Department of Justice

STATEMENT

OF

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U.S. DEPARTMENT OF JUSTICE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
UNITED STATES HOUSE OF REPRESENTATIVES

"HEARING ON WORKING FAMILIES IN FINANCIAL CRISIS:
MEDICAL DEBT AND BANKRUPTCY"

PRESENTED ON

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Committee on the Judiciary
Subcommittee on Commercial and Administrative Law
United States House of Representatives

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Madam Chairman and Members of the Subcommittee,

Thank you for the opportunity to appear before you to discuss the role that medical expenses play in consumer bankruptcy filings. The United States Trustee Program (USTP or Program) is the component of the United States Department of Justice with the mission to enhance the integrity and efficiency of the bankruptcy system.[1/] The Program's responsibilities include consumer bankruptcy cases and reorganizations of large corporations that seek chapter 11 relief. As the primary enforcer of many of the key consumer provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), each of the Program's 95 field offices, and the private trustees whom we appoint and supervise, are called upon to review individual debtors' financial circumstances and to determine whether the bankruptcy relief sought is appropriate or an impermissible abuse of the bankruptcy system.

[1/] The USTP has jurisdiction in all judicial districts except those in Alabama and North Carolina. The duties of the USTP are set forth in titles 11 and 28 of the United States Code. In addition to specific statutory duties and responsibilities, United States Trustees "may raise and may appear and be heard on any issue in any case or proceeding under this title but may not file a plan pursuant to section 1121(c) of this title." 11 U.S.C. § 307.

Most consumers seeking bankruptcy protection file under either chapter 7 or chapter 13 of the Bankruptcy Code. Chapter 7 provides for the liquidation of a debtor's nonexempt property and the distribution of the proceeds to creditors. In more than 9 out of 10 chapter 7 cases, all of the debtor's assets are exempt. Chapter 13 provides for repayment of all or part of the debts over a three to five year period, but the debtor retains all of his or her assets. Under both chapters, debtors receive a discharge of most kinds of unsecured debt.

Under the new section 707(b) of the Bankruptcy Code, Congress imposed a more objective and transparent test to determine eligibility for relief. Individual debtors who file under chapter 7 are now subject to a "means test" to determine their disposable income. Debtors with income above their state's median income level are allowed to deduct expenditures set forth in the statute. If the resulting disposable income is more than $110 per month, the debtor may be "presumed abusive" and the case subject to dismissal. In determining allowable expenses, the BAPCPA mandated the use of standards developed by the Internal Revenue Service (IRS) for certain expenses. The IRS standards also are used to provide the framework for determining the amount of disposable income that a debtor would be required to pay to unsecured creditors in a repayment plan.[2/]

[2/] Based upon data compiled for a report to Congress from the Director of the Executive Office for United States Trustees on the impact of the IRS Standards, as required under section 103(b)(1) of the BAPCPA, the USTP found that the IRS standards allow above median chapter 13 debtors to deduct an average of $490 in expenses more than the amount that debtors report they actually spend. As income rises, the differential becomes smaller. This means that the IRS standards have a progressive impact on above median debtors, such that those with lower incomes are treated more favorably than those with higher incomes. The USTP's report is based upon data collection and analysis performed under contract by the RAND Corporation.

Within ten days after a statutorily required meeting where creditors, private trustees, and the United States Trustee may question a debtor under oath, the United States Trustee must determine if a case is "presumed abusive." Within thirty days thereafter, the United States Trustee must file a motion to dismiss the case or a statement explaining why a motion would not be appropriate to file. 11 U.S.C. § 704(b). A debtor may rebut a presumption of abuse "by demonstrating special circumstances, such as a serious medical condition," to the extent such special circumstances justify additional expenses or adjustments of current monthly income "for which there is no reasonable alternative." 11 U.S.C. § 707(b)(2)(B)(i).

From October 17, 2005, to June 30, 2007, approximately eight percent of debtors who filed chapter 7 petitions had income above the state median income. Of those debtors, approximately 12 percent were "presumed abusive." The United States Trustees declined to file a motion to dismiss in approximately 22 percent of those cases.[3/] The reason for almost one out of every five declinations was high medical expenses or loss of income from illness or injury. To provide just one example, a United States Trustee declined to seek dismissal of a case involving married debtors where the wife suffered from degenerative epilepsy that rendered her unable to work and required her husband to reduce his work hours to provide care for her. Given the progressive nature of the wife's condition, the United States Trustee determined that it was

[3/] United States Trustees are now filing motions to dismiss chapter 7 cases at about twice the rate as were filed prior to enactment of the BAPCPA (i.e., about eight motions to dismiss per 1,000 cases versus about four motions to dismiss per 1,000 cases pre-BAPCPA). These numbers include motions brought in "presumed abusive" cases under section 707(b)(2), as well as motions brought under the "totality of the circumstances" standard established under section 707(b)(3).

unlikely that the husband would earn income at the same level he did prior to their bankruptcy filing.

The Program believes strongly that the Congress established an objective system for determining eligibility, but also resided discretion in the United States Trustee to decide whether dismissal would be "appropriate." Accordingly, debtors who have incurred high medical debt or anticipate recurring significant medical expenditures may be entitled to chapter 7 relief irrespective of the "means test" formula.

The USTP does not have definitive data on the amount of medical debt owed by consumer debtors who seek bankruptcy relief. In 2003, the Program reviewed a sample of more than 5,000 bankruptcy cases utilizing data from official records in no-asset chapter 7 cases closed between 2000 and 2002. In general, the data describing medical-related expenses contained in official documents filed by chapter 7 debtors revealed that slightly more than five percent of their general unsecured debt was medical related. Forty-six percent of the debtors listed medical debt. Of those debtors listing medical debt, about 78 percent reported medical debt of less than $5,000. Fewer than one percent of the cases accounted for over one-third of the medical debt. Less than 10 percent of the cases represented about 80 percent of all reported medical debt. For the most part, this accounting would not have identified medical debts charged on credit cards, placed with collection agencies, or paid prior to a bankruptcy filing.

The need for bankruptcy data that is readily accessible was recognized by Congress in section 604 of the BAPCPA which provides, in pertinent part, that "the national policy of the

United States should be that all data held by bankruptcy clerks in electronic form . . . should be released in a usable electronic form in bulk to the public, subject to such appropriate privacy concerns . . . ." Debtors' financial information is contained in schedules, statements, and other forms filed by debtors in the bankruptcy court. Although medical debt is difficult to identify with precision on the current official bankruptcy forms, there may be ways that such data can be made more accessible for policymakers, bankruptcy administrators, and researchers.

The USTP has been working with the Administrative Office of the United States Courts and the Judicial Conference of the United States on a new automation solution which entails the "tagging" of data on bankruptcy forms. "Data-enabled" or "smart" forms, among other things, would allow a computer system automatically to route filings into identified categories and to simplify the review of data. With appropriate changes to bankruptcy forms, data-enabled form technology would allow researchers and others to more easily identify cases with high medical expenses, domestic supports orders, or other features. In addition, much of the "means test" could be performed through data tagging, thereby allowing the USTP to perform its duties more effectively and allowing debtors to know sooner in the process whether the USTP will deem their case to be "presumed abusive." The Administrative Office adopted the jointly developed data-enabled technical standard approximately two years ago, but postponed its widespread use pending further study. If the Judicial Conference ultimately grants the USTP's request for the adoption of data-enabled forms as a mandatory standard (with appropriate exceptions), then bankruptcy administration will be streamlined and policymakers will have more information to evaluate the effectiveness of the bankruptcy system.

The USTP is committed to improving consumer bankruptcy administration for the benefit of debtors, creditors, and the general public. This includes the exercise of appropriate discretion in evaluating bankruptcy cases that exhibit substantial medical debt.

I would be happy to answer any questions from the Subcommittee.