

## **APPENDIX G-3.a.**

**Introducing a Debtor Education Program into  
the U.S. Bankruptcy System: A Roadmap for  
Change (Prepared by Professor Karen Gross)**

INTRODUCING A DEBTOR EDUCATION PROGRAM INTO THE  
U.S. BANKRUPTCY SYSTEM: A ROADMAP FOR CHANGE

Submitted to the National Bankruptcy Review Commission  
By Professor Karen Gross  
July 7, 1997

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**Introduction**

I have prepared the following document regarding debtor education pursuant to the National Bankruptcy Review Commission's (the "Commission") request and as a follow-up to my Preliminary Proposal on Debtor Education dated February, 1997 ("Preliminary Proposal").<sup>1</sup> As it prepares its final report scheduled for release on October 20, 1997, I hope this document will further inform the work of the Commission, which has already expressed support for the concept of debtor education.<sup>2</sup> It is my expectation that, following issuance of the Commission's Final Report, there will be continued discussion regarding debtor education, both in the public and private sector, and hopefully, the

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1. This proposal was submitted to the Commission in February, 1997 and widely circulated by the Commission to numerous individuals and entities interested in consumer bankruptcy. I also supplied numerous copies to interested individuals who requested same. With permission, the Preliminary Report was also reprinted in several publications including the CONSUMER QUARTERLY REPORT. It was also referenced in detail in the May 1997 issue of the ABI Journal and the May/June 1997 issue of the COMMERCIAL LAW BULLETIN.

2. The June 10th draft of the Consumer Bankruptcy Framework states, in relevant part, "All debtors in both Chapter 7 and Chapter 13 should have an opportunity to participate in a financial education program." (at p.1) Later in the same draft, it states, "Everyone will benefit if debtors have the chance to learn how to manage financially, an integral part of the financial rehabilitation process." (at p. 4)

implementation of a pilot debtor education program.<sup>3</sup> This document has been crafted in anticipation of such future activities.

This document contains four subsections. The first subsection contains a description of the background leading up to this document, including the One Day Debtor Education Think Tank held at New York Law School on June 5, 1997 ("Think Tank"). The second subsection articulates the justification for a nationwide post-filing debtor education program and sets forth the goals of a debtor education program. This subsection also addresses the myriad of choices we face in implementing any such program, and the important distinctions between the ideal and the practical. The third subsection contains a detailed description of a pilot debtor education program. In addition to describing the content of such a program, the description addresses how the program should be studied and funded. The fourth and final subsection provides recommendations regarding what concrete steps should be taken now to implement a debtor education program in the United States.

The concept of debtor education has generated a great deal of interest and enthusiasm.<sup>4</sup> Indeed, as many people have told me on numerous occasions, it is hard to be against debtor education -- it would be like being against apple pie. It has been rewarding and encouraging to see such an outpouring of interest from such a wide range of constituencies. That said, what is meant by debtor education and how debtor education should be implemented are hard issues and ones as to which reasonable people can, do and will disagree. In writing this document, I have been mindful of the many views expressed to me over the past nine months. I recognize that my conclusions will not satisfy everyone, and there will be disagreement with my specific roadmap for change. However, the goal of this document is to express, in clear and concrete terms, my best vision for

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3. The creation of such a program is referenced in the Preliminary Report and endorsed by the Commission in its June 10, 1997 Consumer Bankruptcy Framework at p. 4.

4. See infra Subsection II.

both a national debtor education program and the necessary precursor to same, namely a pilot program. I have been ably assisted and enriched by others (to whom I am deeply indebted).<sup>5</sup> However, the views expressed in this report are my own, and I bear responsibility for the final product.

### **Section I: Background**

Following issuance of the Preliminary Report in February, 1997, I have heard from a number of individuals and institutions. I received, both directly and forwarded to me through the Commission, letters, books, videos and other materials. All of these communications have been thoughtful efforts to think about the question of debtor education. I have read all the correspondence, reviewed the books and videotapes, and spoken at length to numerous individuals. Appendix A is a partial listing of these contacts.

In the Preliminary Report, I indicated my reluctance to proceed to a final report without input from others. In particular, it seemed to me that there were a number of individuals and organizations that had done a good deal of thinking about debtors or financial/money education or both. Accordingly, I organized the Think Tank, which was an all day meeting held on June 5, 1997 at New York Law School ("Think Tank").<sup>6</sup> The twenty-five attendees were drawn from a wide range of constituencies:<sup>7</sup> debtor lawyers; credit card

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5. I am particularly grateful to Professor Susan Block-Lieb (Seton Hall Law School); Professor Marjorie Girth (Georgia State University College of Law); Joseph Guzinsky (Executive Office of the U.S. Trustee) and Elizabeth Wiggins (Federal Judicial Center).

6. All attendees received a "reading" packet before the program which included material published by two attendees, selected data on the Canadian experience and a piece by Lawrence and Sybil Ginsburg titled, "A Psychoanalytic View of Personal Bankruptcy."

7. To obtain such breadth of participation, several of the  
(continued...)

companies and banks; credit counselling services; the judiciary; trustees; legal and non-legal educators; psychologists; and institutes/centers.<sup>8</sup> A member of the National Bankruptcy Review Commission, Babette Ceccotti, was also in attendance. In addition, we were privileged to have with us Micheline Raymond, an Assistant Superintendent of Bankruptcy in Canada. Since Canada is the only nation in the world with mandatory debtor education (to the best of my knowledge), she led off the Think Tank with a discussion of the Canadian experience and responded to a series of questions for the attendees. A complete list of the attendees is included as Appendix B.

Over the course of the day, the attendees spoke at length to a credit reporting agency representative and to each other. In smaller groups, discussions were held on the following five aspects of debtor education: its goals and purposes; course content, course materials and pragmatics; the development and training of teachers; funding; and monitoring and study. These small group discussions were then reported to the larger group where further discussions were held. The experience and commitment of the attendees were evident throughout. There were many points as to which the group had shared views; on other issues, there was greater divergence. What was remarkable was that individuals representing wide and often divergent constituencies shared their views with extraordinary candor and with a commitment to think about the topic of debtor education fairly, congenially and constructively. There was remarkable agreement concerning the need for debtor

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7. (...continued)  
attendees contributed monies to New York Law School to fund the Think Tank and defray the costs of transportation/food and lodging of some of the attendees. I remain deeply appreciative; without this support, it would not have been possible to have such a wide-based group in attendance.

8. Several invitees could not attend but have indicated an interest in remaining involved with this project. They include Elizabeth Volard of the National Council on Economic Education, Suneet Kapila, CPA and Chapter 7 trustee in Florida, and Professor James Horan of the Harvard School of Education.

education and the belief that such a program could and should be developed within the United States. Indeed, the group believed its work was not finished and, following a sharing of information, including this document, intends to reconvene in late September, 1997, to continue its discussions and movement toward the development and implementation of a pilot debtor education program.<sup>9</sup>

Over the past several months, I have also had an opportunity to read and review a host of materials on financial/money education. In addition to articles, I have read actual course materials. I have also read and reviewed the two studies of the Canadian debtor education experience. My recent experience working with debtors at the New York Legal Aid Society has given me an opportunity to reflect on the needs of the individuals within the system. Various attendees of the Think Tank have also spoken to me<sup>10</sup> since the meeting, and others attendees have forwarded additional materials to me which I have read and reviewed.<sup>11</sup>

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9. In the recommendations that follow, I have drawn heavily on the discussions at the Think Tank although the views expressed herein are my own. Consistent with the commitment I made at the Think Tank, I do not take any position on behalf of the Think Tank (as a whole).

10. I am particularly grateful to John Sprague at Experien who put me in touch with Alan Rudi, also of Experien, who has willingly shared his insights with me.

11. I have also been invited to, and plan to attend, the American Bankruptcy Institute initiative on debtor education to be held in Chicago on July 19, 1997. It is my understanding that the ABI is trying to determine how best it, as an institution, can further consumer awareness of household finances, budgeting, debt and legal alternatives. It is most important, I think, that debtor education within the bankruptcy system proceed in a coordinated fashion. See infra Section II. Accordingly, it is my hope that interested parties and institutions will make an effort to proceed in concert with the work that is already underway, an opinion that I will express at the ABI initiative.

Enriched by the foregoing, I have been better able to elaborate on and develop the ideas set forth in the Preliminary Report, recognizing all the while that there are additional materials and resources yet to be studied. Moreover, there are no doubt other individuals expert in these topics who can provide added insights. I would welcome further communication from anyone on these matters; so, while this is my final submission on this topic to the Commission, it is certainly not the final word on these issues.<sup>12</sup>

## **Section II: Goals of Debtor Education**

As everyone is well aware, bankruptcy filing rates are rising, and there are more than one million individual debtors seeking bankruptcy relief a year in the United States.<sup>13</sup> Although we provide debtors with a legal fresh start through the discharge provisions, we have done little systematically to provide individuals with the tools necessary to re-enter the credit marketplace effectively.

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12. For those trying to reach me, here are my address, phone, fax and e-mail, respectively: New York Law School, 57 Worth Street; New York, NY 10013-2960; (212) 431-2154 (phone); (212) 431-1864 (fax); kgross@nyls.edu.

13. This number is somewhat imprecise. Since the Administrative Office of the United States counts joint bankruptcy filings (between a husband and a wife) as one rather than two filings, the actual number of individuals within the system needs to be increased to reflect joint filings. Approximately 300,000 filings are joint. While much fewer in number, there are duplicative filings and repeat filings which would reduce the actual count. See KAREN GROSS, FAILURE AND FORGIVENESS: REBALANCING THE BANKRUPTCY SYSTEM (1997)[hereinafter, GROSS, "FAILURE AND FORGIVENESS"] at pp. 76-78.

There are currently several Chapter 13 debtor programs in existence in this country.<sup>14</sup> While the contours of these programs differ, they attempt to provide Chapter 13 debtors with a better understanding of their financial situation and money management skills. Additionally, some of these programs offer a credit rehabilitation feature that enables debtors who successfully complete the program to re-enter the credit marketplace. According to at least one of the Chapter 13 trustees running such a program, the default rates among these debtors in respect of post-filing credit is extremely small. Unfortunately, the existing programs have not been systematically studied or compared each with each other and with a control group, although those running the programs have conducted their own studies showing success.<sup>15</sup>

The lack of systematic education for debtors is a serious shortcoming because, for better or worse, we live in a credit based economy,<sup>16</sup> and debtors will necessarily

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14. Other less formal Chapter 13 programs have been tried in the past, and it is my understanding that other Chapter 13 trustees may be contemplating adding an education component to their program.

15. One study conducted by Professor Pamela Stokes of a Chapter 13 debtor education program in Texas (which she teaches) demonstrated that over half of the debtors participating in the debtor education program used the ideas presented, and over 80% believed their money management skills improved. See Pamela Stokes, "Moving from Bankruptcy to Solvency: An Educational Experience that Works," BUSINESS CREDIT pp. 20-25 (June 1995). As is suggested *infra*, studying those programs that are up and running and pilot testing one or more of them in the Chapter 7 environment appears to be a useful and doable suggestion.

16. Some people have argued that all debtors post-filing should operate on a cash only basis. While a "cash only basis" may be the right answer for some debtors in some situations, it is neither wise nor practical for all debtors to forever operate without credit. For some debtors, credit  
(continued...)

confront this system when they emerge from bankruptcy.<sup>17</sup> It makes sense, then, to help debtors not just "get out from under their debts" but to function effectively in our credit-based marketplace.<sup>18</sup> Bankruptcy provides us with a unique opportunity: there is a captive audience of over one million debtors who could be provided with education that will help them, their families, present and future creditors and society.<sup>19</sup>

#### a. Educating Whom?

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16. (...continued)  
use should wait until they are in a position to handle same. However, if debtors are to live in our economic system, they need to understand credit so they can use it well. As many people have experienced, one cannot easily travel, stay in a hotel or rent a car without a credit card.

17. GROSS, FAILURE AND FORGIVENESS at p.6.

18. In a certain sense, history is repeating itself in that the call for some form of assistance to the debtor beyond the legal fresh start is not new. In the landmark 1971 study of the bankruptcy system titled BANKRUPTCY: PROBLEM, PROCESS, REFORM and published by the Brookings Institution, David Stanley and Marjorie Girth noted that debtors often receive "casual representation" (at p. 197). They suggest that debtors should have "financial counselling services" for the duration of their case (at p. 205). They also suggest counselling to help debtors comply with their plan (at p. 211).

The Commission Report, published in 1973, also addressed the needs of debtors to get more than a discharge. As expressed therein, "Discharge is not rehabilitation. The present system does not afford adequate counseling to the bankruptcy on his future financial affairs." The Report of the Commission on the Bankruptcy Laws of the United States H.R. Doc. 93-137, 93rd Cong., 1st Sess., Parts I and II at p. 109.

19. GROSS, FAILURE AND FORGIVENESS at p. 98-103; 134-5; 246-7.

Focussing on debtor education strikes some people as paying attention to the horse only once it is out of the barn. Clearly, learning to function effectively in a credit economy is a skill that should be learned long before one is a "debtor" in the bankruptcy system. Nothing in this proposal is intended to undermine any of the economic education initiatives that are currently being developed, implemented and studied by a growing number of organizations and states for elementary and secondary school students.<sup>20</sup> Programs in colleges and community-based adult education settings should also continue and be developed further. Such educational initiatives (which can address topics such as understanding credit; budgeting; spending habits; legal rights and obligations; and credit reporting and scoring) are essential and should be supported.<sup>21</sup> Ironically, at least in some areas of this country, it appears that it is easier and more common to talk and educate about sex than money.

But, pre-bankruptcy education does NOT eliminate the need to educate debtors once they are in the bankruptcy system. Debtors already in the system can be seen as bleeding patients in an emergency room;<sup>22</sup> they need help now. Until the financial education programming in schools and community-based organizations becomes widespread (akin to preventative medicine in the medical field), many debtors will not have had such opportunities to learn. Moreover, even with some education in place, some debtors will still not yet have learned certain financial/budgeting skills we want them to have. In other words, even the best preventative medicine does not eliminate trips to the emergency room. Additionally, debtors may be suffering from other situations (both within and outside their control) that affect their ability to function effectively. As

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20. There may be a place for law students to participate in such programs in local elementary and high schools.

21. For a useful book alerting us to the myriad of issues such programs need to address, see NATIONAL CONSUMER LAW CENTER, SURVIVING DEBT: A GUIDE TO CONSUMERS (2d ed. 1996).

22. The hospital analogy has its origins in TERESA SULLIVAN et. al., AS WE FORGIVE OUR DEBTORS (1989).

psychologists and others point out, financial failures can be a manifestation of failures of a non-economic nature such as divorce, alcoholism, drug dependency, unemployment, industry retooling, job obsolescence or illness. Last but not least, there is a psychology of spending (and saving) that is important to think about and understand, particularly in our culture, and it affects debtors as well as their families.

It is also important to distinguish between pre-bankruptcy filing debtor education and post-bankruptcy filing debtor education. In some of the materials I received, there were suggestions for educating potential debtors BEFORE they seek actually bankruptcy relief. Some of the proposed programs would require that all debtors receive "counselling" as a prerequisite to bankruptcy relief. Such counselling would involve educating the debtor as to budgeting and financial management as well as his or her options both within and outside the bankruptcy system. For example, debtors could be advised (encouraged?) as to the possibility of composition agreements (out-of-court workout arrangements) and the choices between liquidating (Chapter 7) and reorganizing (Chapters 11, 12 and 13) under the Bankruptcy Code. The goal of such a program would be to make sure the choice to file for bankruptcy is carefully made, informed by the other options available, and appropriate to the each particular debtor's circumstances.<sup>23</sup>

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23. As used in this context, "counselling" involves advising debtors on financial and legal issues. An underlying assumption of such an approach is that some portion of debtors seeking relief under the Bankruptcy Code do not need to do so, and they (or their creditors? or both) would have been better served by an out-of-court arrangement. Additionally, there is some sense that debtors who can repay creditors in a Chapter 13 are not electing to do so and should be "redirected" to a Chapter 13. A cautionary note must be issued here. How pre-bankruptcy counselling is conducted and by whom may affect debtor behavior. And, there is a lack of consensus on how debtors should be advised. Clearly, pre-bankruptcy counselling programs must not reflect the views of a single interest group; these programs must be balanced, fair and accurate.

At the present moment, the Bankruptcy Code already contemplates some form of "legal counselling" by attorneys for prospective debtors to advise them as to their legal options under the Code.<sup>24</sup> The nature and degree of this legal counselling no doubt differs from lawyer to lawyer. Indeed, the overall effectiveness and quality of this counselling has been questioned in some corners.<sup>25</sup> Moreover, for prospective debtors not represented by counsel, any detailed assessment of options is necessarily limited.

Currently, some prospective debtors also receive some form of non-lawyer credit counselling from either for profit or not-for-profit credit counsellors. The nature, degree, effectiveness and quality of this type of counselling has also been questioned.<sup>26</sup> In other words, some prospective debtors who use counselling centers may be extremely well counselled on legal and financial matters; others may not be so fortunate.

That said, the purpose of this document is NOT to address pre-filing prospective debtor counselling, whether conducted by lawyers or others. There is certainly room for improvement in terms of the nature and extent of the information potential debtors receive prior to seeking bankruptcy relief. Indeed, some thought should be given to

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24. See 11 U.S.C. § 342(b); Official Form 1 and accompanying affidavit.

25. See Jean Braucher, "Lawyers and Consumer Bankruptcy: One Code, Many Cultures," 67 Am. BANKR. L.J. 501 (1993); Gary Neustadler, "When Lawyer and Client Meet: Observation of the Interviewing and Counselling Behavior in the Consumer Bankruptcy Law Office," 35 BUFF. L. REV. 177 (1986).

26. My experiences at the New York Legal Aid Society has shown me first hand the experiences of debtors with credit counsellors. Further, through my conversations with attorneys involved in consumer representation, I have been advised that the quality of consumer counselling that takes place varies.

providing debtors' lawyers and credit counsellors with improved materials for this purpose.<sup>27</sup> One such example would be the very good new video on this topic prepared by the American Bar Association titled "DEALING WITH DEBT: YOUR GUIDE TO BANKRUPTCY AND OTHER OPTIONS."<sup>28</sup> Perhaps offering some (further in some cases) voluntary, inexpensive training to credit counsellors and debtor lawyers would also be beneficial. Such training could also give these lawyers and counsellors information concerning budgeting, credit card use and costs, spending habits, credit reporting, and debtors' legal rights and responsibilities.<sup>29</sup> Development of materials and programs in this area might be undertaken

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27. I had occasion to look at the written material on bankruptcy options prepared by a credit counselling service. It was replete with inaccuracies. For example, in referencing Chapter 13, it states, "All secured and unsecured debts are paid back in full though a court-ordered plan..." (Copy on file with author.)

28. The ABA's written materials accompanying the video are, however, dated and flawed and hence cannot be recommended. Indeed, this does reflect the risks of any educational material in a field that is constantly changing.

29. In Canada, the training is done by trustees, and all trustees are required to be trained before they are permitted to serve. They must take a course, pass an examination and receive certification. The course, offered through Ryerson Polytechnic University, covers the following topics: basic interviewing skills; money management; family dynamics and money concepts; creative thinking and problem solving; and insolvency process information. The course materials, which I have briefly reviewed, are good and thoughtful. Perhaps some portion of them could be adapted for use in the United States. It is worth noting, however, that "trustees" in Canada are different from "trustees" in the United States. In Canada, they are usually accountants who oversee an individual debtors' bankruptcy cases and serve as something of a cross between a court appointed trustee and a debtor's representative. In Canada, individual debtors are not represented by counsel in the bankruptcy process.

by bar associations, trade associations or other educational institutions, such as law schools.<sup>30</sup>

It is possible, indeed probable, that the nationwide debtor education program proposed herein (or the pilot project itself) may serve as a model for pre-bankruptcy debtor initiatives. However, the testing of post-filing debtor education of still off in the future and current initiatives should begin or continue.

The focus of this document is on **post-filing debtor education**. It is intended to serve the population of individuals who have already made, for better or worse, the decision to seek bankruptcy relief.<sup>31</sup> Therefore, the

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30. The economics of the compensation to debtors' counsel makes it problematic for said attorneys to spend more time with each individual debtor. Given that, it is hard to see how adding a component to the initial client interview would realistically be implemented or monitored for quality control. But, if new and better material were made available and more lawyers than now add it to their counselling, it would certainly not hurt.

31. The suggestion to counsel these individuals as to their bankruptcy options once they are IN the system is problematic. First, this requires legal advice, and a debtor may well be represented by counsel. Further, it undermines whatever advice the debtor has already received. It may be that debtors are not well advised pre-filing and do not understand the whole bankruptcy system and their rights and responsibilities in it. However, the solution to that situation is to improve the quality of the debtors' advisors pre-filing, not to enable others to come in and second guess why a debtor chose bankruptcy relief. Moreover, there are other ways of channeling debtors' pre-bankruptcy selections among the options, such as legending a credit report differently for Chapter 7 and Chapter 13 debtors, some of which are already under consideration by the Commission.

There does remain the critical issue of how pro se  
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question is: what are the goals of educating post-filing debtors?

### **b. Goals of Debtor Education**

Let me begin by saying that, in the real world, an education program cannot be perfectly implemented in every setting. Even the best educational program will miss some debtors, will have some teachers who are better than others and will not succeed at achieving all of its announced goals. So, in stating goals of a nationwide debtor education program, I recognize up front that some of these goals are aspirational in nature and each goal will not always be met.

A nationwide debtor education program should help all individual debtors (whether in Chapter 7, 11, 12 or 13)<sup>32</sup> and their families deal with their financial failure both over the short and long term. It should also provide a fair and responsible process for rehabilitating debtors so they can make informed decisions about re-entering the credit marketplace following completion of the bankruptcy process.

These goals can be accomplished in the following six ways:

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31. (...continued)  
debtors obtain advice regarding the bankruptcy system and their choices within it. That issue, while important, is beyond the scope of this proposal.

32. This document addresses debtors in Chapters 7 and 13 because that is where the overwhelming number of individual debtors file. Corresponding work would need to be done for individuals in Chapters 11 and 12.

! Identify and address the root causes of the debtors' bankruptcy filings, both financial and non-financial;

! Provide basic information about financial management; the usage, costs and management of credit; spending habits; distinguishing wants and needs; setting priorities; budgeting; and life planning;

! Provide basic information about the bankruptcy system so as to dispel confusion and mystery and enable the debtors to be more effective participants in the process they have selected;<sup>33</sup>

! Provide some psychological (group) support to debtors and their families during the bankruptcy process;

! Identify debtors in need of non-financial counselling or similar services and then refer said debtors to such resources, including marital counselling services, substance abuse programs, gambling addiction programs, job training (or re-training) programs and pro bono legal services; and

! Assist debtors with the re-establishment of their creditworthiness through a cleaning-up of their credit reports and the addition of a legend on the credit report to show successful completion of the debtor education program.

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33. A clear distinction must be made between informing debtors about the nature of the bankruptcy system and providing debtors with legal advice about issues of bankruptcy law and their personal legal choices. A debtor education program should not provide legal advice. For example, it should not advise a debtor as to chapter choice or whether or not to reaffirm a debt (assuming that remains an option). On the other hand, it would be appropriate to explain to debtors what they would be expected to see and do in a Chapter 7 or a Chapter 13 case. For example, the debtors should understand what happens to their future income and what the role of the trustee is.

In addition to helping debtors (both in terms of financial and psychological understanding), a nationwide debtor education program should help the debtors' families that are inevitably affected by a bankruptcy filing.<sup>34</sup> Moreover, a debtor education program will help future creditors because more knowledgeable, educated debtors will be better credit risks, and creditors may be able to better assess prospective creditworthiness. A debtor education program would be less of a drain on our economic system prospectively since more knowledgeable debtors may be less likely to draw prospectively on governmental assistance programs. Debtor education would also be beneficial in a societal sense by reflecting our national commitment to assist those in need to better themselves.<sup>35</sup> It is, to use game theory terminology, a win-win situation.

A debtor education program can provide other tangible benefits within the bankruptcy system. Debtors in Chapter 13 might be more likely to complete their Chapter 13 plans successfully. Chapter 7 debtors may be less likely to have their cases dismissed. Debtors may be less likely to refile a bankruptcy case in the future.<sup>36</sup>

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34. In an ideal world, all family members would be educated with the debtor. But, given the number of debtors, that is an unrealistic option, at least at present. But, there are still ways that some family benefits could be garnered. As developed in the pilot project, a member of (rather than all of the members of) the debtor's family could join in the educational offering. For non-attending family members, the information could funnel back, particularly through course materials that are brought home and informal family discussions. Thus, one family member would benefit directly while others would benefit indirectly.

35. Helping debtors does not mean that we approve of what they did that landed them in financial trouble. Indeed, forgiveness of debtors or debt is not necessarily linked to approval of those debtors' conduct. See GROSS, FAILURE AND FORGIVENESS pp. 91-103.

36. These are the very types of issues that could and  
(continued...)

### **c. Controversial Areas**

There are three important and controversial topics that must be addressed before turning to the details of any pilot debtor education program. To begin, there is the question of whether a debtor education program should be mandatory or voluntary. This is a hugely important issue in that it affects both the structure and costs of a debtor education program.

#### **i. Mandatory vs. Voluntary**

At the Commission roundtable discussion on debtor education held in December, 1996, there was strong support voiced by the invited participants that debtor education be voluntary. Mandatory education troubled many participants in that it appeared (among other things) coercive, hard to administer and paternalistic. There was the sense that people learn better when they choose to learn as opposed to being forced to learn.

At the Think Tank, there was greater support for some form of mandatory debtor education. Many attendees voiced that the very debtors who may not want to attend debtor education are the ones who need it the most but might not be able to envision its potential. As the attendees attested to based on their personal and professional experiences, there are often things that one only comes to appreciate after they are required.<sup>37</sup> Some Think Tank attendees were also concerned about "required" education that was, in fact, voluntary being touted as mandatory to encourage greater debtor participation; these attendees were concerned about deceiving the debtor participants. Once the discussion

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36. (...continued)  
should be studied in the pilot project.

37. One example given was that couple counselling is often resisted by one member of the couple but once tried, it benefits both spouses.

moved to the practical, the support for mandatory education waned somewhat. The problems of linking education with discharge troubled some attendees who were concerned about implementation and the realistic possibility that some debtors could not complete education for very good reasons (illness; moving; new job). Moreover, if there needed to be court action to deny discharge (or grant it absent education), there would be a whole new set of judicial proceedings which would be costly and time-consuming.

The Commission, in its June 10th Consumer Framework at p. 4, recognized this dilemma and opted to recommend voluntary debtor education, provided that a judge could require debtors to participate "in appropriate circumstances."

Although the argument in favor of mandatory debtor education has increasing appeal to me, I remain in favor of a well-structured, well-attended, readily available and affordable form of voluntary debtor education. I endorse, then, the Commission's stance. I think the possibility of judges "ordering" education in appropriate circumstances has potential,<sup>38</sup> although I think this needs to be thought through more fully.<sup>39</sup> Absent a change in judicial involvement in consumer cases, some thought should be given to placing the "ordering" job in the hands of the Chapter 7

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38. This would necessitate an amendment to the Bankruptcy Code, either in the discharge sections, Section 105 or a newly created provision.

39. There are pragmatic questions here. Since most judges do not see Chapter 7 debtors, there is a question as to how they would make this determination. For debtors whose discharge is challenged and a court hearing held, that is one opening. For filings challenged on the basis of Section 707, that is another opportunity. That still leaves the vast majority of debtors outside the court's presence. The request could also come on the motion of the trustees, provided a statutory amendment to this end was added to the Bankruptcy Code.

or Chapter 13 trustees as opposed to the judge, since it is the trustees who have direct contact with the debtors.<sup>40</sup>

That said, I think we need to remain open about the voluntary/mandatory nature of debtor education based on the outcome of a pilot program. This is one of several areas in which the results of the pilot program could forecast how a national program might work.<sup>41</sup> For example, if attendance at the voluntary program is very high, mandatory education may not be necessary. Alternatively, if attendance is poor or falls off substantially at the second or follow-up session, mandatory education might be recommended.

My reasons for favoring voluntary education at this juncture are partly pragmatic ones. Canada, with mandatory education and under 100,000 annual filings, has over 1,300 people trained to teach debtors. We would need to educate well over one million debtors.<sup>42</sup> If each debtor were to receive two education sessions, there would need to be 2 million sessions offered annually and literally thousands of trained teachers.

But, sheer numbers are not the only issue. If a debtor who failed to complete a debtor education program were unable to obtain a discharge, there would be a host of newly created administrative burdens on the clerks' offices. What would happen to the debtor that missed the program due to illness (of his/her own or someone in the family)? Then,

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40. Again, a statutory amendment would be required.

41. In an ideal world, we would set up two mandatory programs within the pilot project. This would allow us to compare the successes of mandatory and voluntary education. However, a mandatory program, even at the pilot level, would require statutory change, and amending the Bankruptcy Code would not be a short process. Therefore, in the interest of time, despite its methodological appeal, I am not in favor of mandatory pilot regions.

42. Since I contemplate educating at least one family member, these numbers increase significantly.

there are my concerns about the stigmatizing nature of mandatory education. I am uncomfortable with a bankruptcy system that punishes filing. Most debtors have not done anything wrong; it is not like drunk-driving school where drivers have broken the law and need to be re-educated before we give them their licenses back. Finally, I worry that, with a nationwide program serving so many people, quality will necessarily slip.

That said, I believe we should structure the voluntary debtor education offering in a way that propels considerable enrollment. This can be accomplished in two ways: making the educational offering appealing to debtors (and their families) and providing some tangible and significant benefits to those debtors who participate in the program. These would include a legend on the credit report indicating completion of the program; an ability to receive and then eradicate errors on the existing credit report; a certificate to demonstrate completion;<sup>43</sup> educational materials (books; magazines; videos; computer programs) to take home; and a follow-up mechanism so debtors will not get lost prospectively.

I see debtor education being conducted in two sessions. The initial session (which might be done in conjunction with the Section 341 meeting) would contain a lively, interactive video that attempts to highlight some basic materials and point out the relevance of the next session (more detailed, longer, more informative) of debtor education.<sup>44</sup> Ideally, all debtors would see the initial interactive video.<sup>45</sup> From that group, a portion (hopefully significant) would continue

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43. While a certificate may seem trivial, it is not; anything to improve self-esteem and create recognition for work done is important and valuable.

44. Part of the pilot program would entail creating such a video and testing out its efficacy. Several attendees at the Think Tank have already volunteered to work on product production.

45. Whether that session would include a debtor educator depends on the results of the pilot study.

to undertake the full course. For Chapter 7 debtors, the full course would be one session of three hours; for Chapter 13 debtors, there would be an additional two hour session on the Chapter 13 process. Both Chapter 7 and Chapter 13 debtors would receive a follow-up session.

### **ii. Structure: Finding a Home**

There is also the question of how a national debtor education program should be structured. Debtor education should be available to ALL debtors, regardless of the chapter in which they sought relief. Indeed, the education for all debtors could be virtually identical, provided that Chapter 13 debtors received additional information on the operation of the Chapter 13 process.<sup>46</sup>

One could rely completely on the private sector to provide debtor education. There are already profit and not-for-profit entities that offer (or could offer) different types of debtor education. This could most assuredly become a lucrative new field. One could also leave the nature, content and implementation of debtor education to individual Chapter 7 and 13 trustees. Indeed, as previously noted, several Chapter 13 trustees have already commenced debtor education programs.

Despite the appeal of a purely private sector based approach, leaving debtor education completely to the private sector would mean that the content and quality of debtor education could differ dramatically across the country. There would be no systematic way to monitor or study such a program nationwide. This is not to disparage any existing debtor education program currently underway; indeed, aspects of current programs, as noted by the Commission, would be useful vehicles for study either as part of, or contemporaneous with, the pilot project detailed in Subsection III. However, it is to suggest that a nationwide system should not be, indeed must not be, idiosyncratic.

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46. Debtors in Chapter 11 and 12 would be treated in the same fashion as Chapter 13 debtors.

Another alternative, and the one I presently favor, is to have public (government) oversight and running of a nationwide debtor education program<sup>47</sup> with national standards, reasonably standardized teaching materials (recognizing the diversity among debtors and geographic differences) and a systematic approach to study and follow-up of the educational program.

In terms of the teachers, one appealing approach is to adopt the Canadian model and create a group of qualified, certified individuals eligible to conduct debtor education.<sup>48</sup> One possibility would be for this to be a full-time job, in essence creating a debtor teaching corps. Alternatively, the actual work (following adequate teacher training) could be done by a wide range of individuals from the private sector who hold other jobs, including as Chapter 7 and 13 trustees, debtors' attorneys, law professors, professors from business schools, colleges and adult continuing education programs, personal finance advisors, high school financial education teachers, and credit counsellors.<sup>49</sup> None of the current players in the

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47. There is, then, the question of where, within the government, oversight of such a program should be held -- the judiciary? the clerk's offices? the Office of the United States Trustee?

48. In the context of bankruptcy mediation in the Southern District of New York, all mediators are required to undergo a training program in order for their name to appear on the list of approved mediators.

49. The Canadian debtor education approach is government sponsored and government run. However, the actual work is done through the "private sector," namely qualified trustees or other educators passing qualifying examinations. My increased confidence in this type of approach followed detailed telephone conversations with individuals currently serving as debtor educators. For example, I spoke with Lathea Morris, Executive Vice President of The Credit Alternative, a for-profit organization based in Montclair, N.J., that among other activities, offers educational

(continued...)

bankruptcy system would be forced to teach;<sup>50</sup> instead, they could elect to add the teaching component to what they already do.

Without the benefits of a pilot program, I have a certain degree of uncertainty on how the teaching should be structured. The concept of a specialized full time group of debtor educators has appeal; however, this might be impractical in the United States. It seems that we would need way too many teachers to make such a system doable,<sup>51</sup> and we would be creating yet another bureaucracy. Yet, we want and need quality and consistency. For these reasons, I favor providing teacher training to a wide range of individuals (for whom this is not necessarily their full-time employment). Indeed, we have many candidates to call upon, many of whom are already engaged in aspects of financial education. The ultimate resolution of this issue would best await a review of the results of the pilot program.

### **iii. Finding the Funding**

Then, there is the issue of funding. I do not believe we can rely solely on a Congressional appropriation for a debtor education program. Federal funding is scarce, and we

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49. (...continued)  
programs to college students and businesses on money management and credit use. Indeed, I plan to attend one of the college seminars in Sept./October to see the program (and its teaching) in operation.

50. A number of people who communicated with me were very clear that the job of debtor education should not be foisted upon Chapter 7 trustees, even if they are compensated for this added work. Under this proposal, Chapter 7 trustees could choose, but would not be required, to serve as debtor educators.

51. Until the pilot program, however, we would not know the level of debtor participation in the education program.

are in a time of real budgetary restraint on "social welfare" programs. There remain other (additional) sources of funding for a nationwide debtor education program.

In addition to the existing bankruptcy filing fee of \$175, a further sum could be added.<sup>52</sup> This sum would be paid upon filing. This solution is problematic for those debtors who could not afford to pay this, and consideration would need to be given to some sort of fee waiver program.<sup>53</sup> An alternative would be to place a "tax" on creditors by having the education fee paid from available, non-exempt debtor assets. This latter suggestion is problematic in that a significant number of Chapter 7 cases are "no-asset" cases; it also assumes all creditors would share an equal responsibility for debtor losses. Debtors could also pay a fee post-filing (which could be graduated based on a simple future income test) to participate in the program, on the theory that if one pays for education, one is more likely to take it seriously. This again raises an in forma pauperis question. There are also monies that are intended for distribution to creditors that are never actually distributed because the creditor cannot be found (escheated funds). At present, it appears that this money reverts to the Treasury, and the sums in question are not insubstantial. These sums could be used for those debtors who could not afford to pay for the educational program or to offset the "tax" in the no-asset Chapter 7 cases. There could be funding from damage awards in bankruptcy class action situations, such as the recent proposed settlement involving Sears which calls for states attorneys' general to

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52. The amount would reflect the costs of the program (X dollars to educate each debtor) , or if coupled with one or more of the other alternatives, a portion of the costs (X% of the dollars to educate each debtor).

53. At present, there is no nationwide in forma pauperis system in bankruptcy. One can be too poor to go broke, to use a common adage. In six regions of the country, a three year pilot program in Chapter 7 cases is being tested. Without some in forma pauperis relief for debtors in a debtor education program, we would be denying help to many debtors in need, which would be an unfortunate and ironic result.

receive and then distribute monies (in this instance \$5 million) for consumer education. Or, one could use some combination of these approaches.

### III. The Contours of a Pilot Debtor Education Program

#### a. The Specific Elements

In structuring the pilot debtor education program, we need to be mindful of the need to study and monitor what we put in place. Indeed, starting from scratch, we have an opportunity to study something fully and completely (assuming adequate funding therefor) so that a national program can truly benefit from the experiences under a pilot program.<sup>54</sup> That said, I believe the pilot program should have the following features:

! The pilot program should be for Chapter 7 and Chapter 13 debtors.

! Several of the existing Chapter 13 debtor education programs<sup>55</sup> should be selected for detailed study, and

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54. For some attendees at the Think Tank, the opportunity to study the results of the pilot program was of crucial importance. There have been too many lost opportunities in the past to study debtors and the bankruptcy system; this is an important opportunity to start to close that gap.

55. All of the current Chapter 13 initiatives would remain up and running until completion of the pilot project. Indeed, other Chapter 13 programs could come into existence. However, when the pilot project and its study are completed, it will be possible to assess the success of various education programs in Chapter 7 and Chapter 13 cases. At that point in time, selection among the offerings would be necessary as we move to a nationalized program. So, there could be current programs that, following the completion of  
(continued...)

one of those programs should be extended in two pilot regions.

! There should be three distinct educational models tested, each operating in two districts (six locations in total).

**MODEL ONE:** This model, as just noted, will be an expansion of an existing Chapter 13 program to Chapter 7 debtors in a region where the Chapter 13 model is operating (for ease of implementation) and then to Chapter 7 and Chapter 13 debtors in another location where there is no corresponding Chapter 13 program up and running.<sup>56</sup> ("Pilot Model 1")

**MODEL TWO:** This model would be in place in Chapter 7 cases only. It would use an interactive video introduced to debtors at their Section 341 meeting (with no group leader) followed by a three hour (one session) class offered at a neutral, non-threatening location by a trained debtor educator. A follow-up session would be offered. ("Pilot Model 2")

**MODEL THREE:** This model would operate in Chapter 7 and Chapter 13 cases.<sup>57</sup> Debtors would be offered two sessions, both conducted in a neutral,

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55. (...continued)  
the pilot project and establishment of the nationwide program, are replaced. If we truly believe in a national debtor education program, different untested models operating across the country would undercut the education program for all debtors.

56. The Chapter 13 trustee(s) would need to consent to this program in their region. The ability to obtain such consent could affect which pilot district was selected.

57. The Chapter 13 trustees in these two pilot regions would need to consent to this program. The ability to obtain such consent could militate in favor of which districts are used in the pilot program.

non-threatening environment, one of which would use the interactive video, together with a debtor educator serving as group leader, followed by a three hour (one session class), also with a trained debtor educator. For the Chapter 13 debtors, an additional two hour session would be offered.<sup>58</sup> Follow-up sessions for all debtors would be offered. (Pilot Model 3")

In Pilot Models 2 and 3, the same materials would be utilized. The following variations would exist: Pilot Model 2 would use the Section 341 meeting as a venue for the first session;<sup>59</sup> Pilot Model 2 would not use a debtor educator as group leader with the video while the other would have a leader;<sup>60</sup> and Pilot Model 2 would not control the group for size while Pilot Model 3 would.<sup>61</sup> As noted, Pilot Model 3 would include Chapter 13 debtors whereas Pilot Model 2 would not.

! In addition to Pilot Models 1, 2 and 3, there would be two control groups of Chapter 7 and 13 debtors in similar regions. This is important because the purpose is not just to assess which educational model works best but whether the educational offering provides debtors (and their families) with short and long term

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58. This could be taught by the debtor educators or the Chapter 13 trustees (assuming they, too, were trained).

59. There was considerable concern voiced by Think Tank attendees as to whether the Section 341 meeting was the right venue to begin debtor education. Some people expressed the view that the meeting itself produced too much tension to make education possible. On the other hand, there is a recognition that many debtors have responsibilities during daytime hours, and we should seek to find avenues for offering education that do not take away from their work or family obligations.

60. This is intended to probe the resource question.

61. This also goes to the resource question.

benefits that non-participating debtors do not receive.<sup>62</sup>

! The pilot program should run for TWO years. This will enable us to compare and contrast the three models of debtor education being tested. Moreover, it will allow some (albeit limited) follow-up of debtors. Because the program includes Chapter 13 debtors, the study would need to continue after completion of the pilot project since most Chapter 13 plans take three years to complete.

! Six regions of the country should be selected as pilot districts for the running of the pilot program.<sup>63</sup> These regions should reflect diversity and the selection should be made taking into account the following types of variables: urban vs. rural; high vs. low filing rates; predominance of Chapter 7 vs. Chapter 13 cases; English vs. large non-English speaking debtor populations; inclined towards vs. inclined against debtor education. Attention should also be paid to available resources within each region so as to facilitate implementation. That said, it is also important to test out a pilot in regions which are not currently active in debtor education since a nationwide program would encompass many such locations.

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62. The study would also need to take into account that one of the programs in Pilot Model 1 would be operating in a district already familiar with debtor education programs. This could affect attendance rates because of community knowledge of and interest in debtor education. Indeed, community attitudes toward education generally could affect the results of the study.

63. This is consistent with the size of the pilot in forma pauperis program.

Two pilot regions already come to mind:<sup>64</sup> Western District of Texas (as an expansion of one of the existing Chapter 13 programs) and the Eastern District of New York (one of the in forma pauperis districts and one of the active legal aid locations).<sup>65</sup> As noted later, identification of the specific pilot regions is one of the tasks of the group created to develop and implement the pilot debtor education program.

! The video (to be shown in Pilot Models 2 and 3) would be created through a team of professionals (including a video production company).<sup>66</sup> It would run approximately 30 -- 45 minutes and have an accompanying workbook/leader book for those regions (in Pilot Model 3) using a leader. The materials for the group sessions in Pilot Models 2 and 3 would also be created using a team of professionals. The group materials (with accompanying overheads, workbooks and teachers manuals) could draw on existing materials. The anticipated time needed to create and duplicate all of these materials is six to nine months.

The composition of the team of professionals is key. In addition to those expert in bankruptcy, it must include non-legal educators as well as

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64. I do not have commitments from any individuals or programs within these regions. I use them here because they strike me as very suitable candidates for the program.

65. On a personal note, it is also a region proximate to me and my law school, which would enable me to remain involved at little or no cost.

66. Attendees at the Think Tank already have ideas for all of these materials, including names of production companies. Many of the attendees had their own or access to other written materials that could be sifted through and coordinated. In this context, the Think Tank is a remarkable resource.

psychologists. The psychodynamic piece of debt cannot be ignored in any effective educational program.<sup>67</sup>

Bilingual (or trilingual) materials would need to be created as well.

! Pilot Models 2 and 3 would cover the following specific topics/subjects in the educational materials:

a. Awareness: Why people have money management problems. Specific topics would include psychological bases for why we think about and use money as we do; consumerism in American society; instant gratification (particularly as it relates to credit cards) and its results; societal pressures (and how to deal with them); goal setting and money management techniques; and individualized behavioral insight exercises.

b. Financial Management Skills: Concepts, Tools and Techniques: Specific topics would include the use and cost of credit cards; budgeting techniques including the use of forms; cost saving ideas; mechanisms for prioritizing spending; and consumer rights and responsibilities. In this context, it will be relevant to distinguish between catastrophic events leading to financial failure vs. the inability to budget.

! All educational materials should be mindful of the rich literature on adult education and the specific needs of adult learning. Interactive materials are

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67. See OLIVIA MELLAN, MONEY HARMONY: RESOLVING MONEY CONFLICTS IN YOUR LIFE AND YOUR RELATIONSHIPS (1994); OLIVIA MELLAN, OVERCOMING OVERSPENDING: A WINNING PLAN FOR SPENDERS AND THEIR PARTNERS (1995). Indeed, just the use of terminology in the educational materials can affect a debtor's reaction. For example, the word "budgeting" is more threatening than the word "spending plan."

key. Concrete tools, skills and techniques should be imparted to all participants.

! The follow-up session in Pilot Models 2 and 3 should provide feedback on the debtors' implementation of what he/she learned in the first two sessions. Some mechanism for assessing this should be included. The follow-up sessions could be less formal and more personalized than the other sessions.

! All debtor education programs should be offered to one member of the debtor's family. The debtor could choose the family member to attend. This could be the debtor's spouse or partner. It could be the debtor's parent or child. Ideally, it will be the individual most involved (other than the debtor) with the family finances. Moreover, all programs should be offered at alternative times to enable debtors who work or have family responsibilities to meet same. Moreover, childcare should be provided at these programs. All locations should be bus/subway accessible with easy parking for those driving.

! Dissemination of information about the existence of the debtor education program should be extensive.<sup>68</sup> There should be information in all the clerk's offices in the pilot regions, in local newspapers and on radio and television. There should also be a concerted effort to alert the local bench, bar and trustees as to the program.

! All individuals who are going to educate debtors would be required to go through a training process.<sup>69</sup>

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68. We can learn from the promotion that was done in the context of the in forma pauperis pilot program.

69. I have done teaching training in the Philadelphia public school system (which requires such training for recertification); one or two all day sessions will be  
(continued...)

For purposes of the pilot program, it would be useful and cost efficient to hold an all day training session that the prospective teachers from the six pilot regions could attend. Given the number of teachers, two training sessions might need to be offered to capture all participants. Through this approach, the training would be very consistent.

! All debtors completing the pilot project (under ALL of the pilot models) would receive several tangible benefits from completing the debtor education program, some of which are much more easily implemented than others.

i. All debtors completing the program would receive a legend on their credit report so indicating (in one or two sentences).<sup>70</sup>

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69. (...continued)  
sufficient because the starting teacher corps has basic familiarity with the materials and/or teaching or both.

70. I have spoken at length to individuals with Experien, one of the country's three leading credit reporting agencies. If the pilot project proceeds, Experien is willing to work on making this effort a reality. The legending will require several things, the most significant of which is a way for notifying the credit agency of the names of those who have completed the program. Obviously, this needs to be a "safe" process to insure that only those debtors who complete the process will get the legend.

One of the most significant aspects of the legending is that it will enable us to study the effects of debtor education of future credit access and future success at using credit. Experien is willing to work on structuring a study that would look at all debtors who get the legend 10 years before bankruptcy, 5 years before bankruptcy, at bankruptcy and 2 years following the legending. They will also pull a control group of debtors to see whether there are marked differences between the legended and non-legended debtors. This study could also cull more detailed demographic data regarding debtors, to the extent same is

(continued...)

ii. All debtors participating in the program would receive a FREE copy of their credit report,<sup>71</sup> and some aspect of the debtor education process would be on understanding the credit report.

iii. All debtors participating in the program would be entitled correct any errors on their credit report in an easy and expedited basis;<sup>72</sup>

iv. All debtors completing the program would be entitled to receive, free of charge, one

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70. (...continued)  
available on the credit report. Experien believes that the cost for it to do this study would not be extraordinarily high; it is estimated to cost under \$50,000.

If a debtor education program is implemented nationwide, the legend would need to appear on the reports of all three major credit reporting agencies. However, for purposes of the pilot project, legending by one of the three major credit reporting agencies is sufficient, given their large clientele.

71. Again, Experien has expressed its willingness to work on such requests within the pilot project. The main obstacle is figuring out a mechanism for identifying which debtors' reports should be sent since, by law, the debtor is the only person authorized to obtain his/her own report (for obvious privacy reasons). One possibility is to create a "batch" mechanism whereby the debtor educators could request files on an expedited basis for students in their classes. Perhaps debtors could consent to this process when they sign up for the debtor education program.

72. The mechanics of this are doable according to Experien but we would need to work out the details. For example, one possibility is to create a single designated phone number where debtor participants could call to get help cleaning up the report. This designated number would entitle the debtor to short-cut many of the procedural hoops that currently stand in the way of cleaning up the credit reports.

of several books, videos, magazine subscriptions or computer programs on an approved list. These would all be materials addressing the topics addressed in the debtor education program.<sup>73</sup>

**v.** All debtors (and applicable family members) would receive a personalized certificate (suitable for display or hanging) indicating that they successfully completed the program.

! The entity or entities selected to study the pilot project must be involved at each step of the process. The study will cover selected of the existing Chapter 13 educations programs, the three Pilot Models and two control groups of Chapter 7 and Chapter 13 debtors.

#### **b. Oversight Entity**

For this pilot project to be implemented, there would need to be some entity/individuals organizing and overseeing this project. There are a significant number of administrative and organizational pieces that would need to be put into place to get any such pilot program up and running.

The choice of home for the pilot project strikes me as a political issue, and I leave that debate to others. But politics aside, what I care about most is that the project be well organized, well-administered, with quality as the foremost criteria for everything that is done with the least bureaucratic hassle possible. Moreover, it is very important that the pilot project should be free of influence from any particular group within the bankruptcy community. This is essential. Correctly or not, it is often perceived

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73. There is obviously a cost involved in offering these materials, and it is our hope that foundation money and contributions from publishers or publishing organizations would help offset these costs.

that constituencies within the consumer bankruptcy industry have their own interests at heart, rather than the interests of debtors or the system. Obviously, institutions are not completely altruistic. However, the goal of debtor education is to help debtors, and we should be mindful of that goal in establishing programs and designating an organizational structure to implement same.<sup>74</sup>

A pilot debtor education program could be overseen through an existing entity, such as the Office of the United States Trustee. Another alternative is for the pilot project to be run through an existing not-for profit entity. Yet another option is for the program to be run through a law school or university. Another possibility is to create a new, not-for-profit entity to oversee the project, an entity that could do fundraising. This oversight entity could have a governing board that draws on a wide range of people, similar to those gathered for the Think Tank. Such an entity would need to hire staff to handle the project. This latter suggestion is the one that I favor, as detailed in Section IV in my recommendations.

### **c. A Rough (really rough) Budget**

It is extremely difficult to assess the costs of running the above-described Pilot Debtor Education program. That said, this document would not be complete without some effort to assess costs. Before I give these numbers, I want to make one point. Despite the costs of any program, there are non-quantifiable benefits that can be achieved that offset some of the costs. Restoration of individual debtors and their families within the credit economy will produce benefits -- both economic and psychic. Normally, we do not quantify the benefits of relief from stress, comfort through knowledge and increased family harmony. But, these benefits are very real to those experiencing them and to society as a whole.

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74. This may not be as problematic as it appears since a debtor education program does benefit others beyond the debtor.

It is anticipated that some of the costs of a pilot program could be handled by in-kind donations of time and space of the participants in the pilot project. However, the pilot project will still need significant funding. Let me start with some rough concepts. The Canadian program educates just under 100,000 debtors, most commonly on an individualized as opposed to group basis. Under the Canadian program, each group session (which is paid by the debtor) costs \$25.00. At least one Chapter 13 trustee estimated that the cost of educating each Chapter 13 debtor is between \$50 and \$100 (for all sessions).

The task, then, is to estimate both the number of debtors to be offered the pilot debtor education program and the costs of offering same. For starters, the pilot project should educate fewer debtors annually than the Canadian program, simply as a matter of logistics. We do not have the infrastructure in place to educate 100,000 individuals a year.

To make the assessment of the number of debtor participants we would need to create a statistically significant sample, we would need the assistance of a statistician. That said, I have used the following approach to determine a debtor pool for purposes of this document, erring I hope on the side of a larger pool than is statistically required. Looking at the Chapter 7 and Chapter 13 filing rates and seeking diversity in terms of geography, size and population, I identified six pilot regions<sup>75</sup> (Eastern District of New York, Eastern District of California,<sup>76</sup> Western District of Texas, Northern District

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75. This is **not** a commitment to these regions nor as assessment that they are ideally suited to serve as pilot regions. However, they prove convenient for calculating purposes.

76. I had considered including the Central District of California, the largest Chapter 7 region in the country. However, the number of filings there are so substantial that we would be conducting, in essence, a "California" study, a result that cannot be justified in a pilot project.

(continued...)

of Alabama, Northern District of Indiana and Utah).<sup>77</sup> The aggregate of Chapter 7 filings in these districts totalled 78,500 for 1996; Chapter 13 filings aggregated 37,000.<sup>78</sup> This yields a total of 115,500 individual debtor filings for 1996. In two of these regions,<sup>79</sup> only Chapter 7 debtors would be educated, which lowers the figures by 8,900, yielding a total pool of 106,600 individual debtors.

Using a sampling interval of .30, a maximum number of 32,000 debtors a year from the six pilot districts would be eligible to participate in the education program.<sup>80</sup> The selected debtor names would be drawn on an "as filed basis," once the pilot program began. We do not anticipate that 100% of the debtors offered the education option would partake of same. However, it is difficult to estimate what the actual participation level would be. I have heard estimates ranging from 10% to 80%. Again, we would need the expertise of a sampling expert to tell us what level of participation would be necessary to achieve statistically significant results. Assume, again erring I hope on the high side, that a participation rate of .50 would be appropriate to achieve statistically significant results. Using this figure, a maximum of 16,000 debtors would be educated per year, exclusive of family members. Assume that almost three quarters of the debtors (from Pilot Models 2 and 3) elect to bring a family member to class, another

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76. (...continued)

However, I remain concerned about excluding the largest locale in the country.

77. Professors Susan Block-Lieb and Marjorie Girth were most helpful in developing these figures and the budget that follows..

78. For ease, these numbers and those that follow have been rounded to the nearest hundred.

79. For these purposes, I selected the Eastern District of New York and Utah.

80. I believe this is on the high end of the possible intervals for this type of program but it seemed the safest to use.

unknown and unknowable variable at this juncture. This would add another 8,000 individuals into the program.<sup>81</sup> This means 24,000 individuals would likely be educated in one year.<sup>82</sup> Since the pilot project would run over the course of two years, a maximum total of 48,000 individuals would likely be educated in the program.<sup>83</sup>

If we used the Canadian figure of \$50 per debtor (times 24,000 participants), the two year program would cost (exclusive of the study costs, development of materials, creation of infrastructure and education of teachers) is \$2,400,000. Using the mid-point of a Chapter 13 trustee's figure (\$75), the cost (exclusive the same factors just delineated), of the two year program would be \$3,600,000.<sup>84</sup>

In calculating this budget, I think we need to deal with Pilot Model 1 in a somewhat different fashion than Pilot Models 2 and 3. Pilot Model 1 would be using existing

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81. To the best of my knowledge, family members do not participate in the educational program that is serving as Pilot Model 1 or, if they do, it is included in the estimated costs..

82. This figure does not take into account rising filing rates in the selected regions which could, for 1997, exceed 20%. Moreover, it does not take into account that the Chapter 13 debtor education program in the Western District of Texas educates virtually all of the debtors who file under its current program, which would add another 3,500 debtors to the pool.

83. It must be remembered that this number is an estimate only. The maximum level of debtors that could be educated per year is 31,900, without taking into account family members. Taking family members into account and assuming 100 percent participation in the program by everyone, we still have an annual program that is smaller than the Canadian program.

84. These figures seem too high to me, at least for purposes of the pilot project, considering the added costs that must be factored into the equation.

materials and an existing teaching staff (which would have to be expanded in the original location for Chapter 7 debtors and for Chapter 7 and Chapter 13 debtors in the new region.) Moreover, since the Chapter 13 debtors in this region were already going to be educated under the existing program, the costs of this aspect of the program should be outside the pilot project. Of the 16,000 debtors we seek to educate annually, 5000 are within Pilot Model 1. Of these, approximately one-third are Chapter 13 debtors. So, each year, only two-thirds (3,300) of the debtors in this region should expenses of the pilot project.

It is also necessary to calculate, in rough fashion, how many sessions would need to be held over two years to determine the number of teachers necessary. Assume that there are 11,000 debtors and 8,000 family members to be educated annually in Pilot Models 2 and 3 (19,000). Assume Pilot Model 2 accounts for 7,000 of this number; Pilot Model 3 accounts for the remaining 12,000. Assume that each class session will have no more than 30 students. This means 233 classes for individuals in Pilot Model 2, if each class met once. But, under Pilot Model 2, each class meets twice, yielding a total of 466 sessions annually. For Pilot Model 3, there need to be 400 sessions times 3, yielding 1,200 sessions. So, under Pilot Models 2 and 3, 1,700 sessions would be needed a year, 3,600 sessions over two years. Assume a debtor educator working full-time could teach 10 sessions a week for 50 weeks a year, for a total of 500 sessions a year. This would mean the pilot program would need 7 full time teachers a year to service the program. Assuming a two year program, this is 14 teachers. Now assume that we are using part-time rather than full-time teachers, we would need approximately 50 debtor educators.

Using these figures and assumptions, I have prepared the following budget which is the cost of the project for its two years of operation:

#### **A Two Year Budget**

Costs of operating Pilot Model 1.....\$525,000<sup>85</sup>

Costs of developing uniform educational materials with the accompanying workbooks, teachers manuals, overhead projections, video for Pilot Models 2 and 3<sup>86</sup>.....\$100,000

Costs of training 50 teachers<sup>87</sup> in geographically central locations for one full day (including several meals) and 6 trainers (assuming two such sessions).....\$85,000

Costs of Administering the Project (exclusive of study costs) wherever same is housed<sup>88</sup>.....\$375,000

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85. I have used 3,300 Chapter 7 debtors per year times \$75.00 per debtor (6,600 x 75), the Chapter 13 trustee's average fee. I have added a lump sum over and above that (\$30,000) to cover added teacher/trustee training.

86. This is based on the estimates of some members of the Think Tank. It is sufficient to take into account the costs of translating the materials into two or more different languages.

87. This does not include training added teachers in Pilot Model 1.

88. This assume two full-time staff people, each paid \$60,000 annually (or four part-time staff persons) for two and a half years, plus overhead which would include rent, computers, mailings, telephone, space for a two (plus) year period (\$25,000 per year). These administration expenses would cover all of the Pilot Models.

**Costs of renting space for the education programs themselves, duplicating materials, doing mailings and childcare services for debtors<sup>89</sup>.....\$500,000**

**Costs of debtor educators<sup>90</sup>.....\$360,000**

**Cost of studying the existing Chapter 13 programs and the new six pilot groups as well as establishing 2 control groups for comparison purposes<sup>91</sup>....\$400,000**

Based on this budget, exclusive of study costs, it would cost \$1.945 million to run the two year pilot project. Adding in the necessary study costs estimated at \$400,000, the total projected cost of the two year program is \$2.345 million. On a per debtor basis for all three Pilot Models, this is an average cost of approximately \$49.00 per debtor, inclusive of study costs. Exclusive of study costs, this is an average cost of approximately \$41.00 per debtor. For debtors and their family members in Pilot Models 2 and 3, exclusive of study costs, there is an average cost of \$37

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89. Assume costs of \$10.00 for 19,000 individuals per year (times 2) to cover materials, room rental (allocated pro-rata, childcare services, mailings). This number includes an additional \$120,000 (over two years) to cover the materials (book, video, computer program, magazine subscription) for the students to take home.

90. Assume that some debtor educators will volunteer their time, while others will require payment. Assume 50 debtor educators will teach 3,600 sessions over two years. Assume an average cost of \$100 per session. This would take into account that the debtor educators need time for preparation, organization as well as some telephone calls to answer debtor questions.

91. Obviously, this is a number that would be derived after putting such a project out to bid. Moreover, if aspects of this study could be undertaken by the Federal Judicial Center or another governmental study group, the costs could be diminished.

per person. With study costs, the cost is \$48 per debtor in Pilot Models 2 and 3.

#### **d. The Funding Question (Again)**

There is the necessary and very legitimate question of how \$2.345 million could be raised to fund the pilot project, without turning to Congressional appropriation. Several thoughts come to mind. First, there might be foundation money available for a project of this nature. A portion of the escheated bankruptcy funds could be allocated to this project. States' Attorneys' General could turn over a portion of the Sears settlement sum (assuming same is ultimately court approved). Contributions could be sought from the credit community, including major banks and credit card issuers. Moreover, if each debtor participating in the program were to pay \$10.00 for participation which would include the cost of a family member (if any), \$480,000 could be raised. This sum would be lowered since some portion of debtors would be unable to pay this fee and a fee waiver program would be needed. Finally, in-kind contributions could be sought, another mechanism for lowering costs.

#### **IV. Conclusions and Recommendations**

A pilot debtor education program and thereafter a national debtor education program are most assuredly worthwhile and feasible, although by no means simple or cost-free. Very real support from a wide range of constituencies has already been expressed. The question for me, then, is where and how do we proceed from here. Support from the Commission in its final report is obviously important, the more detailed, the better. Hopefully, this document will assist in that effort.

As everyone is aware, the Commission's final report will then wend its way into Congress and no doubt, there will be Congressional action on some or all of the Commission's recommendations or some variation thereof. However, the Congressional machinery moves slowly. It seems unnecessary to wait for a Congressional mandate to commence

a pilot debtor education program, particularly since funding is not coming from Congress and no aspect of the Bankruptcy Code itself would need to be changed to institute such a project.<sup>92</sup>

However, the commencement of a debtor education project, even a pilot program, would need the support of several governmental bodies operating within the bankruptcy system: the Office of the United States Trustee,<sup>93</sup> the judiciary, the Administrative Office of the United States<sup>94</sup> and the Federal Judicial Center.<sup>95</sup> It would be useful if private organizations, such as the National Association of Bankruptcy Trustees, the National Association of Chapter 13 Trustees and the National Bankruptcy Conference, supported the project as well.

I believe that the first step needed to move from theory into reality is to create a working committee of approximately 30 individuals. This committee would be composed of judges, trustees, legal and non-legal educators, psychologists, empiricists, representatives of debtors and creditors, including lawyers, banks, credit card companies, credit unions, representatives from the credit reporting agencies, and representatives from for profit and not-for-profit credit counselling agencies. This group would be the oversight body for the pilot debtor education project (the "Debtor Education Advisory Committee"). Importantly, service on this group would be pro-bono,<sup>96</sup> and it would be a

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92. Changes to the Bankruptcy Code would be needed for a nationwide program.

93. This is true because they are "in charge" of all Chapter 7 and Chapter 13 trustees.

94. This is important because clerks' offices could help in coordinating aspects of this program.

95. The FJC could be instrumental in studying the pilot debtor education program.

96. Members of the Debtor Education Advisory Committee who  
(continued...)

serious hands-on working group. In other words, this would not be a blue-ribbon, do nothing, group; instead, it would be a group of committed individuals and institutional representatives, ready, willing and able (with their institutions' support) to work on making debtor education a reality.

Although there are several options available, it is my belief that the Debtor Education Advisory Committee should be appointed by a consortium of the following federal agencies/organizations: The Office of the United States Trustee; the Administrative Office of the United States Courts; the National Bankruptcy Judges Conference; and the Federal Judicial Center.<sup>97</sup> Creation of the Debtor Education Advisory Committee in this manner would, it seems, require compliance with the Federal Advisory Committee Act.<sup>98</sup>

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96. (...continued)  
are psychologists, educators (legal and non-legal), judges and legal aid/public service lawyers may need all or a portion of their travel expenses to meetings reimbursed. Clearly, if the Advisory Committee is to represent a broad constituency, such a policy is essential. This cost has not been factored into the pilot debtor education budget. Based on the budget for the Think Tank, the costs per meeting would be under \$6,000. Assuming 6 meetings a year, this is a cost of \$36,000 per year.

97. The federal consortium would be able to look to the attendees at the Think Tank as possible members, particularly since these attendees have already expressed their willingness to continue working on the debtor education project. I am not oblivious to the fact the these appointments will be considered, at some level, "political." That said, it is my hope that the overriding concern of the federal consortium will be to appoint qualified individuals who have already exhibited an interest in the debtor education/financial education process.

98. While this would create added burdens and costs, it seems like the most suitable manner in which to proceed. Moreover, as much as individuals are willing to volunteer their time and effort, these individuals want and need a  
(continued...)

The appointment of the Debtor Education Advisory Committee does not address the question of where the pilot debtor education program should be housed. It is my belief that a not-for-profit entity should be created (the "Debtor Education Foundation").<sup>99</sup> The Debtor Education Advisory Committee would be the principal advisor to the Foundation, which would have a Board of Directors consisting of those members of the Advisory Committee willing and able to so serve.<sup>100</sup>

The functions of the Committee and the Foundation would overlap in many instances but would be different in other important respects. The Foundation would conduct fundraising,<sup>101</sup> and it would oversee the day-to-day administration of the pilot debtor education program. It would have a life of two and a half years, sufficient time to complete the actual project and conclude the major aspects of the study thereof. The Foundation would have employees. The Committee would provide the Foundation with guidance on the implementation of the pilot debtor education program, including development of the educational materials. The Committee would also oversee the study of the pilot project, including the nature of the data collected and the evaluation of same. The Committee would serve one other critical function. It would serve as an informal clearing house for materials and programs on pre and post filing debtor education. This would be to insure that we were

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98. (...continued)  
structure within which to work effectively that has more than ad hoc authority.

99. The costs of creating the Foundation have not been factored into the pilot debtor education budget. I would hope that we could get pro-bono legal help to accomplish this.

100. Some members of the Debtor Education Advisory Committee would be barred, by virtue of their employment, from sitting on a foundation board.

101. This is not permissible activity for some governmental employees.

proceeding in a coordinated fashion, using the vast, available resources and interest in a constructive and productive manner.

A document such as this would also not be complete without an estimated timetable for implementing a debtor education program. I believe that the pilot project can be fully operational by October, 1998. Before that date, the following concrete steps will need to be taken: (1) creation of the Debtor Education Advisory Committee; (2) creation of the Debtor Education Foundation; (3) development of the debtor education materials, including the 30 -- 45 minute video (which requires the retention of a video production company); (4) the identification of prospective debtor educators<sup>102</sup> and then the training of these individuals with the newly developed material; (5) the hiring of the staff for the Foundation to handle the administrative aspects of the pilot debtor education program; (6) the choice of a group or groups to study the debtor education pilot project; and (7) fundraising for the Foundation to cover the costs of the pilot project.

There is a question as to whether these steps must be taken exactly in order. Obviously, the teacher training cannot occur until the teachers are selected and the materials are developed. On the other hand, could the effort to create the educational materials begin immediately, assuming the funding for same were raised and then made available? I think the answer to that is yes, if the contemplated federal consortium gave its permission. This assumes that the actual formation of the Committee under the Federal Advisory Committee would take considerable time. There would, of course, be the obvious question as to who would be responsible for the initial fundraising effort, working on these materials, overseeing that work and coordinating the administrative details. Again, I think the consortium could name a small group of qualified individuals

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102. I would hope that interested individuals, meeting certain pre-set criteria, could volunteer to be chosen. If more individuals than slots existed, some sort of selection process would be needed.

to commence these tasks.<sup>103</sup> Perhaps the consortium would consider looking to the Think Tank, scheduled to meet in late September, 1997, as augmented by such additional members as the consortium deems appropriate, to work on just these kinds of issues.

It is my hope that readers will find that this document serves to further our progress in thinking about debtor education. I remain available to answer whatever questions the Commission or others may have and, as promised, I will address the issues herein at the August 11-12th meeting of the Commission in Washington, D.C. I remain committed to not only the concept of debtor education but to its actualization.

Respectfully Submitted,

Professor Karen Gross  
New York Law School

Date: July 7, 1997

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103. Research would need to be conducted to determine if this informal, temporary group would be within the parameters of the Federal Advisory Committee Act. If so, this suggestion does not speed along the process.

## APPENDIX A

Partial list of Individuals/Entities who wrote/called or sent materials regarding debtor education (other than attendees at the Think Tank)

American Bankruptcy Institute (Alexandria, VA)  
American Bar Association (Chicago, IL)  
Jennie Deden Behles, Esq. (Albuquerque, NM)  
Mark Brenner, Esq. (New York, NY)  
Phillip G. Davis, II (Norfolk, VA)  
Honorable Lisa Hill Fenning (Los Angeles, CA)  
Professor Tahira Hira (Ohio State University, OH)  
Professor James Honan (Cambridge, MA)  
David A. Lander, Esq. (St. Louis, MO)  
Jerome S. Lamet (Chicago, IL)  
Paula E. Langguth (Tracy's Landing, MD)  
Earl F. Leitess (Baltimore, MD)  
Professor Sarapage McCorkle (St. Louis, MD)  
Lathea Morris (Montclair, NJ)  
Bonnie Pollack, Esq. (Mineola, NY)  
Toby Rosen (Chapter 13 Trustee)  
Alan Rudi (Orange, CA)  
Kent Snyder, Esq. (Portland, OR)  
Tim Truman, Chapter 13 Trustee (Ft. Worth, TX)  
Carol Walker (Idaho Falls, ID)  
Grace W. Weinstein (Englewood, NJ)  
Honorable H.F. White (Akron, OH)

**APPENDIX B**

LIST OF ATTENDEES

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The purpose of the debtor education course is to teach you how to manage money and use credit wisely after bankruptcy. If you don't complete the debtor education requirement, the court won't issue a discharge in your bankruptcy. Read on to learn more about the debtor education course requirement in bankruptcy. What Is the Debtor Education Course Requirement? To receive a discharge in Chapter 7 or Chapter 13 bankruptcy, you are required to take a debtor education course after you file your case. The goal of the debtor education requirement is to educate you on making smart financial choices so Ontario's income security system affects us all. No matter our background, our successes, or our challenges, we all have a shared interest in supporting people's ability to thrive and contribute to the social fabric of our communities and the economic well-being of our province. Success requires that all parts of the income security system, a mix of federal, provincial and municipal income supports and benefits, work together to improve people's lives. Urgent and immediate action and significant investments are required in the income security system, including social assistance, to make this a reality over the next 10 years. Income Security: A Roadmap for Change. 3. History of the US Bankruptcy Code. The first bankruptcy law in the United States came into being in 1800. This law was repealed in 1803 and was followed by the Act of 1841. The 1841 law was repealed in 1843 and was succeeded by the Act of 1867, which was amended in 1874 and was later repealed in 1878. The debtor remains in charge of the business as a debtor in possession but under the oversight of the bankruptcy court. Chapter 12 of the Bankruptcy Code is only applicable to family farmers and fishermen. To further your financial education, we suggest the following CFI resources: Corporate StructureCorporate StructureCorporate structure refers to the organization of different departments or business units within a company.