APPENDIX A

Rating Criteria

FAMILY OF FOUR. For purposes of this report, we assume that the debtor is the head of a family of four. Thus, if a state provides a higher exemption amount for a person who is the head of a family, we have used that amount in our ratings. A few states also provide small increases in their protection of wages or property when the debtor has dependent children. In those states, we have assumed that the debtor has two children.

Several jurisdictions provide an exemption for a car only if the debtor uses it to get to work. Since this exemption would be available for the typical working family, we have included those exemptions in this report. In some other states, an exemption for "tools of the trade" may apply to a car, but often the courts require the car to be used for more work-related functions than just getting to and from work. In this report we have assumed that any exemption for tools of the trade is not interpreted to be flexible enough to exempt a car that is used for commuting.

STRUCTURE OF STATE EXEMPTION LAWS AND USE OF WILDCARDS. Some state exemption laws provide a list of property that debtors can preserve from their creditors, with a dollar cap for each category. Others provide a wildcard exemption of a certain dollar amount. Then the debtor chooses what specific items to protect. Some wildcards are limited to certain kinds of property, and some are available only if the debtor does not take advantage of some other exemption, usually the homestead exemption. Many states' exemption schemes combine both a list of earmarked exemptions and a wildcard.

In order to treat these states uniformly, so that their results for debtors can be compared on a state-by-state basis, this report has employed certain assumptions. We assume that, if a wildcard is available, the debtor will apply it first to preserve a car worth up to $15,000, because for so many debtors a working car is necessary to keep a job, buy groceries, and get health care. However, if the wildcard exemption is at least $3,000 and the state does not offer an earmarked exemption for a bank account or household goods, we reserve $1,000 of the wildcard for those purposes. If any amount of a wildcard remains after applying it to preserve a car worth up to $15,000, we apply it next to a bank account, if the state allows it to be used for this purpose and if the state did not provide an earmarked exemption for a bank account. If any amount remains after preserving up to $3,000 in a bank account, we apply the remainder to the debtor's household goods. The reason for applying it last to household goods despite their importance for the debtor's daily life is that they often have so little resale value that the creditor will only threaten to seize them, so a debtor who has no other options may decide to run that risk.

In some states, a wildcard is available only if the debtor does not claim some other exemption, typically a homestead exemption. For purposes of our ratings of the state's protection of a car, a bank account, and household goods, we have assumed that the debtor has not claimed a homestead exemption. A few states offer a wildcard in the amount of any unused portion of certain earmarked exemptions for types of personal property. In these states, we have assumed that the debtor has not used an exemption for tools of the trade or crops, but has used the full exemption for a car, a bank account, and household goods.

WAGE SEIZURE CALCULATIONS. In calculating the amount of wages protected from seizure, we have assumed that the debtor is working full-time at minimum wage and is the head of a four-person household that includes two dependent children. If the state law explicitly requires the state minimum wage rather than the federal minimum wage to be used in a particular calculation, we have done so. In the few states that provide that a calculation is to be based on the larger of the state or local minimum wage, we have used the state minimum. In New York, the state minimum wage varies based on the size and location of the employer, and in California it varies based on the size of the employer. In both cases we have used the highest minimum wage. For simplicity, our wage seizure calculations do not distinguish between gross and net wages. In drafting a wage seizure limit, these distinctions are important, because the exact calculations can make a significant difference.

Many wage seizure laws protect the higher of two calculations—one based on a flat amount, such as $750 or 30 times the federal or state minimum wage, and the other based on a percentage of the worker's weekly earnings. Up until now, for the percentage-based calculations, we have assumed that our sample worker is working full-time at the federal minimum wage.

However, as the federal minimum wage continues to stagnate, more states have increased their own minimum wages. As a result, the gap between the state and federal minimum wage has increased and will make more of a difference in the percentage calculation. Although not all workers are covered by state minimum wage laws, we have decided that, in a state with a higher minimum wage than the federal minimum, we should assume that a full-time worker is earning 40 times the state minimum wage, and the percentage of earnings should be based on that figure. This results in protecting a greater amount of wages in a number of states, and raises several states' grades. However, this is not because of an improvement in state wage seizure laws, but just because of our revision of our calculation method.

We have also, for this report, changed our criteria for rating states' wage seizure laws. We initially set the criterion for a C grade at $350—if a state protected $350 or more per week, it would earn a C grade. We chose $350 as the criterion because it was halfway between the amount protected by federal law ($217.50) and the federal poverty level. But the federal poverty level has increased with inflation, so the halfway point is now $400. We have therefore replaced $350 with $400 as the criterion for a C grade.

MEDIAN HOME VALUES. Our rating of the state's protection of the debtor's home is based on the extent to which the state's homestead exemption protects a median-priced home in the state. We base median home values on the U.S. Census Bureau's most recent American Community Survey. This report is usually released in the fall and reflects the previous year's median prices, broken down by state. For this report we used the most recent values, i.e. those for 2022.

In New York, where the exempt amount ranges from $89,975 to $179,975 depending on the county, we have chosen the exemption amount ($179,975) that applies to the 10 most populous counties. The average of those 10 counties' median home values was $648,640 in 2022.

For the Virgin Islands, a 2020 figure is the latest available. To estimate the 2022 median, we determined the average increase in median values across the United States between 2020 and 2022. (For 2022, we used the 2022:ACS 1-Year Estimates (B25077). For 2020, ACS did not release a one-year estimate, because its 2020 results were not statistically significant enough to release a report for that year, so we used the 2020 ACS 5-Year Estimates (B25077).) We then calculated the average increase for each state by dividing the 2022 estimates by the 2020 estimates and took the average of all the state increases. Our final step was to apply this average increase to the 2020 Virgin Islands median value. The result was a median home value of $399,283.

OTHER RULES. Some states provide higher exemption amounts for debtors who are elderly or disabled. In this report we have not used these higher amounts.

Some states allow married debtors to "stack" their exemptions. For example, if a state allowed a $2,000 exemption for a car, each spouse might be able to exempt that amount and save a car worth $4,000. The figures in this report are based on the individual exemption amounts unless otherwise stated.

Some states make a homestead exemption dependent in whole or in part on filing of a document declaring that the home is the consumer's homestead. In those states, we have assumed that the debtor has filed the required declaration.

HOW WE DEAL WITH AMBIGUITIES IN EXEMPTION LAWS. When there are ambiguities in state exemption laws, we have generally interpreted them in favor of a broader rather than a narrower exemption. For example, some state laws are not very clear about whether the state's protection of the debtor's wages continues after the wages have been paid and deposited in the debtor's bank account. If the statute is worded in a way that suggests that the protection might apply to deposited wages, for example by applying the exemption to wages that are "paid" as well as "payable," we looked for court decisions addressing this question. If we found cases that provided any indication that the protection could be used to protect deposited wages, we rated the state as allowing this. Similarly, some states' exemption laws are not clear about whether a wildcard exemption can be used to protect a bank account. For example, the statute may provide that the wildcard exemption applies to "any real or personal property." If we could find any cases that treated such a wildcard as available to protect a bank account, we treated it as available. If we have overlooked any decisions or statutes that address these or other questions, please bring them to our attention.

Interpreting ambiguous exemption laws broadly is in line with the general principle that state exemption laws are to be interpreted liberally in favor of the debtor. But it also means that, even in states that we rate highly, the exemption law may need improvements to make it clear that the broader reading is correct.

FUTURE CHANGES TO RATING CRITERIA. As noted earlier, this year we increased the threshold to $400 for a "C" grade on protection of wages, to account for inflation. Three other rating criteria—those for the family car, a bank account, and household goods—are also being eroded by inflation. In 2024, we plan to increase these criteria to take inflation into account. (Our rating criterion for protection of the family home is based on the median home price in the state, so already has a built-in inflation adjustment.)