



United States Government Accountability Office
Washington, DC 20548

October 26, 2007

The Honorable Christopher B. Cannon
Ranking Member
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
House of Representatives

The Honorable Melvin L. Watt
The Honorable Adam B. Schiff
House of Representatives

Subject: Potential Effect of Bankruptcy Abuse Prevention and Consumer Protection Act on Child Support Payments Cannot Be Determined because Data Needed for Study Are Not Available

Between 2001 and 2004, an average of more than 1.5 million people annually filed for personal bankruptcy protection. In April 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act¹ (Reform Act) was enacted, in part, to address certain factors viewed as contributing to an escalation in bankruptcy filings. Described as representing the most comprehensive set of reforms in more than 25 years, the Reform Act, among other things, requires those filers with the ability to pay some of their debts from future earnings to enter into repayment plans under Chapter 13 of the Bankruptcy Code instead of liquidating their assets under Chapter 7 and granting the debtor a discharge from eligible debts.

Individuals usually file for bankruptcy under one of two chapters of the Bankruptcy Code. Under Chapter 13, filers submit a repayment plan to the court agreeing to pay part or all of their debts over time, usually 3 to 5 years. Under Chapter 7, the filer's eligible assets are reduced to cash and distributed to creditors in accordance with distribution priorities and procedures set out in the Bankruptcy Code. A large majority of cases filed under Chapter 7 have no assets available for liquidation, and thus no funds are available to pay creditors. Upon the successful completion of both Chapter 7 and 13 cases, the filer's personal liability for eligible debts is discharged at the end of the bankruptcy process, which means that creditors may take no further action against the individual to collect the debt. Bankruptcy filers may choose to reaffirm a debt, often for those debts secured by collateral, such as a home or a car. A reaffirmation agreement, generally filed under Chapter 7, formalizes this arrangement, whereby a filer with debts secured by collateral retains the collateral and continues to make debt payments to a creditor.

You have expressed interest in learning whether the Reform Act has had or is likely to have an effect on bankruptcy filers who have a child support obligation and their ability to make these payments. Obligation refers to an amount owed or promised for payment, whereas payment refers to the act of

¹ Pub. L. No. 109-8, 119 Stat. 237 (2005).

paying or state of being paid. Child support obligations can be for past due child support, current support, or medical support. Past due child support refers to a debt owed by a noncustodial parent to, for example, a custodial parent or guardian for past child support owed but not paid. In contrast, current child support obligations reflect ongoing child support obligations. In the bankruptcy filing documents, a filer is to report past due child support and current child support expenses. Unpaid child support obligations are not discharged through bankruptcy. To request relief from debt, individuals file a petition, financial statements, and schedules (including information about child support obligations), among other things, with the bankruptcy court. In this report, we refer to all documents filed with the court as bankruptcy filing documents.

Your interest stemmed from concerns that amendments made by the Reform Act that require certain debtors to enter into Chapter 13 repayment plans or potential pressure from creditors to reaffirm debts might affect the ability of bankruptcy filers to pay past due child support or ongoing child support obligations. This report discusses issues related to our inability to assess the potential impact of the Reform Act on child support payments as well as information on bankruptcy filers who have child support obligations. Specifically, this report addresses (1) difficulties in determining the potential effect of the Reform Act on an individual's ability to pay child support and (2) an agency proposal regarding the use of data-enabled forms—documents with embedded, invisible data tags that facilitate the extraction of data for analysis—to alleviate some of these difficulties.

To develop an assessment methodology and determine whether we would be able to implement it, we reviewed pertinent Bankruptcy Code provisions, including those relating to child support that were amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, as well as studies, analyses, and other relevant literature covering bankruptcy, in general, and how these intersect with the child support system, specifically. In addition, we reviewed and analyzed the processes and procedures used for both bankruptcy and child support cases, including the federal bankruptcy and child support data systems, to determine which systems, if any, might be used to identify a national universe of individuals who filed for bankruptcy and paid child support obligations. To understand the various federal court, bankruptcy, and child support databases, we interviewed officials and analyzed documentation from the Administrative Office of the U.S. Courts (AOUSC), the Department of Justice's Executive Office for U.S. Trustees (EOUST), and the Department of Health and Human Services' (HHS) Office of Child Support Enforcement.

In addition, we interviewed officials and collected documentation from 4 of 90 bankruptcy courts (Northern District of Alabama, Central District of California, Northern District of Texas, and Southern District of West Virginia); the regional U.S. Trustees and case trustees who manage cases for the districts of Central California, Northern Texas, and Southern West Virginia; and the bankruptcy administrator for the Northern District of Alabama.² These districts were selected based on specific criteria, namely that the selected courts' proportion of cases filed by Chapter 7 or 13 varied, and that rural and urban locations were represented. Using the courts' electronic public access service, we reviewed a nongeneralizable sample of about 60 bankruptcy cases filed in the Eastern and Northern Districts of Texas to gain a better understanding of how child support obligations were reported in practice. These

² Six district bankruptcy courts in Alabama and North Carolina are not under the jurisdiction of the Executive Office for U.S. Trustees. These six districts are the Northern, Middle, and Southern Districts of Alabama and the Eastern, Middle, and Western Districts of North Carolina. These districts have bankruptcy administrators who oversee bankruptcy cases and are under the jurisdiction of the federal judiciary. Pursuant to the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Pub. L. No. 99-554, 100 Stat. 3088 (1986)), the Judicial Conference established the bankruptcy administrator program in these two states as a part of the federal judiciary.

cases were selected based on our knowledge of cases containing a child support obligation, as reported by the case trustees who manage cases for both the Eastern and Northern Districts of Texas. Case trustees are individuals who are typically appointed by the regional U. S. Trustees to administer individual bankruptcy cases. To further our understanding of state child support processes and the data systems used by states, we interviewed officials and collected documentation from selected states' child support enforcement agencies, those of Alabama, California, Illinois, New York, Texas, and West Virginia. We chose these six states for the diverse geography, caseload sizes, and administrative structures. Our work was conducted in accordance with generally accepted government auditing standards from May 2006 through September 2007.

Results in Brief

After exploring the data available and the limitations of those data, we found that it was not possible to determine the potential effects of pertinent child support-related provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 on filers' child support obligations and payments for two principal reasons. First, current federal laws do not require this particular universe— bankruptcy filers who also have child support obligations—to be identified on a recurring basis,³ and the federal judiciary and the Executive Office for U.S. Trustees do not separately identify filers who have these obligations. The information contained in the data systems used by the federal judiciary and regional U.S. Trustees cannot be searched for bankruptcy cases that contain child support obligations. Therefore, we tested a case study approach to identify these filers. At our request, 33 case trustees who manage individual bankruptcy cases in the Eastern and Northern Districts of Texas identified 495 cases filed between October 2005 and August 2006 in which the bankruptcy filer reported a child support obligation. The case trustees perceived this task as one that required extra effort and added to their case management responsibilities. To do a national study would require making a similar request of the other 20 regional U.S. Trustees and a statistically representative sample of their 1,342 case trustees. Second, in our review of a nongeneralizable sample of 60 cases, we found that the information provided by filers and their attorneys contained in the case files had data limitations—including missing information and data that were inconsistently reported—that limited any analysis that could be done. For example, the bankruptcy documents that filers are required to complete did not show what portion of a payment for a child support obligation is applied to current support versus past due child support. According to HHS officials, state child support data would be needed to determine the details regarding the amounts of child support payments and the payment status of cases; those data are complex and available only through the individual states. State child support enforcement officials in one state told us that providing child support payment information would involve a time-consuming and resource-intensive process because the data come from several sources within the state's data system. Thus, data limitations, the need to examine individual bankruptcy case files, and the need to work with each state child support enforcement agency combined to make examining the issues of child support and bankruptcy very expensive and time-consuming, and the conclusions that could be drawn from such an examination uncertain.

As of August 2007, the federal judiciary is considering a request from the Executive Office for U.S. Trustees (EOUST) for the mandatory use of data enabled forms which may enhance the ability to search

³ Pursuant to a statutory mandate, GAO is performing a one time study to assess the feasibility, effectiveness, and cost of requiring trustees or the bankruptcy courts to provide the Health and Human Services Department's Office of Child Support Enforcement with bankruptcy debtor information to allow the office to determine whether such debtors have outstanding child support obligations.

future bankruptcy data. Data-enabled forms contain embedded data tags that are invisible to the user. The tags allow computer systems to automatically extract the tagged data as well as categorize it so that the information can be analyzed. Currently, filers are not required to use data-enabled forms. EOUST officials have requested that the federal judiciary make the use of the data-enabled forms mandatory because, once implemented, they believe that the data-enabled forms will eliminate thousands of hours attributed to the manual review of forms by EOUST staff to meet the Reform Act's mandatory data collection requirements.⁴ EOUST's request included marking data elements to meet new requirements under the Reform Act and other data elements, including child support obligations. However, judiciary officials and others have expressed concerns about the forms' mandatory use because of technical, nontechnical, and cost issues. With regard to technical issues, according to AOUSC officials, the data-enabled form technology must be compatible with its current information system, and the electronic and hard copy documents should be identical to comply with legal requirements, applicable Federal Rules of Procedure, and record-keeping requirements (i.e., National Archives and Records Administration standards). With regard to nontechnical issues, the judiciary, certain attorneys, and form vendors are concerned about the amount of data that EOUST wants to extract and is also concerned about the purpose for which these data would be or could be used. With respect to cost, AOUSC officials expressed concerns about their developmental costs and implementation costs to filers and their attorneys.

We provided a draft of this report to the Department of Health and Human Services and the Department of Justice (DOJ) and the Administrative Office of the U.S. Courts for comment. The two departments had no comments. On October 18, 2007, AOUSC provided written comments that are presented in enclosure I. In its comments, AOUSC notes that the report reflects how difficult it is to assess the effects of the Reform Act in the complex area of bankruptcy and child support. AOUSC also noted that the report should more clearly state that additional data, or the implementation of data-enabled forms, would not necessarily enhance the ability to assess the pre- and post-Reform Act status of debtors' ability to pay their child support payments after exiting bankruptcy. We recognize and agree that there are a number of issues that affect such an analysis. Nevertheless, the data in the bankruptcy case files is essential for analyzing the implementation of the Reform Act and the operations of the bankruptcy system in general. The extraordinary effort currently required to extract data from bankruptcy case files greatly increases the time, effort, and cost associated with any analysis of bankruptcy filers or bankruptcy cases. Congress has a policymaking and oversight interest in the operations of the bankruptcy system and in obtaining cost-effective analyses that can inform congressional decisionmaking with regard to potential changes in bankruptcy statutes and processes. We believe such analyses cannot be efficiently accomplished unless AOUSC and the judiciary help make bankruptcy case data more readily accessible for analysis.

Background

Overview of the U.S. Bankruptcy System

Bankruptcy is a federal court procedure designed to help both individuals and businesses address debts they cannot fully repay as well as help creditors receive some payment in an equitable manner. Under

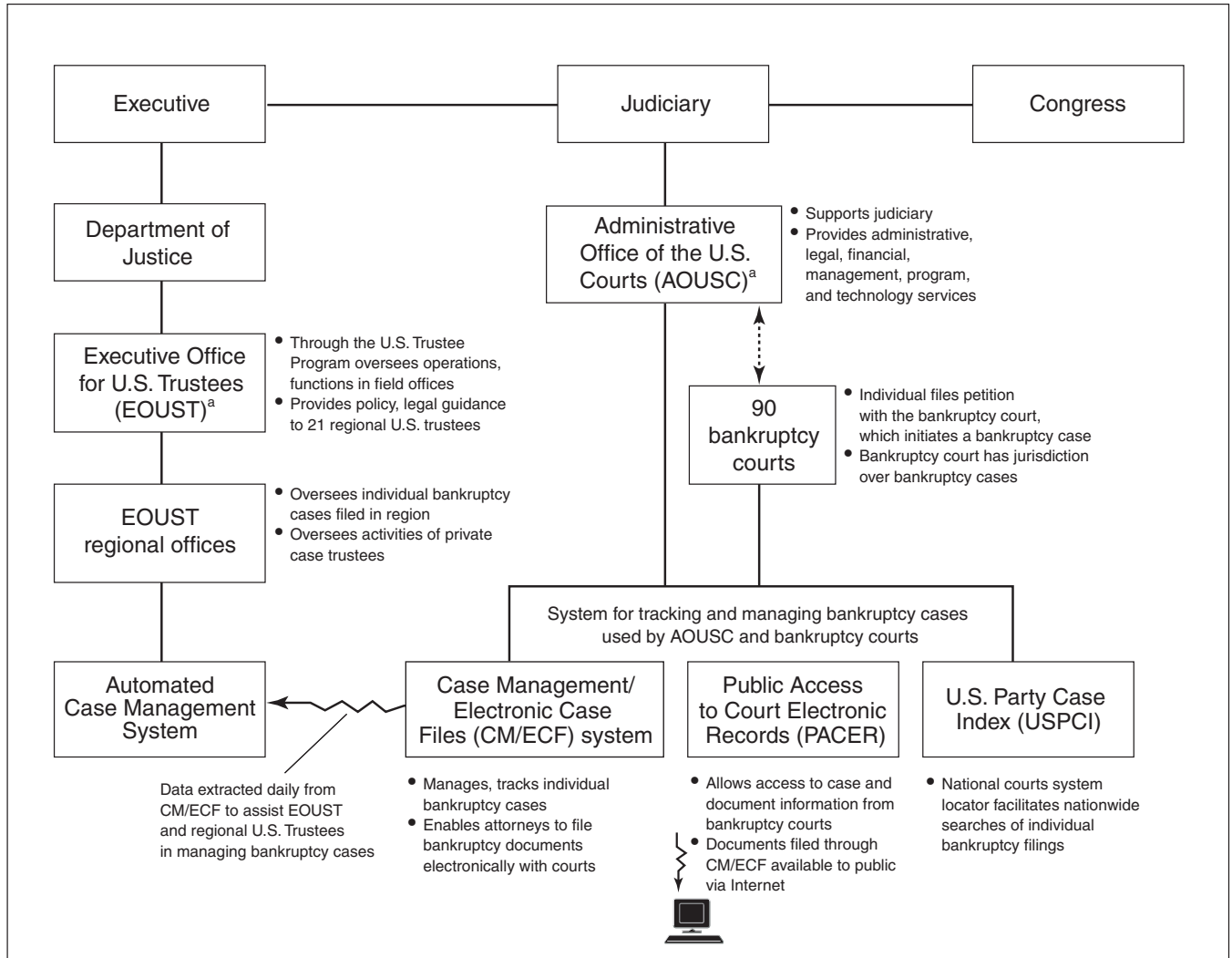
⁴ The Reform Act imposed new requirements for collecting and reporting data on bankruptcy cases. The purpose of these bankruptcy statistics requirements is to be able to gather detailed information, at the individual case level, about bankruptcy filers, including financial statistics and the average period of time between case filing and closure. This information is to be used to provide an overview of the bankruptcy filer universe (not individual cases) annually, beginning no later than July 2008.

Chapter 7, an individual's assets are liquidated for the benefit of creditors and the debtor's personal liability for eligible debts is discharged. Under Chapter 13, an individual repays some or all debt under a court-approved plan prior to a discharge.⁵ Child support debt is not discharged under either Chapter 7 or Chapter 13. Individual bankruptcy is designed to give debtors a "fresh start" but is often considered a last resort, in large part because of the adverse effect it can have on an individual's credit record. As shown in figure 1, federal courts have jurisdiction over bankruptcy cases, and petitions can be filed in any one of the nation's 90 federal bankruptcy courts.⁶ The figure also shows that the courts share responsibility of administration for bankruptcy cases with regional U.S. Trustees at the Department of Justice.

⁵ Because businesses do not pay child support obligations, the scope of this report is limited to individual bankruptcies.

⁶ There are 94 judicial districts, but only 90 federal bankruptcy courts because the Eastern and Western Arkansas judicial districts are served by a single bankruptcy court and bankruptcy cases in Guam, the Virgin Islands, and the Northern Mariana Islands judicial districts are filed in district court.

Figure 1: Overview of Federal Bankruptcy System



Source: GAO.

^aSix districts in Alabama and North Carolina do not have regional trustees and are not under the jurisdiction of the Executive Office for U. S. Trustees. Instead, these six districts have bankruptcy administrators who are under the jurisdiction of the federal judiciary. The bankruptcy administrators carry out duties similar to those of the regional U.S. Trustees, including the administration of bankruptcy cases, maintaining a panel of private trustees, and monitoring the transactions and conduct of parties in bankruptcy.

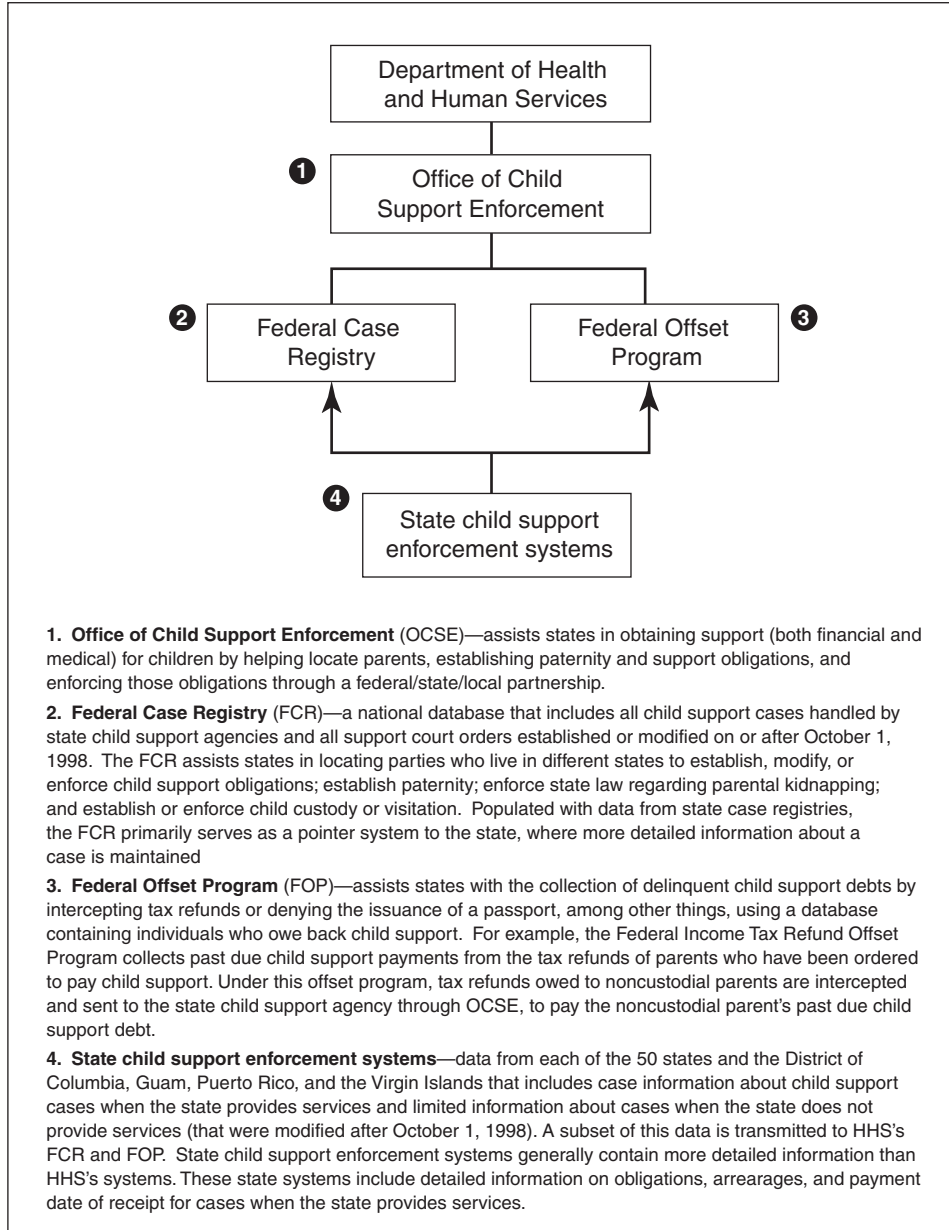
Overview of Federal/State Child Support Enforcement System

Child support obligations are enforced through a federal/state partnership. State child support enforcement agencies typically maintain detailed information about child support cases, including the court order for child support that specifies the amount of the obligation and how it is to be paid; the status of payments made, including the amount of past due child support owed, if any; and the names and addresses of all parties involved in a child support order, among other things.⁷ As figure 2 shows,

⁷ While state agencies have detailed information about child support cases they administer, HHS officials said that the states have minimal to no information available about child support cases that are handled outside the state child support enforcement agency, and the amount of information varies state by state.

each state regularly transmits some of this information to HHS’s Office of Child Support Enforcement to be included in federal databases that help states enforce child support obligations nationwide.

Figure 2: Overview of Child Support Enforcement System



Source: GAO.

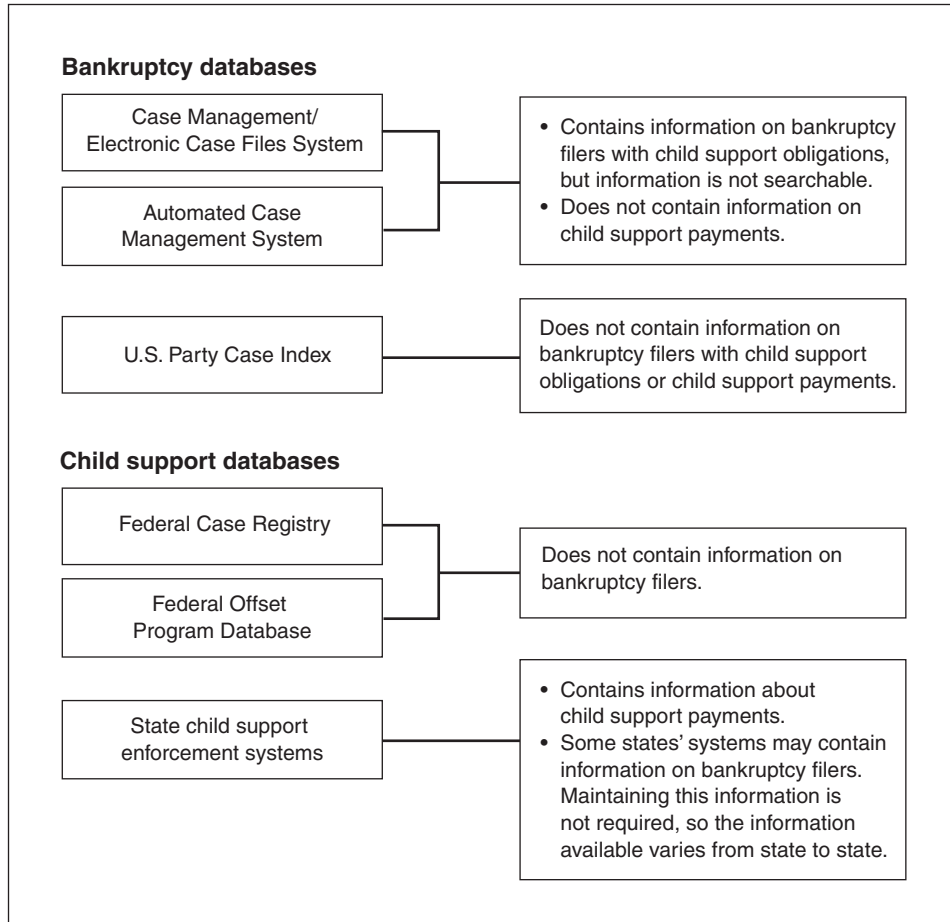
Data Limitations Restrict Analysis of the Potential Effects of the Reform Act on Bankruptcy Filers' Child Support Payments

Data limitations we encountered when attempting to assess the effect of the pertinent child support related provisions of the Reform Act on child support payments relate to identifying a sample of bankruptcy filers with child support obligations as well as data collection and consistency issues. These factors restricted our ability to perform an analysis of child support payments.

Information to Identify Bankruptcy Filers with Child Support Obligations Is Not Readily Available

At the time of our review, it was not possible to determine the potential effects of the Reform Act on bankruptcy filers who also had child support obligations because there is no practical means of reliably identifying this universe. We sought to identify a representative sample of bankruptcy filers with child support obligations from a national universe so that we could project an effect of the Reform Act nationwide. Although the federal bankruptcy system has multiple databases, as does the federal/state child support system, none of these databases single out a universe of bankruptcy filers who have child support obligations and their child support payment information, as shown in figure 3. Current federal laws do not require this universe to be identified on a recurring basis.

Figure 3: Information Contained in Bankruptcy and Child Support Databases



Source: GAO.

In an effort to identify whether each database described in figure 3 contained information on either child support obligations or child support payments, we reviewed these databases, including the systems used by staff in the Executive Office for U.S. Trustees and the U.S. bankruptcy courts, which manage federal bankruptcy cases. At EOUST, the Automated Case Management System (which is based on extracts of case management information from AOUSC) functions as an internal agency case management system that contains the information needed by the U.S. Trustee Program to carry out its responsibilities, including supervising the administration of cases and case trustees. Some case details, such as child support information, are not extracted—and this system is not designed to provide that type of information. The case management system contains information about bankruptcy filers in 84 of 90 bankruptcy courts. The remaining 6 bankruptcy courts are not part of the U.S. Trustee Program, so information about bankruptcy filers in these districts is not included in the Automated Case Management System.⁸

⁸ These include the Northern, Middle, and Southern Districts of Alabama and the Eastern, Middle, and Western Districts of North Carolina.

To identify a national universe of bankruptcy filers who also have child support obligations, we reviewed two databases used by AOUSC and the bankruptcy courts. While one of these systems—the Case Management/Electronic Case Files System—included child support information, the fields where this information is contained are not searchable. The child support information is contained in filing documents as text. According to AOUSC officials, it is difficult to isolate and extract the relevant child support information from other text in the documents. The second system, the U.S. Party Case Index, does not contain any child support information.

The two federal HHS child support systems we reviewed—the Federal Case Registry and the Federal Offset Program database—did not contain all of the information needed for analysis. Specifically, they did not contain detailed payment information needed for our analysis. This information is available only at the state child support enforcement agencies.

For a case study approach, we explored identifying bankruptcy filers who have child support obligations at the bankruptcy court level—specifically, in the Eastern and Northern Districts of Texas. We found that identifying these filers required the regional U.S. Trustee (who oversees bankruptcy cases filed in these two courts) to ask the 33 case trustees in the region to identify, using their working files, those cases where the filer reported owing a child support obligation. When we made this request, the case trustees identified 495 cases filed between October 2005 and August 2006 in which the bankruptcy filer reported a child support obligation. However, this information was not readily available and it took them almost 3 months to compile. Also, the case trustees perceived this task as one that required extra effort and added to their case management responsibilities. To do a national study would require making a similar request of the other 20 regional U.S. Trustees and a statistically representative sample of their 1,342 case trustees.

Missing Information and Inconsistent Data Reporting Affect Analysis of Reform Act Impact

Even if we were able to identify a sample of bankruptcy filers who also have child support obligations, we noted data limitations that may preclude the necessary analysis. Of the 495 cases identified by case trustees as having a child support obligation, we reviewed data provided by bankruptcy filers and their attorneys for 60 case files and found data limitations such as missing information and inconsistent data. In addition to data issues, we found that changes to filing information and the characteristics of bankruptcy filers resulting from the Reform Act affect our ability to make direct pre- and post-Reform Act comparisons.

Missing Information Affects Data Analysis

On the basis of our nongeneralizable case file review in the two districts, we found that the details needed to determine how child support payments were applied to child support debt were not available. Specifically, the bankruptcy documents that filers are required to complete do not show what portion of a payment for a child support obligation is applied to current monthly support versus past due child support. Without this information, we are unable to provide a complete picture of how a bankruptcy filer's child support debt is structured. Details about child support payments are available only at the state child support agencies.

To explore how state child support enforcement agencies maintain data regarding child support payments, we contacted child support enforcement officials in six states. While officials in one state were helpful in providing some child support data, these officials told us that there were technical barriers and resource limitations to making child support payment data easily available for our purposes.

For example, officials were able to provide summary data to us about individuals in the system, such as whether they were custodial or noncustodial parents. However, these officials said that providing child support payment information involves a time-consuming and resource-intensive process because the data come from several sources within the state's data system.⁹ These circumstances require preparing programming language to merge the sources and compile the information. When the state provided the summary data, officials had to take into consideration their existing workload in order to meet our request as well as accommodate the needs of the state legislature, which was in session. In addition, officials in two other states mentioned that they would have to balance providing this type of information with the priority of carrying out their enforcement activities.

We also observed examples where bankruptcy data that would be needed for determining a filer's financial condition after a Chapter 7 case is closed were not collected. Knowing this information is important when assessing a filer's future ability to pay child support. For instance, under Chapter 7, bankruptcy filers are to propose in the filing documents how they plan to address a debt secured by collateral. Whether or not the filer took action on this proposal cannot be determined because this information is not captured in the bankruptcy filing documents or data systems. For example, a filer can propose to surrender the collateral to the creditor. However, neither the filer nor the creditor is required to provide information to the court or trustees about whether or not this action occurred, so we have no way of confirming that the collateral was surrendered. We also found a case where a filer proposed to reaffirm a debt, but no reaffirmation agreement (an agreement that formalizes the arrangement whereby a filer retains collateral and continues to make payments to a creditor) was filed with the court. We have no way of knowing whether or not the filer continued to make payments to the creditor after the case was closed. In fact, even when a reaffirmation agreement is filed, data on the extent to which a filer was able to meet the terms specified in the agreement (e.g., made payments as required) are likely only available, if at all, at the individual creditor level.

Inconsistent Data Affect Analysis

Our review raised questions about the consistency of bankruptcy filers' data. We found instances among the nongeneralizable sample of case files we reviewed where information in the filing documents was reported inconsistently. For example, one case showed the total amount of an ongoing child support obligation as a debt in the filing documents for several years into the future (i.e., debt obligations that are not due until a future date), whereas in another case, the filer reported the ongoing obligation as a monthly amount, not the total amount of the future obligation. Also, some case trustees told us that filers (and their attorneys) sometimes complete the filing documents differently, resulting in inconsistent information being reported. For example, on one filing document filers may report past due or current child support obligations without identifying which type of obligation is being reported.

Changes to Filing Information and the Characteristics of Bankruptcy Filers Affect Ability to Analyze the Impact of the Reform Act

In addition to the data collection and the consistency issues we identified, we also were unable to make direct comparisons between the universe of bankruptcy filers who filed just before the majority of the Reform Act provisions took effect in October 2005 and those who filed immediately after. The ability to

⁹ We worked with these state officials for over approximately 7 months to obtain the summary-level data. The officials estimated that an additional 2 months would be required to obtain the payment information needed for our analysis.

perform a pre- and post-Reform Act analysis of filers is important for conducting an analysis of the Act's impact on bankruptcy filers who also have a child support obligation.

We were unable to compare these universes for two reasons. First, the filers within these universes may well have been motivated to file for different reasons than filers in prior years—reflecting, in part, the perception that filing for bankruptcy would be more difficult after the Reform Act, according to court officials and our analysis. Thus, individuals who filed before the law's provisions went into effect may have been less critically in need of bankruptcy relief than typical filers in prior years, whereas after the law's provisions went into effect, filers may have been more critically in need of bankruptcy relief. We would be unable to directly attribute any differences between these groups as resulting from the Reform Act because of the possibility that the characteristics of the groups of filers might be inherently different for reasons related more to behavior than changes in Bankruptcy Code provisions.

Second, some definitional changes made to the Bankruptcy Code as a result of the Reform Act limit our ability to make pre- and post-Reform Act comparisons. For example, prior to the Reform Act, the term “debt for child support” was defined as specified types of debt for maintenance or support of a child of the debtor. The Reform Act introduced the broader umbrella term “domestic support obligation” that in addition to child support debt also refers to certain other types of debts such as alimony. In addition, under the Reform Act, the definition of domestic support obligation expanded the types of entities that could seek to collect domestic support obligations beyond a spouse, former spouse, or child of the debtor to include a child's parent, legal guardian, responsible relative, or a governmental unit. These types of definitional changes limit our ability to compare filer universes.

As mentioned previously, reaffirmed debts are certain debts (e.g., a mortgage or automobile loan) that a bankruptcy filer agrees to pay that might otherwise be discharged by the bankruptcy court. The Reform Act included changes that affected reaffirmation agreements. The Reform Act requires that certain information, such as the amount to be reaffirmed, be disclosed. This information was not required under federal law prior to the Reform Act and may or may not be included in reaffirmation agreements filed prior to the act. Furthermore, agreements made before or after the Reform Act were not required to include information on actual monthly payments made that would be needed to assess the impact of such agreements on a filer's ability to pay child support.

Data-Enabled Forms under Consideration as a Method to Search Bankruptcy Data For Filers Who Have Child Support Obligations

As noted earlier, bankruptcy databases do not contain information that would be needed about actual child support payments—information available only through state child support agency data. In particular, state child support data would be needed to determine the details regarding the amounts of child support payments and the payment status of cases—that is, whether child support payments are up to date or past due child support is owed. However, if data-enabled forms were to be used and if child support obligations were among the data fields tagged, limited analysis could include summary information on the number of bankruptcy filers who reported a domestic support obligation or included ongoing child support obligations in their bankruptcy filing documents. Data-enabled forms contain embedded data tags that are invisible to the user but which a computer system can detect using programming language. After a user completes the form online, the tags allow a computer system to automatically extract the tagged data as well as categorize it so that the information can be compared and analyzed.

As mentioned previously, according to AOUSC officials, extracting child support information from the current bankruptcy courts databases is difficult. The judiciary is considering a request by EOUST to mark certain data elements in the filing document text so it can more easily be extracted. EOUST's request included marking data elements to meet new requirements under the Reform Act and other data elements, including child support obligations. The Reform Act imposed new requirements for collecting and reporting specified data on bankruptcy cases. The purpose of these bankruptcy statistics requirements is to be able to gather detailed information, at the individual case level, about bankruptcy filers, such as financial statistics and the average period of time between case filing and closure. This information is to be used to provide an overview of the bankruptcy filer universe (not individual cases) annually beginning no later than July 2008. AOUSC and EOUST both have responsibilities for collecting and reporting data as a result of the Reform Act. For purposes of the bankruptcy data collection, EOUST is considering data-enabled forms as one option for meeting reporting requirements, such as the total assets and liabilities of filers, the aggregate debt discharged by filers during the reporting period, and trustees' final reports (which include information about the length of time a case was pending, assets, disbursements, and expenses, among other things). EOUST's request seeks to include additional data elements that judiciary officials consider unrelated to the data required by the Reform Act and unrelated to the management of cases. Judiciary officials have expressed concerns about the volume of data proposed to be tagged.

There are factors that affect the potential use of data-enabled forms. According to AOUSC officials, the forms have not been used because certain bankruptcy attorneys and the software vendor community have raised concerns about privacy issues and the volume of data proposed to be tagged, among others. Issues have also been raised concerning the programming format for embedding the tags. Currently, filers are not required to use data-enabled forms. EOUST has proposed a technology for data-enabled forms and made a request to AOUSC that the use of data-enabled forms be mandatory because, once such forms are implemented, they believe that the new automated data collection process will eliminate thousands of hours attributed to the manual review of forms by EOUST to meet the Reform Act mandatory data collection requirements. As of August 2007, the federal judiciary is considering EOUST's request that data-enabled forms be mandatory. However, the federal judiciary, certain attorneys, and form vendors have voiced concerns about the forms' mandatory use because of technical, nontechnical, and cost issues. With regard to technical issues, according to AOUSC officials, the data-enabled form technology must be compatible with its current information system, and the electronic and hard copy documents should be identical to comply with rules of court procedures and record-keeping standards. With regard to nontechnical issues, the judiciary, certain attorneys, and form vendors are concerned about the amount of data that EOUST wants to extract and are also concerned about the purpose for which these data would be or could be used. With respect to cost, AOUSC officials expressed concerns about their developmental costs and implementation costs to filers and their attorneys.

At its January 2007 meeting, the Committee on the Administration on the Bankruptcy System¹⁰ of the U.S. Judicial Conference decided to study further the mandatory use of data-enabled forms. According to AOUSC officials, in September 2007 EOUST demonstrated its technological proposal for the use of data-enabled forms to the Bankruptcy Committee's Subcommittee on Automation and other judiciary officials. The Bankruptcy Committee is considering plans to conduct a survey of vendors and

¹⁰ The Judicial Conference of the United States operates through a network of committees created to address and advise on a wide variety of subjects such as information technology, personnel, space and facilities, security, judicial salaries and benefits, budget, court administration, and rules of practice and procedure. The Committee on the Administration of the Bankruptcy System oversees the bankruptcy system by monitoring, analyzing, and proposing legislation affecting bankruptcy operations, including their impact on the entire judiciary, for consideration by the Judicial Conference.

bankruptcy attorneys regarding the mandatory use of data-enabled forms. According to AOUSC officials, as of August 2007, the Bankruptcy Committee had not set a time frame for completing its study.

In summary, obtaining the data needed to assess the impact of the Reform Act on filers who have child support obligations is difficult and time-consuming and requires the review of case files by us and case trustees. Moreover, it is not clear, given the limitations of the data available, that the extensive and expensive effort required would yield data that could be used to reach reasonably reliable conclusions.

Agency Comments and Our Evaluation

We provided a draft of this report to AOUSC, DOJ, and HHS for review and comment. DOJ and HHS had no comments on the draft. AOUSC provided written comments on October 18, 2007, which are presented in appendix I. AOUSC also provided technical comments that were incorporated as appropriate.

In its comments, AOUSC notes that the report reflects how difficult it is to assess the effects of the Reform Act in the complex area of bankruptcy and child support. AOUSC also noted that the report should more clearly state that additional data, or the implementation of data enabled forms, would not necessarily enhance the ability to assess the pre- and post-Reform Act status of debtors' ability to pay their child support payments after exiting bankruptcy, given the variations in local economies, debtor characteristics, and other factors. We recognize and agree there are a number of issues that affect any pre- and post-Reform Act analysis. Nevertheless, the data in the bankruptcy case files is essential for analyzing the implementation of the Reform Act and the operations of the bankruptcy system in general.

To compensate for the limitations of the data available for analysis, AOUSC suggests that we provide a more extensive legal analysis, including expounding on the potential validity of hypotheses regarding the effect of chapter 13 versus chapter 7 proceedings on the ability of debtors to pay child support obligations. We, bankruptcy scholars, and other researchers can speculate on these probable effects. However, Congress has requested fact-based analyses. The extraordinary effort currently required to extract data from bankruptcy case files greatly increases the time, effort, and cost associated with any analysis of bankruptcy filers or bankruptcy cases. The data in the case files are essential for testing the validity of many hypotheses regarding the operations of the bankruptcy courts and bankruptcy system. Congress has a policymaking and oversight interest in the operations of the bankruptcy system and in obtaining cost-effective analyses that can inform congressional decisionmaking with regard to potential changes in bankruptcy statutes and processes. We believe such analyses cannot be efficiently accomplished unless AOUSC and the judiciary help make bankruptcy case data more readily accessible for analysis.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. We then plan to provide copies of this report to the Director of the Administrative Office of the U.S. Courts, the Attorney General of the Department of Justice, and the Secretary of the Department of Health and Human Services and other interested congressional committees and parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8757 or jenkinswo@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff contributing to this report are listed in the enclosure II.

A handwritten signature in black ink that reads "William Jenkins, Jr." The signature is written in a cursive style with a large, sweeping flourish at the end.

William Jenkins, Jr., Director
Homeland Security and Justice Issues

Enclosure I



JAMES C. DUFF
Director

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ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

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Deputy Associate Director

Office of Management,
Planning and Assessment

October 18, 2007

Mr. William O. Jenkins, Jr.
Director, Homeland Security and Justice Issues
United States Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Jenkins:

Thank you for the opportunity to provide comments on the draft report entitled *Potential Effect of Bankruptcy Abuse Prevention and Consumer Protection Act on Child Support Payments Cannot be Determined because Data Needed for Study Are Not Available* (GAO-08-28R). Your task was challenging and the report reflects how difficult it is to assess the effects of the statute in this complex area. Not only does the report point out that data are not readily available to answer the question posed, but it also explains why it would be extremely difficult to answer the question even with more data. Unfortunately, this important message is not presented clearly in the critical beginning sections of the draft report. The report's title and its primary emphasis on data availability and the potential value of data-enabled forms in the *Results in Brief* section suggest that collecting additional data would enable GAO to answer the requesters' question. A reader might reasonably conclude from the synopsis that the use of data-enabled forms to collect information from bankruptcy filers would produce the information needed. As your report notes elsewhere, this would not be the case.

A key point is made (on page 11 of the draft) that it would be extremely difficult or impossible to establish a causal connection between changes in the bankruptcy law and differences in the level of payments on child support obligations, even if comprehensive and reliable data were available. On page 12, the report explains the limited analysis that data collected through data-enabled forms might allow. In addition, the report notes that data currently provided by filers (or their attorneys) contains errors or omissions, but this important issue is not addressed in regard to describing the value of data-enabled forms. The *Results in Brief* paragraph implies that data-enabled forms that would be completed by bankruptcy filers might provide the data needed for further analysis. It notes potential

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Mr. William O. Jenkins, Jr.
Page 2

drawbacks to this proposal, but the report does not suggest production of electronic data through other means, such as the potential use of data-enabled forms by case trustees. It seems to us that these important points should be covered more clearly to avoid misunderstanding.

The report indicates that a data-centered approach to this issue offers limited potential because there are numerous confounding factors in evaluating the effect of the statute on child support payments. Some of these factors are noted in the report and some are not. For example, BAPCPA broadened the category of nondischargeable debts to include "domestic support obligations" such as alimony, in addition to child support. The report notes that the characteristics of pre- and post-BAPCPA debtors are likely to be different. Changes in the economy and local variations in the effectiveness of state agencies in collecting child support obligations are other relevant factors. It seems that these fundamental problems should be given more prominence at least equal to the extended discussion of difficulties in data collection.

To compensate for the challenges of data analysis, a useful alternative would be to provide a more robust legal analysis of the potential effects of BAPCPA on the level of child support payments. Page 2 of the letter to the requesters states that this study was requested because of "concerns that amendments made by the Reform Act that require certain debtors to enter into Chapter 13 repayment plans or potential pressure from creditors to reaffirm debts might affect the ability of bankruptcy filers to pay a past due child support or ongoing child support obligations." This concern seems to stem from an underlying assumption that debtors will repay more in chapter 13 than in chapter 7. The reasoning seems to follow that, if chapter 13 debtors repay more than in a chapter 7, there would be less available for domestic (including child) support creditors. The report does not examine the validity of this hypothesis. It may be more likely that a debtor with nondischargeable domestic support obligations would propose a chapter 13 plan that would favor the domestic support creditor at the expense of general unsecured creditors holding dischargeable debt.

We understand that GAO prefers to conduct data analysis, but in this situation it might be useful to provide information to address the requesters' underlying concern based on the expertise of individuals who operate within the bankruptcy system. The report indicates that the GAO team interviewed bankruptcy trustees and bankruptcy court officials in the course of this study, but it is not clear whether the hypotheses described above were explored during those interviews. It appears the team did not consult with bankruptcy attorneys for this study.

Mr. William O. Jenkins, Jr.
Page 3

We hope you find these comments constructive. Technical corrections are provided as a separate enclosure.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cathy A. McCarthy', with a stylized flourish at the end.

Cathy A. McCarthy

Enclosure

Enclosure II: GAO Contact and Staff Acknowledgments

GAO Contact

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Acknowledgments

Other key contributors to this report were Linda Watson, Assistant Director; and Amy Bernstein; Cynthia Grant; Geoffrey Hamilton; Gale Harris; Susan Higgins; Ron La Due Lake; Sara Pelton; Peter Singer; Jamie Whitcomb; Tracy Williams; and Ellen Wolfe.

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