CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

February 28, 2005

S. 256

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

As reported by the Senate Committee on the Judiciary on February 17, 2005

SUMMARY

CBO estimates that implementing S. 256 would cost $392 million over the 2006-2010 period primarily to pay for increased responsibilities of the United States Trustees (U.S. Trustees). At the same time, the bill would slightly increase the fees charged for filing a bankruptcy case and would change how some of these fees are currently recorded in the budget. We estimate that implementing the bill would increase the amount of bankruptcy fees that are treated as an offset to appropriations by $246 million over the five-year period, resulting in a net increase in discretionary spending of $146 million over this period.

In addition, CBO estimates that enacting this bill would decrease governmental receipts (revenues) by $226 million over the 2006-2010 period, and by $456 million over the 2006-2015 period because bankruptcy fees that are currently recorded as revenues would be reclassified as offsetting collections and offsetting receipts. Finally, enactment of S. 256 would result in filling additional judgeships, and we estimate that their mandatory pay and benefits would cost $26 million over the next five years and $45 million over the 2006-2015 period.

On balance and assuming appropriation of the necessary amounts to implement the bill, CBO estimates that its enactment would increase budget deficits by almost $400 million over the 2006-2010 period.

S. 256 contains two intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates the costs would be insignificant and would not exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation). Overall, CBO expects that enacting this bill would benefit state and local governments by enhancing their ability to collect outstanding obligations in bankruptcy cases. S. 256 would impose private-sector mandates as defined in UMRA on bankruptcy attorneys, creditors, bankruptcy petition preparers, debt-relief agencies, and credit and charge-card companies. CBO estimates that the direct costs of those mandates would exceed the annual threshold established by UMRA ($123 million in 2005, adjusted annually for inflation).

MAJOR PROVISIONS

In addition to establishing means-testing for determining eligibility for chapter 7 bankruptcy relief, S. 256 would:

- Require the Executive Office for the U.S. Trustees to establish a test program to educate debtors on financial management;
- Authorize 28 new temporary judgeships and extend four existing judgeships;
- Permit courts to waive chapter 7 filing fees and other fees for debtors who could not pay such fees in installments;
- Require that at least one of every 250 bankruptcy cases under chapter 13 or chapter 7 be audited by an independent certified public accountant;
- Require the Administrative Office of the United States Courts (AOUSC) to receive and maintain tax returns for certain chapter 7 and chapter 13 debtors;
- Require the AOUSC and the U.S. Trustees to collect and publish certain statistics on bankruptcy cases; and
- Increase chapter 7 and chapter 13 bankruptcy filing fees and change the budgetary treatment of such fees.

Other provisions would make various changes affecting the bankruptcy provisions for municipalities and the treatment of tax liabilities in bankruptcy cases.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

As shown in Table 1, CBO estimates that implementing S. 256 would result in a net increase in discretionary spending of $146 million over the 2006-2010 period, subject to appropriation actions. In addition, we estimate that mandatory spending for the salaries and benefits of bankruptcy judges would increase by less than $100,000 in 2005 and by $26 million over the 2006-2010 period. Enacting the bill's provisions for adjusting filing fees would reduce revenues by $226 million over the next five years. That change in revenues would be more than offset, however, by increased collections to be credited against discretionary spending if future appropriation actions are consistent with the bill. (The estimated net increase in discretionary spending of $146 million reflects an increase in spending totaling $392 million over the 2006-2010 period, offset by collections of $246 million over the same period.) The costs of this legislation fall within budget function 750 (administration of justice).

TABLE 1. ESTIMATED BUDGETARY EFFECTS OF S. 256

	By Fiscal Year, in Millions of Dollars					
	2005	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Means-Testing (Section 102)						
Estimated Authorization Level	0	16	24	39	39	36
Estimated Outlays	0	14	23	39	39	36
Studies by U.S. Trustees, GAO, and SBA (Sections 103, 230, and 443)						
Estimated Authorization Level	0	1	*	0	0	0
Estimated Outlays	0	1	*	0	0	0
Debtor Financial Management Training (Section 105)						
Estimated Authorization Level	0	3	1	0	0	0
Estimated Outlays	0	2	1	*	0	0
Credit Counseling Certification (Section 106)						
Estimated Authorization Level	0	4	7	8	8	7
Estimated Outlays	0	4	6	8	8	7
Maintenance of Tax Returns (Section 315)						
Estimated Authorization Level	0	2	2	2	2	2
Estimated Outlays	0	2	2	2	2	2
Changes in Bankruptcy Filing Fees (Sections 325 and 418)						
Estimated Authorization Level	0	-48	-52	-50	-48	-48
Estimated Outlays	0	-48	-52	-50	-48	-48
U.S. Trustee Site Visits (Section 439)						
Estimated Authorization Level	0	3	3	3	3	3
Estimated Outlays	0	3	3	3	3	3
Compiling and Publishing Data (Sections 601-602)						
Estimated Authorization Level	0	1	7	8	8	8
Estimated Outlays	0	1	7	8	8	8

Continued

TABLE 1. Continued

	By Fiscal Year, in Millions of Dollars					
	2005	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION (Continued)						
Audit Procedures (Section 603)						
Estimated Authorization Level	0	0	16	17	17	16
Estimated Outlays	0	0	16	17	17	16
Additional Judgeships—Support Costs (Section 1223)						
Estimated Authorization Level	*	8	17	17	18	18
Estimated Outlays	*	7	16	17	18	18
FTC Toll-Free Hotline (Section 1301)						
Estimated Authorization Level	0	2	1	1	1	1
Estimated Outlays	0	2	1	1	1	1
Total Discretionary Changes						
Estimated Authorization Level	*	-8	26	45	48	43
Estimated Outlays	*	-12	23	44	48	43
CHANGES IN DIRECT SPENDING						
Additional Judgeships (Section 1223)						
Estimated Budget Authority	*	3	6	6	6	6
Estimated Outlays	*	3	5	6	6	6
CHANGES IN REVENUES						
Changes in Revenue from Filing Fees						
Estimated Revenues	0	-42	-46	-46	-46	-46

NOTES: GAO = Government Accountability Office; SBA = Small Business Administration; FTC = Federal Trade Commission.

* = less than $500,000.

BASIS OF ESTIMATE

For this estimate, CBO assumes that S. 256 will be enacted by July 2005 and that the amounts necessary to implement the bill will be appropriated for each fiscal year. Many of the bill's new provisions would be effective 180 days after enactment. However, a few provisions would be effective 18 months after enactment. CBO assumes those provisions would take effect in fiscal year 2007.

Spending Subject to Appropriation

Most of the estimated increases in discretionary spending under S. 256 would be required to fund the additional workload that would be imposed on the U.S. Trustees. Those increases would be partially offset by changes in bankruptcy filing fees that would be recorded as offsetting collections under the bill. CBO estimates that implementing S. 256 would result in a net increase in discretionary costs of $146 million over the 2006-2010 period.

Means-Testing (Section 102). This section would establish a system of means-testing for determining a debtor's eligibility for relief under chapter 7. Under the proposed means test, if the amount of debtor income remaining after certain expenses and other specified amounts are deducted from the debtor's current monthly income exceeds the threshold specified in section 102, then the debtor would be presumed ineligible for chapter 7 relief. A debtor who could not demonstrate "special circumstances," which would cause the expected disposable income to fall below the threshold, could file under other chapters of the bankruptcy code.

Although the private trustees would be responsible for conducting the initial review of a debtor's income and expenses and filing the majority of motions for dismissal or conversion, CBO expects that the workload of the U.S. Trustees would increase under the means-testing provision. The U. S. Trustees would provide increased oversight of the work performed by the private trustees, file additional motions for dismissal or conversion, and take part in additional litigation that is expected to occur as the courts and debtors debate allowable expenses and other related issues. Although CBO cannot predict the amount of such litigation, we expect that, during the first few years following enactment of the bill, the amount of litigation could be significant as parties test the new law's standards. In subsequent years, litigation could begin to subside as precedents are established. Based on information from the U.S. Trustees, CBO estimates that the U.S. Trustees would require 200 additional attorneys, paralegals, and analysts to address the increased workload. As a result, CBO estimates that implementing this provision would cost $150 million over the 2006-2010 period, assuming appropriation of the necessary funds.

Studies by the U.S. Trustees, Government Accountability Office (GAO), and Small Business Administration (SBA) (Sections 103, 205, 230, and 443). Section 103 would require the U.S. Trustees to conduct a study regarding the use of Internal Revenue Service expense standards for determining a debtor's current monthly expenses and the impact of those standards on debtors and bankruptcy courts. Section 230 would require GAO to conduct a study regarding the feasibility of requiring trustees to provide the Office of Child

Support Enforcement information about outstanding child support obligations of debtors. Section 205 would require GAO to conduct a study on the treatment of consumers by creditors with respect to reaffirmation agreements. Section 443 would require the Administrator of SBA, in consultation with the Attorney General, the U.S. Trustees, and the AOUSC, to conduct a study on small business bankruptcy issues. Based on information from the U.S. Trustees, GAO, and SBA, CBO estimates that completing the necessary studies would cost about $1 million in 2006 and less than $500,000 in 2007, subject to the availability of appropriated funds.

Debtor Financial Management Test Training Program (Section 105). This section would require the U.S. Trustees to establish a test training program to educate debtors on financial management. The test training program would be authorized for six judicial districts over an 18-month period. Based on information from the U.S. Trustees, CBO estimates that about 90,000 debtors would participate if such a program were administered by the U.S. Trustees in fiscal years 2006 and 2007. At a projected cost of about $40 per debtor, CBO estimates that implementing this provision would cost nearly $4 million over the 2006-2007 period.

Credit Counseling Certification (Section 106). This section would require the U.S. Trustees to certify, on an annual basis, that certain credit counseling services could provide adequate services to potential debtors. Based on information from the U.S. Trustees, CBO estimates that the U.S. Trustees would require additional attorneys and analysts to handle the greater workload associated with certification. CBO estimates that implementing this provision would cost $33 million over the 2006-2010 period.

Maintenance of Tax Returns (Section 315). This section would authorize the AOUSC to receive and retain debtors' tax returns for the year prior to the commencement of the bankruptcy for chapter 7 and chapter 13 filings. Such collection and storage of tax returns would commence only at the request of a creditor. Based on information from the AOUSC, CBO expects that creditors will request tax information in about 25 percent of such cases. CBO estimates that implementing section 315 would cost $10 million over the 2006-2010 period to store and provide access to about two million tax returns.

Changes in Bankruptcy Filing Fees (Sections 325 and 418). Section 325 would increase chapter 7 and chapter 13 bankruptcy filing fees and change the distribution of such fees. In addition, the bill would allow the U.S. Trustee System Fund to collect 75 percent of chapter 11 filing fees. Under current law, the filing fee for chapter 7 and chapter 13 is $155 and is divided between the U.S. Trustee System Fund, the AOUSC, the private trustee assigned to the case, and the remainder is recorded as a governmental receipt (i.e., revenue). Under the bill, the filing fee for a chapter 7 case would be $160, and income from this fee would be recorded in two different places in the budget. Of the $160, $65 would be recorded as an offsetting collection to the appropriation for the U.S. Trustee System Fund, and $50 would be recorded as an offsetting receipt and spent without further appropriation by the

AOUSC. The remainder of this fee would be spent by the private trustees assigned to each case. The bill would reduce the filing fee for a chapter 13 case to $150 and change how the fee is recorded in the budget. The U.S. Trustee System Fund would receive $105, and the AOUSC would receive $45 per case to spend without further appropriation. Under S. 256, no portion of chapter 7, chapter 11, or chapter 13 filing fees would be recorded as governmental receipts.

Section 418 would permit a bankruptcy court or district court to waive the chapter 7 filing fee and other fees for a debtor who is unable to pay such fees in installments. Based on information from the AOUSC, CBO expects that, in fiscal year 2006, chapter 7 filing fees would be waived for about 3.5 percent of all chapter 7 filers and that the percentage waived would gradually increase to about 10 percent by fiscal year 2009.

Considering the expected reduction in the use of chapter 7 because of means-testing and the provision that would allow fee waivers, CBO estimates that implementing the new fee structure and changes in fee classifications would result in an increase in offsetting collections totaling $246 million over the 2006-2010 period.

U.S. Trustee Site Visits in Chapter 11 Cases (Section 439). This section would expand the responsibilities of the U.S. Trustees in small business bankruptcy cases to include site visits to inspect the debtor's premises, review records, and verify that the debtor has filed tax returns. Based on information from the U.S. Trustees, CBO estimates that implementing section 439 would require about 20 additional analysts to conduct over 2,300 site visits each year. CBO estimates that implementing this provision would cost about $15 million over the 2006-2010 period for the salaries, benefits, and travel expenses associated with those additional personnel.

Compilation and Publication of Bankruptcy Data and Statistics (Sections 601-602). Beginning 18 months after enactment, the bill would require the AOUSC to collect data on chapter 7, chapter 11, and chapter 13 cases and the U.S. Trustees to make such information available to the public. CBO estimates that it would cost about $32 million over the 2006-2010 period to meet these requirements. Of the total estimated cost, about $25 million would be required for additional legal clerks, analysts, and data base support. The remainder would be incurred by the U.S. Trustees for compiling data and providing Internet access to records pertaining to bankruptcy cases.

Audit Procedures (Section 603). Beginning 18 months after enactment, S. 256 would require that at least one out of every 250 bankruptcy cases under chapter 7 and chapter 13, plus other selected cases under those chapters, be audited by an independent certified public accountant. Based on information from the U.S. Trustees, CBO estimates that less than 1 percent of about 1.6 million cases a year would be subject to potential audits. Each audit would cost roughly $1,000 (in 2005 dollars). CBO also expects that the U.S. Trustees would need about 10 additional analysts and attorneys to support the follow-up work associated with the audits. We estimate that implementing this provision would cost $66 million over the 2006-2010 period.

Additional Judgeships—Support Costs (Section 1223). This provision would extend four temporary bankruptcy judgeships and authorize 28 new temporary bankruptcy judgeships. Based on information from the AOUSC, CBO assumes that about half of the 28 new positions would be filled by the beginning of fiscal year 2006 and the rest would be filled by the start of fiscal year 2007. Also, we anticipate that all four temporary judgeships would be filled by fiscal year 2007. We expect that discretionary expenditures for support costs associated with each judgeship would average about $500,000 annually (in 2005 dollars). CBO estimates that the administrative support of additional bankruptcy judges would cost less than $200,000 in fiscal year 2005 and $76 million over the 2006-2010 period. (Salaries and benefits for the judges are classified as mandatory spending, and those costs are described below.)

Federal Trade Commission Toll-Free Hotline (Section 1301). This section would require the Federal Trade Commission (FTC) to operate a toll-free number for consumers to calculate how long it would take to pay off a credit card debt if they were to make only the minimum monthly payments. Based on information from the FTC about the demand for similar services, CBO expects that the FTC would receive about 20,000 calls each month. CBO estimates that the equipment and personnel necessary to serve this volume of inquires would cost $2 million in 2006 and $6 million over the 2006-2010 period, subject to appropriation of the necessary amounts.

Direct Spending and Revenues

By adding additional judgeships and changing the budgetary classification of bankruptcy filing fees, CBO estimates that enacting S. 256 would increase direct spending by $45 million over the 2006-2015 period and reduce revenues by $456 million over the 2006-2015 period as shown in Table 2.

TABLE 2. ESTIMATED CHANGES IN DIRECT SPENDING AND REVENUES UNDER S. 256

	By Fiscal Year, in Millions of Dollars										
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING											
Additional Judgeships (Section 1223)											
Estimated Budget Authority	*	3	6	6	6	6	6	5	3	3	2
Estimated Outlays	*	3	5	6	6	6	6	5	3	3	2
CHANGES IN REVENUES											
Changes in Revenue from Filing Fees											
Estimated Revenues	0	-42	-46	-46	-46	-46	-46	-46	-46	-46	-46

NOTE: * = less than $500,000.

Additional Judgeships (Section 1223). CBO estimates that enacting the means-testing provision (section 102) would impose some additional workload on the courts. Section 128 would authorize 28 new temporary bankruptcy judgeships and extend four existing temporary judgeships. Based on information from the AOUSC and other bankruptcy experts, CBO expects that the increase in the number of bankruptcy judges would be sufficient to meet the increased workload. Assuming that the salary and benefits of a bankruptcy judge would average about $177,000 a year (in 2005 dollars), CBO estimates that the mandatory costs associated with the salaries and benefits of those additional judgeships would be less than $100,000 in fiscal year 2005, about $26 million over the 2006-2010 period, and about $45 million over the 2006-2015 period.

Changes in Bankruptcy Filing Fees (Sections 102, 325, and 418). Section 325 would change the classification of where bankruptcy filing fees are recorded in the budget. Under current law, filing fees are divided between the U.S. Trustee System Fund, the AOUSC, the private trustee assigned to the case, and the remainder are recorded as governmental receipts (i.e., revenues). The percentage of the fees allocated to those different parts of the budget varies by chapter. Under the fee structure specified in the bill, the portions of chapter 7, chapter 11, and chapter 13 filing fees that are now recorded as governmental receipts would be recorded as offsetting collections or offsetting receipts. Therefore, CBO estimates that enacting S. 256 would reduce governmental receipts by $226 million over the 2006-2010 period and by $456 million over the 2006-2015 period. (The change in offsetting receipts would be matched by additional spending, resulting in no net change in direct spending.)

Tax Provisions (Title VII). Title VII of S. 256 would alter several provisions related to tax claims. It would alter the treatment of certain tax liens, disallow the discharge of taxes resulting from fraudulent tax returns under chapter 11 or chapter 13 of the bankruptcy code, require periodic cash payments of priority tax claims, and specify the rate of interest on tax claims. Title VII also would change the status of assessment periods for tax claims and would alter various administrative requirements. Based on information from the Internal Revenue Service and the Joint Committee on Taxation, CBO estimates that these provisions would increase revenues, but that any increase would be negligible.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 256 contains intergovernmental mandates as defined in UMRA, but CBO estimates that any resulting costs would not be significant and would not exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation). Overall, CBO expects that enacting this bill would benefit state and local governments by enhancing their ability to collect outstanding obligations in bankruptcy cases.

Mandates

Section 227 of the bill would preempt state laws governing contracts between a debt relief agency and a debtor but only to the extent that those state laws are inconsistent with the federal requirements set forth in this bill. Such preemptions are mandates as defined in UMRA. Because the preemption would not require states to take any action, CBO estimates that the costs to comply with this mandate would not be significant.

Section 719 would require state and local income tax procedures to conform to the Internal Revenue Code with regard to dividing tax liabilities and responsibilities between the estate and the debtor, the tax consequences of partnerships and transfers of property, and the taxable period of the debtor. CBO estimates that this provision would increase costs for the administration of state and local tax laws but would not require state and local tax rates to conform to the federal rates. Such administrative costs would not be significant and would likely be offset by increased collections by state and local governments.

Other Impacts

The changes to bankruptcy law in the bill would affect state and local governments primarily as creditors and holders of claims against debtors for taxes or child support payments. In addition, it would change some of the state statutes that govern which of a debtor's assets are protected from creditors in a bankruptcy proceeding.

According to the Federation of Tax Administrators, while total bankruptcy filings have increased in the last decade, the proportion of claims collected by states from taxpayers in bankruptcy has remained relatively constant—about 5 percent of claims owed. CBO cannot predict how much more money might be collected under this legislation; however, we think that it is likely that state and local governments would collect a greater share of future claims than they would under current law.

Domestic Support Obligations. The bill would enhance a state's ability to collect domestic support obligations, including child support. Domestic support obligations owed to state or local governments would be given priority over all other claims except those same obligations owed to individuals. The bill would make those debts nondischargeable (not able to be written-off at the end of bankruptcy). The bill also would require that filers under chapter 11 and 13 cases pay domestic support obligations owed to government agencies or individuals in order to receive a discharge of outstanding debts. In addition, under this bill, the automatic stay that is triggered by filing bankruptcy would not apply to domestic support obligations owed by debtors or withheld from regular income as it currently does. The bill also would require bankruptcy trustees to notify individuals with domestic support claims of their right to use the services of a state child support enforcement agency and to notify the agency that it has done so. The last known address of the debtor would be a part of the notification.

Exemptions. Although bankruptcy is regulated according to federal statute, states are allowed to provide debtors with certain exemptions for property, insurance, and other items that are different from those allowed under the federal bankruptcy code. (Exempt property remains in possession of the debtor and is not available to pay off creditors.) In some states debtors can choose the federal or state exemption; other states require a debtor to use only the state exemptions. The bill would reduce the value of a debtor's homestead exemption under certain circumstances. It also would place a monetary cap on the value of certain property that the debtor may claim as exempt under state or local law. The bill would exempt certain types of retirement and education savings as well as contributions to specified employee benefit plans.

These exemption standards would apply regardless of the state policy on exemptions. The new property-value limitations could make more money available to creditors in some cases, while the exemptions on some retirement, education, and other savings generally would make less money available.

Time Limits on Tax Collection. Under some circumstances, a tax claim can qualify for priority status, making it more likely that a state or local government can collect the debt. However, this status is granted only if a tax is assessed within a specific period of time from the date of the bankruptcy filing. If that filing is subsequently dismissed and a new filing is made, the tax claim may lose its priority status. The bill would make adjustments to this provision, allowing more time to pass in some circumstances, thus increasing the likelihood that state or local tax claims would maintain their priority status.

Taxes and Administrative Expenses. Under current law, certain expenses and the priority of claims reduce the funds that would otherwise be available to pay tax liens on property. The bill would increase the priority of those liens in certain circumstances against certain expenses and claims, thereby making it more likely that funds would remain available to cover tax obligations. The bill would allow state and local governments to claim administrative expenses for costs incurred by closing a health care business. The bill would provide for a more uniform interest rate on all tax claims and administrative expenses, determined in accordance with applicable nonbankruptcy law rather than at the discretion of a bankruptcy judge.

Tax Return Filing. A number of provisions in the bill would require debtors to have filed tax returns before a bankruptcy case may continue. Those provisions would help states identify potential claims in bankruptcy cases where they may be owed delinquent taxes.

Priority of Payments. In some circumstances under current law, debtors have borrowed money or incurred some new obligation that is dischargeable (able to be written-off at the end of bankruptcy) to pay for an obligation that would not be dischargeable. This bill would give the new debt the same priority as the underlying debt. If the underlying debt had a priority higher than that of state or local tax liabilities, state and local governments could lose access to some funds. However, it is possible that the underlying debt could be for a tax claim, in which case, the taxing authority would face no loss. Because it is unclear what types of nondischargeable debts are covered by new debt and the degree to which this new provision would discourage such activity, CBO can estimate neither the direction nor the magnitude of the provision's impact on states and localities.

Municipal Bankruptcy. Title V would clarify regulations governing municipal bankruptcy actions and allow municipalities that have filed for bankruptcy to liquidate certain financial contracts.

Fuel Tax Claims. Under current law, all states owed fuel tax under the International Fuel Tax Agreement must file separate claims against debtors under the bankruptcy code. A provision in title VII would allow a state designated under the agreement to file a single claim on behalf of all states owed the fuel taxes. That provision would simplify the filing process.

Single Asset Cases. Title XII includes a provision that would allow expedited bankruptcy proceedings in certain cases where the debtor's principal asset is some form of real estate. Enacting this provision could benefit state and local governments to the extent that real property is returned to productive tax rolls earlier.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 256 would establish means-testing of individual debtors for determining eligibility for relief under chapter 7 of the bankruptcy code. Under UMRA, duties arising from participation in voluntary federal programs are not mandates. The bankruptcy process is largely voluntary for debtors, and debtor-initiated bankruptcies are equivalent to participation in a voluntary federal program. Consequently, new duties imposed by the bill on individuals who file as debtors do not meet the definition of private-sector mandates, and additional cost for debtors would not be counted as direct costs for purposes of UMRA.

Mandates

S. 256, would impose private-sector mandates on bankruptcy attorneys, creditors, preparers of bankruptcy petitions, debt-relief agencies, and credit and charge-card companies. Under the bill:

- Consumer bankruptcy attorneys would have to make reasonable inquires to confirm that the information in documents they submit to the court or to the bankruptcy trustee is well-grounded in fact;

- Creditors would have to make disclosures in their agreements with debtors and provide certain notices to the courts and debtors;

- Preparers of bankruptcy petitions and debt-relief agencies would also have to provide certain notices to debtors; and

- Credit and charge-card companies would have to disclose specified information in monthly billing statements, introductory rate offers for new accounts, internet-based solicitations, credit extensions secured by a dwelling, and for late payment deadlines and penalties.

In addition, the bill would prohibit credit and charge-card companies from terminating a consumer credit account prior to its expiration date because the consumer has not incurred finance charges. CBO estimates that the direct costs of the mandates in the bill would exceed the annual threshold established by UMRA ($123 million in 2005, adjusted annually for inflation).

Requirements For Attorneys. Section 102 of the bill would make bankruptcy attorneys liable for misleading statements and inaccuracies in schedules and documents submitted to the court or to the trustee. To avoid sanctions and potential civil penalties, attorneys would need to verify the information given to them by their clients regarding the list of creditors, assets and liabilities, and income and expenditures. Completing a reasonable investigation of debtors' financial affairs and, for chapter 7 cases, computing debtor eligibility, would require attorneys to expend additional effort. Information from the American Bar Association indicates that this requirement would increase attorney costs by $150 to $500 per case. Based on the 1.6 million projected filings under chapter 7 (liquidation) and chapter 13 (rehabilitation), CBO estimates that the direct cost of complying with this mandate would be between $240 million and $800 million in fiscal year 2007, the first full year of implementation, and would remain in that range through fiscal year 2010. CBO expects that some of the additional costs incurred by attorneys would most likely be passed on to their clients.

Notice and Disclosure Requirements. The bill would require certain notices to be disclosed as part of the bankruptcy process. Section 203 would require a creditor with an unsecured consumer debt seeking a reaffirmation agreement with a debtor to provide certain disclosures. The agreement reaffirms the debt discharged in bankruptcy between a holder of a claim and the debtor. These disclosures must be made clearly and conspicuously in writing and include certain advisories and explanations. The required disclosures could be incorporated into existing standard reaffirmation agreements. Section 221 would require preparers of bankruptcy petitions who are not attorneys to give debtors written notice explaining that the preparer may not provide legal advice. Section 228 would require a debt-relief agency providing bankruptcy assistance to give certain written notices to those assisted and to execute written contracts. The bill also would require such agencies also to supply certain advisories and explanations regarding the bankruptcy process. Most attorneys and debt-relief counselors currently provide similar information, and CBO estimates that the direct costs of complying with those mandates would be small.

S. 256 also would require credit lenders to provide additional disclosures to consumers. It would require credit and charge-card companies to include certain disclosures in billing statements with respect to various open-end credit plans regarding the disadvantages of making only the minimum payment. Other disclosures would be required to be included in application and solicitation materials involving introductory rate offers, internet-based credit card solicitations, credit extensions secured by a dwelling, and for late payment deadlines and penalties. Based on information from credit lenders, CBO estimates that the incremental costs of complying with the additional disclosure requirements would not be substantial.

Requirement for Closing Credit Accounts. In addition, the bill would prohibit termination of a credit account prior to its expiration date because the consumer has not incurred finance charges. According to industry representatives, credit and charge-card companies do not close accounts based solely on the fact that a consumer has not incurred any finance charges. Thus, CBO expects there would be no direct cost to comply with this prohibition.

Other Impacts on the Private Sector

S. 256 also contains many provisions that would benefit creditors. Most significant for creditors are provisions that are expected to shift some debtors from chapter 7 to chapter 13 bankruptcy proceedings and provisions that would expand the types of debts that would be nondischargeable. By expanding the types of debts that are nondischargeable, some creditors would continue to receive payments on debts that would be discharged under current law. Means-testing in the bankruptcy system would likely result in more individuals being required to seek relief under chapter 13 rather than chapter 7. Because chapter 13 requires debtors to develop a plan to repay creditors over a specified period, the total pool of funds available for distribution for creditors would likely increase. As long as the likelihood of repayment by debtors and the pool of funds increases by an amount greater than the cost to creditors of administering the new bankruptcy code, creditors would be made better off under the bill.

ESTIMATE PREPARED BY:

Federal Spending: Gregory Waring
Federal Revenues: Annabelle Bartsch
Impact on State, Local, and Tribal Governments: Melissa Merrell
Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis