

**Beyond the Bankruptcy Bill:
Transparency in the Bankruptcy System**

By Martha Davis, Acting Director^{1/}
Executive Office for U.S. Trustees

Preparing for Legislation

As this article is being written, the bankruptcy reform bill is working its way through Congress. It appears that a bankruptcy bill could become law by April or May, and consequently the bankruptcy community is focusing upon how to prepare for legislative implementation. Debtors' attorneys wonder what forms will be used for means-testing. Credit counseling agencies seek information on the qualifications for approval as a provider of pre-filing credit counseling. Trustees question how their business operations will be affected. Bankruptcy clerks prepare to carry out new noticing and record-keeping duties.

All of this preparation for the immediate impact of the legislation is crucial, because the legislation will bring about major changes in the manner in which virtually all bankruptcy cases are conducted. Indeed, the U.S. Trustee Program established working groups one year ago to examine issues pertaining to means-testing, credit counseling, debt or education, debtor audits, and Chapter 11 small business cases, and to develop preliminary plans for implementing the legislative mandates in those areas.

Yet it is also worthwhile to momentarily look beyond the immediate effects of the legislation to contemplate the extraordinary amount of information about the bankruptcy system that will be collected pursuant to the legislation. The pending legislation requires a tremendous amount of new data to be collected and reported upon; in addition, the bill calls for a number of one-time studies on a variety of topics. Whatever one's view of the substantive changes brought by the bill, it is hard to disagree with the fact that the massive amount of new reporting it mandates could bring a new level of transparency to the system. Overlaying all of these new information collecting requirements is the bankruptcy courts' move to electronic case filing, which will make much more information easily accessible to the public.

To fulfill all of the new responsibilities for reporting and collecting information, and to do so while moving to a total electronic environment, will require a significant change in business practices within the bankruptcy community. However, we will all benefit from the availability of increased information upon which to analyze and base our decisions.

^{1/} All view expressed in this article are those of the author and do not necessarily represent the views of, and should not be attributed to, the United States Department of Justice or the United States Trustee Program.

Information Required

Consider the following studies and informational requirements in H.R. 333 and S. 420:

Section 103 requires the Director of the Executive Office for United States Trustees (EOUST) to report on the use of the Internal Revenue Service standards for determining expenses and the impact that the application of the standards has had on debtors and the courts.

Section 105 requires the EOUST to conduct a pilot project for debtor education, evaluating the effectiveness of various personal financial management programs.

Section 107 requires the EOUST to issue schedules of reasonable and necessary administrative expenses relating to the administration of a Chapter 13 plan for each judicial district.

Section 230 requires the Comptroller of the United States to study and report on the feasibility, efficacy, and cost of requiring a trustee to supply specified information about a debtor's bankruptcy case to the Office of Child Support Enforcement.

Section 313(b) requires the EOUST to prepare a report on the use of the Federal Trade Commission's definition of "household goods" for the purpose of avoiding non-possessory, non-purchase money liens.

Sections 419, 434, and 435 relate to the requirement that small business debtors file periodic financial reports and other documents. This replicates existing practice in most districts as well as the requirements of Section 602, as described below.

Section 443 requires the Small Business Administration, in consultation with the Attorney General, the EOUST, and the AOUSC, to study the factors that cause small businesses to seek bankruptcy relief and to successfully complete their Chapter 11 cases, and how the bankruptcy laws may be amended to help small businesses remain viable.

Section 601 requires the bankruptcy clerk to collect certain statistics and the AOUSC to report upon the information collected. Required information includes: scheduled total assets and liabilities by category; debtors' current monthly income, average income, and average expenses; aggregate amount of debts discharged; average case duration; specified information on cases in which reaffirmation agreements were filed; specified information on Chapter 13 cases; the number of cases in which creditors were fined for misconduct and the amount of punitive damages awarded; and the number of cases in which Bankruptcy Rule 9011 sanctions were imposed against debtors' counsel and the amount of damages awarded.

Section 602 requires the Attorney General to promulgate rules mandating the establishment of uniform forms for final reports in cases under Chapters 7, 12, and 13, and periodic reports in Chapter 11 cases. Final reports in Chapters 7, 12, and 13 must include: case duration, assets abandoned, assets exempted, receipts and disbursements, administrative expenses, claims asserted, claims allowed, disbursements to claimants, and claims discharged without

payment. Periodic reports in Chapter 11 cases must include: the standard industry classification for the debtor's business; case duration; number of full-time employees; cash receipts, cash disbursements, and profitability; compliance with the Bankruptcy Code, filing of tax returns and payment of taxes; professional fees approved; and plans filed and confirmed, including aggregate recoveries by class.

Section 603 requires the U.S. Trustee to submit reports as directed by the Attorney General on the results of random debtor audits, including the percentage of cases by district in which a material misstatement of income or expenditures is reported.

Section 1230 requires the Federal Reserve Board to study certain consumer credit industry solicitation and credit granting practices, as well as the effect of those practices upon consumer debt and insolvency.

Section 1307 permits the Federal Reserve Board to study the laws regarding consumer liability for unauthorized use of a debit card.

Section 1308 requires the Federal Reserve Board to study the impact of the extension of credit to college students upon the bankruptcy filing rate.

Other informational needs are imbedded in the text of the bill. Consider, for example, Section 603, which calls for two types of debtor audits--a random audit and an audit targeting debtors whose income or expenses "reflect greater than average variances from the statistical norm of the district." Because statistical norms do not exist today, income and expense information will have to be collected to implement these audits.

Conclusion

Over the next few years, what we all do, how we do it, and what we produce will be the subject of far greater scrutiny than ever before. This could have a tremendous impact on debtors' counsel, creditors, and trustees, as well as upon government entities such as the courts and the U.S. Trustee Program. The extent to which all of the newly mandated information will be publicly available is not yet determined, but the rudimentary structure will certainly be in place to extract data.

How different entities use this information will vary. For the U.S. Trustee Program, however, it presents an opportunity to be able to identify problem cases more readily, and to perform our responsibilities and target our resources in a more efficient manner.