

June 2008

BANKRUPTCY REFORM

Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005





Highlights of [GAO-08-697](#), a report to congressional requesters

Why GAO Did This Study

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Reform Act) made significant changes to the administration of bankruptcy relief, affecting (1) the U.S. Trustee Program (Trustee Program), which oversees the bankruptcy process; (2) the federal judiciary, which includes bankruptcy courts and a central administrative support office; (3) consumers filing for bankruptcy; and (4) private trustees—individuals who administer bankruptcy cases and are supervised by the Trustee Program but are not government employees. The number of new personal bankruptcy filings declined after the act—about 600,000 people filed in 2006 as compared to an average of 1.5 million annually between 2001 and 2004.

GAO was asked to examine (1) new costs incurred as a result of the Bankruptcy Reform Act by the Trustee Program and federal judiciary, (2) new costs to consumers, and (3) the impact of the act on private trustees. GAO reviewed budget information from the Trustee Program and federal judiciary, and collected data on attorney fees from a random and projectable sample of personal bankruptcy cases. GAO also obtained documentation and interviewed staff from these entities, as well as from organizations representing consumers, bankruptcy attorneys, creditors, and private trustees.

To view the full product, including the scope and methodology, click on [GAO-08-697](#). For more information, contact Yvonne D. Jones at (202) 512-2717 or jonesy@gao.gov.

BANKRUPTCY REFORM

Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

What GAO Found

The Trustee Program estimated that its costs to carry out responsibilities resulting from the Bankruptcy Reform Act were approximately \$72.4 million for fiscal years 2005 through 2007. These costs were mostly for staff time for ongoing activities related to the means test, debtor audits, data collection and reporting, and counseling and education requirements. The federal judiciary could not isolate all costs related to the act since it broadly affected nearly all bankruptcy court staff and operations, but estimated about \$48 million was incurred in one-time start-up costs for such things as training and revisions of rules, forms, and procedures. These estimates do not incorporate the effect of the decline in bankruptcy filings since the act, which presumably has helped reduce the Trustee Program's and judiciary's overall costs, but has also reduced fee revenues. Trustee Program filing fee revenues declined from \$74 million to \$52 million between fiscal years 2005 and 2007, and federal judiciary filing and miscellaneous fee revenues declined from \$237 million to \$135 million.

Consumers filing for bankruptcy pay higher legal and filing fees since the Bankruptcy Reform Act went into effect. Based on a random sample of bankruptcy files, GAO estimated that the average attorney fee for a Chapter 7 case increased from \$712 in February-March 2005 to \$1,078 in February-March 2007. For Chapter 13 cases, the standard attorney fees that individual courts approve rose in nearly all the districts and divisions with such fees that GAO reviewed, and in more than half the cases the increase was 55 percent or more. As a result of the act and subsequent budget legislation, total bankruptcy filing fees have risen from \$209 to \$299 for Chapter 7 and from \$194 to \$274 for Chapter 13. GAO estimated that the proportion of Chapter 7 debtors filing without an attorney had declined and did not find a significant change in the proportion of such debtors receiving free legal assistance. In addition, fees to meet the act's credit counseling and debtor education requirements are typically about \$100, although some clients receive a fee reduction or a full waiver.

Private trustees told GAO that new Bankruptcy Reform Act requirements related to documentation, verification, and reporting have increased the time and resources they spend administering each case. The caseload of some private trustees has declined in concert with the significant decline in bankruptcy filings that has occurred since the act went into effect, but trustees' overall rate of attrition has not changed significantly.

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Abbreviations

AOUSC	Administrative Office of the United States Courts
Bankruptcy Reform Act	Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
Trustee Program	U.S. Trustee Program

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United States Government Accountability Office
Washington, DC 20548

June 27, 2008

Congressional Requesters

Congress enacted major bankruptcy reform legislation with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Reform Act), most of the provisions of which became effective in October 2005.¹ The act made many significant changes to the administration of consumer bankruptcy relief and has resulted in certain new responsibilities for the various entities involved in the bankruptcy process. Within the judicial branch (or federal judiciary), these entities include the 90 bankruptcy courts; the Administrative Office of the United States Courts, which provides the courts with central support functions; and the bankruptcy administrators in the six judicial districts in Alabama and North Carolina. Within the executive branch, the Department of Justice's U.S. Trustee Program (Trustee Program) oversees bankruptcy case administration in most federal judicial districts and litigates to enforce the bankruptcy laws. The Bankruptcy Reform Act also has affected the roles and responsibilities of the approximately 1,400 "private trustees." These trustees are private individuals who are appointed and supervised by the Trustee Program or bankruptcy administrators and are responsible for administering bankruptcy estates and distributing assets as appropriate to creditors.

Among other things, the Bankruptcy Reform Act established a means test for determining whether a consumer is eligible for bankruptcy relief under Chapter 7 (in which assets are liquidated and debts discharged) or must file under Chapter 13 (which involves a court-approved plan for repayment of debts) or under Chapter 11. The act required procedures be established for audits of consumer bankruptcy cases by a certified public or licensed accountant. Further, the act required the federal judiciary to collect and publish certain annual statistics on bankruptcy cases. In addition, consumers must receive approved credit counseling before filing a petition in bankruptcy court and take an approved debtor education course before having debts discharged. The act also increased bankruptcy filing fees, and is widely believed to have affected the fees bankruptcy attorneys charge

¹Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (Apr. 20, 2005) (as amended, Bankruptcy Reform Act).

consumers for these cases. The number of new consumer bankruptcy filings declined after implementation of the Bankruptcy Reform Act—about 600,000 people filed for bankruptcy in 2006 as compared with an average of 1.5 million people annually from 2001 through 2004.

In light of these changes, you asked us to report on new costs resulting from the Bankruptcy Reform Act. The specific objectives of this report are to examine (1) new costs incurred as a result of the Bankruptcy Reform Act by the Department of Justice and the federal judiciary, (2) new costs incurred as a result of the act by consumers filing for bankruptcy, and (3) the impact of the act on private trustees. Our review focused on the impact of the act with regard to consumer (that is, personal) bankruptcies and not business bankruptcies. Further, the scope of the first two objectives is limited to the monetary (dollar) costs incurred by federal entities and consumers and not on other ways the Bankruptcy Reform Act may have affected them. The scope of this report also is limited to costs directly related to the process of filing for bankruptcy, and not on the overall financial impact the act may be having on consumers. Finally, this report did not seek to assess the benefits of the Bankruptcy Reform Act and is therefore not an evaluation of the merits of the act.

To address the objectives, we obtained documentation from, and interviewed representatives of, the Trustee Program; the federal judiciary, including the Administrative Office of the United States Courts (AOUSC) and selected individual bankruptcy courts; Congressional Budget Office; and organizations representing consumers, bankruptcy attorneys, the financial services industry, and Chapter 7 and Chapter 13 trustees. For the first objective, we reviewed available data on the budgets of the Trustee Program and the federal judiciary for fiscal years 2003 to 2009. We asked the Trustee Program and the judiciary to provide estimates of their spending, including staff time, dedicated to implementing the Bankruptcy Reform Act. We did not verify these estimates, although we reviewed and analyzed them and we interviewed the staff who provided the estimates to understand how they were created. We determined that the estimates were sufficiently reliable for our purposes. For the second objective, to determine changes in attorney fees for Chapter 7 bankruptcy cases, we selected two random and projectable samples of cases (from before and after the act) and collected information on the attorney compensation, if any, from the disclosure statements regarding compensation that are

required to be filed by debtors' attorneys.² To determine changes in attorney fees for Chapter 13 cases, we collected data on the standard fees set by 48 judicial districts or divisions (a sublevel below that of judicial district). These fees represent the amount most attorneys charge consumers to handle a Chapter 13 case in those divisions or districts. To determine costs associated with credit counseling and debtor education courses, we obtained data from the Trustee Program and a credit counseling trade organization and reviewed information we collected previously for a report on that topic.³ To determine changes in filing fees, we reviewed changes in fees made by the Bankruptcy Reform Act and subsequent budget legislation. For the third objective, we reviewed provisions of the Bankruptcy Reform Act that affect private trustees' roles and responsibilities and the Trustee Program's policy and procedure manuals for private trustees. We also interviewed professional associations representing private trustees and conducted individual and group interviews of, collectively, 21 Chapter 7 and Chapter 13 private trustees, who were chosen because they served in districts that represented a range of sizes and geographic regions. A more extensive discussion of our scope and methodology appears in appendix I.

We conducted this performance audit from June 2007 through June 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

The Trustee Program and the federal judiciary have both incurred new costs—mostly in staff resources—as a result of the Bankruptcy Reform Act, but these costs are difficult to measure since it is not always possible to isolate the amount of staff time devoted specifically to implementing the act's requirements. At our request, the Trustee Program estimated that

²Estimates from our review of Chapter 7 filings are based on a probability sample and are subject to sampling error. At the 95 percent confidence level, all fee estimates have margins of error of +/- 6.3 percent or less and all percentage estimates have sampling errors of +/- 6 percentage points or less. Appendix I contains additional information about our survey of Chapter 7 files and the sampling error for our estimates.

³GAO, *Bankruptcy Reform: Value of Credit Counseling Requirement Is Not Clear*, [GAO-07-203](#) (Washington, D.C.: Apr. 6, 2007).

for fiscal years 2005 through 2007, its costs related to carrying out responsibilities resulting from the Bankruptcy Reform Act were approximately \$72.4 million, mostly for personnel. The costs included \$42.5 million to implement the means test, \$6.1 million related to credit counseling and debtor education requirements, and \$3.0 million to supervise and conduct debtor audits. Additional funds were spent for studies, reporting requirements, and information technology needs related to the act. The federal judiciary could not isolate costs specifically resulting from the Bankruptcy Reform Act since the act had a broad effect on nearly all bankruptcy court staff and operations. However, the judiciary did estimate that \$48.4 million was incurred in costs for specific start-up activities associated with the initial implementation of the act's requirements. The largest of these costs was for staff time dedicated to revisions of the Bankruptcy Rules, official forms, court operating procedures, and the courts' electronic filing, docketing, and case management system. Other major expenses were for training, statistical and reporting requirements, and new responsibilities for the bankruptcy administrators who oversee cases in certain districts. The cost estimates for the Trustee Program and the judiciary do not incorporate the effect of the decline in bankruptcy filings since the act, which presumably has helped reduce their overall costs to some extent. As a result of the decline in bankruptcy filings since the passage of the act, revenues from bankruptcy-related filing and other fees declined between fiscal year 2005 and fiscal year 2007—from \$74 million to \$52 million for the Trustee Program and from \$237 million to \$135 million for the federal judiciary.

Since the implementation of the Bankruptcy Reform Act, there have been increased costs to individual consumers filing for bankruptcy resulting from higher attorney fees and filing fees, as well as new fees to meet credit counseling and debtor education requirements. Based on a review of legal fee disclosure forms in our random sample of Chapter 7 personal bankruptcy filings, we estimate that the average attorney fee for a Chapter 7 case increased from \$712 in February–March 2005 to \$1,078 in February–March 2007. The proportion of Chapter 7 debtors filing without an attorney (pro se) was about 11 percent in February–March 2005, according to our sample estimate, as compared to 5.9 percent in calendar year 2007, according to AOUSC data. We did not find a statistically significant difference in the proportion of Chapter 7 debtors receiving free legal assistance between the 2 years. For Chapter 13 cases, our review found the standard attorney fee approved by courts (and which, in practice, is the fee Chapter 13 attorneys typically charge their clients) rose in nearly all the districts and divisions with such fees. In more than half of these cases, the increase was 55 percent or more. The act raised Chapter 7 filing

fees by \$65 and reduced Chapter 13 filing fees by \$5. However, as a result of further changes to filing fees made by the Deficit Reduction Act of 2005, total bankruptcy filing fees since 2005 have risen from \$209 to \$299 for Chapter 7 filers and from \$194 to \$274 for Chapter 13 filers. The act included a new provision allowing these filing fees to be waived for qualified Chapter 7 debtors, and these fees were waived in 2.1 percent of Chapter 7 personal bankruptcy cases filed in fiscal year 2007. The Bankruptcy Reform Act also included a new requirement that consumers receive credit counseling from an approved provider before filing for bankruptcy and complete a debtor education course before debts can be discharged. Most consumers pay about \$100 to fulfill these requirements since credit counseling and debtor education providers typically charge about \$50 per session, according to data from the Trustee Program and other sources. The act requires that these services be provided without regard to a client's ability to pay, but providers vary significantly in their policies for waiving or reducing fees. To address this variation, the Trustee Program issued a proposed rule in February 2008 stating that a client's inability to pay for credit counseling shall be presumed if the client's household income is less than 150 percent of the poverty line.

The Bankruptcy Reform Act has affected the responsibilities and caseloads of Chapter 7 and Chapter 13 private trustees. As a result of new provisions in the act, trustees must collect, track, store, and safeguard additional documents such as tax returns; notify appropriate parties of domestic support obligations; check calculations and review the accuracy of information in forms associated with the means test; and, once finalized, will be required to comply with new requirements for uniform final reports. Private trustees told us that these new responsibilities have significantly increased the time and resources required to administer a bankruptcy case. The \$60 fee Chapter 7 trustees collect for each case they administer remained unchanged with the passage of the Bankruptcy Reform Act. The caseload of private trustees has declined since the act in concert with the decline in filings. From fiscal years 2004 through 2007, Chapter 7 filings—personal and business—declined from 1.2 million to 484,000, and Chapter 13 filings declined from 454,412 to 310,802. However, the one-time surge in filings that occurred just prior to the act helped offset these declines in caseload since Chapter 7 trustees receive a portion of assets liquidated and Chapter 13 trustees receive a portion of payments to creditors, both of which can take several years to complete. Our analysis of data provided by the Trustee Program showed that Chapter 7 trustees collectively received an estimated \$192 million in total compensation in fiscal year 2005 and an estimated \$212 million in fiscal year 2007, while Chapter 13 trustees received about \$31 million in fiscal

year 2005 and about \$32 million in fiscal year 2007. Attrition among private trustees has not changed significantly since the implementation of the Bankruptcy Reform Act, according to our analysis of Trustee Program data, although the program is moving more slowly to fill trustee vacancies given the reduced number of bankruptcy filings.

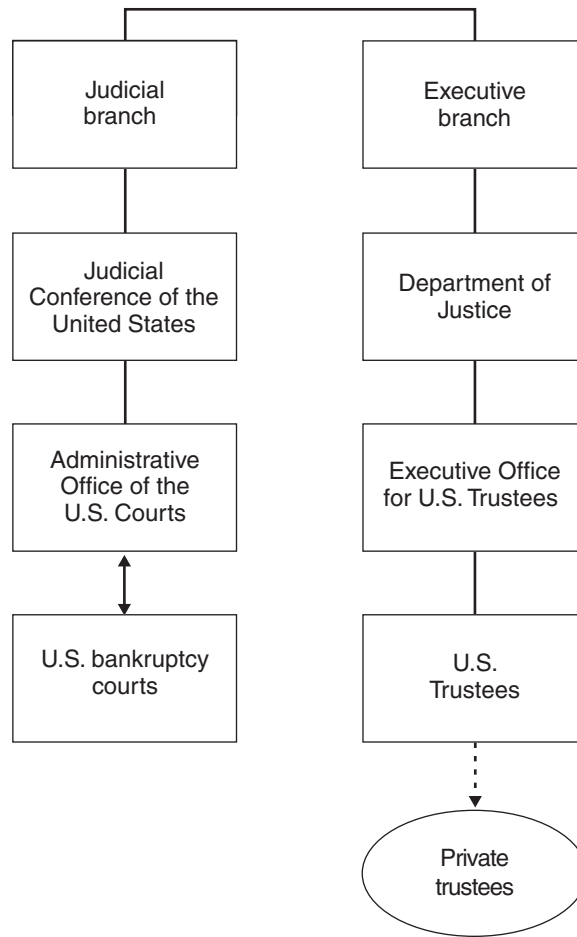
We provided a draft of this report to the Administrative Office of the United States Courts and the Department of Justice, which provided technical comments that we incorporated as appropriate.

Background

Bankruptcy is a federal court procedure designed to help both individuals and businesses eliminate debts they cannot fully repay as well as help creditors receive some payment in an equitable manner. Individuals usually file for bankruptcy under one of two chapters of the Bankruptcy Code. Under Chapter 7, the filer's eligible nonexempt assets are reduced to cash and distributed to creditors in accordance with distribution priorities and procedures set out in 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. 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 any unpaid portion of the debt. Most debtors who file for bankruptcy use an attorney, but some debtors represent themselves without the aid of an attorney and are referred to as pro se debtors.

The bankruptcy system is complex and involves entities in both the judicial and executive branches of government (see fig. 1).

Figure 1: Overview of the Bankruptcy System



Source: GAO analysis.

Note: While not shown in this graphic, the judicial branch oversees private trustees in six judicial districts.

Within the judicial branch, 90 federal bankruptcy courts have jurisdiction over bankruptcy cases. The Administrative Office of the United States Courts (AOUSC) serves as the central support entity for federal courts, including bankruptcy courts, providing a wide range of administrative, legal, financial, management, and information technology functions. The Director of AOUSC is supervised by the Judicial Conference of the United States, the judiciary's principal policy-making body. Within the executive branch, the Trustee Program, a component of the Department of Justice, is responsible for overseeing the administration of most bankruptcy cases. The program consists of the Executive Office for U.S. Trustees, which

provides general policy and legal guidance, oversees operations, and handles administrative functions, as well as 95 field offices and 21 U.S. Trustees—federal officials charged with supervising the administration of federal bankruptcy cases.⁴ The Trustee Program appoints and supervises approximately 1,400 private trustees, who are not government employees, to administer bankruptcy estates and distribute payments to creditors.⁵

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was signed into law on April 20, 2005, and most of its provisions became effective on October 17, 2005. The following are among the most significant changes the act made with respect to consumer bankruptcies:

- *Means test.* The act established a new means test to determine whether a debtor is eligible to file under Chapter 7. If a debtor’s current monthly income minus allowable living expenses exceeds certain thresholds, a Chapter 7 petition is presumed to be abusive and the debtor may have to file under Chapter 11 or under Chapter 13 (which requires repayment of at least a portion of outstanding debt over a period of several years under a court-approved plan) or receive no bankruptcy relief at all.⁶
- *Credit counseling and debtor education.* The act created certain counseling and education requirements for filers. To be a “debtor” (that is, eligible to file for bankruptcy), an individual, except in limited circumstances, must receive credit counseling from a provider approved by the Trustee Program (or the bankruptcy administrator, if applicable). In addition, prior to discharge of debts, debtors must complete a personal financial management instructional course—typically referred to as debtor education—from an approved provider.⁷

⁴Bankruptcy cases in Alabama and North Carolina are not administered by the Trustee Program; instead, bankruptcy administrators within the judicial branch administer the cases in the judicial districts in those states.

⁵For the purposes of this report, we use “private trustees” to refer to Chapter 7 trustees and Chapter 13 trustees.

⁶Bankruptcy Reform Act § 102, 119 Stat. at 37-42 (amending 11 U.S.C. § 707). A debtor may overcome the presumption of abuse by demonstrating to the court special circumstances, such as a serious medical condition or a call to active duty in the armed forces, which justify further adjustments to a debtor’s current monthly income. Such adjusted current monthly income may overcome the presumption of abuse.

⁷Bankruptcy Reform Act § 106 (b)-(c), 119 Stat. at 38 (amending various sections of Title 11 of the U.S.C.). The act also sets forth procedures and standards for the Trustee Program and bankruptcy administrators, as applicable, to use in approving agencies and providers. Bankruptcy Reform Act § 106(e), 119 Stat. at 38-41 (codified at 11 U.S.C. § 111).

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- *Debtor audits.* The act required that procedures be established for independent audit firms to audit bankruptcy petitions, schedules, and other information in consumer bankruptcy cases filed on or after October 20, 2006. The act specified that the procedures should include random audits of at least one out of every 250 bankruptcy cases in each judicial district, as well as additional audits of cases with incomes or expenditures above certain statistical norms.⁸
 - *New reporting and data collection requirements.* The act required that the judiciary collect certain new aggregate statistics and report on them annually beginning no later than July 1, 2008.⁹ The act also required that the Attorney General—who delegated the authority to the Trustee Program—draft rules requiring private trustees to submit uniform final reports on individual bankruptcy cases that include certain specified information about the case.¹⁰

The Bankruptcy Reform Act was enacted, in part, to address certain factors viewed as contributing to an escalation in bankruptcy filings. As shown in figure 2, consumer bankruptcy filings in the United States more than doubled between 1990 and 2004, with an average of more than 1.5 million people filing annually between 2001 and 2004. In the months leading up to the effective date of the act (October 17, 2005), bankruptcy filings rose dramatically because many consumers believed it would be more difficult to receive bankruptcy protection once the act went into effect.¹¹ Immediately after the act went into effect, filings fell substantially. Although filings have been rising since that time, they are still well below historic levels, with about 823,000 Chapter 7 and Chapter 13 consumer bankruptcies reported in calendar year 2007.

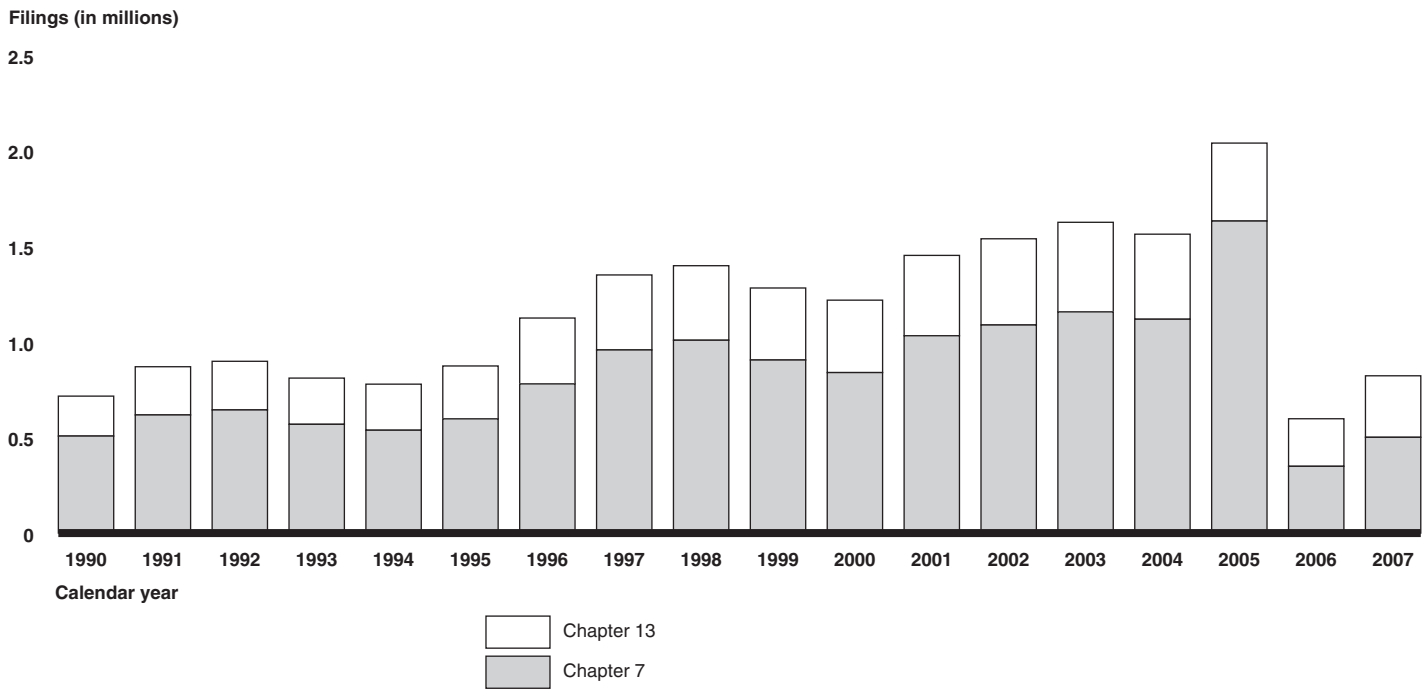
⁸Bankruptcy Reform Act § 603(a) – (b), 119 Stat. at 122-23 (amending 11 U.S.C. § 586).

⁹Bankruptcy Reform Act § 601(a), 119 Stat. at 119-20 (codified at 11 U.S.C. § 159).

¹⁰Bankruptcy Reform Act § 602, 119 Stat. at 120-22 (codified at 11 U.S.C. § 589b).

¹¹Oct. 17, 2005 was the effective date for most of the provisions of the Bankruptcy Reform Act, including the prefiling credit counseling requirement and the Chapter 7 means test.

Figure 2: Number of Personal Bankruptcy Filings, Calendar Years 1990–2007



Source: AOUSC.

Note: Excludes personal bankruptcy filings under Chapter 11. While most bankruptcies filed under Chapter 11 involve a corporation or partnership, individuals also can file under Chapter 11. From 1990 through 2007, fewer than 0.5 percent of personal bankruptcies were filed under Chapter 11.

**Trustee Program
Incurred
Approximately \$72
Million in Overall
Costs, and the
Judiciary
Approximately \$48
Million in Start-up
Costs, Related to the
Bankruptcy Reform
Act**

The Trustee Program estimated its costs related to carrying out responsibilities resulting from the Bankruptcy Reform Act to be approximately \$72.4 million in fiscal years 2005-2007, mostly in personnel costs, to implement the means test and credit counseling and debtor education requirements, conduct debtor audits, comply with reporting requirements, establish information technology systems, and expand facilities. The federal judiciary could not isolate costs specifically resulting from the Bankruptcy Reform Act since the act had a broad effect on nearly all bankruptcy court staff and operations, but did estimate that \$48.4 million was incurred in one-time costs associated with start-up activities to implement the act's requirements. The largest of these expenses related to necessary revisions of the Bankruptcy Rules, official forms, and court operating procedures. The cost estimates for the Trustee Program and the judiciary do not incorporate the effect of the decline in bankruptcy filings since the act, which presumably has helped reduce their overall costs to some extent. However, this decline in filings also has resulted in some reduction in fee revenues for the Trustee Program and the judiciary.

**In Fiscal Years 2005–2007,
the Trustee Program
Allocated about \$72
Million for Responsibilities
Resulting from the
Bankruptcy Reform Act**

Based on estimates developed at our request, the Trustee Program allocated approximately \$72.4 million in fiscal years 2005 through 2007 to carry out responsibilities resulting from the Bankruptcy Reform Act.¹² The majority of these costs represented staff time dedicated to new tasks required by the act.¹³ In some cases, the Trustee Program hired new staff—including 156 bankruptcy analysts, attorneys, paralegals, and other administrative and information technology personnel hired as of October 1, 2007—to fulfill new responsibilities. In other cases, the program reallocated the time and responsibilities of existing staff to meet the requirements of the act. While the scope of this report is largely limited to

¹²The Trustee Program generally was able to provide estimates of costs related to the act for fiscal years 2005–2007, but in some cases estimates for fiscal year 2005 were not available. However, program officials told us costs in this year were limited since the effective date of most of the provisions of the act was October 17, 2005. The Trustee Program's overall budget for all of its operations was approximately \$174 million in fiscal year 2005, \$212 million in fiscal year 2006, and \$223 million in fiscal year 2007.

¹³For the purposes of this report, we use "costs" to refer to resources dedicated to a given initiative or activity, and not necessarily to refer to actual obligations or dollar outlays. The Trustee Program's financial system does not track obligations according to activities related to the Bankruptcy Reform Act, but rather according to a set of "object classes" established uniformly across the federal government. The classes categorize obligations according to the types of goods or services purchased, such as personnel compensation, supplies, and materials.

describing costs incurred through fiscal year 2007, many or most of those costs are for ongoing tasks that will continue in fiscal year 2008 and beyond.

These cost estimates are approximate for two major reasons. First, the Bankruptcy Reform Act had a broad impact on the agency's overall operations, and thus it is difficult to isolate staff time devoted specifically to elements of the act. Second, although the cost of overseeing each bankruptcy filing may have increased, to some extent this has been offset by the significant decline in the number of bankruptcy filings following the act, and the net effect on overall costs is difficult to measure.

As shown in table 1, the Trustee Program's most significant costs resulting from the Bankruptcy Reform Act for fiscal years 2005 through 2007 were related to the means test (\$42.5 million), credit counseling and debtor education requirements (\$6.1 million), debtor audits (\$3.0 million), studies and reporting requirements (\$5.6 million), information technology (\$13.7 million), and facilities expansion (\$1.5 million).

- *Means test.* As of October 1, 2007, the Trustee Program had hired 127 new staff for duties related to the means test, including attorneys who litigate cases and paralegals, bankruptcy analysts, and legal clerks who review the bankruptcy petition, supporting forms, and financial materials filed by every individual debtor in a Chapter 7 case to identify whether the case is "presumed abusive."¹⁴ This involves an initial review of each debtor's income, a more thorough review of debtors with income exceeding the state median, and any related litigation. The program estimated it allocated \$15.76 million in fiscal year 2006 and \$26.7 million in fiscal year 2007 to implementing the means test.¹⁵

¹⁴Under the Bankruptcy Reform Act, the means test takes into account the debtor's current monthly income, debt burden, and various allowable living expenses. If the debtor's current monthly income minus allowable living expenses exceeds certain thresholds, a Chapter 7 petition is presumed to be abusive and the trustee, bankruptcy administrator, or a party in interest (such as a creditor) may seek dismissal of the case or conversion to a case under Chapter 11 or Chapter 13. Bankruptcy Reform Act § 102(a)(2)(C), 119 Stat. at 27-29 (amending 11 U.S.C. § 707(b)).

¹⁵Trustee Program officials noted that allocations for a given fiscal year were not necessarily obligated in that year. In particular, \$20 million of the \$26.7 million for fiscal year 2007 was carried over to fiscal year 2008 and then obligated as the program continued to fill means test staff positions.

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- *Credit counseling and debtor education.* The Trustee Program established a separate unit responsible for developing application forms and procedures, approving and monitoring approved credit counseling and debtor education agencies, and taking steps to help ensure that filers were meeting the new requirements. The program initially used detailees from field offices to staff this unit until permanent staff could be hired. The program estimated its costs related to credit counseling and debtor education to be approximately \$6.1 million for fiscal years 2005 through 2007.
 - *Debtor audits.* The Trustee Program had to develop procedures for the audits described in the act. The program contracted with and supervised six third-party auditors, who completed nearly 4,000 debtor audits during fiscal year 2007. The program obligated \$2.6 million in fiscal year 2007 for audit contracts. The Trustee Program estimated that staff time allocated to developing audit procedures and overseeing contractors cost \$160,000 in fiscal year 2006 and \$280,000 in fiscal year 2007.¹⁶
 - *Studies and reporting requirements.* The Trustee Program estimated the costs of the act's various studies and reporting requirements—which include reports on the results of debtor audits and a study of the effectiveness of debtor education—to have been approximately \$263,363 in fiscal year 2005, \$3.15 million in fiscal year 2006, and \$2.21 million in fiscal year 2007.¹⁷
 - *Information technology.* The Trustee Program created several new data systems—including the Means Test Review Management System, Credit Counseling/Debtor Education Tracking System, and Debtor Audit Management System—and modified or updated several others. According to Trustee Program officials, these efforts cost \$1.9 million in fiscal year 2005, \$7.2 million in fiscal year 2006, and \$4.6 million in fiscal year 2007.¹⁸
 - *Facilities expansion.* To accommodate the additional staff hired as a result of the act, the Trustee Program expanded numerous offices. The

¹⁶In January 2008, the Trustee Program temporarily suspended its designation of cases subject to audit for budgetary reasons. The program resumed its designation of cases in May 2008, although random audits will now be conducted in 1 in 1,000 cases (as opposed to 1 in 250 cases) filed in a judicial district.

¹⁷The costs for fiscal year 2005 are actual obligations related to the debtor education study.

¹⁸These costs represent actual obligations, which largely consisted of third-party contracts and purchases of software and physical equipment.

expansion involved one-time build-out costs, for which the Trustee Program spent \$1.42 million in fiscal year 2006 and \$69,863 in fiscal year 2007.¹⁹

Table 1: Trustee Program’s Estimated Allocation for Activities Resulting from the Bankruptcy Reform Act, Fiscal Years 2005–2007

Dollars in thousands

Category	Fiscal years			
	2005	2006	2007	2005-2007
Means test	\$ ^a	\$15,760	\$26,700	\$42,460
Credit counseling and debtor education	531	3,014	2,532	6,077
Debtor audits	0	160	2,880	3,040
Studies and reporting requirements	263	3,150	2,211	5,624
Information technology	1,900	7,200	4,600	13,700
Facilities expansion	0	1,422	70	1,492
Total cost	\$2,694	\$30,706	\$38,993	\$72,393

Source: GAO analysis of data provided by the Trustee Program.

Note: In some cases, these estimated allocations represent staff time and other resources dedicated to a given initiative or activity, and not necessarily actual obligations or dollar outlays. The allocations for a given fiscal year were not always obligated in that year.

^aCosts associated with the means test for fiscal year 2005 were not available since staff time associated with that function could not be isolated during that time period.

As of December 2007, the Federal Judiciary Had Dedicated Approximately \$48 Million in Start-up Costs to Implement the Bankruptcy Reform Act

The Bankruptcy Reform Act had a significant effect on the operations of AOUSC and the bankruptcy courts. However, unlike the Trustee Program, where the act resulted in several discrete new functions and tasks, the impact on the judiciary has been more diffuse. In congressional testimony, a representative of the Judicial Conference noted that the act created new docketing, noticing, and hearing requirements that make addressing bankruptcy cases more complex and time-consuming.²⁰ In its fiscal year 2008 congressional budget justification, the judiciary estimated that as a result of the Bankruptcy Reform Act, it takes at least 10 percent more time

¹⁹These figures represent actual costs in terms of obligations.

²⁰Prepared statement of Judge Julia S. Gibbons, Chair, Committee on the Budget, Judicial Conference of the United States, before the Senate Subcommittee on Financial Services and General Government, Committee on Appropriations, 110th Cong., 1st Sess. (Mar. 21, 2007).

to process a bankruptcy case. New or expanded tasks relate to additional petition documents, an increased number of motions and hearings, and new procedures associated with such things as rent deposits, tax return filings, and petitions to waive filing fees.

Because of the broad impact the Bankruptcy Reform Act has had on bankruptcy court staff and operations—affecting nearly all aspects of court operations and staff responsibilities and tasks—AOUSC could not readily differentiate costs resulting from the act (“new costs”) from those costs incurred in everyday operations. Therefore, it did not provide us with estimates of the costs associated with any additional staff time needed to process a case resulting from the act. Further, as noted earlier, it is difficult to determine the extent to which new costs related to the act may be offset by overall cost savings associated with the decline in bankruptcy filings following the act. However, at our request, AOUSC did estimate that as of December 2007, \$48.4 million was incurred for specific start-up activities to implement the act, which included \$47.2 million in staff time and \$1.2 million for travel, equipment, and contractors.²¹

As shown in table 2, these costs were incurred for the following functions:

- *Revision of rules, forms, and procedures.* The judiciary estimated that it spent approximately \$32.5 million revising the Bankruptcy Rules, official forms, and court operating procedures to reflect provisions of the Bankruptcy Reform Act. About 98 percent of this amount was attributed to staff time and the remainder to travel and other expenses related to changes in the courts’ case management system.
- *Training and communication to courts.* The judiciary estimated that it spent about \$7.3 million to disseminate information on changes made by the act—through training and other means—to judges, clerks, bankruptcy administrators, and other personnel. The judiciary used broadcasts over the Federal Judicial Television Network, conference calls, national workshops and conferences, and the Internet to conduct training and make the information available. About 98 percent of the costs related to training and communication was for staffing.

²¹The Bankruptcy Reform Act included provisions authorizing new bankruptcy judgeships, but we did not include the costs of these new judgeships because they had been planned prior to and independent of the act.

- *Bankruptcy administrator responsibilities.* As noted earlier, in the six judicial districts in North Carolina and Alabama, the bankruptcy administrator program, rather than the Trustee Program, oversees the administration of bankruptcy cases. AOUSC estimated that the bankruptcy administrators' offices incurred an estimated \$3.6 million in expenses for activities similar to those described above for the Trustee Program.
- *Statistical and reporting responsibilities.* The judiciary spent about \$2.8 million—88 percent for staffing costs—on statistical and reporting responsibilities, which required revisions to the courts' electronic filing, docketing, and case management system. To prepare its annual statistical reports, the judiciary modified its electronic database and statistical infrastructure, reprogrammed software to accept new data elements, and prepared additional tables to conform to the statistical reporting required by the act. The judiciary also prepared several reports required by the act, including a report to Congress outlining the courts' procedures for safeguarding the confidentiality of filers' tax information.
- *Other items.* The judiciary spent an estimated \$2 million on other activities related to the implementation of the act, of which about 98 percent was for staffing costs. These activities included revisions to studies to determine staffing needs and the revision and updating of publications and manuals for external parties.

Table 2: Federal Judiciary's Estimate of Start-up Costs to Implement the Bankruptcy Reform Act, as of December 2007

Dollars in thousands

Activity	Staffing costs (based on estimated full-time equivalents dedicated to task)	Other costs	Total costs
Revision of rules, forms, and procedures	\$32,020	\$512	\$32,532
Training and communication to courts	7,185	151	7,336
Bankruptcy administrator responsibilities	3,520	112	3,632
Statistical and reporting responsibilities	2,432	343	2,775
Other items	2,080	34	2,114
Total cost	\$47,237	\$1,152	\$48,389

Source: GAO analysis of data provided by AOUSC.

As a Result of Fewer Filings Since the Bankruptcy Reform Act, Revenues from Bankruptcy Filing Fees Have Declined

Trustee Program

Revenues to the Trustee Program and federal judiciary from bankruptcy filing fees and other fees have declined since the implementation of the Bankruptcy Reform Act due to the reduction in the number of bankruptcy filings.

Since 1997, the Trustee Program has been entirely self-funded from a portion of the filing fees paid by bankruptcy debtors, which are deposited in the U. S. Trustee System Fund.²² As shown in figure 3, the Trustee Program's filing fee revenues (excluding Chapter 11 quarterly fees) have declined since the Bankruptcy Reform Act—from \$68 million and \$74 million in fiscal years 2004 and 2005, respectively, to \$58 million and \$52 million in fiscal years 2006 and 2007.²³ The Bankruptcy Reform Act and subsequent budget legislation increased bankruptcy filing fees, as discussed later in this report. In addition, the Bankruptcy Reform Act changed the portion of the filing fee allocated to various parties.²⁴ The net effect was that the amount received by the Trustee Program for each Chapter 7 filing increased from \$42.50 to \$89 while the amount received by the program for each Chapter 13 filing remained unchanged at \$42.50. However, the decline in the number of consumer bankruptcy filings since the implementation of the act offset the increase in revenue per Chapter 7 case. As we discussed previously, the number of filings in 2006 and 2007 was less than half the annual number of filings in the years just prior to the act. To a more limited extent, Trustee Program revenues also have been

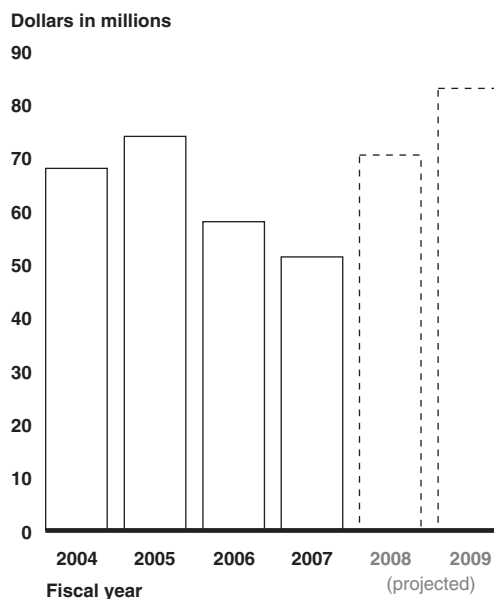
²²Prior to fiscal year 1997 the Trustee Program's operations were funded through a combination of direct appropriations and offsetting collections. Fee revenues deposited in the United States Trustee System Fund are offsetting collections to amounts appropriated to the Attorney General for the Trustee Program. See 11 U.S.C. § 589a.

²³The filing fee revenues we cite include fees from all bankruptcy filings—including both business and personal bankruptcies—but exclude Chapter 11 quarterly fees. Trustee Program staff told us that they do not track the proportion of filing fee revenues collected under each chapter of the Bankruptcy Code. Historically, about 40 percent of Trustee Program revenues come from filing fees paid in business and personal cases filed under Chapters 7, 11, 12, and 13, as well as interest earnings and other miscellaneous revenue. The remaining 60 percent come from quarterly fees paid in Chapter 11 business reorganization cases.

²⁴Filing fees paid by a debtor are allocated among the U.S. Trustee System Fund, the federal judiciary and the private trustee. See Judiciary Appropriations Act, 1990, § 406(b), Pub. L. No. 101-162, 103 Stat. 988, 1016 (Nov. 21, 1989) (set out, as amended, as a note to 28 U.S.C. § 1931); 11 U.S.C. § 330 (b) and (d).

affected by a provision of the act that allows the court to waive the Chapter 7 filing fee for debtors below certain income thresholds.²⁵ Chapter 7 filing fees were waived for 2.1 percent of cases in fiscal year 2007, according to data provided by AOUSC.

Figure 3: Trustee Program’s Filing Fee Revenues, Fiscal Years 2004–2009



Source: Trustee Program.

Note: These revenues represent fees paid at the time of filing received by the Trustee Program for personal and business bankruptcies under Chapters 7, 11, and 13.

The Trustee Program may expend the funds in the U.S. Trustee System Fund as appropriated by Congress. In its annual budget request to Congress, the Trustee Program provides an estimate of its filing fee revenues, based on the anticipated number of bankruptcy filings. In years where the actual amount of fee revenues deposited in the U.S. Trustee System Fund is greater than the amount appropriated for that year, the

²⁵Bankruptcy Reform Act § 418(2), 119 Stat. at 109 (codified at 28 U.S.C. § 1930(f)). Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under Chapter 7 for an individual if the court determines that such an individual has income of less than 150 percent of the official poverty line.

excess fee revenue remains in the fund and is available until expended.²⁶ Accordingly, in years where the actual amount of fee revenues falls short of the amount appropriated for that year, the program may draw down monies from the fund. In fiscal years 2006 and 2007, the program drew down about \$44 million and \$92 million, respectively, from the U.S. Trustee System Fund, with congressional approval, to allow the program to operate at appropriated levels. In its 2009 budget request, the Trustee Program stated it expected bankruptcy filings to increase in the coming years and estimated its fee revenues would rise to approximately \$70 million and \$83 million for fiscal years 2008 and 2009, respectively.

Federal Judiciary

Funding for the federal judiciary comes from appropriations that are funded from filing and other fees, as well as “carry forward” balances from prior years.²⁷ The judiciary receives revenues from a portion of the fee charged for filing a bankruptcy petition, as well as from certain administrative fees and fees charged for filing certain motions.²⁸ The portion of the statutory filing fee received by the judiciary for each Chapter 7 bankruptcy petition increased from \$52.50 to \$63.51 and the portion received for each Chapter 13 petition remained unchanged at \$52.50. In addition, the “miscellaneous administrative fee” paid to the courts by debtors in all bankruptcy cases remained at \$39.

However, as with the Trustee Program, the decline in the number of bankruptcy filings (and to a lesser extent the provision allowing fee waivers in a limited number of cases) resulted in a reduction in the judiciary’s overall bankruptcy fee revenues. As shown in figure 4, the judiciary’s bankruptcy-related fee revenues declined from \$221 million and \$237 million in fiscal years 2004 and 2005, respectively, to \$168 million and

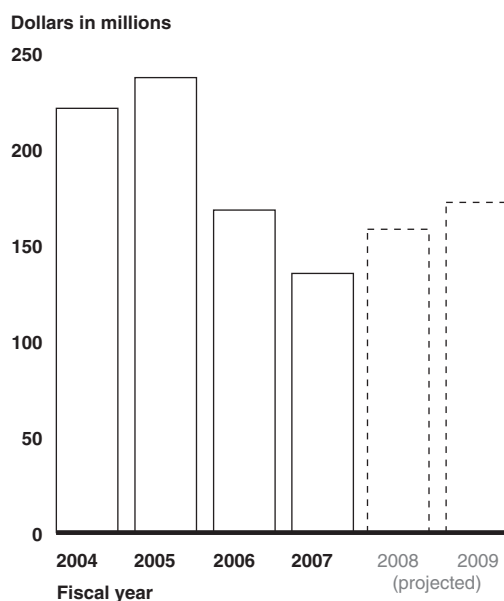
²⁶Monies in the fund are available without fiscal limitation in such amounts as appropriated by Congress for the operation of the Trustee Program.

²⁷Carry-forward balances are funds remaining in the judiciary-wide fee account from prior years that remain available until obligated.

²⁸Two types of fees are collected by federal courts—statutory fees and “miscellaneous” fees. Statutory fees are those fees expressly established by statute; for bankruptcy courts, these are set forth in 28 U.S.C. § 1930(a). The Judicial Conference of the United States has statutory authority under 28 U.S.C. § 1930(b) to prescribe additional (“miscellaneous”) fees in bankruptcy cases. See U.S.C. § 1930(b).

\$135 million in fiscal years 2006 and 2007.²⁹ According to an AOUSC official, the reduction in bankruptcy fee revenues is offset by increases in appropriated funds. AOUSC officials have estimated that fee revenues will be \$158 million in fiscal year 2008 and \$172 million in fiscal year 2009.

Figure 4: Federal Judiciary's Bankruptcy Fee Revenues, Fiscal Years 2004–2009



Source: AOUSC.

Note: These revenues represent all statutory fees and miscellaneous fees received by the judiciary for personal and business bankruptcies under Chapters 7, 9, 11, 12, 13, and 15.

²⁹These revenues represent all statutory fees and miscellaneous fees received by the judiciary for personal and business bankruptcies under Chapters 7, 9, 11, 12, 13, and 15. AOUSC staff told us they do not track the proportion of fee revenues collected under each chapter of the Bankruptcy Code.

Cost to Bankruptcy Filers Has Risen Due to Increased Legal and Filing Fees and New Counseling and Education Requirements

Based on our sample of bankruptcy files, we estimate that the average attorney fee for a Chapter 7 case has increased roughly 50 percent since the Bankruptcy Reform Act. The proportion of Chapter 7 debtors filing without attorney representation (pro se) appears to have declined, but we did not find a change in the proportion of Chapter 7 debtors receiving free legal assistance. For Chapter 13 cases, our analysis found the standard attorney fees that individual courts approve rose in nearly all the districts and divisions with such fees that we reviewed. Due to changes made by the Bankruptcy Reform Act and the Deficit Reduction Act of 2005, bankruptcy filing fees have risen by \$90 and \$80 for Chapter 7 and Chapter 13 filers, respectively. Fees related to the new credit counseling and debtor education requirements typically total about \$100.

Average Attorney Fees Have Risen an Estimated 51 Percent for Chapter 7 Filings and Many Courts Have Approved Attorney Fee Increases for Chapter 13 Filings

Most debtors hire an attorney when seeking bankruptcy relief, and bankruptcy attorneys typically charge a fixed fee to handle a consumer bankruptcy case. Anecdotal evidence from a variety of stakeholders—including organizations representing bankruptcy attorneys, private trustees, and consumers—indicated that legal fees associated with seeking consumer bankruptcy relief have risen significantly since the effective date of the Bankruptcy Reform Act. According to bankruptcy attorneys and other parties involved in the process, significantly more legal work is required to meet the requirements of the new law. For example, satisfying the new means test for a bankruptcy filing requires completing a lengthy form that includes various calculations of the debtor's income and expenses. Attorneys also must collect additional documents from the debtor—such as pay stubs and tax returns—to satisfy new documentation requirements, and ensure compliance with new provisions related to credit counseling and domestic support obligations.³⁰ Bankruptcy cases since the act typically have involved a greater number of motions and hearings, according to AOUSC officials, which further can increase the time an attorney spends on a case. Finally, new provisions in the act require attorneys to attest to the accuracy of information in bankruptcy

³⁰The Bankruptcy Reform Act included new provisions to help ensure that debtors in bankruptcy continue paying their child support obligations. See Bankruptcy Reform Act, Subtitle B of Title II, 109 Stat. at 50–59. For example, (1) domestic support obligations are given priority over all other unsecured claims, (2) domestic support obligations are nondischargeable, and (3) a bankruptcy court is authorized to withhold income that is property of the bankruptcy estate for payment of domestic support obligations under a judicial or administrative order. See 11 U.S.C. §§ 362(b)(2), 507(a) and 523(a)(5).

Chapter 7 Attorney Fees

petitions.³¹ Some parties have said that concerns about increased liability may have affected legal costs, but others have said this has not been a significant factor.

To estimate how legal fees for Chapter 7 consumer bankruptcy cases may have changed since the implementation of the Bankruptcy Reform Act, we reviewed disclosures of legal fees contained in a nationwide random sample of 468 Chapter 7 consumer bankruptcy filings.³² Our sample included 176 cases filed in February and March 2005—prior to the act’s enactment—and 292 cases filed in February and March 2007—more than 15 months after the act went into effect.³³ The fee disclosure form that we reviewed does not necessarily constitute a full or final accounting of compensation actually paid, but rather states the amount the attorney agreed to accept.³⁴ However, bankruptcy attorneys, private trustees, and representatives of AOUSC and the National Association of Consumer Bankruptcy Attorneys with whom we spoke told us that the fee amount in these disclosures typically represents the actual amount paid by the debtor.

As shown in figure 5, on the basis of our sample we estimate that the average attorney fee in Chapter 7 consumer bankruptcy cases was \$712 in February–March 2005 and \$1,078 in February–March 2007.³⁵ The average fee therefore increased by \$366—or 51 percent—during this 2-year

³¹See 11 U.S.C. § 707(b)(4)(C) (as added by Bankruptcy Reform Act § 102(a)(2)(C), 119 Stat. at 30). Among other things, section 707(b)(4)(C) provides that an attorney’s signature on a bankruptcy filing constitutes a certification that the attorney (1) has performed a reasonable investigation as to the circumstances giving rise to the filing and (2) has determined that the filing is well-grounded in fact and does not constitute an abuse under section 707(b)(1).

³²We accessed the bankruptcy filings through the federal judiciary’s Public Access to Court Electronic Records system, which allows registered users to use the Internet to obtain case and docket information from federal appellate, district, and bankruptcy courts.

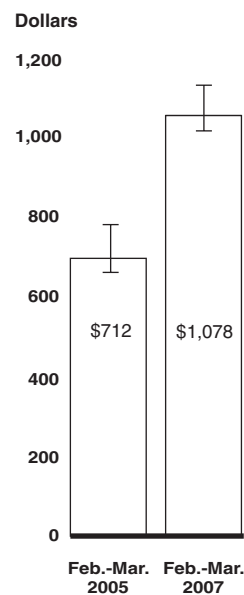
³³To ensure that we did not include cases that were still open at the time of our review (and thus subject to changes in disclosed fees), we limited our sample to cases that had closed within 272 days of being filed.

³⁴An attorney representing a debtor in bankruptcy is required to file with the court, whether or not the attorney applies for compensation, a written statement of the compensation paid to the attorney within 1 year before the filing of the bankruptcy petition or agreed to be paid to the attorney for services rendered in contemplation of or in connection with the bankruptcy case. See 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b).

³⁵At the 95 percent confidence level, all fee estimates have margins of error of +/- 6.3 percent or less. See app. I for additional information about sampling error for estimates.

period.³⁶ (These averages include only cases in which the debtor paid an attorney; they exclude those cases in which the debtor filed without an attorney or received legal assistance at no charge. We discuss pro se and pro bono cases later in this report.)

Figure 5: Estimated Average Attorney Fee for Chapter 7 Personal Bankruptcy Cases, February–March 2005 and February–March 2007



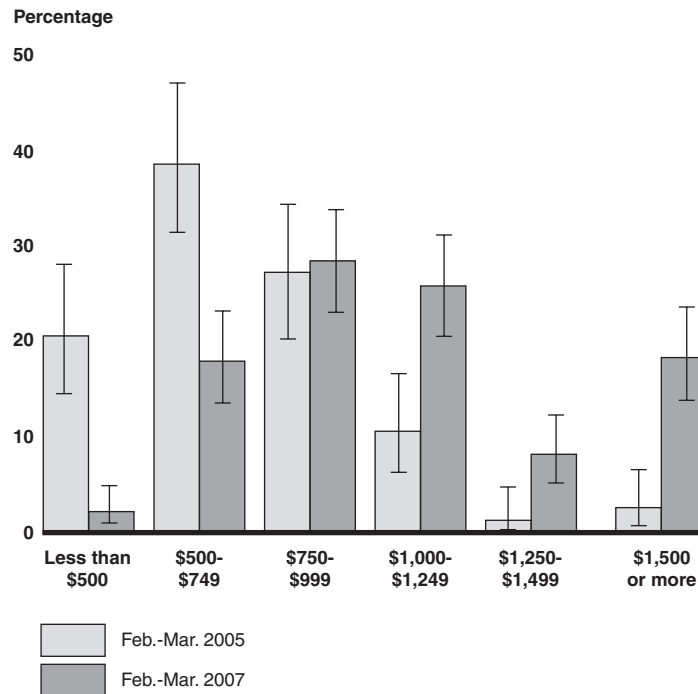
Source: GAO analysis of sample data from Chapter 7 consumer bankruptcy files.

Note: The lines within the bars represent the 95 percent confidence intervals for fee estimates.

Within each time period, the attorney fees showed considerable variability, but the increase in fees was evident across all fee ranges. For cases filed in February–March 2005, the fee was less than \$750 in 59 percent of cases, from \$750 to \$999 in 27 percent of cases, and \$1,000 or more in 14 percent of cases. For cases filed in February–March 2007, the fee was less than \$750 in 20 percent of cases, from \$750 to \$999 in 28 percent of cases, and \$1,000 or more in 52 percent of cases. Further, the fee exceeded \$1,499 in 18 percent of cases in the 2007 time frame, as compared with 3 percent of cases in the 2005 time frame. Figure 6 illustrates the estimated frequency of these attorney fees.

³⁶We did not adjust for inflation because the impact of inflation during this 2-year time period was small and such an adjustment would not have made a material difference to our findings.

Figure 6: Estimated Frequency of Attorney Fees for Chapter 7 Personal Bankruptcy Cases, February–March 2005 and February–March 2007



Source: GAO analysis of sample data from Chapter 7 consumer bankruptcy files.

Note: The lines within the bars represent the 95 percent confidence intervals for fee estimates.

Chapter 13 Attorney Fees

To determine the impact of the Bankruptcy Reform Act on legal fees paid for Chapter 13 bankruptcy cases, we collected and analyzed information on how standard attorney fees have changed since the effective date of the act. These fees—which often are also referred to as either “presumptively reasonable” or “no-look” fees—are fee amounts that individual courts have predetermined as reasonable compensation to an attorney representing a Chapter 13 debtor. An attorney who seeks to collect a fee up to that predetermined amount does not need to apply for court approval of the fee.³⁷ Such fees are used widely throughout the country for Chapter 13

³⁷ A debtor attorney seeking compensation from the bankruptcy estate must apply to the court for compensation. After a hearing, the court may award the attorney reasonable compensation for services rendered and reimbursement for actual and necessary expenses. Many courts, by order or local rule, have waived the application and hearing requirement if the compensation sought does not exceed a predetermined amount. See 11 U.S.C. § 329 and Fed. R. Bnkr. P. 2016.

cases and can be uniform across an entire judicial district or can vary by division or individual judge.³⁸ According to many of the participants with whom we spoke—including attorneys, private trustees, and court personnel—in locations with an established fee, that amount represents the actual fee attorneys charge Chapter 13 bankruptcy filers in the majority of cases.

We collected information on the standard fees in place before and after the Bankruptcy Reform Act in 48 districts or divisions that collectively accounted for 65 percent of Chapter 13 filings in fiscal year 2007.³⁹ For each of these districts or divisions, we gathered data on the amount of the standard fee, if any, as of (1) October 2005, just prior to the effective date of the Bankruptcy Reform Act; and (2) February 2008, which was more than 2 years after the act had been in effect.⁴⁰ Of the 48 districts or divisions we reviewed, 42 had court-set standard fees as of October 2005 and 41 had them as of February 2008.

Our analysis found that the Chapter 13 standard fee had increased in nearly all the districts and divisions with such fees. In more than half of those districts and divisions, the increase was 55 percent or more. As shown in figure 7, just prior to implementation of the act, standard fees ranged from \$1,500 to \$3,000 (with a median of \$2,000). As of February 2008, the standard fees ranged from \$1,800 to \$4,000 (with a median of

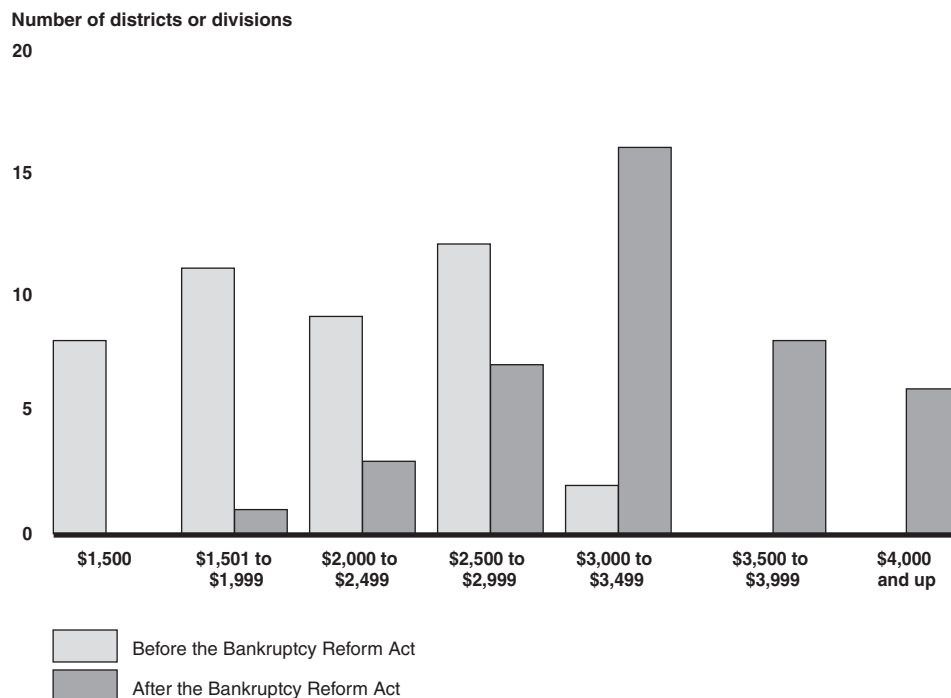
³⁸A division is a sublevel below that of federal judicial district. Sometimes court procedures, typically defined as “local rules” or “administrative orders,” are set at the division rather than district level.

³⁹To collect these data, we interviewed Chapter 13 trustees, their designated staff, or bankruptcy court personnel in each location and reviewed the documentation on the fees as available in the court’s published local rules and administrative orders.

⁴⁰In some instances, the district or division had an imminent increase in its standard fee that had not been formally finalized. For those cases, we confirmed the increased amount subsequently. Further, a few districts and divisions had two or more standard fees based on the extent of services provided or the specific characteristics of the case. In such instances, we used the highest fee for both time periods for our analysis, although in one case, we used the mid-level fee because the Chapter 13 trustee told us it was the fee most commonly charged by attorneys in that district.

\$3,000).⁴¹ (See app. II for the full list of standard fees in these selected districts and divisions.)

Figure 7: Standard, Court-Set Chapter 13 Attorney Fees before and after the Bankruptcy Reform Act in Selected Judicial Districts and Divisions



Source: GAO analysis of the standard fees set by bankruptcy courts in selected judicial districts or divisions.

Several of the local rules and administrative orders that raised the standard fees specifically cited the Bankruptcy Reform Act as the reason for the change. For example, one order noted that the act’s amendments “have had a material effect on the amount of time attorneys must devote to the representation of a Chapter 13 debtor” and that “many tasks which formerly might have been delegated to [nonattorney professionals, such as a paralegal] must now be handled personally by an attorney.”⁴² Similarly,

⁴¹Districts and divisions can vary considerably in the number of Chapter 13 bankruptcy filings that they handle. However, the medians we provide are not weighted for the number of filings and thus do not represent the median fee paid by all bankruptcy filers across these districts and divisions.

⁴²General Order No. 2007-06, Attorney Compensation (Bnkr. S.D.Ga. posted Mar. 1, 2007).

several of the Chapter 13 trustees with whom we spoke told us that the standard fees were increased as a direct result of the act, which had increased the average amount of time an attorney spent on each case.

Although legal fees associated with seeking consumer bankruptcy relief have risen since the Bankruptcy Reform Act went into effect, in some cases creditors rather than debtors bear the true financial costs of the fee increase. For example, in many Chapter 13 cases, debtors enter a repayment plan in which only part of their total debt is paid to creditors and the rest is discharged. Approved claims for Chapter 13 attorneys' fees are paid out of the debtor's estate as an administrative claim—which are to be paid before most unsecured claims.⁴³ As a result, in a Chapter 13 bankruptcy case with a partial repayment plan, it may be the unsecured creditors rather than the debtor who absorb the cost of higher attorney fees.

Pro Se Filings

According to data from AOUSC, 6.3 percent of Chapter 13 cases and 5.9 percent of Chapter 7 cases were filed pro se (without an attorney) in calendar year 2007, which was the first year that the agency collected complete data on pro se filings.⁴⁴ The proportion of bankruptcy cases filed pro se varied substantially across judicial districts. For example, fewer than 2 percent of Chapter 7 cases were filed pro se in 25 districts, while more than 10 percent were filed pro se in another 16 districts. Some bankruptcy attorneys, consumer advocates, and bankruptcy court staff told us that based on anecdotal evidence, they believed that the overall proportion of bankruptcy petitioners filing pro se had increased since the Bankruptcy Reform Act, in large part because increases in legal fees made hiring an attorney less affordable. However, data from our sample of Chapter 7 consumer case files and from AOUSC suggest that the proportion of Chapter 7 bankruptcy cases filed pro se may actually have declined since the act. We estimate that 11 percent of Chapter 7 consumer cases were filed pro se in February–March 2005, compared with the 5.9

⁴³ 11 U.S.C. §§ 507 and 1326(b).

⁴⁴ According to AOUSC staff, prior to October 17, 2006, AOUSC's case filing system did not comprehensively capture all cases filed pro se, and two large districts did not report pro se data at all. AOUSC data on Chapter 7 pro se filings included business cases, which accounted for about 4 percent of Chapter 7 filings in 2007.

percent of Chapter 7 cases that AOUSC reported were filed pro se in calendar year 2007.⁴⁵

Debtors who file for bankruptcy without an attorney sometimes use the services of a nonattorney “bankruptcy petition preparer” to assist them in filing the petition.⁴⁶ Of the 19 cases filed pro se in our sample of Chapter 7 filings in February–March 2005, 15 were prepared by a nonattorney petition preparer; fee information was available for 9 of those cases and the average fee was \$179. Of the nine cases filed pro se in our sample of Chapter 7 filings in February–March 2007, seven were prepared by a nonattorney petition preparer and the average fee was \$302. (Because of the small sample size, these figures cannot be projected beyond the sample to all Chapter 7 petition preparer fees.)

Pro Bono Services

Various local legal services providers throughout the country employ staff attorneys who assist clients or match clients with private attorneys who volunteer their time to provide legal services at a discount or at no cost (pro bono). We spoke with providers at five agencies that provide legal services to bankruptcy filers, as well as a representative of the American Bar Association’s Center for Pro Bono, about the effect the Bankruptcy Reform Act has had on the availability of pro bono services. In general, they said that fewer attorneys have been willing to volunteer their services to assist bankruptcy filers since the act went into effect, largely due to the increased time and responsibilities required to handle a bankruptcy case. As a result, clients must sometimes wait longer for a referral and one agency noted it had reduced the number of clients for whom it provided pro bono assistance.

We did not find a statistically significant difference in the proportion of Chapter 7 bankruptcy filers receiving free legal services since implementation of the Bankruptcy Reform Act. We estimate that 2.8 percent of filers received free legal services in February–March 2005,

⁴⁵The 95 percent confidence interval for our 2005 estimate is from 6.6 percent to 16.4 percent.

⁴⁶A bankruptcy petition preparer must file together with the bankruptcy petition, a declaration disclosing any fee received from or on behalf of the debtor within the 12 months immediately preceding the filing of the petition. 11 U.S.C. § 110(h)(2); see also Bankruptcy Form B280, “Disclosure of Compensation of Bankruptcy Petition Preparer.” A “bankruptcy petition preparer” is defined as a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing. 11 U.S.C. § 110(a)(1).

compared with 4.5 percent of cases filed in February–March 2007.⁴⁷ (Additional filers may have received legal services at a discounted fee.) These findings do not necessarily contradict the anecdotal evidence that fewer attorneys may be offering pro bono bankruptcy services, because the decline in the number of bankruptcy filings since the act may diminish the effect of the reduced supply of such services.

Bankruptcy Reform Act Changed Filing Fees and Permitted Fee Waivers

As shown in tables 3 and 4, as a result of changes made in the Bankruptcy Reform Act and the subsequent Deficit Reduction Act of 2005, the total fees paid at the time of filing a bankruptcy petition under Chapter 7 rose from \$209 to \$299—an increase of \$90. The total fees paid for cases under Chapter 13 rose from \$194 to \$274—an increase of \$80. The total fees paid to file for bankruptcy protection include both statutory fees and “miscellaneous” fees, which are set by the Judicial Conference of the United States pursuant to statutory authority.⁴⁸ The Bankruptcy Reform Act, as amended, increased the statutory filing fee from \$155 to \$220 for Chapter 7 cases and decreased the statutory filing fee from \$155 to \$150 for Chapter 13 cases.⁴⁹ Subsequently, the Deficit Reduction Act, which was signed into law on February 8, 2006, raised these statutory filing fees from \$220 to \$245 for Chapter 7 cases and from \$150 to \$235 for Chapter 13 cases.⁵⁰ The “miscellaneous administrative fee” of \$39 paid by all filers and the “miscellaneous fee for Chapter 7 trustees” of \$15 paid by filers in a Chapter 7 case were not affected by either piece of legislation.

⁴⁷The 95 percent confidence interval for the 2005 estimate is from 0.9 percent to 6.5 percent. The 95 percent confidence interval for the 2007 estimate is from 2.4 percent to 7.5 percent.

⁴⁸See 28 U.S.C. § 1930(b).

⁴⁹See Bankruptcy Reform Act § 325(a)(1), 119 Stat. 98 (amending 28 U.S.C. § 1930(a)).

⁵⁰Deficit Reduction Act of 2005 § 10101(a), Pub. L. No. 109-171, 120 Stat. 4, 184 (Feb. 8, 2006). The additional revenue from the act’s increases in statutory filing fees is deposited in a designated fund in the Treasury; these fee increases are available to the judiciary only to the extent subsequently appropriated by Congress.

Table 3: Changes in Chapter 7 Filing Fees Resulting from the Bankruptcy Reform Act and the Deficit Reduction Act of 2005

Chapter 7	Statutory fee	Miscellaneous administrative fee	Miscellaneous fee for Chapter 7 trustees	Total filing fee
Before the Bankruptcy Reform Act	\$155	\$39	\$15	\$209
As modified by the Bankruptcy Reform Act, as amended	\$220	\$39	\$15	\$274
As modified by the Deficit Reduction Act of 2005	\$245	\$39	\$15	\$299

Source: 28 U.S.C. § 1930(a) as amended.

Table 4: Changes in Chapter 13 Filing Fees Resulting from the Bankruptcy Reform Act and the Deficit Reduction Act of 2005

Chapter 13	Statutory fee	Miscellaneous administrative fee	Total filing fee
Before the Bankruptcy Reform Act	\$155	\$39	\$194
As modified by the Bankruptcy Reform Act, as amended	\$150	\$39	\$189
As modified by the Deficit Reduction Act of 2005	\$235	\$39	\$274

Source: 28 U.S.C. § 1930(a) as amended.

However, the Bankruptcy Reform Act also contains a provision that allows the bankruptcy court to waive the filing fee in a Chapter 7 filing if the court determines that the filer has (1) an income of less than 150 percent of the income official poverty line (as defined in the Bankruptcy Code), and (2) the debtor is unable to pay the fee in installments.⁵¹ Prior to the Bankruptcy Reform Act, bankruptcy courts had no authority to waive filing fees. Courts waived Chapter 7 filing fees in 2.1 percent of cases filed during fiscal year 2007, according to data provided by AOUSC.

⁵¹Bankruptcy Reform Act § 418(2) (codified at 28 U.S.C. § 1930(f)).

Required Credit Counseling and Education Cost about \$100, and Fees Are Waived for Consumers Unable to Pay

As noted earlier, the Bankruptcy Reform Act required that individuals receive credit counseling before filing for bankruptcy and take a debtor education course before having debts discharged.⁵² Information from a variety of sources indicates that most providers charge around \$50 each, or slightly less, for the required credit counseling and debtor education sessions—a total of about \$100 to fulfill both requirements.⁵³ During the summer of 2007, the Trustee Program’s Credit Counseling and Debtor Education Unit collected and analyzed fee information from agencies approved to provide prefiling credit counseling and predischarge debtor education. The unit’s review found that the median fee for credit counseling was \$50 for an individual and \$50 for a couple among the 156 approved credit counseling providers that charged a fee and for whom data were available.⁵⁴ An additional three credit counseling providers charged no fee. For debtor education, the reports indicated that the median fee was \$50 for an individual and \$55 for a couple for 81 approved debtor education providers that charged a fee and for whom data were available. An additional 20 debtor education providers charged no fee. The National Foundation for Credit Counseling, which periodically collects fee data from its members, reported similar findings.⁵⁵ The average prefiling credit counseling fee charged by the 68 member agencies that provided data to the National Foundation for Credit Counseling was \$46.05 during

⁵²Specifically, the act amended the federal bankruptcy code to require (1) individuals to receive budget and credit counseling from an approved provider before filing a petition in bankruptcy and (2) bankruptcy petitioners to complete an instructional course on personal financial management in order to have their debts discharged. Bankruptcy Reform Act § 106, Pub. L. No. 109-8, 119 Stat. 23, 37-42 (2005) (amending various sections of Title 11). For the purposes of this report, we refer to the prefiling budget and counseling requirement as the credit counseling requirement and the predischarge personal financial management course as the debtor education requirement.

⁵³Representatives of the Financial Services Roundtable noted that because debtors’ attorneys are sometimes the source of payment to the credit counseling agency, our data on Chapter 7 attorney fee disclosures may in some cases already capture the cost to consumers for credit counseling. However, a representative of the National Association of Consumer Bankruptcy Attorneys told us that attorneys who provide payment to credit counseling agencies are typically reimbursed directly by the client and this amount is not typically included in the legal fee reported in the disclosure forms we reviewed.

⁵⁴These medians represent the full fee normally charged by the agency, which does not incorporate those cases where that fee is reduced or waived. Married couples may file a joint bankruptcy petition. Although a husband and wife may attend the same credit counseling and debtor education session, both must obtain credit counseling and debtor education and be issued separate certificates.

⁵⁵The National Foundation for Credit Counseling includes more than 100 nonprofit member agencies, many of which use the name Consumer Credit Counseling Service®.

the period from July 1 to September 30, 2007.⁵⁶ Further, in our April 2007 report on credit counseling and debtor education, we reported that each of three largest providers of pre-filing credit counseling—which together had issued about half of all certificates as of October 2006—charged exactly \$50 for an individual credit counseling or debtor education session.⁵⁷ In a few cases, we identified smaller counseling and education providers with higher fees, such as \$75 per session.

The Bankruptcy Reform Act requires that in order to become an approved provider of credit counseling or debtor education, any fee charged by such provider must be reasonable. However, the act did not specify criteria for determining whether a fee amount is “reasonable.” On February 1, 2008, the Trustee Program’s proposed procedures and criteria to be used by the program to approve credit counseling agencies were published.⁵⁸ The proposed rule provides that a fee of \$50 or less for credit counseling services would be presumed to be reasonable, and that an agency seeking to be an approved provider must obtain prior approval from the Trustee Program in order to charge a fee of more than \$50.⁵⁹ Trustee Program officials told us that a separate proposed rulemaking covering debtor education agencies was forthcoming.

The Bankruptcy Reform Act also required that credit counseling and debtor education providers offer their services without regard to the client’s ability to pay.⁶⁰ Based on the periodic activity reports submitted by providers to the Trustee Program in 2006 and 2007, approximately 11 percent and 13 percent of clients had their fees waived for credit

⁵⁶The \$46.05 figure represents a weighted average to account for the varying numbers of credit counseling sessions performed by the agencies that responded to the survey. In addition, it excludes those cases where the fee was waived.

⁵⁷GAO, *Bankruptcy Reform: Value of Credit Counseling Requirement Is Not Clear*, [GAO-07-203](#) (Washington, D.C.: Apr. 6, 2007).

⁵⁸*Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees*, 73 Fed. Reg. 6062 (Feb. 1, 2008) (proposed rule). This rule, once final, will supersede the provisions that address credit counseling agencies in the Trustee Program’s Interim Final Rule published in 2006. See *Application Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustee*, 71 Fed. Reg. 38076 (Jul. 5, 2006) (interim final rule) (codified at 28 C.F.R. §§ 58.15-58.27).

⁵⁹73 Fed. Reg. at 6070 (proposed 28 C.F.R. § 58.21(a)).

⁶⁰11 U.S.C. §§ 111(c)(2)(B) and 111(d)(1)(E).

counseling and debtor education, respectively, and an additional 28 percent and 19 percent of clients received a partial reduction of the fee. Similarly, the National Foundation for Credit Counseling provided us with data showing that among member agencies surveyed, the fee for pre-filing credit counseling was waived about 18 percent of the time between July 1, 2007 and September 30, 2007.

Our April 2007 report noted that the policies of individual providers for waiving fees varied. Trustee Program data on the three largest providers showed significant variations in the proportions of clients whose fees were waived—from 4 percent to 26 percent for counseling sessions and from 6 percent to 34 percent for debtor education courses. As a result, our report recommended that the Trustee Program issue formal guidance on what constitutes a client’s “ability to pay.” In its proposed rule of February 1, 2008, the Trustee Program stated that the client shall be deemed unable to pay, and thereby entitled to a fee waiver, if the client’s household income is less than 150 percent of the poverty line as defined by the Office of Management and Budget.⁶¹

Bankruptcy Reform Act Has Affected the Duties and Caseloads of Private Trustees

The Bankruptcy Reform Act has affected the responsibilities of Chapter 7 and Chapter 13 private trustees, largely as a result of new documentation, verification, and reporting requirements. The trustees with whom we spoke said the act significantly increased the amount of staff time needed to administer a bankruptcy case. The caseloads of many Chapter 7 and Chapter 13 trustees have declined since the act in concert with the decline in bankruptcy filings. However, as yet, the overall compensation to trustees collectively has not declined significantly because disbursements and repayments are still being made from the surge in bankruptcy filings that occurred just prior to the effective date of the act. Further, according to data provided by the Trustee Program, attrition among trustees has not changed significantly since the implementation of the act.

⁶¹73 Fed. Reg. at 6070 (proposed 28 C.F.R. § 58.21(b)). The proposed rule states that agencies may waive fees based on other considerations as well, such as the client’s net worth or the percentage of the client’s income from government assistance programs.

Private Trustees Have Additional Documentation, Verification, and Reporting Requirements

The Bankruptcy Reform Act has affected the responsibilities of Chapter 7 and Chapter 13 private trustees, largely as a result of new documentation, verification, and reporting requirements. As noted earlier, private trustees—individuals who are not government employees and are overseen in most districts by the Trustee Program—administer individual Chapter 7 and Chapter 13 bankruptcy cases. Chapter 7 trustees identify the debtor’s available assets, liquidate them (turn them into cash), and distribute the proceeds to creditors.⁶² Chapter 13 trustees administer cases according to a court-approved plan for the repayment of debt, collecting payments from the debtor and making distributions to creditors.⁶³ One of the key responsibilities for both Chapter 7 and Chapter 13 trustees is to preside over the meeting of creditors (commonly known as the “341 meeting”), in which the debtor must appear and answer questions under oath from the trustee and creditors.⁶⁴ In addition, trustees collect, review, and verify the information in the bankruptcy petition and the supporting documentation that lists the debtor’s assets, liabilities, income, and expenditures. This ensures that exemptions are accurately claimed and that assets that can be liquidated are distributed to creditors.

The provisions of the Bankruptcy Reform Act with the most significant impact on the duties of the private trustees for personal bankruptcy cases are the following:

- *New documentation requirements.* Trustees must confirm that debtors have submitted documentation required under the act, which includes 2 months of wage statements and the tax return from the year prior to filing. The trustees must safeguard all tax return documents according to procedures set by the Trustee Program—for example, access to tax records must be restricted and sensitive documents must be properly secured, destroyed, or returned to the debtor.
- *Domestic support obligations.* In cases where a debtor has a domestic support obligation—alimony or child support—private trustees must notify the claimant (such as the custodial parent) and the relevant state child support enforcement agency of the bankruptcy. The trustee must

⁶²Historically, about 95 to 97 percent of Chapter 7 cases yield no assets, and therefore the trustee makes no distribution of payments.

⁶³In both Chapter 7 and Chapter 13 cases, some assets are exempted by federal or state law, and therefore may be retained by the debtor.

⁶⁴11 U.S.C. § 341(a).

notify applicable parties twice during the bankruptcy process—once around the time of the meeting of the creditors and once at the time of discharge.

- *Means test.* Chapter 7 trustees must review the means test form submitted by debtors and verify the calculation of current monthly income. In those cases where the income is below the state median—and therefore not presumed abusive—the trustees are to verify that the income is truly below the median by examining wage statements and tax documents. Chapter 13 trustees use the means test form—in conjunction with other documents, such as tax returns—to determine what the debtor can afford to pay each month in a repayment plan.
- *Uniform final reports.* Once the Trustee Program issues a final rule, private trustees will be required to submit a uniform final report of each bankruptcy case.⁶⁵ For Chapter 7 trustees, the proposed reporting forms add additional responsibilities since they require reporting data not currently collected for no-asset cases, and they must enter this information manually. Chapter 13 trustees already submit final reports, although the proposed new forms require some additional information they must collect, such as assets abandoned.

Bankruptcy Reform Act Has Affected the Time and Resources Trustees Require to Administer Cases and Has Reduced Some Trustees' Caseloads

The Bankruptcy Reform Act has affected the time and resources required by trustees to administer bankruptcy cases, according to private trustees and representatives of the Trustee Program. We spoke with, collectively, 18 Chapter 7 and Chapter 13 trustees, as well as organizations representing them, about how the act has affected their work. While the experiences of individual trustees varied, all said that the act increased the amount of staff time it took to administer a bankruptcy case, with many reporting that the staff time needed per case roughly doubled. For example, trustees told us they require additional administrative and clerical support to help collect and track newly required documents, such as tax returns and wage statements. There also are costs associated with printing, storing, securing, and shredding these documents. The trustees also told us that the means test significantly increased the time spent reviewing documentation.

⁶⁵Proposed rules were published in February 2008. See *Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of Title 11*, 73 Fed. Reg. 6447 (Feb. 4, 2008) (proposed rule).

In addition, while individual experiences varied, Chapter 7 and Chapter 13 trustees typically told us that the 341 meetings were taking longer, in part due to more questions about the documents submitted; additional time also is sometimes required to determine the addresses for notifying child support claimants for the domestic support obligations. Furthermore, the 341 meetings have been postponed more frequently because of debtors' delays in gathering the required documentation. In addition, according to the Trustee Program's notice of proposed rule making, the new uniform final reports will require Chapter 7 trustees to spend an estimated 10 additional minutes per case to collect and input newly required information, potentially adding \$2,100 a year in increased costs.⁶⁶ Finally, a representative of the National Association of Chapter 13 Trustees noted that trustees have been required to make significantly more court appearances as a consequence of the additional hearings and litigation that have resulted from the Bankruptcy Reform Act.

The caseload of Chapter 7 trustees has declined significantly since the Bankruptcy Reform Act in concert with the decline in filings—from 1.2 million personal and business Chapter 7 bankruptcy filings in fiscal year 2004 to about 484,000 in fiscal year 2007. Chapter 7 trustees are unsalaried and typically work part time in their trustee duties. They collect a fee of \$60 for each case they administer and this amount remained unchanged with the passage of the Bankruptcy Reform Act.⁶⁷ In addition, as noted earlier, a provision of the act allows the court to waive the filing fee for qualified Chapter 7 debtors, and for these cases the trustee receives no compensation at all.⁶⁸ In addition, for cases where there are assets to be liquidated, the Chapter 7 trustee receives a percentage—as prescribed by

⁶⁶Trustee Program officials told us that these costs may be mitigated by plans to provide Chapter 7 trustees with certain data elements in electronic format, which will greatly expedite completion of the uniform final reports.

⁶⁷A Chapter 7 trustee is paid \$45 from the statutory filing fee, as well as an additional \$15 miscellaneous filing fee collected by the clerk from the debtor upon the filing of the petition. See 11 U.S.C. § 330(b)(2) and the Bankruptcy Court Miscellaneous Fee Schedule issued in accordance with 28 U.S.C. § 1930(b).

⁶⁸As noted earlier in this report, Chapter 7 filing fees were waived by the court in 2.1 percent of cases filed during fiscal year 2007, according to data provided by AOUSC.

statute—of the assets distributed to creditors, and also may be reimbursed for certain direct expenses.⁶⁹

Although about 95 percent of Chapter 7 filings have traditionally been “no-asset” cases with \$60 as the trustee’s sole compensation, Chapter 7 trustees derive the majority of their overall revenues from those few cases involving disbursement of assets. It can take several years to completely disburse available assets. As a result, the dramatic surge in bankruptcy filings just prior to the Bankruptcy Reform Act’s October 2005 implementation resulted in an increase in Chapter 7 trustees’ overall compensation from 2005 to 2007, despite the decline in their caseload. According to our analysis of Trustee Program data, in fiscal year 2005, Chapter 7 trustees collectively received \$191.7 million in total compensation (\$111 million from asset disbursements and an estimated \$80.7 million from filing fees), while in fiscal year 2007, they received \$212.4 million in total compensation (\$183.7 million from asset disbursements and an estimated \$28.5 million from filing fees).⁷⁰ However, these revenues may decline in future years as assets from cases filed in 2005 are disbursed fully.

The caseload for Chapter 13 trustees since the Bankruptcy Reform Act also has declined, although less substantially—from 454,412 personal and business Chapter 13 filings in fiscal year 2005 to 310,802 in fiscal year 2007. In contrast to Chapter 7 trustees, Chapter 13 trustees are full time and typically run offices that employ other full-time staff. Chapter 13 trustees’ compensation is based—up to a preset limit—on a percentage of the total payments made to creditors. The Chapter 13 trustee uses these funds to pay for rent, staff, and certain other office expenses. Most Chapter 13

⁶⁹ A court may allow reasonable compensation to trustees for services rendered in a Chapter 7 case or Chapter 13 case, subject to a statutory maximum allowed, plus reimbursement for actual and necessary expenses. 11 U.S.C. §§ 300 and 326. Trustees also can receive compensation for services rendered as a professional when the trustee retains himself or herself as attorney or accountant for the trustee. 11 U.S.C. § 328. For the purposes of this report, we limit our discussion to compensation received for those services rendered as trustee.

⁷⁰ These figures include both personal and business cases because available data on trustee compensation do not distinguish between the two. The figures exclude reimbursement for direct expenses and compensation for services rendered as a professional when the trustee retains himself or herself as attorney or accountant for the trustee. The Trustee Program provided us with data on trustee compensation from disbursed assets. To estimate compensation from the per-case fee, we multiplied the number of Chapter 7 filings for fiscal years 2005 and 2007 (excluding those in which the fee was waived) by \$60.

repayment plans are either 3 years or 5 years in length and, as with Chapter 7 trustees, the surge in filings just prior to the Bankruptcy Reform Act has continued to be a source of revenue for Chapter 13 trustees despite the decline in filings. According to data provided by the Trustee Program, in fiscal year 2005, total compensation to Chapter 13 trustees was \$31.02 million, averaging \$162,432 per trustee. In fiscal year 2007, total compensation was \$31.85 million, averaging \$165,870 per trustee.

Attrition among Chapter 7 and Chapter 13 trustees has not changed significantly since the implementation of the Bankruptcy Reform Act, according to our analysis of Trustee Program data. This analysis found that the rate of attrition—due to resignations, retirements, or terminations—has stayed consistent at approximately 3 percent to 4 percent over the past several years.⁷¹ Almost all of the private trustees with whom we spoke told us that they were not likely to leave their position, despite the challenges resulting from the Bankruptcy Reform Act. However, a Trustee Program official noted that the program has not always sought to fill vacancies that have occurred since the act because of the decline in filings.

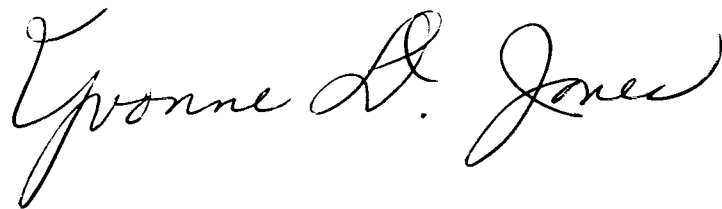
Agency Comments

We provided a draft of this report to AOUSC and the Department of Justice for comment. These agencies provided technical comments that we incorporated as appropriate.

As agreed with your offices, 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 will then send copies of this report to the Ranking Member of the Committee on the Judiciary, U.S. Senate; the Ranking Member of the Committee on the Judiciary, House of Representatives; the Director of the Administrative Office of the United States Courts; the Attorney General; and other interested committees and parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>. If you or your staffs have any questions concerning this report, please contact me at (202) 512-8678 or jonesy@gao.gov. Contact points for our Offices of Congressional Relations and Public

⁷¹To calculate the rate of attrition, we divided the number of trustees that departed (as of the end of the fiscal year) by the number of trustees at the beginning of the fiscal year.

Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Yvonne D. Jones". The signature is written in a cursive style with a large, stylized 'Y' and 'J'.

Yvonne D. Jones
Director, Financial Markets and Community Investment

List of Requesters

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
House of Representatives

The Honorable Richard J. Durbin
The Honorable Russell D. Feingold
The Honorable Edward M. Kennedy
United States Senate

The Honorable Howard L. Berman
The Honorable William D. Delahunt
The Honorable Sheila Jackson-Lee
The Honorable Zoe Lofgren
The Honorable Jerrold Nadler
The Honorable Robert C. Scott
The Honorable Chris Van Hollen, Jr.
The Honorable Debbie Wasserman Schultz
The Honorable Melvin L. Watt
House of Representatives

Appendix I: Objectives, Scope, and Methodology

Our report objectives were to examine (1) new costs incurred as a result of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Reform Act) by the Department of Justice and the federal judiciary, (2) new costs incurred as a result of the act by consumers filing for bankruptcy, and (3) the impact of the act on private trustees. Our review focused on the impact of the act on personal and not business bankruptcies. Further, the first two objectives examined only the monetary (dollar) costs incurred by federal agencies and consumers and not on other ways that the Bankruptcy Reform Act may have affected them. In addition, the scope of this report is limited to costs directly related to the process of filing for bankruptcy, and not on the overall financial impact the act may be having on consumers. Finally, this report did not seek to assess the benefits of the Bankruptcy Reform Act and is therefore not an evaluation of the merits of the act.

To address all of the objectives, we reviewed the relevant provisions of the Bankruptcy Reform Act. We also obtained documentation from, and interviewed representatives of, the Department of Justice's U.S. Trustee Program (Trustee Program); the federal judiciary, including the Administrative Office of the United States Courts (AOUSC) and selected individual bankruptcy courts; Congressional Budget Office; and organizations representing consumers, including the National Consumer Law Center, and the financial services industry, including the Financial Services Roundtable.

To address the first objective on new costs to the federal government, we reviewed relevant budget-related documents. For the Department of Justice's Trustee Program, these included its actual or projected annual budgets for fiscal years 2005 through 2009, as well as annual budget and performance summaries, strategic plans, annual reports, and congressional testimonies by Trustee Program officials. For the federal judiciary, we reviewed congressional budget justifications for fiscal years 2003 through 2008, as well as annual reports, and congressional testimonies by officials of the Judicial Conference of United States and AOUSC. We also reviewed internal documentation from AOUSC on activities and timelines for implementing requirements of the Bankruptcy Reform Act.

Since the budget documentation generally did not identify costs specific to implementation of the Bankruptcy Reform Act, we requested the Trustee Program and federal judiciary to estimate costs to date incurred specifically as a result of the act, including the cost of allocated staff time. To develop its estimates, the Trustee Program primarily used information

from its fiscal year 2006 budget justification, which specified funds needed to address specific provisions of the act. For costs for debtor audit contracts, information technology, and facilities expansion—which were largely contract costs—the program provided actual obligations. The cost estimates from the judiciary were specific to a set of one-time activities undertaken to initially implement the Bankruptcy Reform Act and were based on a tracking report developed by AOUSC to monitor its efforts to implement the act. We did not verify the estimates provided to us by the Trustee Program and the federal judiciary, although we reviewed and analyzed them and we interviewed the staff who provided the estimates to understand how they were created. We determined that the estimates were sufficiently reliable for our purposes. The Bankruptcy Reform Act included provisions authorizing new bankruptcy judgeships, but we did not include the costs of these new judgeships because they had been planned prior to and independent of the act. In addition, we collected and analyzed data on the Trustee Program’s and judiciary’s revenues from bankruptcy-related statutory and miscellaneous filing fees.

To address the second objective on new costs to consumers, we reviewed changes in attorney fees and filing fees, as well as fees to fulfill the new credit counseling and debtor education requirements. To determine changes in attorney fees for Chapter 7 bankruptcy cases, we selected two random and projectable samples of cases (from before and after the Bankruptcy Reform Act) and collected information on the attorney compensation, if any, disclosed in the case file. From AOUSC’s U.S. Party/Case Index, we selected a random sample of 193 Chapter 7 cases that had been filed nationwide during February or March 2005 and had closed within 272 days from the filing date. We chose this time period because it occurred just before the act was enacted. We selected another random sample of 307 cases filed during February or March 2007 that had closed within 272 days from the filing date. We chose this time period because it was about 16 months after the effective date of the Bankruptcy Reform Act; bankruptcy attorneys with whom we spoke said that most significant changes in attorney fees resulting from the act had occurred by that time. For both timeframes, we included only cases that had closed within 272 days of filing to ensure we did not include cases that were still open at the time of our review. From our sample, we excluded business cases since these were outside the scope of our review. We also excluded cases that had converted from Chapter 13 to Chapter 7 because it would not have been possible to determine the extent to which the attorney fee was based on work related to the Chapter 7 filing. Finally, we excluded cases in which necessary data were not accessible from the electronic file (which represented fewer than 3 percent of cases).

With these exclusions, we had an effective sample of 176 Chapter 7 cases from February–March 2005 and 292 cases from February–March 2007. Table 5 summarizes the population and sample disposition for the Chapter 7 filings sample.

Table 5: Population and Disposition of Our Sample of Chapter 7 Filings

	Feb.-Mar. 2005	Feb.-Mar. 2007	Total
Total population	191,012	71,106	262,118
Sample selected	193	307	500
Completed cases (in scope for study)	176	292	468
Total excluded (out-of-scope for study):	17	15	32
Dismissed	4	8	12
Business cases	0	2	2
Chapter 13 conversions	1	0	1
Other	0	1	1
Data not accessible	12	4	16

Source: GAO.

Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample’s results as a 95 percent confidence interval (for example, plus or minus 6 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. As a result, we are 95 percent confident that each of the confidence intervals in this report will include the true values in the study population. All percentage estimates in this report based on our sample review of Chapter 7 filings have 95 percent confidence intervals of plus or minus 6 percentage points or less, unless otherwise noted. All numerical estimates other than percentages (for example, estimated mean Chapter 7 fees) have 95 percent confidence intervals of within plus or minus 6.3 percent of the value of those estimates, unless otherwise noted.

We performed our case file review using a data collection instrument that included uniform questions to ensure data were collected consistently. For each case, we reviewed the docket and relevant documents from the bankruptcy file to determine (1) the attorney fee, if any, disclosed in Form B203, the *Disclosure of Compensation of Attorneys for Debtor(s)*, and any amendments to that form; (2) whether the attorney represented the debtor

at no charge (pro bono); (3) whether the debtor filed without an attorney (pro se); and (4) the bankruptcy petition preparer fee, if any, disclosed in Form B280, the *Disclosure of Compensation of Bankruptcy Petition Preparer*.

We relied on data presented in bankruptcy documents filed with the courts by debtors, creditors, and debtor attorneys and electronically stored in the courts' Public Access to Court Electronic Records system. Bankruptcy courts and U.S. Trustees manage bankruptcy cases and perform some measures to verify data that help ensure the reliability of information provided in these case files. For example, bankruptcy court officials have measures to ensure that data entered into information systems are accurate. Other measures we used to ensure reliability of these data included relying on our past work using the U.S. Party/Case Index and Public Access to Court Electronic Records and by performing additional steps during our review to compare information between these two systems.

For attorney fees for Chapter 13 cases, we collected and analyzed changes since the Bankruptcy Reform Act in standard attorney fees approved by individual judicial districts or divisions—in 48 districts or divisions that collectively accounted for 65 percent of Chapter 13 filings in fiscal year 2007. For each of these districts or divisions, we collected the amount of the standard fee, if any, as of (1) October 2005, just prior to the effective date of the Bankruptcy Reform Act, and (2) February 2008, more than 2 years after the act went into effect. We obtained these data from published local rules or administrative orders, as well as through interviews with relevant Chapter 13 trustees and bankruptcy court personnel. A few districts and divisions had two or more standard fees based on the extent of services provided or the specific characteristics of the case. In such instances, we used the highest fee for both time periods for our analysis, although in one case, we used the mid-level fee because the Chapter 13 trustee told us it was the fee most commonly charged by attorneys in that district.

We also collected available data from AOUSC on the number of bankruptcies filed without an attorney (pro se) and spoke with representatives of the National Association of Consumer Bankruptcy Attorneys and the Business Law Pro Bono Project of the American Bar Association's Center for Pro Bono, and with attorneys at five firms that provide free or reduced-cost legal assistance to bankruptcy filers.

To review filing fees, we reviewed changes to these fees made by the Bankruptcy Reform Act, as amended, and the Deficit Reduction Act of 2005, as well as any changes made by the judiciary to nonstatutory fees. We obtained from AOUSC data on the number of cases in which the court waived the filing fee. To determine costs associated with credit counseling and debtor education requirements, we reviewed information in our prior report, *Bankruptcy Reform: Value of Credit Counseling Requirement Is Not Clear* (GAO-07-203), and reviewed and analyzed additional fee and waiver data provided to us by the Trustee Program. We also reviewed data provided to us by the National Foundation for Credit Counseling that included its members' fees for pre-filing credit counseling. Finally, we interviewed officials from the Trustee Program's Credit Counseling and Debtor Education Unit and reviewed provisions of the agency's proposed rule related to credit counseling fees.

To address the third objective on private trustees, we reviewed provisions of the Bankruptcy Reform Act that affect private trustees' roles and responsibilities, as well as the Trustee Program's interim guidance and policy and procedure manuals for private trustees. We spoke with Trustee Program staff responsible for overseeing trustees and with officials from the National Association of Bankruptcy Trustees and National Association of Chapter 13 Trustees, two professional associations representing Chapter 7 and Chapter 13 trustees, respectively. We also reviewed published materials from the National Association of Bankruptcy Trustees, including a survey conducted of its members on the impact of the Bankruptcy Reform Act. In addition, we conducted individual and small group interviews of 10 Chapter 7 and 11 Chapter 13 private trustees. These trustees were chosen because they served in districts that represented a range of sizes and geographic regions. Finally, we collected and analyzed data from the Trustee Program on attrition rates for private trustees from fiscal years 2003 through 2007.

We conducted this performance audit from June 2007 through June 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Standard Attorney Fees for Chapter 13 Cases

The “standard fees” provided in table 6 represent standard amounts individual courts approve as reasonable compensation for an attorney representing a Chapter 13 debtor. The districts and divisions shown here collectively accounted for 65 percent of Chapter 13 filings in fiscal year 2007. A few districts and divisions had two or more standard fees. In such cases, the applicable fee is based on the extent of services provided or the specific characteristics of the case, as prescribed by local rules or administrative orders.

Table 6: Standard Attorney Fees for Chapter 13 Cases in Selected Districts and Divisions, before and after the Bankruptcy Reform Act

District	Personal Chapter 13 filings (fiscal year 2007)	Standard fee before the act (as of Oct. 16, 2005)	Standard fee after the act (as of Feb. 2008) ^a
Alabama, Middle District	3,851	\$1,600	\$2,500
Arkansas, Eastern & Western Districts	5,712	\$1,500	\$3,000
California, Eastern District	4,035	\$2,500	\$3,500
Florida, Southern District	3,146	\$2,500	\$3,000
Georgia, Middle District	5,973	\$1,501	\$2,500
Georgia, Northern District	15,710	\$2,500	None
Georgia, Southern District	6,497	\$1,500	\$2,500
Illinois, Northern District	9,634	\$3,000	\$3,500
Maryland District	5,867	None	\$2,000 \$3,500 \$4,500
Massachusetts District	4,382	\$3,000	\$4,000
Michigan, Eastern District	11,300	\$1,500	\$3,000
Missouri, Eastern District	3,739	\$1,850	\$3,000
Missouri, Western District	3,089	\$2,000	\$3,000
Mississippi, Southern District	3,390	\$1,700	\$2,500
New Jersey District	6,866	\$2,500	\$3,500
North Carolina, Middle District	3,273	\$1,500	\$3,000
Ohio, Southern District	8,078	\$1,500	\$3,000
Pennsylvania, Eastern District	4,681	\$2,000	\$3,000 \$3,500
Pennsylvania, Western District	3,742	\$2,000	\$3,100
Puerto Rico District	5,581	\$1,500	\$3,000
South Carolina District	4,789	\$1,800	\$3,000

**Appendix II: Standard Attorney Fees for
Chapter 13 Cases**

	Personal Chapter 13 filings (fiscal year 2007)	Standard fee before the act (as of Oct. 16, 2005)	Standard fee after the act (as of Feb. 2008)^a
Tennessee, Eastern District	5,319	\$1,600	\$3,000
Tennessee, Middle District	5,095	\$2,500	\$3,000
Tennessee, Western District	13,045	\$1,800	\$2,400
Texas, Northern District	8,595	\$2,000	\$3,000
Texas, Southern District	7,263	\$2,460	\$3,085
Virginia, Eastern District	5,388	\$1,500	\$3,000
Washington, Western District	3,176	\$1,800	\$1,800
Division^b			
Los Angeles, Calif., Central District	2,277	\$2,500	\$4,000
Northern/Santa Barbara, Calif., Central District	189	\$2,500	\$4,000
Riverside/San Bernardino, Calif., Central District	2,216	\$1,750	\$4,000
Santa Ana, Calif., Central District	535	\$2,500	\$4,000
Woodland Hills/San Fernando, Calif., Central District	1,314	\$2,500	\$4,000
Tampa, Fla., Middle District	4,119	\$2,500	\$3,300 \$3,600
Fort Wayne, Ind., Northern District	519	None	None
Hammond, Ind., Northern District	1,754	\$2,500	\$2,800
Lafayette, Ind., Northern District	188	None	None
South Bend, Ind., Northern District	613	\$2,500	\$2,800
Alexandria, La., Western District	906	\$2,100	\$2,500
Las Vegas, Nev. District	3,281	\$2,700	None
Albany, N.Y., Northern District	1,276	None	None
Syracuse, N.Y., Northern District	1,255	None	None
Utica, N.Y., Northern District	953	None	None
Akron, Ohio, Northern District	1,204	\$2,000	\$2,000
Canton, Ohio, Northern District	929	\$1,250 \$1,750	\$1,500 \$2,000
Cleveland, Ohio, Northern District	3,821	\$1,200 \$1,700	\$3,000
Youngstown, Ohio, Northern District	1,183	\$1,500	\$3,000
Waco, Tex., Western District	619	\$2,000	\$3,000

Source: GAO.

^aIn some instances, the district or division had an imminent increase in its standard fee that had not been formally finalized as of February 2008. For those cases, we confirmed the increased amount subsequently.

^bA division is a sublevel below that of the federal judicial district.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the contact named above, Jason Bromberg, Assistant Director; Randy Fasnacht; Cynthia Grant; Carol Henn; Tiffani Humble; Kristeen McLain; Marc Molino; Mark Ramage; Carl M. Ramirez; Omyra Ramsingh; Barbara Roesmann; and Rhonda P. Rose made key contributions to this report.

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