

**"Effectiveness and Accountability:
Twin Goals of Bankruptcy Reform"**

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Much of the bankruptcy community's attention is now justifiably focused upon the bankruptcy reform legislation pending in Congress. In the heat of the current debate, however, it is easy to lose sight of the fact that significant reforms of the bankruptcy system have been proposed and examined for much of the past decade.

Congress spent four years developing and debating the legislation ultimately enacted as the 1994 Bankruptcy Reform Act. Congress' desire for further guidance on challenging issues led it to create the National Bankruptcy Review Commission in the 1994 Reform Act. Now, two-and-one-half years after the Review Commission issued its final report, two versions of legislation to revamp the bankruptcy system await reconciliation by a House-Senate conference committee, and possible enactment.

While opinions differ as to the merits of the proposed legislative changes, few would argue with the premise that the bankruptcy system could be improved. Many key reforms in the legislation are aimed at problems such as fraud and abuse, inefficiency, and sloppy and incomplete bankruptcy filings. Regardless of whether the legislation passes, the United States Trustee Program and the bankruptcy community must continue to meet the challenges posed by the bankruptcy reform measures--to improve the effectiveness and the accountability of the bankruptcy system. The Program's responsibility is to administer whatever changes are made, and to provide hard data about those changes for future decision makers.

As I write this column, conference committee members have yet to be appointed and attention is focused on the prospect of dealing with the minimum wage provisions through separate non-bankruptcy legislation, thus increasing the prospect that the legislation will pass. In light of this distinct possibility, the Program has developed a comprehensive and, we believe, effective game plan so that we will be prepared to administer the duties set forth in the legislation if it is enacted.

Our legislative implementation plan, established under

the direction of an internal steering committee, focuses on key areas in which both the House and Senate versions of the legislation have given specific responsibilities and/or oversight authority to the Program, including:

- Means testing for consumer debtors;
- Section 707(b) actions;
- Credit counseling;
- Debtor education;
- Consumer debtor audits; and
- Chapter 11 issues, including small business Chapter 11 cases.

The Program has formed working groups to expand upon the proposed implementation plans in these key areas. Comprised of Program senior staff from across the nation, the working groups are charged with revising and fine-tuning the preliminary implementation plans for application in the field. Our goal is to have final implementation plans prepared for Program-wide use within 60 days after bankruptcy reform legislation is enacted.

If this goal proves unworkable, the Program will strive to provide guidance as soon as possible in the "first phase" areas of means testing, credit counseling, and debtor education. The other key issues will be addressed subsequently.

Our implementation plan will take into consideration the Program's accountability to policy makers. Hence, we hope to develop ways to better measure the Program's effectiveness with reliable and unbiased empirical data. The Review Commission and Congress have repeatedly called for more impartial bankruptcy-related data upon which to base policy decisions. In our view, a vital mission of the Program is to develop empirical measures in areas such as trustee regulation, Chapter 11 case management, professional oversight, and fair treatment of debtors and creditors.

Consistent with our objectives of effectiveness and accountability, the Program has also embarked upon an effort to streamline some of our existing procedures to make them more efficient and more transparent. We want to be as efficient as possible in carrying out our responsibilities, we want our policies and actions to be fully communicated to the bankruptcy community, and we want to incorporate the input and experience of the community into how we do our work.

Improving communication, I realize, might strike some as a catch phrase or cliché. My experience with the United States Trustee Program, however, has been that much of its good work is viewed with a suspicion that grows from misunderstanding. Continuing on the course set by former EOUST Director Jerry Patchan, we are actively exploring methods to better communicate with judges, trustees, practitioners, academics, and others in the bankruptcy system.

For example, in 1999 the Program, along with the FBI, the Criminal Division, the Executive Office for United States Attorneys, and other Department of Justice components, helped create the National Bankruptcy Fraud Working Group, which provides a forum for law enforcement agencies to work together to target bankruptcy fraud, provide training and support, and disseminate information about prosecution results. Similarly, last year's establishment of the National Bankruptcy Training Institute at the Justice Department's National Advocacy Center in Columbia, S.C., allows us to offer comprehensive professional training for Program employees and, in the future, to cultivate a national center for scholarship in bankruptcy and related topics.

Additionally, various Program field offices have expanded their participation in projects with the bankruptcy community and the wider community, such as trustee training, educational programs for health care and environmental regulators, financial literacy workshops for consumers, and visits from foreign insolvency experts. The Program has also enhanced its web site (www.usdoj.gov/ust), to offer timely, reliable, and easily accessible information on the Program's operations and the bankruptcy system. All of these steps fundamentally improve communication, and all have led to demonstrable improvement in our mission.

The bankruptcy system is constantly evolving, and all of us in the bankruptcy community share the responsibility for ensuring that it is fair and efficient for all participants. Congress demonstrated its confidence in the Program when it charged us with a broad range of new responsibilities in the reform legislation. We look forward to successfully meeting the challenge of these new duties and validating the confidence that has been reposed in us.

