

1998

Striking a "Balance" in U.S. Bankruptcy Law

Nancy Lazar

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>



Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Nancy Lazar *Striking a "Balance" in U.S. Bankruptcy Law*, 10 Loy. Consumer L. Rev. 13 (1998).

Available at: <http://lawcommons.luc.edu/lclr/vol10/iss1/3>

This Recent Legislative Activity is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.



RECENT LEGISLATIVE ACTIVITY

by Nancy Lazar

Striking a "Balance" in U.S. Bankruptcy Law

"For nearly 1.3 million American families, the most important event of 1997 [was] the public declaration that they are bankrupt." This disheartening statistic comes from the National Bankruptcy Review Commission ("the Commission"), a creation of Congress. After three years of studying the national bankruptcy system, the Commission issued a 1,300-page report to Congress on October 20, 1997 proposing 172 changes in U.S. bankruptcy laws and procedures. Brady C. Williamson, who President Clinton appointed Chairperson of the Commission, described the recommendation as "controversial . . . [and] meant to be controversial." Although the Commission attempted to "balance" the interests of creditors and debtors in its recommendations, creditors and some members of Congress criticized the proposals as allowing American debtors to file "bankruptcies of convenience."

Congress Creates Commission in Response to Increase in Bankruptcies

Congress created the Commission in 1995 in response to the recent dramatic increase in personal bankruptcy filings. Nationally, one out of every 75 households filed for bankruptcy protection in 1997 and consumer bankruptcy filings have nearly tripled since 1987. When Congress last conducted a comprehensive review of the nation's bankruptcy system in 1977, which led to the enactment of the 1978 Bankruptcy Code, only

212,000 Americans filed for bankruptcy that year. In 1996, over 1.1 million Americans filed for bankruptcy — a *400 percent increase* since 1980 — and in 1997, an estimated 1.3 million filed for bankruptcy. Each bankruptcy judge's caseload, in turn, has risen significantly. A caseload of 895 cases for each bankruptcy judge in 1977 has increased dramatically to 4,200 cases per judge in 1997.

The nine-member Commission, appointed by President Clinton, Chief Justice William H. Rehnquist, and Congress, included a federal court of appeals judge, a bankruptcy judge, six attorneys, and an accountant. The Commission itself had no judicial or legislative authority; therefore, its recommendations for the nation's bankruptcy system are not binding. In order to effectuate any of the Commission's proposals for the U.S. bankruptcy system, Congress must adopt bills based on the Commission's report.

The Commission insisted that all 172 recommendations contained in its report reflect three basic goals: (1) the improvement of the integrity and fairness of the bankruptcy system; (2) the decrease in the abuse of debtors and creditors; and (3) the enhancement of the efficiency of the bankruptcy process. The Commission made recommendations regarding several areas of U.S. bankruptcy law, such as the bankruptcy appellate structure, transnational insolvency, mass tort claims, the compilation and dissemination of bankruptcy data, family farm bankruptcy, and partnership and small business bankruptcy.

However, the Commission placed greater significance on *consumer* bankruptcy issues,

and therefore, introduced 34 consumer bankruptcy proposals in the first chapter of its report. The "consumer framework" section of the Commission's report sparked the most intense and controversial debate. It was presented and voted on as a package, and the Commission approved it in a 5-4 vote. In response to this debate, the Commission noted, "[t]he last 16 months have seen the single most concentrated national dialogue on consumer bankruptcy in history. The Commission devoted more time, more resources and more energy to the development and debate of recommendations about consumer bankruptcy than it did to any other topic."

Improving the Administration of the Consumer Bankruptcy System

The Commission made three recommendations to improve the administration of the current consumer bankruptcy system. First, the Commission proposed the creation of a national bankruptcy filing system, which would offer greater availability of consumer bankruptcy filing information to debtors, creditors, and bankruptcy courts. This system would provide bankruptcy courts with information necessary to monitor serial bankruptcy filings since both the Commission and Congress anticipate the placement of restrictions upon such filings.

Second, to improve the integrity of the bankruptcy system, the Commission recommended the implementation of random audits of debtors and associated penalties for filing improper bankruptcy claims. New Rule 9011, which requires bankruptcy attorneys to make a "reasonable inquiry" into the truthfulness of information contained in pleadings to bankruptcy courts, reinforces the requirement of participants of the bankruptcy process to provide complete and truthful information to

bankruptcy courts.

Finally, the Commission proposed the development of debtor education programs to prevent debtors from repeating their past financial mistakes. The Commission indicated in its report that "[a] legal fresh start may not prevent repeated failure if debtors do not have the skills to manage the credit marketplace. . . . Repeated financial failure does not benefit debtors, creditors or the public interest." Although the Commission recommended that debtors undergo some type of training on managing their credit, it explicitly rejected the creation of mandatory debtor education programs and refused to propose any specific type of debtor education. The Commission feared that such mandatory programs "may be unduly coercive and difficult to administer" and believed that states must experiment with different types of debtor education programs to find one that best prevents debtors from repeating their past financial failures.

Rejection of a "Needs-Based" System for Personal Bankruptcy

Although Congress created the Commission to reach a consensus on changes to the nation's bankruptcy system, the Commission voted 5-4 *not* to endorse a "needs-based" system for personal bankruptcy which would base the amount of an individual's debt relief upon his or her financial obligations and income. Currently, consumers may file for bankruptcy in two fundamental ways under the 1978 Bankruptcy Code—through a Chapter 13 repayment plan or a Chapter 7 liquidation. A Chapter 13 filing requires a filer to repay part or all of his unsecured debts, such as credit card bills, in exchange for a discharge of the unpaid portion of his debts. The repayment of the unsecured debt usually extends over 3-5 years according

to a plan created by a bankruptcy court. This Chapter 13 repayment plan will, in turn, protect the filer from creditors' collection attempts.

In contrast, a debtor filing Chapter 7 bankruptcy must only provide particular assets to the bankruptcy court, which then sells the assets and distributes the proceeds to creditors. In exchange, most of the Chapter 7 filer's unsecured debts are canceled, even if the filer has paid only a small amount of his total debt. Consequently, a debtor filing for personal bankruptcy commonly chooses to file Chapter 7 bankruptcy; nearly 70% of consumer debtors file under Chapter 7. In 1996 alone, Chapter 7 bankruptcy filings erased nearly \$30 billion in consumer debt, according to Visa U.S.A., a major creditor supporting legislation that would limit number of Chapter 7 filings.

This complete deletion of consumer debt under current Chapter 7 bankruptcy rules has enraged creditors, such as Visa U.S.A., who, in turn, have created their own policy group, the National Consumer Bankruptcy Commission ("NCBC"), to aggressively lobby Congress for stricter Chapter 7 bankruptcy laws. Creditors argue that current personal bankruptcy rules allow Chapter 7 filers relief from debt they are *able* to satisfy, and therefore, invite debtor abuse. Creditors refer to studies finding that a significant number of Chapter 7 filers have sufficient income beyond individual needs to satisfy a minimum of the debt erased under Chapter 7. However, bankruptcy courts typically do not review an individual debtor's income since current Chapter 7 law does not require a minimum amount of debt or specific income-to-debt ratio in order to file for Chapter 7 bankruptcy.

Consequently, members of the NCBC are supporting legislation named the "Responsible Borrower Protection Bankruptcy Act," H. R. 2500, 105th Cong. (1997), introduced by Representatives Bill McCollum (R-Fla.) And

Rick Boucher (D-Va.), in September of 1997. Senator Charles Grassley (R-Iowa) and Senator Richard Durbin (D-Ill.) Introduced a similar needs-based bill, the "Consumer Bankruptcy Reform Act of 1997," S. 1301, 105th Cong., §707(b) (1997), on October 21, 1997 — merely one day after the Commission issued its report. The bills propose an individual "needs-based" system for Chapter 7 personal bankruptcy. Such a system would determine a Chapter 7 filer's specific amount of debt relief based on a formula measuring his individual income and financial obligations. Representative McCollum argues that such a needs-based bankruptcy system "address[s] the problem at the very heart of our nation's personal bankruptcy crisis" — the lack of "personal responsibility" and "responsible borrowing." Although the Commission refused to recommend a needs-based system for personal bankruptcy, the immediate reaction by both houses of Congress reflect Congress' view of Chapter 7 filings.

Equalize State-Law Home and Personal Property Exemptions

The Commission viewed the creation of a *uniform* system of property exemptions as vital to improving the fairness of the consumer bankruptcy system. Under current federal bankruptcy law, states have the power to set *any* amount of exemptions for equity in homes and personal property under Chapter 7. These state exemption laws allow debtors to shelter a certain amount and/or certain classes of property from attachment by a judgment creditor or trustee in bankruptcy to satisfy the debtor's debts. Although the Constitution gives Congress the authority to adopt uniform bankruptcy laws, the current system of property exemptions is determined by individual states. As a

result, the amount of property a debtor may hold exempt when filing for Chapter 7 bankruptcy solely depends upon the law of the state where the debtor chooses to file. Williamson believes this inconsistency in state exemption laws constitutes "the single greatest threat to the integrity of the bankruptcy system because it threatens public confidence in the fairness and balance of the bankruptcy laws."

To eliminate this inconsistency, the Commission recommended that Congress adopt a uniform system of homestead and personal property exemptions. Under the Commission's proposal, all consumers filing Chapter 7 bankruptcy would be subject to the same exemption restrictions; however, they would be able to protect *more* assets than currently allowed under most state exemption statutes. The Commission proposed that Congress adopt a range that provides states with "some flexibility, but not unlimited flexibility," in setting the amount of equity that a debtor may protect from creditors. By a controversial 5-4 vote, the Commission recommendation that Congress require states to establish home exemptions between \$20,000 and \$100,000, and a single exemption for all personal property of \$20,000 for each individual.

This particular vote sparked intense debate because the proposed exemption levels are higher than the current amounts established by most state exemption statutes. For instance, debtors in Ohio may currently claim a principal residence exemption of only \$5,000 and a catch-all exemption of only \$400. The four dissenting Commissioners believe that the amount of the proposed exemptions would provide an incentive for more debtors to file for Chapter 7 bankruptcy. Although Commissioners failed to reach a consensus on the appropriate exemption levels, they unanimously de-

cided upon the need for uniformity in state exemption laws to increase the fairness of the consumer bankruptcy system.

Direct Appeal to the United States Courts of Appeals

The Commission advanced a controversial proposal by urging the elimination of the first of two required levels of appeal under current federal bankruptcy law. Under the present bankruptcy system, every party in every bankruptcy case must satisfy a requirement not imposed in any other federal judicial proceeding: two levels of intermediate appeal. Bankruptcy case law requires an appellant in any bankruptcy case to first appeal to the federal district court or appellate panel of bankruptcy judges ("BAP"), depending upon the particular district's bankruptcy appellate structure. The case will then reach a United States Court of Appeals only after the district court or appellate panel reviews the lower court's decision and the party decides to undergo another round of appeals.

This unique burden imposed upon bankruptcy litigants not only requires an additional round of appellate briefs and arguments, additional time, and additional cost to the parties and the judicial system, but also fosters ongoing bankruptcy litigation. For instance, the appellate decision issued by the district court or BAP has no precedential value beyond the case itself. Moreover, the interlocutory/finality rules and the high cost of bonding appeals from final decisions prevent federal appeals courts, the only intermediate appellate courts that issue binding bankruptcy decisions, from resolving significant issues of bankruptcy law. Consequently, the current bankruptcy system contains only minimum precedential guidance for debtors, who, in turn, must develop and argue

their bankruptcy case on a case-by-case basis.

To create a more efficient bankruptcy appellate structure and establish a body of binding bankruptcy law, the Commission unanimously recommended that bankruptcy judges be elevated to Article III status, granting them lifetime tenure and jurisdiction over all issues arising in a bankruptcy case. As a result, the district court or BAP need not review any aspect of the bankruptcy court's trial level opinion, which could then be directly appealable to the United States Court of Appeals. Bankruptcy Court Judge, Robert E. Ginsburg, the Vice Chair of the Commission, considers this recommendation "the most serious and important recommendation" of the 172 proposals contained in the report since it is fundamental in improving the efficiency of bankruptcy practice and procedure and creating binding bankruptcy precedent.

Expanded Dischargeability of Debt and Discharge Exceptions

Although the Commission issued nine recommendations regarding the dischargeability of debt, three proposals have sparked the most intense debate: (1) the establishment of a bright-line test for evaluating the dischargeability of credit card debt; (2) the eradication of the discharge exception for student loans; and (3) the simplification of the dischargeability of marital debts.

Dischargeability of debt under federal bankruptcy law allows debtors to be released from the obligation of all their debts, which are provable in bankruptcy proceedings, except such debts specifically excepted by the Bankruptcy Code. Under its first proposal, the Commission recommended discharging credit card debt if the debt was incurred at least 30 days before filing personal bankruptcy and the

debtors' charges did not exceed the credit limit on the card. Current Chapter 7 bankruptcy law prohibits debtors from discharging credit card purchases for luxuries or large cash advances (typically \$1,000 or more) made 60 days prior to filing Chapter 7 bankruptcy. Second, the Commission recommended the elimination of the discharge exception to federal student loans. The Commission proposed that federal student loans, except loans financing a medical school education, be immediately forgiven, instead of waiting seven years after filing for bankruptcy which is required under the current bankruptcy system. Third, the Commission proposed to simplify the dischargeability decision of material debts by deleting § 523(a)(15) of the Bankruptcy Code and amending § 523(a)(5), which would focus the decision upon whether the debt was in the nature of support. Other proposals recommended that debts incurred to pay nondischargeable taxes and all criminal restitution orders be nondischargeable, a limit be placed upon vicarious liability and the effect of default judgments, and all creditors be given the opportunity to oppose a debtor's discharge and have a voice in the settlement of these conflicts.

Commission's Report Causes Expected Controversy

After holding 21 national and regional hearings over 35 days, attracting more than 2,600 attendees, and devoting almost half of its nearly \$1.5 million budget to open, public meetings, hearings and communications, the National Bankruptcy Review Commission passed 34 consumer bankruptcy proposals for the amendment of the 1978 Bankruptcy Code by a controversial 5-4 vote. By its own admis-

sion, the Commission “embraces the controversy.” Although the Commission tried to strike a balance in the current bankruptcy system with “both fair treatment for creditors and a fresh start for debtors,” the Commission’s report received criticism from both sides of the debate on consumer bankruptcy. Nevertheless, the Commission realized at the outset that its report would not be completely welcomed by either debtors or creditors, stating in the preface of its report, “[t]his report will not fully satisfy anyone. . . . The commission did not adopt the cause or the interests of any group — corporate or individual, creditor or debtor.” Therefore, criticism of the report by both creditors and debtors “is not only inevitable, [but] is also a mark of the Commission’s care in reviewing and discussing the bankruptcy laws, from diverse perspectives, with the goal of recognizing both the interests of creditors and the interests of debtors.”

Although the Commission issued a report at the end of the 1997, legislative session and congressional debate over the bankruptcy

system has carried over into the 1998 session, Congress may spend many years debating the report before adopting any part of the report into law. In 1970, the last time a commission recommended reform of the bankruptcy system, Congress took nearly five years after the report’s filing to enact new bankruptcy laws. That commission even filed proposed legislation with its report, an option this current Commission declined to exercise. Rather, the National Bankruptcy Review Commission submitted only recommendations that, in order to be transformed into law, must be drafted into statutory language.

Although the Commission recognized that its report “will have no immediate effect on the Bankruptcy Code, the rules formulated by the judiciary, or the determination of bankruptcy cases,” the Commission realized that it completed its assigned task “not to make binding decisions or to change the law but to make recommendations that will help Congress improve the law.”

CLR

Congress Considers President Clinton’s Education Plan for Voluntary National Achievement Tests

“This should be something that has nothing to do with party politics. . . . There’s not politics in this, only our children.” On February 6, 1998, the House of Representative passed an education bill by a 242-174 vote, which grants to Congress final authority on deciding upon federal funding of national standardized tests. *See* H.R. 2846, 105th Cong. (1998). The bill explicitly prohibits any new federal government spending on the development *and* use of the tests without Congress’s consent. Although House Republicans who sponsored the bill are fighting against President Clinton’s national testing proposal, the House vote was not

sufficient to override a potential veto.

This new House bill changes the tentative agreement reached by Congress and President Clinton last Fall regarding the establishment of national tests. On November 5, 1997, President Clinton and Congressional Republicans reached a tentative agreement regarding voluntary national achievement tests in reading and math that would delay such testing until 2000. *See* H.R. 2846, 105th Cong. (1997). According to the compromise, the government may perform restricted development of the tests beginning in 1999; however, it may not conduct any trial runs of the tests until after October 1, 1998.

Rather, the National Academy of Sciences would conduct a six-month study to decide whether current state tests and popular commercial tests can be conformed to achieve similar goals. Although President Clinton agreed with this educational plan, it was a modified version of his original educational proposal.

Proposed by President Clinton in 1997, national standardized tests would evaluate the reading level of all fourth graders and the mathematical proficiency of all eighth graders in order to determine whether students satisfy a national educational standard. First enunciated in the President's 1997 State of the Union address, the plan is gaining support from not only Congress, but from the general public as well.

Clinton's proposed educational plan calls for an *individual* assessment of every fourth grader's reading ability and every eighth grader's mathematical skills in order to: (1) make a nationwide comparison; and (2) determine whether students are satisfying a national educational standard. Presently, no single test is administered to every fourth or eighth-grade student in the country. Consequently, schools are unable to compare the academic progress of fourth or eighth grade students from different areas and evaluate their achievement against a national standard.

Although some school districts now obtain the test results of children within the district, no tests currently evaluate *individual* schools or students. Therefore, results from most educational testing presently conducted fail to indicate a specific grade level's reading and mathematic skills nationwide. For instance, although many currently administered commercial standardized tests make comparisons of the scores of test takers, these particular tests are graded on a curve. Therefore, the tests do not to measure the test taker's scores against a

national standard. Moreover, although the educational tests currently sponsored by the Educational department, called the National Assessment of Education Progress ("NAEP"), are measured against a national standard, they are taken by only a sample of children, and the results are computed nationally and statewide, but not for individual schools or students.

In sharp contrast, President Clinton's plan would transform NAEP's fourth-grade reading and eighth-grade math tests into such individual tests and would measure the individual test scores against a set national criterion. Gordon M. Ambach, the executive director for the Council of Chief State School Officers, argues that such a national standardized test would produce far-reaching results since "[t]hrough that one, single test administration, you would have the possibility that students in one school would know how their scores on that test compare with [those of other] students in their state, in school districts outside their state, [and in] the nation as a whole."

If the national testing plan is enacted into law, the administration of the tests demands an increase in the Education Department's fiscal spending. In 1997, the Department spent \$13 million on the nation's education. However, the implementation of the national tests would require the department to spend \$16 million in 1998 to develop the tests and as much as \$90 million in 1999 to administer the tests to fourth and eighth graders nationwide.

On September 17, 1997, by a 295-to-125 vote, the House of Representatives passed an amendment to the Education Department's fiscal 1998 spending bill, which would prohibit the Department from financing the development of the tests. In contrast, the Senate overwhelmingly confirmed the financing of the national tests by a 87-13 vote the previous week, on the condition that the tests are administered by a non-partisan independent board, not the Depart-

ment of Education. Both the House and Senate are now considering the two versions of the spending bill in an attempt to reach a compromise on the spending package for the nation's education. This Congressional conference committee that will determine the fate of Clinton's national educational plan held its first meeting on October 14, 1997, to resolve principal conflicts between the House and Senate.

The American public approves of such reforms to national educational testing according to the most recent version of the annual Phi Delta Kappa/Gallup Poll of public attitudes toward public schools. Released in August 1997, the poll showed that 77% of the respondents supported national educational standards, 67% favored standardized tests measuring academic achievement and 66% believed that the public schools demanded a national curriculum.

However, critics of the national testing plan

argue that children already take an excessive amount of standardized tests. Researchers at Boston College's Center for the Study of Testing found that teachers nationwide administer somewhere between 140 million and 400 million standardized tests per year and that each American child takes approximately three to nine standardized tests annually. American children currently spend as much as 10 percent of their classroom time taking these required standardized tests.

Opponents of Clinton's plan argue that the already excessive number of standardized tests requires teachers to spend a significant portion of their teaching time preparing students for such tests and less time in actually "teaching" their students. Critics claim that the enactment of Clinton's national standardized testing will merely add to this student preparation time and not necessarily "improve our schools by raising standards, empowering parents and increasing accountability," as President Clinton contends.

CLR

Food and Drug Administration Accelerates Approval Process of New Drugs and Medical Devices

After three years of passionate debate on the Food and Drug Administration's (FDA) review of new drugs and medical devices, Congress passed ground-breaking legislation on November 9, 1997 revolutionizing the agency's system of approval of \$1 trillion worth of pharmaceuticals and medical devices each year. President Clinton signed this legislation, the FDA Modernization Act of 1997, an amendment to the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, into law on November 21, 1997. 21 U.S.C. § 301 (1997). Attempting to ensure maximum performance of the FDA and adequate protection of the health of American consumers, the compro-

mise legislation reached by both houses of Congress will not only *accelerate* the FDA's approval process, but will also *broaden* consumer access to breakthrough drugs and medical devices.

Although the FDA has recalled only nine drugs or medical devices in its 91-year history, the FDA's former process of reviewing drugs and devices, a process that typically took over 30 months, lagged behind the rapid advancement of medical technology. In response to this slow process, Congress included a provision in the statute that continues a user-free program established in 1992 for five additional years. This program allows drug makers to hire 600

Representative Michael Bilirakis, (R-Fla.), head of the House Commerce health subcommittee believes the legislation “represents our best effort in many years to improve the health and safety of all Americans.”

new FDA drug reviewers to examine the safety and usefulness of revolutionary drugs. Since 1992, when Congress first implemented the drug-review fees, the average FDA approval time has dramatically decreased from 30 to 15 months. To further accelerate the FDA drug-approval process, Congress has authorized the Health and Human Services Secretary to accredit independent third-party review of lower-risk medical devices. Due to this significant shift of responsibility of review to nongovernmental entities, the FDA will concentrate primarily on the approval of high-risk devices, and in turn, speed up the review of such products.

This overhaul of FDA regulation and procedure also provides *more* patients *greater* access to needed drugs and medical devices. For example, the statute allows physicians to petition the FDA to provide certain unapproved drugs to seriously ill patients quickly, significantly decreasing the patient's waiting period for treatment. Moreover, the bill offers an incentive to drug companies to develop and test medicines for children by providing an additional six months of patent exclusivity for pediatric drugs.

Even though an independent third party review has facilitated a speedier and more available FDA review process, in the Modernization Act, Congress significantly restricted

the authority of pharmaceutical companies and device makers in handling non-approved uses of drugs and devices, considered “off-label” use. For instance, drug companies must now obtain FDA clearance to write and publish medical-journal articles on non-approved uses of drugs. Drug companies also must study the safety and effectiveness of certain off-label uses and obtain FDA approval for them within three years of the study. Additionally, the compromise authorizes FDA officials to require medical device makers to express on labels that the safety and usefulness of particular off-label uses has not been proven and thus could be potentially harmful to consumers.

The rapid transformation of the bill into the FDA Modernization Act of 1997 evidences the immediate need for the acceleration of the FDA's review of new drugs and medical devices. Representative Michael Bilirakis, (R-Fla.), head of the House Commerce health subcommittee believes the legislation “represents our best effort in many years to improve the health and safety of all Americans.” Alan Holmer, president of Pharmaceutical Research and Manufacturers of America, predicts that such changes to the current approval process will deliver new medicines to patients nearly one year earlier than under the prior FDA approval system.

CLR

Congress Strives to Make the IRS a "Taxpayer Friendly" Agency

Editor's Note: In our last issue, Volume 9, Issue 4, the Research Section focused on the effect of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34 (1997), and on the taxpaying consumer. The following information supplements last issue's description of the Act.

On November 5, 1997, the U.S. House of Representatives overwhelmingly approved a bill by 426-to-4 vote to revamp the Internal Revenue Service (IRS). The Internal Revenue Service Restructuring and Reform Act of 1997, H.R. 2676, 105th Cong. (1997). The bill is an amendment to the Internal Revenue Code of 1986. Attempting to shift the agency's law enforcement culture toward a more customer-friendly service provider, the legislation would establish an 11-member board to monitor the federal agency, provide taxpayers with new powers in handling tax conflicts, and grant taxpayers a "taxpayer bill of rights." The taxpayer bill of rights would shift the burden of

proof from the taxpayer to the IRS in particular tax disputes and grant taxpayers a greater incentive to bring an action against the IRS and collect legal fees when the IRS has lost the lawsuit. The bill also transforms personnel decision making in the IRS; managers would have more flexibility in promoting workers and in hiring from outside the agency.

Although President Clinton's administration initially disagreed with the overhaul of the IRS as proposed, President Clinton and Congressional Democrats are now urging Senate leaders to vote on the tax bill soon. The Senate vote is scheduled for 1998.

CLR