

# **APPENDIX C**

## **DATA COLLECTION**

## **APPENDIX C-1**

### **Report of the Bankruptcy Statistics Task Force of the Administrative Office of the United States Courts**

Mr. Brady C. Williamson, Chair  
National Bankruptcy Review Commission  
Thurgood Marshall Federal Judiciary Building  
Suite 5-130, One Columbus Circle, N.E.  
Washington, DC 20544

Dear Mr. Williamson:

Recommendation 73 of the *Long Range Plan of the Federal Courts* commits the judiciary to assess its information needs and evaluate its data-collection operations and policies, and to include interested parties outside the federal judiciary in this assessment. Although the assessment envisioned under Recommendation 73 includes all types of federal courts, the judiciary decided to begin with bankruptcy court statistics, in part to assist the Bankruptcy Review Commission in its efforts.

To accomplish its goal, the judiciary established a task force consisting of court and Administrative Office officials. The task force prepared a report, a copy of which is enclosed for your information. The general approach described in the report was recently endorsed by the Bankruptcy Committee and the Judicial Resources Committee of the Judicial Conference. A subcommittee of the Bankruptcy Committee has been assigned to implement further work on the project.

The task force was established to collect information and make recommendations regarding bankruptcy court statistics. It met in Washington, D.C. with various users of bankruptcy statistics from within the federal court system as well as with users from outside the judiciary, such as U.S. trustees and case trustees, other government agencies, lending institutions and other commercial enterprises, consumer groups, researchers, the press, and the public. Commissioner John Gose, who was appointed by you to serve as liaison to the judiciary, was present at some of the task force meetings and was kept abreast of its activities. A list of the task force members and the individuals and organizations which they consulted is enclosed.

The specific recommendations of the task force will be implemented by the new subcommittee of the Bankruptcy Committee and by working groups established for that purpose. The basic conclusions of the task force, which are set forth in detail in the report, are as follows:

1. The judiciary is primarily concerned with gathering the court caseload statistics and other data it needs to fulfill its statutory reporting obligations and to meet its management needs.

2. The judiciary is making efforts to improve the availability of bankruptcy court statistics and data. For example, it is working to develop an electronic case file system which, when implemented, will capture most of the information requested by users. Also, a new National Case Party Index will soon become operational which will consolidate party information from all courts (including social security numbers) into one database.
3. The judiciary will be able to make some modifications to its existing statistical systems in order to accommodate requests for additional information. Major advances will occur when the judiciary's electronic case file system is in place.
4. The accuracy of data provided by debtors must be improved. Substantially better financial information about debtors could be obtained if: (a) standard financial forms were prescribed for trustees; and (b) the forms were filed electronically.
5. The judiciary is concerned about the expense of gathering additional statistics. In the absence of additional appropriated funds, the possibility of tapping other funding sources should be considered. Some statistical needs may well be satisfied through the use of surveys, questionnaires, and sampling, rather than by adding new reporting requirements and costs to the national statistical systems. Consideration should be given to identifying alternative sources that might generate and produce required data, including government agencies, commercial entities, contractors, and academia.

The judiciary is currently working with the U.S. trustees and the Executive Office for U.S. Trustees on efforts to increase the availability and accuracy of bankruptcy statistics. We intend to keep the Commission informed concerning our ongoing consultations with the trustee community.

On behalf of the judiciary, thank you for soliciting our views on this important matter. We share the goals of the Commission and the Congress for a more effective bankruptcy system.

Sincerely,

Leonidas Ralph Mecham  
Director

Enclosures

## FEDERAL JUDICIARY BANKRUPTCY STATISTICS PROJECT

### Task Force Members

Honorable Steven A. Felsenthal, United States Bankruptcy Court, Northern District of Texas

Honorable Judith K. Fitzgerald, United States Bankruptcy Court, Western District of Pennsylvania

Honorable Barry S. Schermer, United States Bankruptcy Court, Eastern District of Missouri

James A. Higgins, Circuit Executive, United States Court of Appeals for the Sixth Circuit

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Myra Howze Shiplett, Assistant Director for Human Resources and Statistics,  
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Peter G. McCabe, Assistant Director for Judges Programs, Administrative Office of the  
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### Individuals Invited to Provide Input to the Task Force

Durant Abernethy, President, National Foundation of Consumer Credit

Allen Auestrom, Chairman, National Retail Federation, Inc.

Lawrence M. Ausubel, Department of Economics, University of Maryland

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## REPORT OF THE BANKRUPTCY STATISTICS TASK FORCE

### I. Background

Recommendation 73 of the *Long Range Plan for the Federal Courts*, approved by the Judicial Conference in December 1995, commits the judiciary to assessing its information needs and evaluating its data-collection operations and policies. The recommendation was adopted by the Judicial Conference to ensure that the future information needs of the courts, and where possible, those of people who use the courts, are met.

The assessment envisioned under Recommendation 73 includes the statistical reporting systems of the courts of appeals, district courts, bankruptcy courts, and supporting court offices and programs. The Administrative Office (AO) decided to begin the general assessment with a review of bankruptcy court statistics for several reasons. First, the recent surge in bankruptcy case filings has spurred keen interest in the business world, the credit community, the press, and among government leaders. Second, the National Bankruptcy Review Commission, which was created to assess the overall operations of the bankruptcy system, is scheduled to submit its recommendations to Congress in October 1997. Some of its members and staff have suggested certain enhancements in the AO's statistical systems. Third, several commentators have written that the judiciary should improve and expand its bankruptcy statistical reporting system.

The judiciary has two major projects underway to implement the bankruptcy portion of Recommendation 73:

- (1) an audit of 11 bankruptcy courts to determine the accuracy and completeness of the statistics gathered currently, and
- (2) a review of the present and future statistical information needs of the judiciary and users outside the judiciary.

This report covers the latter project only. It is being submitted to the Bankruptcy Committee and the Judicial Resources Committee for appropriate guidance and action.

In October 1996, the Director of the AO assigned responsibility for overall management of the Recommendation 73 project to the Office of Human Resources and Statistics and the Office of Judges Programs. The assistant directors of those offices, in turn, established a task force to help collect information and make decisions concerning the project. The task force consists of three bankruptcy judges, three bankruptcy clerks of court, a circuit executive, and representatives of the AO.

The task force collected and prepared documents regarding the types of bankruptcy case statistics that are now being collected and the methods by which the information is collected, including descriptions of existing automated case management systems. The task force then identified the principal categories of users of the data, both within and outside the judiciary, and made a preliminary assessment of the users' needs.

The judiciary's own users of statistical information were identified first. They include individual judges and chief judges, circuit councils, court executives, the Judicial Conference and its committees, especially the Bankruptcy Committee, the AO, and the Federal Judicial Center (FJC). Statistical information is used within the judiciary, for example, to project case filings, justify requests for judgeships, allocate staff and resources, and assist in case management. Non-judiciary users include the Congress, U.S. trustees and case trustees, other government agencies, lending institutions and other commercial enterprises, researchers, the press, and the public.

Information was gathered directly from users in a pattern of expanding concentric circles. Beginning with the AO and the Judicial Conference, the scope of the inquiry radiated out toward the needs of the courts and the FJC, and then to groups outside the judiciary, such as other government entities, private associations, the press, and academia.

On December 13, 1996, the task force met in Washington to discuss the data needs of the federal court family. On March 3 and 4, 1997, it met with individuals and entities outside the judiciary, including representatives of the press and academia, the Executive Office for U.S. Trustees, the General Accounting Office, the National Bankruptcy Review Commission, the IRS, the Federal Reserve System, the Federal Deposit Insurance Corporation, the American Bar Association, and various consumer groups and creditor associations. Representatives of the FJC also attended and made a presentation. The level of interest in the project was high and many valuable suggestions were received.

Because of the different interests represented, a wide variety of information was requested. Yet, several common themes emerged from the meetings, particularly the need for statistics that reflect in an accurate, timely, and uniform way: (1) events and activities occurring in bankruptcy cases, and (2) the financial conditions of bankruptcy debtors.

## **II. Basic Principles**

In formulating the recommendations set forth in part V of this report, the task force has been guided by certain principles.

First, the primary statistical obligation of the judiciary is to produce court caseload statistics and other data essential to fulfill its reporting obligations and meet its management needs at the national, regional, and local levels. Whenever possible, the statistics collected by the judiciary should be aggregated and displayed in a manner that would be useful to policy makers.

Statistics and other data not essential for the judiciary's own operations should normally be collected and compiled by others, with coordination and cooperation provided by judiciary staff where appropriate. For example, it might be more efficient and more accurate for the case trustees, in coordination with the U.S. trustees, bankruptcy administrators, and the Executive Office for U.S. Trustees, to verify and/or collect financial information, such as the exact dollar amounts of assets, liabilities and income, the types of debt incurred by the debtor, the amounts of

exempt property, and distributions to creditors. Information of this type is found in the individual case files of the courts, but it is not recorded locally or collected by the AO. The U.S. trustees and bankruptcy administrators, on the other hand, record and maintain some of these data on a regular basis, consistent with their statutory mandate to “supervise the administration of cases and trustees” in bankruptcy cases. *Cf.* 28 U.S.C. § 586(a)(3).

The judiciary’s data collection efforts should be focused on case filing and docketing events in accordance with the requirement of 28 U.S.C. § 604(a), which states that the Director of the Administrative Office shall “examine the state of the dockets of the courts” and “secure information as to the courts’ need of assistance.” The record-keeping efforts of the courts and the U.S. trustees should not be duplicated. Rather, existing systems should be made compatible with one another, so that information can be readily shared.

Second, it must be emphasized that major advances are being made in the development of automated electronic filing, financial, personnel, and administrative systems. Recent and future advances in automation present significant opportunities to extract better information and collect additional information from court records. As part of the omnibus review of statistical information needs, the judiciary will explore what additional information might be extracted reliably from existing electronic docket systems and whether there is certain data collection that could be added or eliminated.

Third, wherever feasible, statistics should be generated as by-products of automated court transactions, including docket entries, electronic filings of documents, and automated financial transactions. It is important that all essential information be entered accurately into an electronic database at the source. Some minimum level of standardization of docket entries and other court data is necessary to facilitate the extraction and counting of necessary statistics.

Fourth, additional emphasis must be placed on the accuracy of data provided by debtors. Much of the information reported to the AO is provided at the opening of a case, when complete accuracy may not be possible. Consideration should be given to obtaining additional information about the debtor after the schedules and statements have been filed, after the § 341 meeting has been held, or at the closing of a case.

Fifth, the resources available to produce additional data will be limited. Data gathering and statistical reporting cost money, and they impose significant burdens on understaffed clerks’ offices and U.S. trustees’ offices. It is unlikely that Congress will provide sufficient appropriated funds to finance additional data collection activities. Alternate financing arrangements should be considered—including reasonable user fees—to defray the costs of gathering statistics and other information.

Some statistical needs may be satisfied through the use of surveys, questionnaires, and sampling, rather than by adding new requirements and costs to the national statistical systems. Consideration should also be given to identifying alternative sources that might generate and produce required data, including government agencies, commercial entities, contractors, and academia.

Sixth, a system of “modular” database systems—maintained separately by the individual branches of government but communicating with each other and employing the same terminology—is preferable to one large system. At the task force meeting on March 3, 1997, one commentator suggested that a single government-wide bankruptcy data system be created to accommodate the needs of the U.S. trustees, the courts, the Administrative Office, the individual case trustees, and the public.

But experience has shown that large, government-wide automated systems, i.e., “grand designs,” are difficult to manage and fund. There are too many competing interests, needs, priorities and technical requirements to be satisfied. In 1986, the U.S. trustee system attempted without success to design and build a single centralized system.

The key to making modules work together is connectivity. If the separate components can be linked together in a meaningful and uniform way, they can communicate clearly and still be managed effectively.

### **III. Additional Statistical Information Requested**

During the course of the meetings, and in the written submissions of participants, a great deal of information was requested that is not currently being reported to the AO. The information can be grouped into two main categories—information available at case opening and information available later in a case or at case closing. A general list of the information requested is set forth below.

#### **A. Information Available at Case Opening**

1. Social Security Numbers of Debtors
2. Pro Se Cases
3. In Forma Pauperis Cases
4. Payments of Filing Fees in Installments
5. Whether a Case is a Business Case or a Consumer Case
6. Refinement of the “Nature of Business” Classifications
7. Adjustment of the Creditor, Asset and Liability Ranges
8. Demographic Information on Debtors

#### **B. Information Available Later in a Case or at Closing**

1. More Accurate Financial Information Regarding the Debtor
2. Greater Breakdown as to the Nature of the Debts
3. Reasons Why the Debtor Filed for Bankruptcy
4. Section 707(b) Motions to Dismiss
5. Reaffirmation Agreements
6. Adversary Proceedings
7. Contested Matters
8. The Operation and “Success” of Chapter 11 Cases
9. Chapter 12 and 13 Cases
10. Disposition of Cases
11. Appeals
12. Professional Fees Requested and Awarded
13. Distributions to Creditors
14. Information to Detect Fraud
15. Information for Administrative Purposes
16. Information on Visiting Judges and Retired Judges

#### **IV. Collecting and Extracting Case-Related Information**

Bankruptcy information is currently found in the following formats and places:

- A. *Information entered into the courts’ electronic docket systems (BANCAP and NIBS) in a uniform manner at the commencement of a case based on paper records filed with the clerks of court.*

The clerks open up a case and a docket sheet by entering into a local computer certain fields of data submitted by the debtor on a cover sheet. The cover sheet is incorporated into the petition itself (Official Form 1) and its use is mandatory. Fed.R.Bankr.P. 9009. The information,

presently filed by the debtor in paper form and entered manually by the clerk's office, includes the names of the debtor(s), the social security number, the appropriate bankruptcy chapter, whether the case is a business case or a consumer case, estimates as to the number of creditors, the dollar amount of the debtor's total assets and liabilities, and other information.

Case-opening statistical reports are submitted by the clerks to the AO. They are generated electronically by a program that extracts some (but not all) of the case-opening information from the court's data base. A complete list of the case-opening data collected by the AO at the present time is attached to this report.

Although most of the case-opening information is reliable, such as social security number, Code chapter and the like, there are inevitable problems with the accuracy of financial information supplied by debtors at case opening.

*B. Information entered into the courts' electronic docket systems during the course of a case.*

The courts' docket sheets are designed to reflect, in chronological order, all significant events occurring during the course of a case. The dockets, for example, should normally reflect such key events as case conversions, motions and applications filed, disclosure statements and plans filed, and court orders and opinions.

Theoretically, it should be possible to design extraction programs that could count and report many of these matters to a central database or several different databases. These databases, for example, could reside in the courts, the AO, the U.S. trustees' offices, and elsewhere.

Unfortunately, except for case opening information, courts do not docket all case events uniformly. There are differences among courts as to whether certain events are docketed and how they are labeled. To compile reliable information on key events occurring in a case it would be necessary: (1) to require that the desired information be entered into each court's docket system, and (2) to require that it be docketed using uniform terminology or codes.

*C. Information presented to the court and maintained by the court in paper form.*

Pleadings and other documents filed with the court in paper form are usually maintained in folders on shelves and in file cabinets. Public access to case papers is guaranteed by the Bankruptcy Code. 11 U.S.C. § 107. A person seeking information contained in a file normally must obtain the file from the clerk's office or request a search of the records by the clerk.

When the courts move to electronic case files and electronic case filing procedures, it should be possible to obtain substantial additional information that is now contained in paper files,

such as schedules, statements, and reports. These new systems will accommodate many of the information needs of the courts and those of other users.

Fortunately, much of the information in the files, such as the statements and schedules, is set forth in standard format. Use of the Official Forms is mandatory, and the forms have been designed by the Advisory Committee on Bankruptcy Rules to foster uniformity and to facilitate eventual automation of the records. Work is well underway to publish instructions to assist users of the forms.

*D. Information maintained or monitored by case trustees and U.S. trustees.*

U.S. trustees and bankruptcy administrators are responsible for the appointment and supervision of case trustees and for estate administration generally. Case trustees are responsible for reviewing the schedules and statements filed by debtors, for conducting § 341 meetings, and for otherwise monitoring the financial activities of debtors. They also file financial reports, including reports of distributions, with the U.S. trustees. The U.S. trustees and bankruptcy administrators are responsible for approving the distributions, monitoring for fraud, and assuring the courts that the estate has been fully administered and the case may be closed.

At the meeting on March 3 and 4, 1997, a representative of the U.S. trustee system and a representative of a national trustee organization both reported that most trustees maintain their records in electronic form and that uniform financial reports could be designed and generated with minimal difficulty.

The financial information that the clerk reports to the AO at the close of a case is extracted manually from the paper reports submitted by the trustees. The court itself normally has little or no role to play in reviewing the amounts reported by the trustees or approving distributions to creditors.

A fruitful exchange of information could occur if the major parties involved--the judiciary and the Executive Office for U.S. Trustees--were to coordinate and standardize their data-collection activities and enter into written agreements regarding their collection responsibilities and how the information would be shared.

*E. Information not presently maintained.*

The courts do not request or need information regarding the personal background of the debtor, such as age, sex, race, marital status and the like. Except where a matter is raised during the course of litigation, most courts do not inquire into the reasons why a debtor has filed for bankruptcy. Indeed, very few consumer cases give rise to disputes or litigation. They are handled, in effect, as part of a very efficient, high-volume administrative process by clerks of court and trustees.

The great majority of cases involve consumer debtors and are processed in the first instance by trustees who maintain extensive computer records.

## **V. Recommendations Regarding the Information Requested**

### **A. Recommendations Concerning Information Available at Case Opening**

#### **1. Social Security Numbers of Debtors**

Information has been requested on social security numbers of debtors to enable the courts and U.S. trustees to identify repeat filers or abusive filers.

Debtors must provide their social security number to the court at case filing, and the number becomes an essential part of the title of the case. Fed.R.Bankr.P. 1005. The Social Security number is entered into the court's docket as a matter of public record, and it is a required part of the caption of pleadings and other documents that parties file with the court. Fed.R.Bankr.P. 9004(b); Official Form 16(A). The number is also set forth on notices sent to creditors, and it enables creditors to identify the debtor. Fed.R.Bankr.P. 2002(n).

#### *Recommendation to Judicial Conference Committees*

The use and dissemination of social security numbers inevitably raises privacy concerns. It is a potentially sensitive and controversial matter, particularly in light of the recent controversies surrounding public access to IRS and Social Security Administration databases.

The debtor's social security number is available locally on the paper records in the court and in the electronic database of each court. It is provided to case trustees and U.S. trustees, and it is available to the public through the PACER system.

The new National Case Party Index, presently under development, consolidates party information from all courts in one national database. It contains social security numbers and should enable the courts and U.S. trustees to identify most repeat filers.

The AO itself has no need for social security numbers, and it should not collect or disseminate them as a matter of policy.

#### **2. Pro Se Cases**

Information has been requested on debtors who file a bankruptcy case without an attorney. This information might also specify those pro se debtors who are assisted by a filing service, rather than an attorney.

In addition, information has been requested on the disposition of pro se cases and on the number of adversary proceedings and motions filed by pro se debtors.

*Recommendation to Judicial Conference Committees*

The AO's statistical database has recently been modified to include a new field to identify debtors who file their case without an attorney. Accordingly, in the future, information on debtors who file pro se could be collected nationally.

**3. In Forma Pauperis Cases**

Information has been requested on debtors who file a petition without paying the required filing fees. Currently the option to file a case in forma pauperis is available by statute only in six districts participating in a pilot IFP project.

*Recommendation to Judicial Conference Committees*

Information on IFP cases is presently being gathered in the six pilot districts to obtain data for assessing the statutory experiment. If the option to file IFP is extended by the Congress to all districts, the AO should collect basic information on IFP cases nationwide.

**4. Payments of Filing Fees in Installments**

Information has been requested on debtors who apply, and are granted permission, to pay the filing fee in installments. 28 U.S.C. § 1930(a); Fed.R.Bank.P. 1006(b). Information has also been requested on whether the debtor actually makes all the installment payments.

*Recommendation to Judicial Conference Committees*

At present the FINSYS court financial system, used by the bankruptcy court in the Eastern District of Virginia, captures up to four installment payments per case. In the near future, the functions of FINSYS will be integrated into FAS<sub>4</sub>T, the judiciary's new central accounting system. FAS<sub>4</sub>T will be capable of flagging and noticing installment payments that are due or overdue, and it will identify the originating district or division. It appears that the new system will provide statistics that are sufficient for the judiciary's purposes.

**5. Whether a Case is a Business Case or a Consumer Case**

It has been suggested by several commentators that the judiciary should devise a more accurate method of determining whether a case is a business case or a non-business case.

*Recommendation to Judicial Conference Committees*

A business/non-business box is contained on the official petition form filed by the debtor at case opening. Unfortunately, the information provided by some debtors is not accurate.

The current definition of whether the debtor is a “business” depends on whether the debts accumulated by the debtor are primarily business or personal in nature. Many small-capitalized debtors derive most of their income from their own business, and their business and personal assets and debts are often intertwined and not easily distinguishable, particularly if they do not maintain sound records.

A better approach to obtaining information on whether the debtor is a business might be to amend the forms to require the debtor to provide information on specific facts, rather than make a subjective conclusion. Such facts might include, for example, whether the debtor filed a Schedule C or Schedule K with the federal income tax return for the preceding year or whether the debtor has been incorporated or has a business license.

Moreover, more accurate information on business categorization might be provided if the information were verified, and perhaps reported, by the case trustees, in coordination with the U.S. Trustees, bankruptcy administrators, and the Executive Office for U.S. Trustees.

**6. Refinement of the “Nature of Business” Classifications**

Several commentators have recommended that a better system be devised for determining the specific nature of the debtor’s business, particularly for analyzing chapter 11 cases. Several suggested use of the Standard Industry Codes (SIC Codes).

*Recommendation to Judicial Conference Committees*

Use of the SIC Codes is probably an appropriate solution, but it might be ineffective to have the debtor select the appropriate business code. One representative of the U.S. trustee system stated that information received from debtors on the nature of the business is generally unreliable. Therefore, the local U.S. trustee’s office uses a financial analyst to review the case and assign a SIC code for internal agency purposes.

Accordingly, it might be preferable for the U.S. trustee to verify this information and provide it to the court at a specified point in a case.

**7. Adjustment of the Asset, Liability and Creditor Ranges**

Several participants recommended that the ranges of categories set forth on the petition and cover sheet—dealing with the estimated number of creditors and dollar amounts of assets and liabilities—be narrowed. No specific substitute ranges were recommended. One commentator recommended that actual numbers be used instead of ranges.

One participant suggested adding the following new categories for the very smallest of consumer cases:

- ▶ fewer than 10 creditors;
- ▶ under \$10,000 in assets; and
- ▶ under \$10,000 in liabilities.

#### *Recommendation to Judicial Conference Committees*

The current ranges, as recently amended to include two new high-end categories, are workable. Moreover, they are an integral element of the present bankruptcy judgeship formula. They could not be changed at this time without causing disruption. It would be advisable to sample cases before determining whether any additional or revised categories should be used.

### **8. Demographic Information on Debtors**

The following information on debtors has been requested:

- ▶ Marital status
- ▶ Family breakups
- ▶ Gender
- ▶ Race and ethnicity
- ▶ Age
- ▶ Education
- ▶ Occupation

#### *Recommendation to Judicial Conference Committees*

The information might be very helpful to certain commercial entities and to academics. But the judiciary should not attempt to collect it as a matter of policy. It might cooperate in the collection of the information by others who may need it. Yet caution must be exercised in this area because of the privacy interests of debtors.

### **B. Recommendations Regarding Information Available Later in a Case or at Case Closing**

#### **1. More Accurate Financial Information Regarding the Debtor**

Several commentators emphasized the need for more detailed, and more accurate, financial information about the debtor. Specific items requested include:

- ▶ Accurate amounts on schedules
- ▶ Nature of the debts--by type of debt
- ▶ Information on the schedules--assets and property
- ▶ Seniority of the debt (legal judgment, bank debt, etc)
- ▶ Amount and types of property claimed as exempt
- ▶ Assets that may be subject to an equitable distribution
- ▶ Income of the debtor

In addition, some judges have cited their need for financial data to help them make decisions about cases, particularly in chapter 11, 12, and 13 cases.

#### *Recommendation to Judicial Conference Committees*

The present statistical system relies heavily on information provided by the debtor at the time a case is filed. The reliability of the information is subject to question. Later in many cases, however, financial information about the debtor becomes more complete and more reliable—at least in “asset” cases. The information tends to improve progressively after the debtor files the required schedules and statements, after the trustee reviews the papers and conducts the § 341 meeting of creditors, after amended schedules and statements are filed, after litigation activity occurs, after the trustee files a report and account, after distributions are made, and after the case is closed. In “no-asset” chapter 7 cases, however, it may never be possible to obtain completely accurate information because there is simply no financial incentive or practical need for trustees in these cases to investigate the debtors’ financial statements and schedules.

Case trustees, U.S. trustees, and bankruptcy administrators are responsible for estate administration. *Cf.* 28 U.S.C. § 586. They are in a better position than the courts to review the records of the debtor and to question the debtor. Accordingly, some review and verification of financial information by the case trustees, in coordination with the U.S. trustees, bankruptcy administrators, and the Executive Office for U.S. Trustees, should be used to improve the information provided to the court.

Also, the impact of past and future improvements in electronic systems cannot be underestimated. The introduction of electronic case files and the electronic filing of documents with the court—including the financial schedules and statements—will greatly enhance the ability to verify, match, and extract financial information on debtors.

In summary, the additional financial information requested is not readily available in the current statistical systems. But new electronic systems—especially the projected new electronic case file system—should make it available.

A key issue is *when* basic information about the debtor should be reported to the AO. Presently, the basic information reported at the time of case opening is used to classify cases and provide information for workload formulas. Some commentators, including Commissioner John Gose of the National Bankruptcy Review Commission, suggested that it would be better to collect the information at case closing. Alternatively, it might be possible, with advances in automation, to obtain the information at some point after the case has been opened, such as following the filing of schedules and statements or after the § 341 meeting.

On the other hand, it has been said that it is difficult to report and account for cases in which significant information is simply unavailable. The later in the case that information is collected, the higher the percentage of cases that will already have dropped out of the system, rendering the data unavailable. Data collected or corrected later in continuing cases may not be directly comparable in reliability or comprehensiveness to opening case data in short-lived cases. These analytic issues should be addressed at the outset of the design of any new system in order to avoid systemic data biases.

It is the view of the task force that a case-opening report, including the financial estimates provided by the debtor, should be retained. Among other things, it supplies important information relied upon by the judiciary to justify and allocate resources.

But additional and more accurate financial data should also be collected at case closing. To this end, the judiciary should work with case trustees, U.S. trustees, and bankruptcy administrators to prescribe standard trustee financial reports to be filed electronically. These reports would form the basis of the financial data on the case-closing reports.

In chapter 11 cases the possibility should be explored of requiring the debtor to compile and file certain information electronically with the court as part of the final decree process. This approach could save substantial clerk time now spent manually searching case files to extract information for the case-closing reports.

## **2. Greater Breakdown as to the Nature of the Debts**

Academics and representatives of the commercial community have requested that additional information be provided as to specific types of debts, such as gambling losses, and damages from fire, theft, or flood.

*Recommendation to Judicial Conference Committees*

The schedules and statements (especially Official Form 7, Question 8) already require a breakdown of each debt in the requested categories. The present statistical system cannot readily provide this information in electronic form. New electronic systems, however, could provide the information.

### **3. Reasons Why the Debtor Filed for Bankruptcy**

Academics and representatives of the commercial community have asked for additional information as to the reasons the debtor filed a bankruptcy case, such as marital breakup or other personal reasons, or financial conditions, such as debts of a particular nature. The following information has been requested:

- ▶ Information to establish a profile of the typical debtor
- ▶ Breakdown on different categories of debt (gambling, etc.)
- ▶ External events that caused the bankruptcy
- ▶ Causes and consequences of bankruptcy
- ▶ Pre-bankruptcy counseling or debt education of debtors

#### *Recommendation to Judicial Conference Committees*

Eliciting this information generally would require a review of the schedules and statements filed by the debtor. It would also require additional information not presently available in court records. That information might be obtained through interviews with, or questionnaires sent to debtors. Participation by the case trustees and U.S. trustees or bankruptcy administrators would be essential to obtaining the additional information. In some districts, U.S. trustees presently supply some of this information to the courts. Samples and surveys might also be considered. Caution must be exercised, however, because of the privacy interests of debtors.

### **4. Section 707(b) Motions to Dismiss**

Information was requested on the number of motions filed by U.S. trustees to dismiss a case for substantial abuse under 11 U.S.C. § 707(b) and the actions flowing from those motions.

#### *Recommendation to Judicial Conference Committees*

The present AO statistical system is based on two reports submitted by the court to the AO—one sent at the time of filing and one at closing. Information about important events occurring during the course of a case, including litigation activity, should generally be reflected on the court's dockets. But this information—with few exceptions—is not currently reported to the AO.

It would be possible to collect information on specific events, such as the filing or disposition of various categories of motions, but only in a newly-designed, expanded docket/statistical reporting system. The effectiveness of that new system, moreover, would require substantial uniformity among the courts in their docketing practices and terminology.

It is not possible to obtain the information requested in the current statistical system. Serious study must be given to designing new electronic docket/statistical systems and electronic case file systems so that they will provide accurate information to assist in case management, statistical reporting, and financial analysis.

## **5. Reaffirmation Agreements**

Information has been requested on the existence and effect of reaffirmation agreements and whether they have been filed with the court.

### *Recommendation to Judicial Conference Committees*

Reaffirmation agreements are required to be filed with the court, 11 U.S.C. § 524(c), and they should be entered on the courts' dockets as a matter of policy. But it is not certain that these legal and policy requirements are being followed uniformly.

It may be difficult to obtain the requested information from the current statistical reporting system. The possibility of doing so, however, should be explored. The new electronic docket/statistical system and the electronic case file project should be designed to produce this information.

## **6. Adversary Proceedings**

Requests have been made for information on the number of adversary proceedings, their nature (especially core vs. non-core), multi-count proceedings, jury demands, jury trials, the use of alternative dispute resolution techniques, the duration of proceedings, and the manner of their disposition. Among other things, the information would be of substantial assistance to the Judicial Conference, the courts, and circuit councils in assessing litigation activity and the need for bankruptcy judgeships. In addition, some judges have suggested that better statistics should be kept on the time spent by judges in the courtroom.

### *Recommendation to Judicial Conference Committees*

Adversary proceedings are akin to civil cases filed in the district courts. They are instituted by the filing of a complaint with the court; they entail payment of the filing fee in the same amount as for a civil action in the district court; and the Federal Rules of Civil Procedure are generally applicable to them. See Fed.R.Bankr.P. 7001.

The AO currently collects basic information regarding the number, nature, duration, and disposition of adversary proceedings. Additional information on tracking specific events occurring within adversary proceedings cannot readily be obtained under the current statistical reporting system.

If appropriate revisions can be made to the current statistical reporting system, information on the handling and disposition of adversary proceedings should be gathered. With new court electronic systems, and with greater uniformity in court docketing practices and terminology, substantial additional information could be obtained.

## **7. Contested Matters**

Requests have been made for information on the nature of contested matters, the number of contested matters filed, and how long it takes to decide them. Among other things, the information would be of substantial assistance to the Judicial Conference, the courts, and circuit councils in assessing litigation activity and the need for bankruptcy judgeships.

### *Recommendation to Judicial Conference Committees*

The distinction between adversary proceedings and contested matters derives from Fed.R.Bankr.P. 7001. Certain contested matters are as important and as complex as adversary proceedings. Rule 9014, moreover, permits the court effectively to convert a contested matter into an adversary proceeding. In particular, claims litigation has been cited by court commentators as inadequately reflected in current court caseload statistics.

The present statistical system does not report contested matters separately, but the possibility of revising the system to capture this information should be explored. The judiciary's new electronic docket systems and the electronic case files project should be designed to provide the requested information.

## **8. The Operation and "Success" of Chapter 11 Cases**

Judges have requested additional information on the handling and disposition of chapter 11 cases to aid them in case management and to provide them with insight into the likelihood of confirmation and consummation of plans.

Commercial interests have expressed a great deal of interest in information on the "success" of chapter 11 cases, i.e., information that will demonstrate how well the chapter is working generally and how it works for different categories of businesses and industries. Key to any analysis of chapter 11 cases would be a more refined breakdown of the types of cases, especially if SIC codes can be used and there is accurate information as to asset and liability amounts.

Regarding the outcomes of chapter 11 cases, the following non-financial items were requested:

- ▶ Post-confirmation reports
- ▶ Number of cases where the business is sold
- ▶ Success rate of business entities in bankruptcy
- ▶ “Small business” cases
- ▶ Related cases and subsidiaries
- ▶ Who files the plans?
- ▶ Confirmation rates of plans
- ▶ Time from filing to confirmation
- ▶ Consummation of plans
- ▶ Information on the largest cases
- ▶ Number of cases with creditor committees
- ▶ Better breakdown on the reason for dismissals
- ▶ Whether the case is prepackaged or prenegotiated
- ▶ Number and dates of extensions of exclusivity
- ▶ Trustee appointments and elections
- ▶ Examiner appointments

#### *Recommendation to Judicial Conference Committees*

The present statistical reporting system cannot readily provide the information requested. But new electronic docket/statistical and electronic case file systems could retrieve the information, at least information on events occurring up to the time that a chapter 11 plan is confirmed.

Even under a new system, however, it would be difficult for a court to track a chapter 11 case after a plan has been confirmed. Relevant information on consummation is not generally provided to the court unless it happens to give rise to specific litigation.

Through sampling, some additional information could be provided, especially in large chapter 11 cases. It might be feasible, for example, for the clerks’ offices to provide computer diskettes to the debtors’ attorneys in certain chapter 11 cases, setting forth, for example, questions like those suggested by Stephen Case, legal advisor to the National Bankruptcy Review Commission. The answers could be entered by the attorneys for proponents of plans, and the diskettes could be submitted to a central source, such as the AO. In this manner, relevant data could be collected on important commercial cases. But the cost of this additional statistical-gathering process would have to be calculated, and the attorneys might be entitled to additional compensation for the time they spend in answering the questions.

#### **9. Chapter 12 and 13 Cases**

Chapter 12 and chapter 13 cases involve a court-approved plan to pay some or all of the debtor's debts over a period of time with the professional assistance of a standing trustee. Interest has been expressed in capturing certain key dates and events in chapter 12 and chapter 13 cases to give a better picture of the success or failure of these cases. Following are the non-financial data elements that would be needed:

- ▶ Date that a plan was confirmed
- ▶ Date of conversion
- ▶ Length of approved plan
- ▶ Date and number of plan modifications
- ▶ Wage attachment orders entered (chapter 13 only)
- ▶ Hardship discharges
- ▶ Debts paid outside the plan
- ▶ Costs of administration
- ▶ Pre-confirmation disbursements
- ▶ Percentages paid to creditors under plan

*Recommendation to Judicial Conference Committees*

The information is not readily available in the courts' present statistical systems, but it could be provided through new electronic docketing and case file systems.

Most of the information requested is currently available in the records of the standing trustees. Most trustees maintain the information in electronic format. Thus, it should be possible to build a system to have the trustees report the requested information electronically in standard format to the courts and the U.S. trustees.

**10. Disposition of Cases**

Court and non-court commentators asked for additional information as to the disposition of cases, especially chapter 11 cases. Several wanted information regarding the implementation of confirmed plans and other activities following confirmation.

*Recommendation to Judicial Conference Committees*

The AO currently collects information on the disposition of all bankruptcy cases, including discharges granted, denied, waived or revoked, petitions dismissed, and cases transferred to other districts.

Some additional information could be obtained if the present case-closing forms were expanded, but this could impose additional burdens on the clerks' offices. It would be

cheaper and more accurate to obtain key data as by-products of the docketing process. The present statistical systems cannot readily obtain the information requested, but new electronic systems could.

Standardization of the individual courts' docketing practices and use of terminology would be required if the judiciary decided to collect further information. That kind of information could be captured in new electronic systems.

## **11. Appeals**

Commentators asked for information about bankruptcy appeals, including whether the appeals are in fact prosecuted by the appellants. It was also requested that the AO track each appeal from a bankruptcy court to the district court, to a bankruptcy appellate panel, to the court of appeals, and even to the Supreme Court.

Several court commentators pointed to the need to keep track of the frequency of bankruptcy appeals to the district courts and how long it takes the district courts to dispose of them.

Information was also requested on withdrawals of references requested by parties and granted by the district courts.

### *Recommendation to Judicial Conference Committees*

The BANCAP and NIBS systems should be modified to capture a case code that will carry over to the district and appellate court electronic docketing systems. Further refinement of the recommendation will occur during the study of the district and appellate court case statistics.

New electronic docket and electronic case file systems should include the capability of tracking each individual case on appeal. In the interim, a reporting method should be devised to capture information on bankruptcy appeals to the district courts, possibly using a report on cases and motions under advisement.

## **12. Professional Fees**

Information has been requested as to the number, type, and amount of fee applications submitted to the court for approval, as well as the court's actions in approving or rejecting the applications. Specific requests for fee data include the dollar amounts of fees requested and awarded, sorted by type of professional, chapter, and size of case.

### *Recommendation to Judicial Conference Committees*

At present the BANCAP and NIBS systems capture the aggregated amount of professional fees awarded to trustees, professionals retained by trustees, and examiners. *See also Fed.R.Bankr.P. 2013.*

The United States trustees are called upon by statute to review, comment on, and adopt guidelines for professional fees. *See* 11 U.S.C. § 586(a)(3). If more detailed information on fees is needed by entities outside the judiciary, it might be possible to collect it elsewhere, such as through the U.S. trustees. With the advent of an electronic case file system in the judiciary, it should become possible to track both requests and awards of all professional fees.

### **13. Distributions to Creditors**

The AO currently collects summary financial data on distributions made to secured, priority, equity, and unsecured creditors in chapter 7 and chapter 13 cases. The great majority of these cases are “no-asset” consumer cases.

Commentators also requested the following additional information:

- ▶ Distributions to trade creditors in operating chapter 7 and chapter 11 cases
- ▶ Separate statistics for individual creditors versus classes of creditors
- ▶ Payments made to unsecured creditors compared to the amount of claims allowed
- ▶ Payments to creditors in chapter 11 cases
- ▶ Class of claims being paid (priority, secured, unsecured, etc.)
- ▶ Payments by type of claimant (government, environmental, etc.)
- ▶ Success of payout plans in chapter 13 cases
- ▶ Information on chapter 13 debtors that would help determine who is more likely to repay and should be extended new credit

#### *Recommendation to Judicial Conference Committees*

The case trustee, supervised by the U.S. trustee or bankruptcy administrator, is responsible for determining distributions made to creditors. Unless there is particular litigation activity, the court is not generally involved in distributions to creditors.

The courts presently extract case-closing financial information from the reports and accounts submitted by the trustees and attorneys for debtors-in-possession. But many distributions are not in cash and may involve securities or other property of uncertain

valuation. It may never be possible to place an accurate value on these non-cash distributions.

A uniform reporting system for the trustees should be devised, capturing the information needed in standard format for electronic transmission.

#### **14. Information to Detect Fraud**

Commentators pointed out that the collection and reporting of certain types of financial information might help the U.S. trustees and bankruptcy administrators identify instances of potential fraud by debtors, professionals, and trustees.

##### *Recommendation to Judicial Conference Committees*

The type of information needed for detection of fraud needs to be defined further. That would appear to be the task of the U.S. trustees and bankruptcy administrators, who are statutorily responsible for supervision of debtors, trustees, and estates.

The judiciary should participate and cooperate in efforts to explore this issue.

#### **15. Information for Administrative Purposes**

Requests have been made for information to assist the courts in operational matters, such as courtroom utilization, court reporting, and the use of interpreters.

##### *Recommendation to Judicial Conference Committees*

Some of the information is available now in paper form, but more complete information would depend on the development of new electronic reporting systems.

#### **16. Information on Visiting Judges and Retired Judges**

Court commentators cited the need for more detailed information on the judicial activity conducted by judges in districts other than their own and by retired bankruptcy judges. The information would be very helpful in justifying judgeships and allocating resources.

##### *Recommendation to Judicial Conference Committees*

Efforts should begin immediately to capture information on the services performed by visiting judges and retired judges.

## **VI. Next Steps**

To implement the above recommendations, concerted effort will be needed on a variety of fronts. Discrete projects need to be assigned and working groups appointed to address specific issues and work on details.

The working groups should assist the Administrative Office in designating the specific data elements needed to produce the information that the judiciary and others require. These elements should be prioritized and built into the requirements for the judiciary's new electronic docketing systems and the electronic case files project.

Liaisons should be established with trustee organizations and others to work on identifying specific data elements, designing forms and reports, and suggesting electronic reporting procedures. It is essential to maintain the spirit of cooperation developed between the judiciary and the U.S. trustees as a result of this project. The Executive Office for U.S. Trustees participated actively in the meeting on March 3 and 4, 1997, and in the statistical audit of two bankruptcy courts in California. Similarly, representatives of the judiciary played an active role at a meeting on bankruptcy statistics sponsored by the Executive Office for U.S. Trustees on April 25, 1997. A good working relationship has been initiated between the two groups which must be maintained in order to achieve many of the results recommended in this report. In particular, coordination will be needed in the development of future electronic record-keeping systems. The bankruptcy administrators must also be an integral part of these developments.

It would be appropriate for the Bankruptcy Committee of the Judicial Conference, as the primary program committee for the bankruptcy system, to establish a subcommittee to work with the AO and the courts on this bankruptcy data project and provide direction and policy guidance. It is anticipated that some recommendations could be presented to the Bankruptcy Committee and the Judicial Resources Committee for appropriate action at their Winter 1997 meetings.

**Data submitted on the bankruptcy statistical report (B-100) includes:**

**At the time of filing:**

1. District/Docket Number (includes separate identification for reopened or split cases and whether or not it is a joint petition)
2. Docket Date
3. Names of the first listed petitioner or company
4. County code and judge assigned to the case
5. Name of Trustee
6. Type of case (voluntary or involuntary)
7. Chapter under which petition is filed
8. Financial data:
  - a. Estimated number of creditors
  - b. Estimated assets
  - c. Estimated liabilities
9. Nature of debt (business or nonbusiness)
10. Organizational structure (if business)
11. Type of business (farming, professional, etc.)
12. Estimated number of employees
13. Estimated number of equity security holders (Chapters 11 & 12 only)

**At the time of final disposition:**

1. Disposition action
  - a. Discharge granted
  - b. Discharge denied
  - c. Discharge waived/revoked
  - d. Discharge not applicable
  - e. Petition dismissed
  - f. Transferred to another district
2. Chapter under which case is terminated
3. Chapter 11 confirmation information
4. Chapter 11 percent dividend to be paid
5. Future payments contemplated for Chapter 11
6. Date case closed
7. Financial data
  - a. Fees and expenses (trustee compensation, trustee attorney fees and other professional fees and expenses)
  - b. Distributions (to creditors, equity security holders and others)