



Oversight Hearing on "Implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005."

Opening Statement of the Honorable Chris Cannon
Chair, Subcommittee on Commercial and Administrative Law,
for the Hearing on the Implementation of the Bankruptcy Abuse Prevention and Consumer
Protection Act of 2005

July 26, 2005

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was signed into law by President George W. Bush on April 20, 2005. The Act represents one of the most comprehensive overhauls of the Bankruptcy Code in more than 25 years, particularly with respect to its consumer bankruptcy reforms. These consumer bankruptcy reforms include, for example, the establishment of a means test mechanism to determine a debtor's ability to repay debts and the requirement that consumer debtors receive credit counseling prior to filing for bankruptcy relief.

As we know, most of the Act's provisions do not become effective until approximately three months from now on October 17, 2005. As we also know, the Act directs the Executive Office for United States Trustees and the Judicial Conference to perform various tasks to facilitate the Act's implementation. These responsibilities include the formulation and issuance of various rules, forms, guidelines, and procedures.

The purpose of today's hearing is to provide an opportunity for our Subcommittee to see how the Executive Office and the Conference are progressing toward fulfilling these critical responsibilities. For example, we are particularly interested in hearing how the Executive Office will ensure that only qualified credit counseling agencies and financial management course providers are approved. Unfortunately, some players in this industry have engaged in abusive practices and other wrongful behavior.

With respect to the Act's means test reforms, which establish a income/expense screening mechanism for the purpose of determining a consumer debtor's ability to repay debts, the Act requires the Executive Office to proactively identify abusive bankruptcy cases and to conduct random audits of cases, as directed by the Act. We would like to know how the United States Trustee Program will implemented these responsibilities.

With respect to small business debtors, the Act requires the United States Trustee to conduct an initial debtor interview before the meeting of creditors for the purpose of investigating the debtor's viability and its business plan, among other matters. In addition, the Act authorizes the United States Trustee to inspect the debtor's business premises for the purpose of reviewing the debtor's books and records and verifying that the debtor has filed its tax returns. The methods by which the initial debtor interviews and inspections are of interest to us.

Like the Executive Office, the Judicial Conference is tasked by the Act to play a critical role in its implementation. Much of bankruptcy practice is guided by official rules and forms that are prescribed by the United States Supreme Court, subject to Congressional disapproval or amendment. The Supreme Court, in this endeavor, is largely guided by the Judicial Conference which typically engages in a very prudential and public process from which draft rules and forms are proposed and finalized. Specifically, with respect to the development of bankruptcy rules and forms, the Conference receives guidance from the Advisory Committee on Bankruptcy Rules.

An integral part of the Act's means test provisions is the requirement that a Chapter 7 debtor to file a statement setting forth his or her current monthly income and the calculations that determine whether a presumption of abuse based on the debtor's ability to repay arises. To implement this requirement, section 1232 of the Act requires the Supreme Court to prescribe an official form for the income/expense disclosure statement and to promulgate general rules on the content of such statement. These rules and forms must be finalized and made available to the public by the Act's effective date, namely, October 17, 2005. Accordingly, we are very interested to learn about the process by which these rules and forms will be promulgated, whether the process will be completed in time to meet this deadline, and whether the public will have an opportunity to participate in this process. In addition, we would

like to know the extent – if any – to which the court system will make the Internal Revenue expense standards and Census Bureau income statistics readily available to the public.

Another area of interest to us is the Act's provision authorizing a court to waive the chapter 7 filing fee for an individual and certain other fees, under certain circumstances. In light of the fact that \$45 of the Chapter 7 trustee's fee is paid out of this filing fee, we would like to know how Conference will treat the payment of trustee compensation in cases where the payment of the filing fee is waived.

Finally, the Act requires certain personal information, such as the names of a debtor's minor children, and tax returns filed with the court to be safeguarded from public disclosure. We would like to know how the court system will ensure that this information does not fall into the wrong hands.