

December 2008

BANKRUPTCY

Judiciary Should Take Further Steps to Make Bankruptcy Data More Accessible



GAO

Accountability * Integrity * Reliability



Highlights of [GAO-09-28](#), a report to congressional requesters

Why GAO Did This Study

There have been long-standing questions about a lack of comprehensive and reliable information on consumer bankruptcies. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Reform Act) required the federal judiciary's Administrative Office of the U.S. Courts (AOUSC) to collect and report certain additional bankruptcy statistics and required the U.S. Trustee Program, which oversees bankruptcy case administration, to develop uniform final reports that provide certain specified data about each case.

GAO was asked to examine the (1) availability and accessibility of data from the personal bankruptcy system and (2) potential benefits and limitations of the new data requirements of the Bankruptcy Reform Act in addressing these issues. GAO examined bankruptcy data systems and obtained documentation and interviewed staff from AOUSC, bankruptcy courts, and the Trustee Program; groups representing consumers and creditors; data providers; and academic researchers and other stakeholders.

What GAO Recommends

GAO recommends that AOUSC expeditiously identify and implement—subject to appropriate privacy and security safeguards—measures to further improve the public accessibility of bankruptcy data it already maintains in its information systems. AOUSC said it will carefully consider GAO's recommendation.

To view the full product, including the scope and methodology, click on [GAO-09-28](#). For more information, contact Yvonne D. Jones at (202) 512-6806 or jonesy@gao.gov.

BANKRUPTCY

Judiciary Should Take Further Steps to Make Bankruptcy Data More Accessible

What GAO Found

There are limitations to the availability, accuracy, and accessibility of data on consumer bankruptcies. AOUSC publishes certain aggregate statistics related to the numbers of filings, but few data are available on the causes of bankruptcy and the characteristics of bankruptcy filers. Studies show that the information in the bankruptcy case files is not always accurate because much of it is self-reported by debtors who frequently make errors, although these data are sufficiently reliable for the purposes of initiating a bankruptcy case. Bankruptcy case files are publicly accessible through the Public Access to Court Electronic Records system, but not in a format that allows the data they hold to be easily extracted and used for research or analysis. Another system, the U.S. Party/Case Index, was designed for nationwide searches for individual cases; while it serves that purpose, its search parameters are limited and the output does not include much of the data held in the system. Several factors create challenges to expanding data on consumer bankruptcies—most notably, privacy and security concerns related to facilitating public access to the highly personal data contained in bankruptcy files. The federal judiciary also has noted that collection of demographic and other additional data is not its mission and would require further resources. Nonetheless, a range of bankruptcy stakeholders, including some judges, researchers, and U.S. Trustee Program staff, have suggested that the judiciary identify and implement practicable ways to improve public access to data that already exist in its data systems, which could facilitate scholarly research and the formulation of bankruptcy policy and legislation.

While the data requirements of the Bankruptcy Reform Act are a step toward making more information on consumer bankruptcies available, their value is likely to be limited. The new annual statistics will provide some additional information that may be helpful in identifying differences in bankruptcy cases across judicial districts. In addition, the uniform final reports required by the act will standardize the data in the reports and assist the U.S. Trustee Program in overseeing case administration. However, for several reasons the statistics required under the act are likely to be of limited value. For example, many of the statistics are relatively narrow in scope and were not intended to provide certain key information, such as the causes of bankruptcy and the demographic characteristics of filers. Further, the AOUSC data are provided as aggregated statistics—rather than data on individual cases—which limits the extent to which they can be analyzed. As such, a variety of stakeholders in the bankruptcy process told us that the underlying case-level data used to generate the statistics could be useful if made publicly available as a data set. AOUSC currently has no plans to provide public access to these case-level data, in part, officials say, because they first need to identify and address privacy and security issues. GAO acknowledges the importance of those issues, but believes that better access to bankruptcy data already held in the judiciary's data systems—such as these case-level data—would allow external parties to assess the data's reliability and limitations and could facilitate empirical research and the formulation of bankruptcy policy.

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Abbreviations

AOUSC	Administrative Office of the U.S. Courts
Bankruptcy Reform Act	Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
Bankruptcy Rules	Federal Rules of Bankruptcy Procedure
CM/ECF	Case Management/Electronic Case Files
Judicial Conference	Judicial Conference of the United States
PACER	Public Access to Court Electronic Records

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United States Government Accountability Office
Washington, DC 20548

December 18, 2008

Congressional Requesters

Over the past decade, Americans have filed more than 13 million consumer bankruptcy cases, yet relatively little is known about the characteristics of these individuals, the factors that led to their seeking bankruptcy protection, or the outcomes and consequences of their cases. Questions about the lack of certain information on consumer bankruptcies have existed for some time. Numerous studies, including the 1997 report of the National Bankruptcy Review Commission—an independent commission created by Congress—have noted that relatively little is known about the characteristics of consumer bankruptcies and that relatively little empirical data are available through the bankruptcy system.¹ The commission report noted that better bankruptcy data could shed light on important questions of interest to Congress, the judiciary, and other stakeholders in the bankruptcy system, such as debtors, creditors, and scholars. For example, better data could help inform policy questions dealing with the effect of bankruptcy on unsecured creditors and the costs of particular types of cases.

In 2005, Congress enacted major bankruptcy reform legislation with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Reform Act).² The act sought to expand the information available about consumer bankruptcies by imposing new data collection and reporting requirements on both the federal judiciary, which includes the 90 bankruptcy districts and the Administrative Office of the U.S. Courts (AOUSC), and the Department of Justice's U.S. Trustee Program (Trustee Program), which oversees the administration of bankruptcy cases in most judicial districts. The act required the judiciary to collect and report annual statistics—presented in the aggregate and by judicial district—on certain characteristics and outcomes of consumer bankruptcies.³ The act also required the Attorney General, who delegated the authority to the Trustee Program, to draft rules requiring private

¹National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years, National Bankruptcy Review Commission Final Report* (Washington, D.C., Oct. 20, 1997).

²Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (Apr. 20, 2005) (as amended, Bankruptcy Reform Act).

³Bankruptcy Reform Act § 601, 119 Stat. at 119-20 (codified at 11 U.S.C. § 159).

trustees to submit uniform final reports on individual bankruptcy cases that included certain specific information about the case.⁴

You asked us to review issues related to the availability of data on consumer bankruptcies. Specifically, this report examines (1) the availability and accessibility of data from the bankruptcy system and (2) the potential benefits and limitations of the new data requirements of the Bankruptcy Reform Act in addressing these issues. This report focuses on consumer, or personal, bankruptcies rather than business bankruptcies.

To address the first objective, we reviewed materials produced by the National Bankruptcy Review Commission, as well as academic literature that has used, studied, or commented on the data on consumer bankruptcies that are available from the court system and Trustee Program. We also reviewed our past work that has used bankruptcy data. In addition, we gathered information on the relevant data systems and statistical infrastructures of the judiciary and Trustee Program. To address the second objective, we reviewed provisions of the Bankruptcy Reform Act and documentation from the federal judiciary and Trustee Program that are related to implementation of the act's data provisions, including changes to official bankruptcy forms and proposed and final rules. To address both objectives, we spoke with staff from the AOUSC's statistics and information technology divisions, bankruptcy court judges, bankruptcy clerks and their staff, Trustee Program staff responsible for information technology and trustee oversight, Trustee Program regional offices, representatives of private trustees, bankruptcy attorneys, academic researchers, data providers, representatives of consumer and financial services industry organizations, and other stakeholders in the bankruptcy system.

We conducted this performance audit from June 2007 through December 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.

⁴Bankruptcy Reform Act § 602, 119 Stat. at 120-22 (codified at 11 U.S.C. § 589b).

Results in Brief

Limitations exist to the availability, accuracy, and accessibility of data on consumer bankruptcies. AOUSC publishes certain aggregate statistics on the numbers of bankruptcy filings each quarter. In addition, the bankruptcy case files maintained by the judiciary contain a large amount of information, including financial data such as assets and liabilities and case dockets that reflect the significant events of each case. However, the statistics and case files provide very little information about certain key characteristics of consumer bankruptcies, such as the demographic characteristics of filers, the specific nature of the underlying debt, the reasons for the bankruptcy, and its long-term effect on the filer. Studies show that the information in the bankruptcy files is not always accurate, largely because it is self-reported by debtors, who frequently make errors. This information is sufficiently reliable for the purposes of initiating a bankruptcy case, but of limited value for research or statistical purposes. Various factors affect the ability to expand the data available from the bankruptcy system. Facilitating electronic public access to personal information in bankruptcy files can raise privacy concerns, as well as the potential for enabling identity theft or the targeting of bankruptcy filers for exploitative financial products. The federal judiciary also has noted that collection of demographic or other data unrelated to the operations of the courts is not its mission and would require additional resources. The judicial process also may not be well suited to capturing certain types of information, such as the reasons a consumer files for bankruptcy, and the decentralization of the federal court system can create challenges in ensuring consistent data collection and reporting. The public can access data maintained by the judiciary, as well as documents from individual bankruptcy cases, but the case files are not available in a format that allows the data to be easily compiled and analyzed. “Data-enabled” bankruptcy forms—which allow information to be easily extracted and transferred to a database—could significantly enhance the usability of data in the system, but the federal judiciary has declined for now to mandate their use, citing certain technical, privacy, and security concerns. The U.S. Party/Case Index was designed to allow nationwide searches of individual bankruptcy cases, and although it serves that function, its search parameters are limited and the results do not include much of the data held by the system. AOUSC staff told us that the index was not designed to provide a range of data on individual cases. But many stakeholders—including some judges, researchers, and Trustee Program staff—have suggested that improving public accessibility to data in this or other judiciary data systems could improve knowledge about the bankruptcy system, assist in policy formulation, and be consistent with section 604 of the Bankruptcy Reform Act, which called for a national

policy of maximizing the release of bankruptcy data in a usable electronic form.

While the data collection and reporting requirements of the Bankruptcy Reform Act are a step toward making more information about consumer bankruptcies available, for several reasons their value is likely to be limited. AOUSC provided its first annual report to Congress on June 23, 2008, containing the statistical tables and analysis required by the act. These new bankruptcy statistics may be useful in understanding certain characteristics and outcomes—such as debtors’ average income and the number of cases dismissed—and may help identify differences among judicial districts. In October 2008, the Trustee Program issued a rule requiring private trustees to use uniform final reports beginning April 1, 2009. The use of a single set of reports should improve the consistency of the data and will add new information that may be useful for trustee oversight or other purposes. However, several factors limit the usefulness of the new reported annual statistics and uniform final reports. For example, the required data were not intended to provide certain key information, such as the causes of bankruptcy and the demographic characteristics of filers. Further, the requirement is for AOUSC to report aggregate statistics—rather than case-level data—limiting the value of the information. In addition, the scope of information provided by some of the specific data elements is relatively narrow. For example, the act requires AOUSC to report the number of cases in which creditors were fined for misconduct, but because courts reprimand creditors in a variety of ways, this statistic provides only a limited picture of the sanctions applied to creditors. Despite the statistics’ limitations, some stakeholders in the bankruptcy process told us it would be beneficial for AOUSC to make the underlying case-level data publicly available, which would permit additional analyses of factors such as differences in debtors’ income, assets, and liabilities. AOUSC currently has no plans to make these case-level data available, citing concerns about privacy and security, as well as the reliability of the data. Privacy and security issues would indeed need to be resolved before providing public access to the data. However, releasing these data would allow external parties to assess the data’s reliability and limitations and would be consistent with section 604 of the Bankruptcy Reform Act.

This report recommends that the Director of AOUSC expeditiously identify and implement—subject to appropriate privacy and security safeguards—measures to improve public accessibility to those bankruptcy data that AOUSC already maintains in its information systems.

We provided a draft of this report to AOUSC and the Trustee Program, which provided technical comments that we incorporated as appropriate. In addition, the AOUSC provided written comments, in which it said it would carefully consider GAO's recommendation. It said that the judiciary already provides a high level of access to case records and information and reiterated the need to balance access and privacy interests in making decisions about widespread public disclosure and dissemination of information in case files.

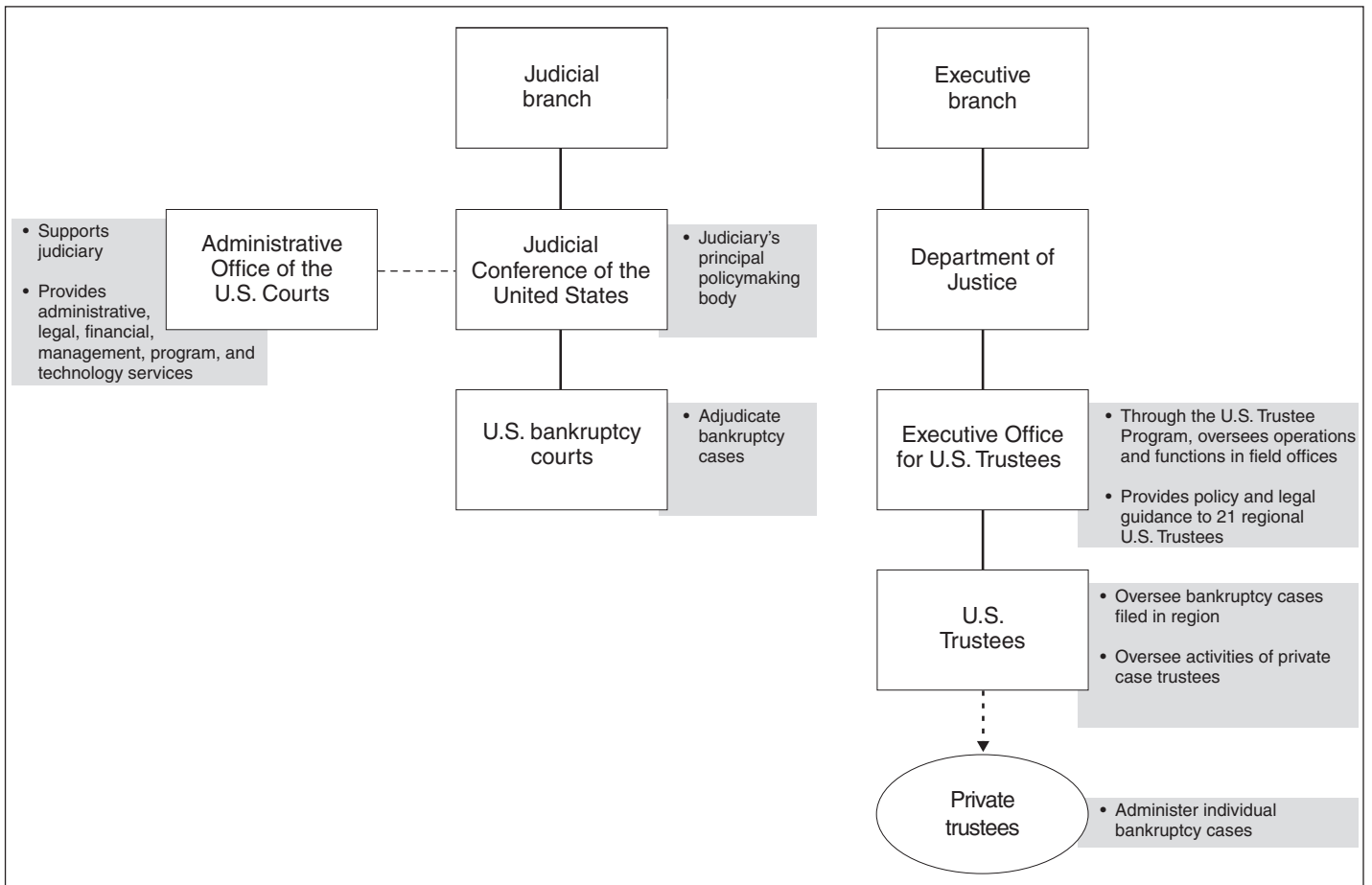
Background

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. The filing of a bankruptcy petition in most cases operates as an "automatic stay" that essentially prohibits most creditors from taking any action to attempt to collect a debt pending the resolution of the bankruptcy proceeding. Individuals usually file for bankruptcy under one of two chapters—Chapter 7 or 13—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, and creditors may take no further action against the individual to collect any unpaid portion of the debt.⁵

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

⁵Although a debtor is not personally liable for discharged debts, a valid lien (i.e., a charge upon specific property to secure payment of a debt) that has not been voided (i.e., made unenforceable) in the bankruptcy case will remain enforceable after the bankruptcy case closes.

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 districts have jurisdiction over bankruptcy cases. The Judicial Conference of the United States (Judicial Conference) serves as the judiciary's principal policy-making body and recommends national policies and legislation on all aspects of federal judicial administration. AOUSC is an agency within the judicial branch and 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. AOUSC has developed and supports nationwide data systems to manage and maintain

information on bankruptcy cases, but these systems are largely operated, managed, and maintained at the local courts.

Within the executive branch, the Trustee Program, a component of the Department of Justice, oversees 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.⁶ 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. To document their administration of cases, private trustees file “final reports” with the bankruptcy courts and submit them to the U.S. Trustees.

The procedural aspects of the bankruptcy process are governed by the Federal Rules of Bankruptcy Procedure (Bankruptcy Rules) and local rules of each bankruptcy court. The Bankruptcy Rules contain a set of official forms for use in bankruptcy cases. The document filed by the debtor to open a bankruptcy case is known as the voluntary petition, which the debtor may amend (make changes to) at any time before the case is closed. 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. Most documents associated with bankruptcy cases are public records and, with certain exceptions, the information contained in a bankruptcy file is publicly accessible.

The Bankruptcy Reform Act was signed into law on April 20, 2005, and most of its provisions became effective on October 17, 2005. The act made substantial changes to the Bankruptcy Code, significantly changing consumer bankruptcy practice. It also sought to address, at least in part, long-standing concerns about perceived shortcomings of the bankruptcy data system that had been identified by the National Bankruptcy Review Commission and other parties. The act required the federal judiciary to collect and report certain new aggregate statistics. It also required the Attorney General (who delegated the authority to the Trustee Program) to

⁶Bankruptcy cases in Alabama and North Carolina are not under the jurisdiction of the Trustee Program; instead, bankruptcy administrators within the judicial branch administer the cases in the judicial districts in those states.

issue rules requiring that private trustees submit uniform final reports containing prescribed information on individual bankruptcy cases.

Limitations Exist to the Availability, Accuracy, and Accessibility of Information on Consumer Bankruptcies

AOUSC publishes certain aggregate statistics related to the numbers of bankruptcy filings. Documents within individual case files contain a range of information, but few data exist on the causes of bankruptcy and the characteristics of bankruptcy filers. There has been long-standing recognition that much of the data in the bankruptcy system may not be accurate—largely because much of the data is self-reported by debtors in the official bankruptcy forms—although these data are sufficiently reliable for the purposes of initiating a bankruptcy case. Several factors create challenges to improving the bankruptcy data system. Most notably, facilitating public access to data in bankruptcy files—which can contain highly personal information—can raise privacy and security concerns. The federal judiciary also has noted that collection of demographic or other additional data is not its mission and would require added resources; further, the judicial process may not be well suited to capturing certain types of information, such as the reasons a consumer files for bankruptcy. Bankruptcy case files are publicly accessible, but not in a format that readily allows for compilation and analysis. The U.S. Party/Case Index was designed to allow nationwide searches of individual bankruptcy cases, and although it serves that function, its search parameters are limited and the results do not include much of the data held by the system.

Limited Information Is Available on Some Characteristics of Consumer Bankruptcies

The judiciary reports statistics on the number of bankruptcy filings and collects a variety of financial information from individual filers in the official bankruptcy forms. However, relatively little information is available on the characteristics of people who file for bankruptcy, the factors that contributed to their bankruptcy filings, or the outcomes of their cases.

Bankruptcy Statistics

AOUSC generates monthly, quarterly, and annual statistics on the numbers of bankruptcy filings. Prior to 2008, these tables were the only statistics the judiciary released on bankruptcies. (The new statistics required under the Bankruptcy Reform Act are discussed later in this report.) The filing statistics include tables that show the number of bankruptcy cases filed for either a 12-, 3-, or 1-month period, broken down by several factors:

-
- status of case (commenced, terminated, and pending),
 - circumstance of filing (voluntary or involuntary),
 - nature of debt (including business or nonbusiness),
 - joint petitions,
 - median time interval from filing the petition to disposition, and
 - adversary proceedings (commenced, terminated, and pending).

Most of these tables include the data broken out by each judicial district as well as by bankruptcy chapter; some of the tables include statistics by individual bankruptcy court or county. AOUSC strives to publicly release the quarterly and annual statistics 2 to 3 months after the close of each quarter. Certain additional statistics used internally are not publicly released, such as the number of cases assigned to each judge and numbers of trials in bankruptcy courts.

The judiciary generates these statistics largely to meet its statutory requirements to produce statistical reports for Congress and the public on the business transacted by the bankruptcy courts. Data on numbers of bankruptcy filings help the judiciary determine the need for resources to operate the courts, forecast future needs, and formulate the judiciary's congressional budget requests. For example, data on the number of cases opened (or filed) are one of the principal bases for determining the number of bankruptcy judges that may be needed. The bankruptcy statistics also receive wide attention outside of the judiciary. For example, AOUSC's statistical tables on the numbers of bankruptcy filings are used by financial analysts and other government agencies as a lagging economic indicator and reported by the mass media as a measure of the financial health of American consumers.

Case Information

The files of individual bankruptcy cases—which are public documents—contain significant amounts of information. For example, the voluntary petition used to initiate a consumer bankruptcy filing includes, among other things, the debtor's name and address, the estimated number of creditors, and the estimated amount of the debtor's assets and liabilities. Other schedules and forms require the debtor to provide information on, among other things: real property (real estate), personal property (such as cash, stocks, bonds, and household items), secured debts (such as

mortgages and liens), unsecured debts (such as credit card debt and tax obligations), monthly income, and itemized monthly expenses.

Bankruptcy case files also include other information filed with the courts. For example, the file may contain a Chapter 13 repayment plan, which identifies specific creditors and the amount of their claims, the monthly repayment amount, the interest rate that the debtor and creditors have agreed on, and the duration of the repayment plan. Similarly, case files may include reaffirmation agreements, including the amount and characteristics of debt being reaffirmed.⁷ Bankruptcy case files also include final reports submitted by the private trustees that can include information on disbursements and repayments to creditors. Finally, the file includes the case docket that serves as a chronological record of all significant events that occur during the case, such as motions, applications, and court orders.

Although the official bankruptcy forms and case files include this information, they nonetheless are limited in providing certain key information that would help inform the nature and causes of consumer bankruptcy. Bankruptcy files do not contain basic characteristics about the debtor or the nature of the debtor's circumstances, such as the following:

- *Demographic information.* Filers are not asked to provide their age, gender, marital status, education, occupation, race, or ethnicity in the bankruptcy petition and thus this information typically is not available from the case file.
- *Reasons for the bankruptcy.* The official bankruptcy forms do not ask for the factors that led to the bankruptcy filing, such as job loss or divorce. The forms also do not collect information on the specific source of debt, such as medical bills, gambling losses, or damages from fire, theft, or flood.
- *Postbankruptcy outcomes.* No component of the bankruptcy system collects information once a discharge has been granted and a case is closed. As a result, the bankruptcy system does not have data on such

⁷Bankruptcy filers may voluntarily reaffirm—that is, agree to pay—certain debts with creditors in an effort to retain assets that secure a debt, such as an automobile or home that otherwise would likely have to be surrendered to the creditor (11 U.S.C. § 521(a)(2)(A)).

things as the financial status of debtors subsequent to the discharge of their debt, including the accumulation of new debt.

As a result, the bankruptcy system provides limited information on who is filing for bankruptcy, why they are filing, and the long-term results of these bankruptcies—all of which can be important in identifying economic and social trends and understanding the impact that bankruptcy may have on families and communities. While this information may be important for public policy purposes, it is not collected as part of the bankruptcy process primarily because it is not information needed by the judiciary or Trustee Program to operate the bankruptcy system.

To a limited extent, some nongovernmental entities collect information on consumer bankruptcies. For example, since 1981, the Consumer Bankruptcy Project, an ongoing research effort involving several universities, has gathered information from bankruptcy filers through case file reviews, surveys, and interviews on such things as educational levels, housing, physical health, employment, and reasons for filing for bankruptcy.⁸ The project has produced empirical studies of the demographic and financial characteristics of consumer bankruptcy debtors based on samples of Chapter 7 and Chapter 13 petitions filed in 1981, 1991, 2001, and 2007. In addition, the National Data Center, a nonprofit organization, collects case and claims information directly from Chapter 13 trustees, which it consolidates into a database that is used by parties of interest, such as creditors, trustees, and debtors and their attorneys.

In the years leading to the enactment of the Bankruptcy Reform Act in 2005, there was significant debate among policymakers, creditors, consumer advocates, and other stakeholders on the factors contributing to the rising rate of consumer bankruptcy, including the relative roles of illness, joblessness, and divorce. While some studies, such as those produced by the Consumer Bankruptcy Project, have examined these issues, it was widely acknowledged that not enough data were available from the bankruptcy system and other sources to help fully inform these discussions. Similarly, in recent work that GAO has conducted examining the bankruptcy system, we have found that limitations in available data have hindered our ability to answer questions of interest to congressional

⁸See, for example, Elizabeth Warren, Deborah Thorne, and Teresa Sullivan, “Generations of Struggle,” AARP Public Policy Institute (Washington, D.C., June 2008) (forthcoming in *Harvard Law and Policy Review*, January 2009).

requesters. For example, in October 2007, we reported that information available from the bankruptcy system was not sufficient to allow us to evaluate the impact of the Bankruptcy Reform Act on child support obligations.⁹ Further, in our December 2007 report on debtors' use of reaffirmation agreements, we examined a representative sample of bankruptcy files in five bankruptcy courts, but were unable to do a nationally representative sample because the necessary data needed to be manually extracted from individual databases at the district level.¹⁰

Some Bankruptcy Data Are Not Always Accurate

There has been long-standing recognition that much of the data in the bankruptcy system may not be accurate, largely because much of the data is self-reported by debtors in the official bankruptcy forms. For example:

- The report of the National Bankruptcy Review Commission noted persistent problems with the accuracy of bankruptcy data, pointing out that data extracted from the debtors' petitions and reported to AOUSC often are inconsistent with other information contained in the same debtors' schedules and statements of financial affairs.¹¹
- The Trustee Program's audits of Chapter 7 and Chapter 13 debtors in fiscal year 2007 identified at least one material misstatement of income, expenditures, or assets in 30 percent of the cases for which audit reports were filed.¹²
- A 1999 study of the consistency and completeness of 200 randomly selected consumer bankruptcy cases in a Michigan district found "errors and problems" in 99 percent of the cases, with an average of three

⁹GAO, *Potential Effect of Bankruptcy Abuse Prevention and Consumer Protection Act on Child Support Payments Cannot Be Determined because Data Needed for Study Are Not Available*, [GAO-08-148R](#) (Washington, D.C.: Oct. 26, 2007).

¹⁰GAO, *Bankruptcy: Implementation of Reform Act's Debt Reaffirmation Agreement Provisions*, [GAO-08-94](#) (Washington, D.C.: Dec. 7, 2007). A reaffirmation agreement is when a debtor agrees to make payments to creditors to retain an asset, such as an automobile or home, that otherwise would likely be surrendered during the bankruptcy process.

¹¹National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years, National Bankruptcy Review Commission Final Report* (Washington, D.C., Oct. 20, 1997).

¹²Executive Office for United States Trustees, U.S. Department of Justice, "Public Report: Debtor Audits by the United States Trustee Program, Fiscal Year 2007" (Washington, D.C., April 2008).

mistakes per case.¹³ A 2002 study of 103 consumer asset cases in the same district found that 41 percent of cases had assets that had not been disclosed by debtors in their initial bankruptcy papers.¹⁴

A key reason why information in bankruptcy cases may be inaccurate is that it is largely self-reported by the debtor. Filers and bankruptcy petition preparers must attest, under penalty of perjury, that the information they provide is correct and true. Nonetheless, as seen above, ample evidence indicates that debtors filing a bankruptcy petition do not always accurately estimate, for example, their debts, the value of their assets, and other key information. The unreliability of self-reported data in bankruptcy files is a result of several factors, according to AOUSC staff, private trustees, and academic experts we spoke with. First, individuals entering bankruptcy often have not kept good financial records, a fact that may hinder their ability to provide accurate information. Second, some portion of debtors file for bankruptcy without the assistance of an attorney and their unfamiliarity with the process increases the likelihood they will make errors on the forms. Third, there is little incentive for any party to ensure that certain information is precisely accurate if that information will not affect the outcome of the case. For example, in Chapter 7 cases that involve no eligible assets to be distributed to creditors, calculating the precise amount of a debtor's liabilities makes little difference since all eligible debt will be discharged anyway. As such, the impact of data in bankruptcy forms that is less than fully accurate varies depending on how the information is being used. The data may be problematic for the purposes of research or the collection of statistics, but are still sufficiently reliable for the purposes of initiating a bankruptcy case.

In every consumer bankruptcy case, the private trustee submits to the Trustee Program a "final report" that details the administration of the estate. The Trustee Program reviews these reports and they are then filed with the court.¹⁵ The information in these final reports is generally more accurate than information in the petition and supporting forms, for two

¹³Steven W. Rhodes, "An Empirical Study of Consumer Bankruptcy Papers," *American Bankruptcy Law Journal*, vol. 73, no. 3 (summer 1999).

¹⁴Steven W. Rhodes, "Demonstrating a Serious Problem with Undisclosed Assets in Chapter 7 Cases," *Norton Bankruptcy Law Adviser* (May 2002).

¹⁵Final reports are the responsibility of the Trustee Program since the responsibility for the administration of estates falls under the Trustee Program rather than the judiciary.

primary reasons. First, the trustee has certain responsibilities to review and verify some of the financial information submitted by the debtor. Second, the final report is generated near the end of the bankruptcy process, when more accurate information may be available, whereas the petition is submitted by the debtor at the beginning of the process. At the same time, the scope of the information contained in the trustee final reports is limited—largely to data related to disbursements and repayments to creditors.

Some parties have expressed concerns about the measurement of consumer versus business bankruptcies. The Bankruptcy Code defines consumer (nonbusiness) debt as that incurred by an individual primarily for a personal, family, or household purpose.¹⁶ If the debtor is a corporation or partnership, or if debt related to the operation of a business predominates, AOUSC defines the nature of the debt as business. Debtors self-report in the bankruptcy petition whether their debts are primarily consumer or business debts, but such a determination can be ambiguous. For example, certain debtors—such as entrepreneurs, small businesses, self-employed individuals, and independent contractors—may have difficulty determining the predominant nature of their debts if their personal and business liabilities are closely intertwined. In the 2005 study, “The Myth of the Disappearing Business Bankruptcy,” the authors concluded that AOUSC statistics significantly undercount the number of business bankruptcies, which they said may lead policymakers and others to draw inappropriate conclusions about trends in business successes and failures and other important policy issues.¹⁷ AOUSC officials told us that the appropriate definition of whether a debtor is a consumer or a business is open to question, but that the classification used in their statistics—the predominant nature of the debt as reported by the debtor—has a statutory basis.

¹⁶See 11 U.S.C. § 101(8).

¹⁷Robert M. Lawless and Elizabeth Warren, “The Myth of the Disappearing Business Bankruptcy,” *California Law Review*, vol. 93, no. 3 (2005). An estimate of business bankruptcies was derived by extrapolating from a sample of 1,771 individual debtors as part of the Consumer Bankruptcy Project. Debtors completed a questionnaire and some were interviewed, and debtors’ court records were reviewed.

Various Factors Affect the Ability to Expand the Data Available from the Bankruptcy System

The concerns that exist today about the data available from the bankruptcy system have existed for decades. For example, interest in more detailed, accurate, and reliable information was raised by both the 1973 and 1997 federal bankruptcy commissions. While opportunities may exist to further expand and improve the data available from the bankruptcy system, several factors create challenges to making such improvements.

- *Public accessibility must balance privacy and security concerns.* Bankruptcy files can contain personal information such as tax and financial data or documents from creditors that may reveal such things as a filer's medical circumstances or gambling history. In the past, accessing bankruptcy records required physically retrieving files from a courthouse. However, with the development of the Internet, personal information can be readily and quickly accessed from anywhere in the world, raising privacy concerns. Further, some consumer groups, bankruptcy attorneys, and representatives of the judiciary have raised concerns that increasing electronic access to bankruptcy data, such as through data-enabled forms, could facilitate identity theft or the use of personal data to target bankruptcy filers for potentially exploitative financial products or services. In 2003 and 2007, bankruptcy rules were amended to restrict the publicly accessible personal information in bankruptcy files.¹⁸ For example, only the last four digits of a Social Security number are required in the bankruptcy petition and bankruptcy filers may redact personal identifiers, such as dates of birth and names of minors, from electronic or paper filings made with the court.¹⁹ AOUSC officials told us that if substantial additional bankruptcy information were to be made publicly available, the privacy and security rules themselves might have to be reconsidered to provide additional protections.
- *Collection of demographic and other additional data is not the judiciary's mission.* The basic mission of the federal courts is to interpret and apply the law to resolve disputes. AOUSC officials told us that while the bankruptcy courts have certain statutory requirements to maintain an accurate public record of case proceedings, they have no such requirements, or any need, to collect demographic or financial data that

¹⁸Fed. R. Bankr. P. 1005, 1007, and 9037. Rule 9037 was adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Pub. L. No. 107-347.

¹⁹Debtors must submit to the clerk a separate statement with the debtor's full Social Security number, but the statement is not maintained in the case file or accessible by the public.

are unrelated to the operations of the courts. As such, the judiciary historically has been reluctant to devote resources to collecting data solely for research and policy purposes.

- *Resources are limited.* Improving the judiciary’s data collection and statistical infrastructure can require additional resources for such things as equipment, staff, and training. AOUSC officials noted that their current resources for information technology, data collection, and statistical reporting were limited and would not be able to readily accommodate additional responsibilities.
- *Local courts’ autonomy can hinder centralized data collection.* All bankruptcy courts are governed by certain national rules and requirements and must report certain standard data to AOUSC. However, individual courts also have a significant degree of autonomy to develop their own local rules and requirements, and local practices and procedures vary. Further, each individual district manages its own data systems and can choose to track additional data according to its preferences. The traditional autonomy of the 90 individual bankruptcy districts can create challenges for AOUSC in ensuring that processes are followed uniformly and data are collected in a consistent fashion.
- *The bankruptcy process is not well-suited to collecting certain types of information.* The factors that result in a bankruptcy—a key public policy issue—are inherently hard to capture in a bankruptcy form. Bankruptcy petitions include a list of creditors but do not necessarily provide insight as to the source of the debt—for example, credit card debt may derive from medical expenses or from a costly vacation. Moreover, bankruptcy often results from multiple factors that can be difficult to isolate (e.g., both unemployment and poor financial management may be factors). Further, because the courts’ formal role generally ends once a case is closed, the courts are not in a position to collect data about the long-term impact of bankruptcies. As a result of these factors, the judicial process may not be well-suited to collecting certain key information, which may instead best be obtained, for example, by private parties conducting one-on-one interviews with debtors.
- *Collecting demographic data poses concerns.* Key demographic information about bankruptcy filers—such as gender, age, and race—is of interest to policymakers and others, but may not be appropriate for inclusion in official bankruptcy forms. Some worry, for example, that formalized collection of this information could introduce the appearance of bias or facilitate discrimination.

Bankruptcy Data Are Not Always Easily or Fully Accessible

The federal judiciary uses several major data systems to collect, manage, and disseminate information about bankruptcies.²⁰

- The Case Management/Electronic Case Files (CM/ECF) system is used by nearly all U.S. district, bankruptcy, and appellate courts to manage and track cases. AOUSC requires all bankruptcy courts to maintain certain uniform pieces of information in CM/ECF—including debtor name and case number, county, filing date, and disposition of the case—but individual bankruptcy courts can customize the system to facilitate its functions under local rules and local practices and procedures. CM/ECF permits bankruptcy participants, such as attorneys and trustees, to electronically file documents with the court.²¹
- The U.S. Party/Case Index is a nationwide locator for U.S. district, bankruptcy, and appellate courts, which can be used by the public to search for individual case filings, including bankruptcy filings. Certain bankruptcy data are obtained from the courts' CM/ECF systems on a daily basis, and the index allows searches based on case identifiers such as a filer's name or Social Security number.²² The index can be used to search all courts nationwide, or to search by judicial circuit, state, or district. Bankruptcy court staff use the index to determine if an individual has filed a bankruptcy petition in other judicial districts. Other parties, such as attorneys and creditors, use the system to determine if an individual is party to any judicial case.
- The Public Access to Court Electronic Records (PACER) system serves as the portal through which the public can access, via the Internet, individual courts' CM/ECF systems and the U.S. Party/Case Index. For any given bankruptcy case, a user can retrieve the docket sheet and hyperlinks to nearly all of the case's documents, including the petition and supporting forms and schedules. Prior to about 2001, parties interested in obtaining bankruptcy files typically needed to physically visit the court where a debtor filed a petition and request hard copies of documents associated

²⁰The judiciary uses other data systems in addition to those listed here. For example, the NewSTATS system is used by AOUSC's Statistics Division to store and report bankruptcy data from bankruptcy courts.

²¹Many bankruptcy attorneys use private software that generates the documents required for filing a bankruptcy case and automatically uploads required data into a court's CM/ECF system.

²²While a user can conduct a search by entering a filer's Social Security number, the index does not display such numbers.

with the case. In addition to case documents, PACER also allows a user to retrieve case-related data from CM/ECF. Users of PACER are charged 8 cents a page.

At the Trustee Program, the Automated Case Management System functions as the internal case management system used by the agency to carry out its responsibilities, including supervising the administration of cases and private trustees. The system, which is not available to the public, includes information on such things as case status and the names of attorneys and the trustee assigned, as well as a history of case hearings, reports, pleadings, appointments, and fees. Some of the information in the system is obtained from individual courts' CM/ECF systems, while other information is entered by the Trustee Program itself.

Some nongovernmental entities also maintain information on consumer bankruptcies that has been obtained from the courts. For example, Automated Access to Court Electronic Records, a private company, uses PACER to extract information from individual courts' CM/ECF systems and, for a fee, repackages the data to meet the needs of lenders, attorneys, researchers, and other clients.

Information in Case Files Is Not Easily Extracted

The bankruptcy petitions, schedules, and other documents available via PACER are provided in a PDF format that is essentially a snapshot image of the document. Thus, the data cannot easily be electronically extracted and transferred to another format for compilation and analysis. As a result, examining the data contained in multiple bankruptcy cases can be time consuming and costly. It involves—for each individual bankruptcy case—locating and accessing the electronic case file in the relevant court's CM/ECF system; identifying the document that contains the desired pieces of information; and manually extracting the data into a database or spreadsheet format. PACER's fee of 8 cents per page also can inhibit the collection of information from a large number of cases.²³

To facilitate the use of the data held in bankruptcy files, the judiciary and the Trustee Program have been exploring for several years the use of "data-enabled" bankruptcy forms. Data-enabled forms contain embedded data tags that are invisible to the user. The tags allow a computer system to automatically extract the tagged data, as well as categorize it so that the

²³The total charge for a single document or case-specific report is limited to the fee for 30 pages, which is \$2.40.

information can be compared and analyzed. In 2004, AOUSC and the Trustee Program began discussions on using data-enabled forms for bankruptcy filing documents, which would allow the data in those documents to be more easily extracted. In September 2006, the Trustee Program formally requested that the judiciary mandate data-enabled forms through a required technical standard for certain documents filed electronically in the bankruptcy courts. In March 2008, the judiciary declined to mandate data-enabled forms, but said it was examining alternatives that would still facilitate automated case review.²⁴

The Trustee Program and other parties—including some judges, researchers, and private trustees—have said that the use of data-enabled forms would be beneficial for several reasons.²⁵ First, data-enabled forms would greatly reduce the number of hours the Trustee Program and other parties devote to manual data entry. Second, it would allow for more efficient collection of bankruptcy data, compilation of national bankruptcy statistics, and analysis of the bankruptcy system. Third, they say, data-enabled forms would allow the Trustee Program to conduct its work more effectively and efficiently. For example, a study prepared for the National Institute of Justice—the research, development, and evaluation agency of the Department of Justice—concluded that implementing data-enabled forms would be an important step toward improving the Trustee Program’s ability to fight bankruptcy fraud and abuse by facilitating statistical fraud detection.²⁶ Similarly, the Trustee Program has noted that data-enabled forms would allow it to more efficiently administer the

²⁴The judiciary electronically transmits to the Trustee Program certain case-level data from CM/ECF on a daily basis. In March 2008, the judiciary agreed to expand the data elements provided in these daily transfers to help the Trustee Program meet new reporting requirements of the Bankruptcy Reform Act.

²⁵There also has been support for data-enabled forms within Congress. The Senate Appropriations Committee reports accompanying the bills containing the Department of Justice’s 2006, 2007, 2008, and 2009 appropriations stated that the committee “support[s] the use of data-enabled, or ‘smart forms’ for filing bankruptcy petitions and schedules.” Sen. Rep. No. 109-88, at p. 17-18 (2005); Sen. Rep. No. 109-280, at p. 23 (2006); Sen. Rep. No. 110-124, at p. 60 (2007); and Sen. Rep. No. 110-397, at p. 48 (2008).

²⁶Noreen Clancy and Stephen J. Carroll, “Identifying Fraud, Abuse, and Error in Personal Bankruptcy Filings.” Prepared for the National Institute of Justice by RAND Corporation, 2007.

“means test” by allowing it to automatically sort cases by whether debtors are above or below the applicable state median income.²⁷

The judiciary has raised concerns about implementing data-enabled bankruptcy forms. AOUSC officials have said the technology for data-enabled forms must be compatible with the current information system and the electronic and hard copy documents should be identical to comply with rules of court procedures and record-keeping standards. Further, the judiciary, certain attorneys, and software vendors have raised potential privacy and security concerns—for example, that data-enabled forms could make it easier to collect personal information and use it for marketing or undesirable purposes. Finally, the judiciary also has expressed concerns that developing and implementing the forms would impose higher costs on the judiciary, attorneys, and debtors and potentially could limit access to bankruptcy court. For example, pro se debtors may not have access to the data-enabled bankruptcy software needed to file a petition.

In January 2008, the Judicial Conference’s Advisory Committee on Bankruptcy Rules established the Bankruptcy Forms Modernization Project to review and revise the official bankruptcy forms. The project, which is expected to last 5 to 7 years, is evaluating technologies that the judiciary could adopt to facilitate the collection, analysis, and dissemination of information collected via the forms. AOUSC officials told us that while the project’s ultimate recommendations will give priority to the requirements of the judiciary, it also will take into consideration the views and needs of external stakeholders, such as policymakers and researchers.

Broader Access to Existing Nationwide Data Could Be Beneficial

Information about bankruptcy cases can be accessed by the public from individual courts’ CM/ECF data systems. For example, a user can search for cases filed in a specific district within a certain time frame and then generate a data file that contains up-to-date information on cases—such as date and chapter of filing, whether the case involves assets, and the disposition of the case. There is no mechanism to conduct a single nationwide search across all 90 districts’ CM/ECF systems. Instead, to

²⁷The Bankruptcy Reform Act required a “means test” to determine whether a debtor is eligible to file under Chapter 7. Eligibility is determined, in part, by whether the debtor’s current monthly income minus allowable living expenses is less than the applicable state median income. Bankruptcy Reform Act § 102, 119 Stat. at 27-32 (amending 11 U.S.C. § 707).

conduct a nationwide search, a user must replicate the search in each district's system. As a result, conducting large-scale studies of bankruptcy cases nationwide can be difficult since the CM/ECF systems cannot readily be used to generate a national sample of cases.

The U.S. Party/Case Index, by contrast, can be used to search nationwide for individual bankruptcy cases. To conduct a search, a name, Social Security number, tax identification number, or case number must be entered. However, the index does not allow a user to search using the other data elements it maintains, such as chapter of filing or disposition of the case. Further, not all of the data maintained in the index are made publicly available in the search results. When a search is conducted in the U.S. Party/Case Index, the results for a given bankruptcy case include the name of the filer, the case number, and the chapter filed. However, the results do not show other case information held in the system, such as key dates and the disposition of the case.²⁸ In addition, presently the U.S. Party/Case Index provides the results of its searches as a text file rather than a data set. As a result, the output the system provides cannot readily be imported into a database for further sorting and analysis.

A range of bankruptcy stakeholders, including some judges, researchers, and Trustee Program staff, have suggested improving public access to data that already exist in the judiciary's data systems. One possible mechanism for doing so might be expanding the search and output capability of the U.S. Party/Case Index, which could enhance the ability to assess and understand the characteristics and outcomes of consumer bankruptcies. For example, it could facilitate the ability to draw a nationwide sample of cases, which is useful in gathering and analyzing real-time information that is representative of the entire country rather than specific districts. It also could facilitate further analysis of certain case dispositions—for example, one could identify Chapter 13 cases that were dismissed for failure to make payments. Moreover, expanding public access to data held in the system would be consistent with recommendations made by the 1997 National Bankruptcy Review Commission and section 604 of the Bankruptcy Reform Act (discussed later in this report), both of which called for a national policy of releasing the maximum amount of

²⁸Data held in the U.S. Party/Case Index but not publicly accessible include, among other things, a case's date of discharge or dismissal; whether a discharge was granted, denied, revoked, or withheld; whether the case was dismissed for abuse, or failure to make payments; and whether a case was transferred within or to another district.

bankruptcy data in a usable electronic form, albeit subject to appropriate privacy safeguards.

Further examination would be needed before it could be determined whether expansion of the U.S. Party/Case Index would indeed be a practicable and appropriate mechanism for facilitating public access to real-time bankruptcy data. AOUSC staff noted that the index was designed as a basic search mechanism for identifying if certain individuals are parties to cases and was not intended to serve as a tool for providing a range of data on individual cases. The staff told us that expanding the output or search capability of the system would be technically feasible, although it would involve network, database, and other infrastructure costs. Moreover, as noted earlier, any measure to facilitate the availability of bankruptcy data—much of which is personal and sensitive—also would need to address appropriate privacy and security protections.

The Inter-University Consortium for Political and Social Research provides free public access via its Web site to case-level data on consumer bankruptcies provided to it by the judiciary.²⁹ Data sets include numerous variables, such as case number, chapter, assets, liabilities, and case disposition. However, one researcher noted that this resource is of limited use because, among other things, the data are not always up to date and can be inconsistent from year to year. In addition, variables for such things as assets and liabilities are provided as ranges (e.g., \$0 to \$50,000) rather than as specific values, limiting their usefulness. AOUSC officials told us that implementation of the Bankruptcy Reform Act prevented them from providing timely data to the Inter-University Consortium over the past few years, but that they recently provided the consortium with bankruptcy data through fiscal year 2007. They also noted that any inconsistencies in the data are the result of changes in the law and the data extracted. These led to changes in data fields and codes in those fields, and the code translations are provided to the Consortium with the data sets.

²⁹The Inter-University Consortium for Political and Social Research is an academic membership-based organization hosted by the University of Michigan. <http://www.icpsr.umich.edu>

Bankruptcy Reform Act's Data Requirements Provide Some Benefits, but Several Factors Limit the Usefulness of the Data

The Bankruptcy Reform Act required AOUSC to compile and report certain statistics on consumer bankruptcy cases on an annual basis, and it required the Trustee Program to require uniform forms for the final reports submitted by private trustees at the end of each bankruptcy case. These new data requirements will provide some additional information that may be useful in understanding the characteristics and outcomes of consumer bankruptcy cases and how such cases vary across different regions of the country. However, the usefulness of these data is limited for several reasons. For example, the annual statistics are aggregated, which limits what the information conveys, and the scope of what is provided by some of the specific data elements is relatively narrow. Despite these limitations, many bankruptcy stakeholders believe it would be beneficial for the judiciary to publicly release the raw, case-level data underlying the statistics required by the Bankruptcy Reform Act.

The Bankruptcy Reform Act Requires Additional Bankruptcy Statistics and Uniform Final Reports

The Bankruptcy Reform Act included new requirements that were intended to improve the availability of information about consumer bankruptcies. The data provisions of the act stemmed from the long-standing concern among policymakers about the need for more detailed and reliable information about the bankruptcy system.³⁰ In large part, the provisions reflected recommendations and specific data needs identified by the 1997 National Bankruptcy Review Commission.³¹

Required Annual Statistics

The Bankruptcy Reform Act requires each bankruptcy court to collect certain statistics for Chapter 7, Chapter 11, and Chapter 13 bankruptcy

³⁰The scope of this report is largely limited to the provisions added by sections 601 and 602 of the Bankruptcy Reform Act and the sense of Congress expressed in section 604, but the act included other provisions intended to provide additional information about the bankruptcy system. For example, section 105(c) of the act required the Trustee Program to assess and submit to Congress a report on the effectiveness of debtor education. Section 315(c) of the act required the AOUSC to assess and submit to Congress a report on the effectiveness of the procedures implemented to safeguard the confidentiality of debtors' tax information provided under section 521 of the Bankruptcy Code.

³¹National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years, Final Report*, "Chapter 4: Other Recommendations and Issues (Data Compilation and Dissemination)" and "Appendix C-1: Report of the Bankruptcy Statistics Task Force of the Administrative Office of the United States Courts" (Washington, D.C., Oct. 20, 1997).

cases filed by individuals with primarily consumer debts.³² The act also requires the director of AOUSC to prescribe a standardized format for these statistics, compile the statistics collected by the courts, make them publicly available, and submit to Congress a report and analysis of this information no later than July 1, 2008, and annually thereafter. The act required each of these data elements to be reported in the aggregate and by district, as well as itemized by chapter. As shown in table 1, the required statistics provide information about a variety of characteristics and outcomes of consumer bankruptcy cases. On June 23, 2008, AOUSC issued its first annual statistical report to Congress, meeting its statutory deadline. The report comprised a summary of findings, a discussion of the methodology of data collection and the limitations of the data, and 21 tables presenting the required statistics, itemized by chapter and presented in the aggregate and for each district.

Table 1: Summary of Annual Statistics Required by 28 U.S.C. section 159 (as added by section 601 of the Bankruptcy Reform Act) for Chapter 7, Chapter 11, and Chapter 13 Consumer Bankruptcy Cases

For Chapters 7, 11, and 13:
Total assets (by real and personal property)
Total liabilities (by secured claims, unsecured priority claims, and unsecured nonpriority claims)
Current monthly income
Average income
Average expenses
Aggregate amount of debt discharged
Average time between cases filed and closed
Number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded
Number of cases in which sanctions under Bankruptcy Rule 9011 were imposed against the debtor's attorney or any damages awarded under such rule
Number of cases in which a reaffirmation agreement was filed
Total number of reaffirmation agreements filed
Number of cases with reaffirmation agreements filed in which the debtor was not represented by an attorney
Number of cases in which a reaffirmation agreement was approved by the court

³²28 U.S.C. § 159 (as added by Pub. L. No. 109-8, Title VI, § 601(a), 119 Stat. 119 (Apr. 20, 2005)). The Bankruptcy Code defines consumer (nonbusiness) debt as that incurred by an individual primarily for a personal, family, or household purpose (11 U.S.C. § 101(8)). 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 consumer bankruptcies were filed under Chapter 11.

For Chapter 13 cases only, the number of:

Cases in which final order contained determination that the value of the collateral was less than the claim

Final orders entered determining the value of collateral securing a claim

Cases dismissed

Cases dismissed for failure to make payments under the repayment plan

Cases refiled after dismissal

Cases in which plan was completed and number of modifications made to the plan prior to completion

Cases in which the debtor filed another case during the 6-year period preceding the filing

Source: Bankruptcy Reform Act.

The data systems the judiciary had in place when the Bankruptcy Reform Act was enacted did not capture all of the new data required for reporting purposes, and those data systems were not capable of collecting and reporting all such data. The judiciary undertook several major initiatives to meet its new reporting responsibilities under the act. For example,

- the official bankruptcy forms were modified to capture certain new data elements needed to generate the new statistics;
- new procedures were developed for bankruptcy courts to collect the required data;
- the electronic case management system, CM/ECF, was modified to capture new data elements;
- bankruptcy court staff received training on the modifications to the data systems and procedures; and
- a new statistical infrastructure was built to collect, store, and produce the new statistics, and the new statistical tables were designed and developed.

AOUSC officials said they struggled to implement these changes using existing funding and staffing resources, noting that the judiciary received no additional funding from Congress to meet the new statistical requirements. They said that many other projects had to be deferred as personnel and resources were diverted to meet the Bankruptcy Reform Act's data requirements. As of December 2007, the judiciary estimated it

had spent \$2.8 million to implement its statistical and reporting responsibilities under the act.³³

Uniform Final Reports

The Bankruptcy Reform Act required the Attorney General—who delegated this responsibility to the Trustee Program—to issue, within a reasonable amount of time, rules requiring uniform forms for the final reports that private trustees submit for each Chapter 7, Chapter 12, and Chapter 13 case.³⁴ The act indicated that the forms should be designed to facilitate compilation of data and maximum possible public access, both physical and electronic. It also indicated that in developing the forms, the Attorney General shall strike a balance between the need for public information, undue burden on the private trustees who must generate the forms, and privacy concerns.³⁵

Although trustees filed final reports prior to the Bankruptcy Reform Act to document their administration of cases, there were more than 100 different versions of the reporting forms in use across the country, according to the Trustee Program. Under the act, a uniform set of forms must be used, and these forms must include certain prescribed data elements, as shown in table 2. Some of these data elements had already been provided in at least some trustees' final reports, while others are new.

³³GAO, *Bankruptcy Reform: Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, [GAO-08-697](#) (Washington, D.C.: June 27, 2008).

³⁴28 U.S.C. § 589b (as added by Pub. L. No. 109-8, Title VI, § 602, 119 Stat. at 120-22 (Apr. 20, 2005)). Bankruptcy cases filed under Chapter 12, which apply to family farmers and family fishermen, are outside the scope of this report. The Attorney General also is required to issue rules requiring uniform forms for the periodic reports filed for Chapter 11 cases, which also are outside the scope of our report since most involve a corporation or partnership.

³⁵28 U.S.C. § 589b(c) (as added by Pub. L. No. 109-8, Title VI, § 602(a), 119 Stat. 120 (Apr. 20, 2005)). "In issuing rules proposing the forms...the Attorney General shall strike the best achievable practical balance between — (1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; (2) economy, simplicity, and lack of undue burden on persons with a duty to file reports; and (3) appropriate privacy concerns and safeguards."

Table 2: Summary of Data Required by 28 U.S.C. section 589b (as added by section 602 of the Bankruptcy Reform Act) to be Included in Uniform Final Reports for Cases under Chapter 7, Chapter 12, and Chapter 13

For Chapters 7, 12, and 13:

Length of time the case was pending
Assets abandoned
Assets exempted
Receipts and disbursements of the estate
Expenses of administration
Claims asserted
Claims allowed
Distributions to claimants and claims discharged without payment

For Chapter 12 and 13 cases only:

Dates of confirmation, modifications, and defaults in performance of the plan

Source: Bankruptcy Reform Act.

In 2005, the Trustee Program began developing drafts of the uniform final report forms after reviewing samples of the forms that were already being used in various bankruptcy courts. The program sought feedback on the draft forms from professional associations representing Chapter 7 and Chapter 13 private trustees and from vendors of software used by these trustees. On February 4, 2008, the Trustee Program issued a notice of proposed rulemaking and publicly released drafts of the uniform forms for Chapter 7 and Chapter 13 trustees' final reports.³⁶ The Trustee Program received approximately 70 comments from private trustees, attorneys, and others on the proposed rule and draft forms. On October 7, 2008, the program issued a final rule that will become effective on April 1, 2009, at which time the trustees will be required to use the uniform forms for submitting their final reports for each consumer bankruptcy case.³⁷ The final rule incorporated changes that reduce the burden on private trustees. For example, final reports for Chapter 7 no-asset cases will not be

³⁶*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). The Trustee Program drafted uniform forms for a variety of trustees' case administration reports, which we collectively refer to as "final reports."

³⁷*Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of the Bankruptcy Code*, 73 Fed. Reg. 58438, 58444-45 (Oct. 7, 2008) (final rule)(to be codified at 28 C.F.R. § 58.7).

separate documents, but rather can be completed electronically as a virtual entry form in the court's docket.

Electronic Availability of Data

Section 604 of the act does not impose any requirements but rather expresses the "sense of Congress" that:

- the national policy of the United States should be that all public record data maintained by bankruptcy clerks in electronic form should be released in bulk to the public in a usable electronic form,
- the bankruptcy data system should use a single set of data definitions and forms to collect data nationwide, and
- data for each bankruptcy case should be "aggregated in the same electronic record."

The statutory language reflects almost verbatim two recommendations of the 1997 report of the National Bankruptcy Review Commission. That report noted that the wealth of data generated by the bankruptcy system should be available for systematic study by making it available to the public electronically, to the extent practical. Bankruptcy stakeholders have expressed varying interpretations of section 604. The Judicial Conference's Committee on the Administration of the Bankruptcy System noted in a March 2008 report that the judiciary already addresses many of the issues raised in these provisions—such as by providing public access to court electronic records through PACER. At the same time, two academic researchers we spoke with noted that case files available through PACER files are largely PDF image files and expressed the opinion that in accordance with section 604, the judiciary should expedite efforts to make case-level data accessible in an extractable database format that could be used more readily for compilation and analysis.

The New Data Requirements Will Provide Some Additional Information about Consumer Bankruptcies

The new annual statistics and the uniform final reports required under the Bankruptcy Reform Act will provide some additional information that may be useful in understanding the characteristics of consumer bankruptcy cases and differences among such cases across the country.

Annual Statistics

The new annual statistics required by the Bankruptcy Reform Act provide Congress, the judiciary, the Trustee Program, and the public with a variety of new information on certain characteristics and outcomes of consumer

bankruptcy cases. Prior to 2008, the bankruptcy statistics produced by the judiciary consisted primarily of information related to the numbers of filings, as noted earlier. The new statistics provide, for the first time, comprehensive statistics on certain aspects of consumer bankruptcies and on the debtors themselves that may provide a better understanding of the trends in, basis for, and impact of bankruptcy filings.

While these data have significant limitations, some bankruptcy stakeholders identified specific ways these new statistics might be revealing or useful. For example, Trustee Program staff and two judges we spoke with said that the statistics could be useful for identifying differences across districts or regions of the country in the outcomes of cases or the characteristics of bankruptcy filers, such as their assets, liabilities, and income. In addition, an academic researcher noted that the statistics could reveal differences in the legal process or local legal culture in different districts. Similarly, Trustee Program staff noted that certain data on Chapter 13 case outcomes—such as the number of repeat filers, cases dismissed, and cases in which a repayment plan was completed—could provide practical information on how Chapter 13 practices differ across the country.

The new statistics also will provide some useful information on the average debtor's financial circumstances. For example, one researcher noted that the statistics on median debtor income and expenses could provide useful information about the profile of the typical filer. Another researcher told us that the new statistics could be used to calculate debt-to-income ratios and track changes in these ratios over time to examine changes in the typical profile of debtors. Further, comparisons of debtors' current monthly incomes with their average incomes in the previous 6 months could provide a better understanding of how their financial situations changed in the period leading up to the bankruptcy filing.

Some Trustee Program officials, judges, and bankruptcy court clerks said that some of the new data also may be beneficial in conducting their internal operations. For example, Trustee Program officials said these data could potentially help assess the efficiency of its regional offices. In addition, the four bankruptcy judges we spoke with said that the statistics on the outcomes of Chapter 13 cases will provide useful information for their administration of these types of cases.

Uniform Final Reports

The Trustee Program will require trustees filing the uniform final reports for Chapter 13 cases and for Chapter 7 asset cases to use a “smart form” that is data enabled.³⁸ As discussed earlier, data entered into these data-enabled forms are “tagged,” and these tags are then available for extraction and searching capability. This data-enabled format will facilitate compilation and analysis of the information the forms include, and it aligns with the sense of Congress expressed in section 604 that bankruptcy data should be released in a usable electronic form. Staff from a Trustee Program regional office told us that the data-enabled format would make it easier for regional staff to compile the distribution statistics on receipts and disbursements that they already generate for internal program use. The format also might allow easy extraction of information from large numbers of forms for research purposes that could inform policy making. Some bankruptcy researchers we spoke with told us they had not used trustees’ final reports in the past but noted that the new data-enabled format of the trustees’ reports would make the reports a potential research tool.

The use of a single set of standard forms should improve the consistency of the data included in the reports. According to Trustee Program staff, the uniform forms should facilitate any analysis that may be conducted, particularly across districts. The Trustee Program staff said that the new final reports also may aid their oversight of private trustees. For example, comparisons of such things as administrative expenses and distributions to creditors could be used to evaluate the efficiency and effectiveness of trustees.

Because the act requires the uniform final reports to include specific new data elements, the reports will provide additional information about consumer bankruptcy cases—particularly for Chapter 7 no-asset cases, whose final reports previously contained little to no data. In its rule, the Trustee Program noted that the new reports will assist Congress in compiling data to accurately analyze bankruptcy trends when making policy decisions. Trustee Program staff we spoke with cited some specific ways the data potentially could be used to inform policy making. For example, the new final reports will include data on the amount of “assets exempted”—that is, those assets that are shielded from unsecured creditors by fully or partially exempting them from the property of the

³⁸For Chapter 7 cases with no assets, the trustee final report is filed as a text entry in the case docket, rather than as a separate document.

bankruptcy estate. This information could be used with data on “distributions to claimants” to show the effects of various exemption rules on the availability of funds to make payments to creditors. (In some states, bankruptcy filers have the option to use federal or state exemption rules.) The data also could provide information on the relative effects of bankruptcies on creditors through a comparison of the amount of distributions to claimants with the amount of debt discharged.

Several Factors Limit the Usefulness of the New Bankruptcy Data

Our review found that although the data requirements of the act will provide some additional information about consumer bankruptcies, their usefulness is limited for several reasons.

- *Content.* The new data do not, nor were they intended to, provide significant information about some of the characteristics of consumer bankruptcies that are of key interest to policy makers—most notably, the reasons consumers filed for bankruptcy, the nature or source of the debts, and the demographic characteristics of the filers. As noted earlier, this type of information is very difficult to capture through the formal bankruptcy system.
- *Aggregation.* The data reported by the judiciary are provided in the aggregate as statistics—rather than as case-level data—limiting the value of the information, according to some Trustee Program staff, researchers, and judges we spoke with. Aggregated numbers do not allow researchers and policy makers to drill down into the data to gain an understanding of the bankruptcy system. For example, an academic researcher we spoke with noted that “total assets” and “total liabilities” in the aggregate do not provide a useful picture of the average debtor’s financial situation.
- *Narrow scope.* The scope of what is provided by some of the specific data elements is relatively narrow. For example, the act requires the judiciary to report the number of cases in which creditors were “fined for misconduct.”³⁹ However, because courts may reprimand creditors in a variety of ways, this statistic provides only a limited picture of sanctions imposed against creditors in bankruptcy courts.

³⁹28 U.S.C. § 159(c)(3)(G). The Bankruptcy Code does not specifically define creditor misconduct, but in its report AOUSC notes that an example might be a creditor who willfully violated the automatic stay that protects debtors after they file for bankruptcy.

-
- *Lack of specificity.* Alternatively, some statistics are so broad in what is included that the usefulness of the data is unclear. For example, the act requires that the judiciary report “total assets,” but this does not distinguish between net assets and assets with liens attached (such as a home with a mortgage). Further, total assets includes assets that are shielded from unsecured creditors, as defined by federal and state exemption laws. As such, the statistic will not be an accurate indicator of debtors’ net worth or of the amount of equity that can actually be liquidated and distributed to creditors.
 - *Accuracy.* Much of the data in the new annual statistics is based on information that debtors provide when submitting forms, schedules, motions, and other court filings. As noted in AOUSC’s statistical report, self-reported data may be incomplete or inaccurate. For example, as described earlier, debtors do not always correctly designate whether their debts are primarily consumer versus business debt, and thus the new statistics may include some business cases that have been incorrectly designated as consumer cases. Similarly, certain data in the new trustee final reports are derived from information provided by the debtor in the bankruptcy forms.
 - *Definitional issues.* Certain definitional issues may limit the usefulness of some of the specific data elements in the statistical requirements and uniform final reports. For example:
 - The Bankruptcy Reform Act requires reporting on “the aggregate amount of debt discharged,” but the definition provided in the act does not, in fact, represent the amount of debt actually discharged in bankruptcy, according to AOUSC officials and legal experts we spoke with.⁴⁰ In addition, included in this statistic are debts with enforceable liens (such as mortgages on real property).⁴¹ As a result, the statistic does not provide a true picture of the amount of debt eliminated in consumer bankruptcies, which can be a useful macroeconomic indicator.

⁴⁰The Bankruptcy Reform Act defines “aggregate amount of debt discharged” as “the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable.” Because this definition does not actually describe debt discharged, the AOUSC referred to this statistic in its report as “net scheduled debt.”

⁴¹Although a debtor is not personally liable for discharged debts, a valid lien on a secured debt can remain after the bankruptcy case, allowing the secured creditor to recover the property.

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- The act requires that uniform final reports include “assets abandoned”—assets that are not liquidated or distributed because they are of little value or benefit or might be too burdensome. The Trustee Program defines assets abandoned for no-asset Chapter 7 cases as the current value of real and personal property on the debtor’s schedules less the total value of exemptions the debtor claimed. Under this definition, the data could include assets secured by reaffirmed debts, which are not actually abandoned.
 - The act also requires the uniform final reports to include “claims discharged without payment,” which the Trustee Program defines for Chapter 7 no-asset cases as the sum of the claims listed by debtors on their official filing forms. Some private trustees have noted that not all claims listed by the debtors are actually discharged without payment—for example, the value of reaffirmed debts and nondischargeable categories of debt such as domestic support obligations and secured claims. As a result, this data element may not provide meaningful information on the amount of debts discharged without payments to creditors in Chapter 7 no-asset cases.

Trustee Program officials told us they believed their definitions strike the best achievable balance between the reasonable need of the public for information and the burden of reporting placed on trustees.⁴² With regard to the definition of “assets abandoned,” they noted that requiring trustees to determine which debts had been reaffirmed would cause additional burden on trustees and delays in closing cases. With regard to “claims discharged without payment,” they noted that (1) trustees usually file a no-asset report before the expiration of a creditor’s deadline for objecting to the dischargeability of a debt, and (2) the Bankruptcy Code provides that certain debts are not discharged regardless of how they are scheduled by the debtor. As a result, program officials told us, their definition provides information about the amount of claims that have been scheduled to be discharged while allowing trustees to expeditiously close no-asset cases without waiting for the objection deadline to pass and without requiring the trustee to make an independent determination as to which of the debts listed by the debtor are dischargeable.

⁴²As noted earlier, the Bankruptcy Reform Act requires that in proposing the forms for the uniform final reports, the Attorney General shall strike the best achievable practical balance between the need for public information; economy, simplicity, and lack of undue burden on those filing the reports; and appropriate privacy concerns and safeguards (28 U.S.C. § 589b(c)).

Releasing Case-Level Data Used for Bankruptcy Reform Act Statistics Could Be Beneficial

AOUSC currently has no plans to provide public access to the raw, case-level data used to generate the statistics required by the Bankruptcy Reform Act. A variety of stakeholders in the bankruptcy process told us that these case-level data would be useful—despite their limitations—if made publicly available as a data set. For example, two researchers told us that the case-level data would permit additional analyses, such as determinations of statistically significant differences among groups of debtors. The case-level data also would allow the creation of statistics aggregated by categories other than state and judicial district, and also would permit examination of the variability of debtors' income, assets, and liabilities. A representative of a financial services trade association noted that creditors could use the data to refine their risk models by analyzing the characteristics of filers to determine the likelihood that particular debtors will repay their debts. In addition, Trustee Program staff noted that case-level data on the time elapsed between the filing and closing of cases could be useful in comparing how quickly individual trustees administer cases. Further, several bankruptcy judges we spoke with suggested that case-level data could be useful, in particular, in understanding the characteristics of Chapter 13 cases and the degree to which they have successful outcomes.

An AOUSC official noted that the data underlying the new statistics were of uncertain quality and that it would therefore be imprudent to publicly release these raw data until AOUSC has time to better analyze the information. However, other stakeholders have noted that concerns about the quality of the data underlying the statistics should not necessarily prevent AOUSC from releasing it. Further, Trustee Program staff and a researcher told us that access to the case-level data could enable external parties to assess their reliability and limitations—for example, by verifying the data against the case files in PACER and removing erroneous data values. Others have noted that, as a general principle, government agencies should be as transparent as possible in releasing supporting data for public examination and assessment of the quality of the statistics drawn from them.

AOUSC staff noted that there was no statutory requirement for releasing the case-level data used to meet the statistical requirements of the Bankruptcy Reform Act, and noted that doing so could raise privacy concerns. However, providing public access to case-level data would be consistent with section 604 of the act, which recommended as national policy releasing in a usable form the electronic public record data held by bankruptcy clerks. More broadly, the judiciary's 2008 strategic plan for information technology recognizes external parties as major consumers of

court data and includes as one of its objectives easy access to appropriate case-related information.⁴³ The plan notes, however, the need to balance data accessibility with privacy and security concerns, pointing out that certain types of cases, categories of information, and specific documents may require special protection from unlimited public access.

Conclusions

Long-standing questions have existed about the information available on consumer bankruptcies. While statistics are published on the numbers of filings, little information is available on the characteristics of individuals who file for bankruptcy or the nature and outcomes of their cases. Much of the information that is collected during the bankruptcy process is not readily accessible by the public in a format that allows for the extraction, compilation, and analysis of data across multiple cases. These shortcomings limit the ability of scholars and other parties to gather and analyze information that would be useful in assessing the bankruptcy system. Congress is similarly limited in its ability to make bankruptcy policy and formulate legislation based on empirical data rather than anecdotal evidence.

The data provisions of the Bankruptcy Reform Act were a useful step in addressing this issue by increasing the amount of information available and by facilitating, to some extent, its accessibility and uniformity. The plans by the Trustee Program to use data-enabled “smart forms” for its new final reports will enhance the utility of this new information. At the same time, the value of certain annual statistics is likely to be limited, in part because some of the data elements are narrow in scope and may not provide a meaningful or comprehensive picture of the issues they address. As further statistical reports are issued, the ultimate value and limitations of the Bankruptcy Reform Act’s data requirements will likely become clearer, and Congress may find it beneficial to review whether particular data elements required would benefit from modifications that would help ensure they are providing information useful to policy makers in assessing the consumer bankruptcy system.

Progress has been made in recent years in making bankruptcy data more available and accessible to various parties. However, a tension remains in the extent to which the judiciary focuses bankruptcy data efforts solely on

⁴³AOUSC, “IT Long Range Plan for Information Technology in the Federal Judiciary,” Fiscal Year 2008 Update.

internal requirements versus the needs or preferences of researchers and policy makers. It is unclear whether it is the appropriate role of the judicial system to collect certain kinds of additional information from the bankruptcy process, such as the reasons people file for bankruptcy. Nevertheless, policy makers and the public could be better served if the judiciary took steps to further facilitate access to existing data already collected and maintained in its systems. For example, one possible option could be to expand the search and output capability of the U.S. Party/Case Index to enable easier access to, and more productive use of, the full array of data residing in this system. Similarly, despite the limitations of the Bankruptcy Reform Act's statistics, publicly releasing the case-level data used to generate these statistics could be a valuable resource in efforts to further analyze and understand consumer bankruptcies. Implementation of data-enabled forms by the judiciary also could be beneficial by allowing more efficient use and analysis of information collected. Before such steps could be taken, however, certain issues would need to be resolved—such as privacy and security concerns and the appropriate disclosure of data limitations.

Facilitating the public access and usability of data already held in the judiciary's databases would be consistent with the recommendations of the National Bankruptcy Review Commission and section 604 of the Bankruptcy Reform Act, both of which called for a national policy of releasing the maximum amount of bankruptcy data in a usable electronic form. Policy makers need adequate information about the characteristics and outcomes of bankruptcies to make sound and informed policy choices. Better access to bankruptcy data already held in the judiciary's data systems could facilitate scholarly research, the informed allocation of bankruptcy resources, and the formulation of bankruptcy policy.

Recommendation for Executive Action

To help provide additional information on consumer bankruptcies useful to policy makers and others, we recommend that the Director of AOUSC expeditiously identify and implement—subject to appropriate privacy and security safeguards—measures to further improve public accessibility to those bankruptcy data that AOUSC already maintains in its information systems. For example, AOUSC might consider whether it would be practical to expand the search and output capability of the U.S. Party/Case Index. AOUSC also might explore appropriate options for releasing at least some of the case-level data used to generate the Bankruptcy Reform Act statistics.

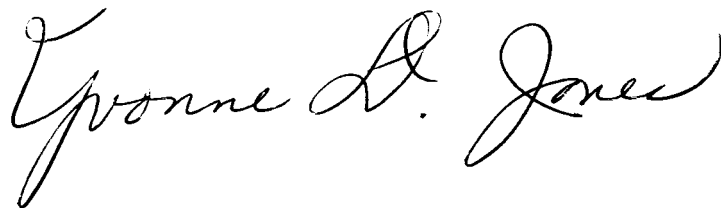
Agency Comments

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. In addition, AOUSC provided a written response, which is reprinted in appendix II.

In its comment letter, AOUSC said it would carefully consider GAO's recommendation to identify and implement measures to further improve public accessibility to bankruptcy data. The agency commented that the judiciary already provides a high level of access to case records and information and that over the past decade it has substantially increased the amount of information it makes available to users of the bankruptcy system. The agency also reiterated the need to balance access and privacy interests in making decisions about widespread public disclosure and dissemination of information in case files. AOUSC said that in January 2009, it will begin assessing potential enhancements to the federal judiciary's electronic public access services and technical interfaces, and will consider making additional existing data available through the U.S. Party Case/Index, as we suggested. The agency also said it will assess issues related to releasing case-level Bankruptcy Reform Act data and will present its recommendation to the appropriate Judicial Conference committees.

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. The report also is 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) 512-6806 or jonesy@gao.gov. Contact points for our Offices of Congressional Relations and Public 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, prominent "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
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) the availability and accessibility of data from the bankruptcy system and (2) the potential benefits and limitations of the new data requirements of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Reform Act) in addressing these issues. This report focuses on consumer, or personal, bankruptcies rather than business bankruptcies.

To address both of the objectives, we gathered documentation from and spoke with representatives of the U.S. Trustee Program's (Trustee Program) Executive Office for U.S. Trustees, including units responsible for information technology and the oversight of private trustees; two Trustee Program regional offices; the Administrative Office of the United States Courts (AOUSC); and selected individual bankruptcy courts, including four bankruptcy judges and six bankruptcy clerks. We also spoke with, and in some cases gathered documentation from, representatives of the National Association of Bankruptcy Trustees and National Association of Chapter 13 Trustees, two professional associations representing Chapter 7 and Chapter 13 trustees, respectively; companies that provide software for case management for private trustees and bankruptcy filings for attorneys; the National Data Center and Automated Access to Court Electronic Records, private organizations that provide bankruptcy data for a fee; the National Association of Consumer Bankruptcy Attorneys; the National Consumer Law Center; the American Bankruptcy Institute; the Financial Services Roundtable; and academic researchers who study the bankruptcy system and use the data that it generates.

In addition, we reviewed the strategic plans for information technology developed by the Trustee Program and AOUSC. We also reviewed correspondence between these two parties on the potential implementation of data-enabled forms, and reviewed public comments they received related to this issue. We also reviewed the meeting minutes and other documentation of relevant committees and subcommittees of the Judicial Conference of the United States related to bankruptcy data and data-enabled forms.

To address the first objective, we reviewed academic literature that has used, studied, or commented on the information on consumer bankruptcies available from the court system and the Trustee Program. In addition, we reviewed our prior reports that have used bankruptcy data and have identified some of the limitations of these data, including reports related to child support enforcement and reaffirmation agreements. Further, we reviewed materials produced by the National Bankruptcy

Review Commission. We also reviewed user guides, protocols, data dictionaries, and other relevant information for the judiciary's major bankruptcy data systems, including the Public Access to Court Electronic Records system, U.S. Party/Case Index, and Case Management/Electronic Case Files system. In addition, we reviewed the Official Bankruptcy Forms and visited a bankruptcy court to observe how information from the forms is inputted into the Case Management/Electronic Case Files system.

To address the second objective, we reviewed relevant provisions of the Bankruptcy Reform Act and some corresponding legislative history. We also reviewed documentation on the judiciary's implementation of the new statistical requirements of the act, which included a tracking report developed by AOUSC to monitor its efforts to implement the act; minutes from the Judicial Conference's Advisory Committee on Bankruptcy Rules; changes to the Official Bankruptcy Forms; documents related to the modifications made to the case management system to collect additional data elements; training materials used to educate court staff on collecting the new data; and documents on the initiation of the NewSTATS statistical infrastructure.

We also reviewed documentation on the Trustee Program's implementation of new requirements related to uniform final reports, including the agency's proposed and final rules related to these reports and draft and final versions of the agency's report formats. In addition, we reviewed public comment letters submitted to the Trustee Program in response to the rulemaking and the draft reports. We also reviewed correspondence between the Trustee Program and the judiciary related to the addition of new data fields to the daily downloads the program receives from AOUSC.

We conducted this performance audit from June 2007 through December 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: Comments from the Administrative Office of the United States Courts



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

November 25, 2008

Ms. Yvonne Jones
Director
Financial Markets & Community Investment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Ms. Jones:

Thank you for the opportunity to comment on the draft report on bankruptcy data. The report includes a recommendation that the Judiciary consider ways to make existing bankruptcy data more readily available to researchers and others.

The Judiciary has long demonstrated its firm commitment to public access to case records, but it is important to recognize, as the report does, that there is a need to balance access and privacy interests in making decisions about widespread public disclosure and dissemination of information in case files. The authority to protect personal privacy and other legitimate interests in non-disclosure is based, like public access rights, in common law and constitutional principles. Certain types of cases, categories of information, and specific documents may require special protection from unlimited public access.

The Judiciary will consider carefully GAO's recommendation to provide even greater access to existing data while also considering privacy, security, and technical concerns. In January 2009, the Administrative Office (AO) will begin an assessment of the federal judiciary's electronic public access services and technical interfaces (such as Public Access to Court Electronic Records (PACER) and the U.S. Party Case Index), with input from various stakeholders, such as researchers, the bar, the media, and government agencies in addition to the courts. The goal of this assessment will be to identify potential enhancements to public-access services, including making additional existing data available through the U.S. Party Case Index, as suggested by GAO. In addition, the AO will assess the issues related to releasing case-level Bankruptcy Abuse Prevention and Consumer Protection Act data, and will present its recommendation to the appropriate Judicial Conference Committees.

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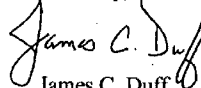
**Appendix II: Comments from the
Administrative Office of the United States
Courts**

Ms. Yvonne Jones
Page 2

The Judiciary already provides a high level of access to case records and information. Over the past decade, the Judiciary has addressed recommendations of the Bankruptcy Statistics Task Force and has substantially increased the amount of data and other information it makes available to other users of the bankruptcy system, including attorneys, trustees, the Executive Office of the U.S. Trustees, researchers and the public. The AO publishes a wide array of statistical reports on the business of the federal courts. The implementation of the Case Management/Electronic Case Files case management system has enabled the judiciary's PACER system to provide easy-to-use Internet-based public access to electronic versions of case dockets and documents filed with the courts. The PACER system has been highly successful and currently has over 900,000 registered users. We have come a long way from the time when the only access to case information required interested parties to go to a courthouse to review case files, and we will continue to explore feasible ways to enhance public access to information.

I would like to express my appreciation for work of the GAO team on this study.

Sincerely,



James C. Duff
Director

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Yvonne D. Jones, (202) 512-6806 or jonesy@gao.gov

Staff Acknowledgments

In addition to the contact named above, Jason Bromberg, Assistant Director; Nicholas Alexander; Krista Breen Anderson; Anne A. Cang; Emily Chalmers; Wilfred Holloway; Angela Pun; and Omyra Ramsingh made key contributions to this report.

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