Consumer Federation of America

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SENATE ENACTS HARSH NEW BANKRUPTCY BARRIERS

--Bill Goes Next to Conference Committee--

Washington, D.C.—The U.S. Senate passed legislation tonight that will place severe new restrictions on many Americans who file for personal bankruptcy (S. 420). The House passed a different version of the bill earlier this month. As the Senate has added several significant amendments to the bill, including provisions regarding state bankruptcy "homestead" requirements and abortion clinic violence, the bankruptcy bill will proceed next to a conference committee.

"In all of my years in and out of the Senate, I've never seen a bill that was so one-sided," said retired Senator Howard M. Metzenbaum, the Chairman of the Consumer Federation of America. "The cries, claims and concerns of vulnerable Americans who have suffered a financial emergency have been drowned out by the political might of the credit card industry."

The legislation would place numerous additional restrictions on Americans who attempt to file for chapter 7 or chapter 13 bankruptcy (see attached). It does not curb aggressive lending practices by creditors or provide adequate information to consumers about the cost of carrying credit. In fact, economists have predicted that it could lead to an increase in reckless lending because the bill will make it harder for consumers to liquidate some debts, especially credit card debts, in bankruptcy.

"The bill creates a complex new bankruptcy bureaucracy where creditors have the upper hand and debtors face numerous new legal traps and paperwork burdens," said Travis Plunkett, CFA's legislative director. "Add up all of the provisions of this lengthy bill and you get a system that is hostile to modest-income debtors who have suffered genuine financial misfortune."

A vast body of evidence links the rise in consumer bankruptcies in the 1990s directly to an increase in consumer debt. As consumers have shown more restraint in borrowing in the last few years, personal bankruptcies have plunged. The per capita bankruptcy rate has now dropped by 15 percent in the last two years. In 2000, however, credit card issuers responded to cautious consumer borrowing by sharply increasing their marketing and extension of credit. Industry profits in 2000 were at a five-year high.

CFA is a non-profit association of more than 280 organizations which, since 1968, has sought to advance the consumer interest through advocacy and education.

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MAJOR FLAWS WITH BANKRUPTCY LEGISLATION

1. ***It would allow wealthy debtors to continue to retain expensive homes while filing for bankruptcy****. The "homestead" provision would allow those declaring bankruptcy to retain homes of unlimited value in five states, as long as the debtor owned the property for two years before declaring bankruptcy. The states that this would be allowed in are Texas, Florida, Iowa, Kansas and South Dakota.*

2. ***It would not provide Americans with meaningful information on their credit card billing statements to help them avoid bankruptcy****. Such a disclosure, which was part of the Senate's 1998 bill, would tell consumers how long it would take to pay off their balance at the minimum rate and what their total costs in interest and principle would be. The bill allows most lenders to provide only a very general statement on the credit card bill about the potential dangers of paying at the minimum rate and a toll-free number. Most people will not receive the kind of specific information that will encourage them to pay their balance off more quickly.*

3. ***It would compromise the payment of high-priority debts after bankruptcy, such as child support and alimony, by increasing the amount of debt for which debtors are liable****. The legislation creates many new types of "nondischargeable" debts that must be paid to credit card companies. It allows creditors to coerce "reaffirmation" agreements from debtors to remain legally liable for more consumer debts, by threatening to repossess essential appliances like refrigerators and washers. These provisions cover all people who file for bankruptcy, including those who meet the "means test" and qualify for chapter 7 bankruptcy. The bill does not include amendments that were offered to insure that parents and children owed support will prevail over the sophisticated collection departments of creditors.*

4. ***It will make it harder for modest-income Americans to get financial relief in chapter 7 and increase the likelihood that they will lose their homes and cars in chapter 13 restructuring plans.*** *The means test to determine which debtors can file chapter 7 bankruptcy (instead of chapter 13) is arbitrary and inflexible. It is based on IRS standards not drafted for bankruptcy purposes that do not take into account individual family needs for expenses like transportation, food and rent. It disfavors renters and individuals who rely on public transportation and unduly benefits higher income individuals with more property and debts. Moreover, the bill's "cramdown" provision will make it much harder for families to use chapter 13 to save their homes and cars.*

5. ***Onerous legal and paperwork burdens in the bill will disadvantage cash-strapped families who cannot afford a lawyer****. The bill provides creditors, especially credit card companies, with a variety of new opportunities to file lawsuits challenging the discharge of debts; lawsuits that financially-pressed families will likely accede to because they cannot afford to challenge them. Cumbersome informational requirements will substantially increase the cost of accessing the system for families who are most in need of debt relief and financial rehabilitation. These paperwork requirements would apply to all debtors, even lower-income debtors. The bill also eliminates provisions of current law that allow families to catch up on rent and avoid eviction.*