DISCUSSION

SYSTEM ADMINISTRATION

1.1.1 *National Filing System*

A national filing system should be established and maintained that would identify bankruptcy filings using social security numbers or other unique identifying numbers.

Many parties have expressed interest in a coordinated system to capture nationwide information on bankruptcy filings, providing quick, inexpensive, and readily available computer access to creditors, trustees and other users of the system. Presently, two different data systems collect basic information from bankruptcy petitions and court dockets on a district-by-district basis.[169] The courts are moving toward a more comprehensive system, with the apparent goal of providing creditors and other interested parties with easier access to case information. An electronic bulletin board system, Public Access to Court Electronic Records ("PACER"), permits electronic access to some information in many judicial districts for a fee. PACER's initial capabilities enabled only case-by-case and district-by-district searches. Thus, the Administrative Office of the U.S. Courts has developed a more consolidated index of party and case information in the U.S. Party/Case Index Project.[170] Once fully operational, one will be able to dial into the system and search by name or social security number in the bankruptcy index, by name or nature of suit in the civil index, by defendant name in the criminal index and by party name in the appellate index. The index will provide the case number and court in which the case has been filed as well as other information available from the court's PACER system. Reviewing and downloading court dockets from the index eventually may be possible.

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[169] The bankruptcy courts currently use two systems, Bankruptcy Court Automation Project (BANCAP) and National Integrated Bankruptcy System (NIBS). The latter initially was an interim measure awaiting the installation of BANCAP. *See generally* J. Owen Forrester, The History of the Federal Judiciary's Automation System, 44 AM.U.L. REV. 1483, 1486 (1995).

[170] *See* Hon. Lee Jackwig, "You Asked For It - The U.S. Party/Case Index and More," 16 AM. BANKR. INST. J. 42 (May 1997); Hon. Lee Jackwig, "Beyond the Quill: Better and Faster Data: The Debut of the U.S. Party/Case Index," 16 AM. BANKR. INST. J. 28 (Sept. 1997).

While it is critical that parties to a bankruptcy case easily can find information about that case, it also is important to enable the court to obtain filing information from across the nation.[171] Currently, when an individual or a lawyer presents a bankruptcy petition for filing, the clerk is required to accept the petition without determining whether that individual recently has filed a petition in that district or elsewhere. Chapter 13 debtors currently face only nominal and discretionary restrictions on successive filings of Chapter 13 petitions.[172] The Commission has made recommendations regarding subsequent filings that partly depend on the ability of the clerks' offices to track an individual's filing records before the clerk accepts the filing and sends notice to creditors. If the Bankruptcy Code provided slightly different treatment for certain subsequent Chapter 13 filings, as the Commission recommends, monitoring filings will be necessary.

The collateral benefits of a national filing system are significant. Creditors and other interested parties would obtain increased monitoring capabilities to keep track of court dockets. Additional and integrated information about the operation of the bankruptcy system would provide a better basis for informed policy-making and would enhance other efforts to collect and analyze more reliable data. For example, little is known about repeat bankruptcy filings, except to the extent diligent efforts have yielded samples of such information.[173] A nationwide collection of bankruptcy filings, which contains information that already is a matter of public record, would bring this information to light.

This Proposal would be enhanced by some corollary changes in collection and reporting. Initial filing protocols should be standardized so that all districts collect the same information in the same format. Verifying information becomes more important to minimize information errors. For example, *pro se* debtors should be required to present identification when filing, and attorneys should present photocopied evidence of their clients' identification when filing petitions on their behalf.[174] All debtors should provide correct social security numbers pursuant to section 342 of the

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[171] *See* Hon. C. Michael Stilson, Bankruptcy Judge, N.D. Ala. Comments on the National Bankruptcy Review Commission Consumer Bankruptcy Working Group's May 6, 1997 Draft 3 (June 6, 1997) ("national database to monitor filings of all bankruptcy cases by social security number or tax identification number would be beneficial to all parties," regardless of whether Congress enacted a restriction on refiling).

[172] 11 U.S.C. § 109(g) (discretionary 180 day bar) (1994).

[173] Information on repeat filings and efforts to document them is discussed later in this chapter.

[174] This may require amendment of rule 5005(a), which states that the clerk shall not refuse to accept for filing any petition presented for the purpose of filing solely because it is not presented in proper form. *See* FED. R. BANKR. P. 5005(a)(1) (1994).

Bankruptcy Code, verifiable through the social security administration database.[175] In the event that social security numbers could not be used for this purpose, examples of unique identifiers include driver's licenses and passports.

To achieve successful implementation of these Recommendations, those most familiar with this part of the system–judges, clerks, and trustees–should assist in the establishment of the details, including development of a mechanism to monitor the database. Likewise, they could develop a method of dealing with improper entries and opportunities for correction of erroneously entered information.

1.1.2 *Heightened Requirements for Accurate Information*

The Bankruptcy Code should direct trustees to perform random audits of debtors' schedules to verify the accuracy of the information listed. Cases would be selected for audit according to guidelines developed by the Executive Office for United States Trustees.

The "fresh start" policy of the consumer bankruptcy system is premised on the notion that a debtor comply fully and honestly with the requirements of the Bankruptcy Code.[176] One essential obligation is the full disclosure that extends far beyond what debtors ordinarily would have to reveal in either a credit application or an ordinary lawsuit. For debtors to be eligible for bankruptcy relief, they must share details on assets, income, liabilities, expenses, previous bankruptcies, lawsuits, business attempts, and co-debtors.[177] Debtors sign bankruptcy petitions under penalty of perjury, an admonition printed on the schedule above the signature line.

Intentional failure to comply with the disclosure requirements carries large penalties. The court may deny or revoke the debtor's discharge.[178] False statements on bankruptcy schedules might lead to the imposition of sanctions on the debtor

[175] This may require a change to the laws governing the Social Security Administration. Some parties have raised concerns about the use of false social security numbers and other identifiers to circumvent and undermine a closely-monitored nationwide database. Such activities are criminal and need to be treated accordingly, while the bankruptcy system makes its best efforts to enhance the accuracy of its information. *See* United States v. Ellis, 50 F.3d 419, 422 (7th Cir.) (convicting debtor for use of false social security number with intent to deceive by obscuring credit history), *cert. denied*, 116 S.Ct. 143 (1995).

[176] Grogan v. Garner, 498 U.S. 279, 286 (1991).

[177] This was the case even under the earliest federal bankruptcy laws. *See In re* Perley, 19 F. Cas. 255 (D. Me. 1846) (fraudulent concealment of property defeats discharge).

[178] 11 U.S.C. § 727 (1994).

and/or the debtor's attorney.[179] Fraudulent concealment of assets may also be grounds for criminal conviction.[180]

Notwithstanding the severe sanctions for incomplete or inaccurate disclosures, some believe that many debtors' schedules paint an unreliable picture of the debtor's financial situation. Realistically speaking, malfeasance is unlikely to be the cause of much of the alleged inaccuracy.[181] Rather, in a system designed to deal with financial failure, it would not be surprising if many debtors had difficulty complying fully with detailed financial disclosures. Debtor representatives and judges have reported that the financial affairs of individual debtors often are in complete disarray. Bills and pay stubs, if available at all, often are brought to lawyers' offices in a shoe box or a paper bag. A debtor without legal representation may have no assistance in putting together the pieces of his financial life to make the requisite disclosures.

The fact that it may be hard for some individuals to make precise financial disclosures does not mean that the system should tolerate unreliable information. The bankruptcy system relies on the accuracy of this reported information. In each case, creditors' decisions, trustees' actions, and court determinations are based in part on representations of income, debts and assets in the schedules. Not only are creditors entitled to accurate disclosures,[182] but the debtors themselves are better served in their financial rehabilitation efforts if they can develop clear and complete pictures of their financial condition.

In addition, because aggregated data from debtors' files comprise the information about the operation of the bankruptcy system, inaccuracies make it impossible to know whether the system is functioning as intended. Higher quality

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[179] *See, e.g., In re* Dubrowsky, 206 B.R. 30 (Bankr. E.D.N.Y. 1997) (debtor sanctioned $5,000 for omissions on petition, schedules, and statement of financial affairs, and attorney sanctioned as well).

[180] 18 U.S.C. § 152(1) (1994) (concealment of assets, false oaths punishable by fine of not more than 5 years in jail and $5,000) §157 (similar punishment for scheme to defraud accomplished by filing petition, document, or making fraudulent representation). *See* United States v. Shadduck, 112 F.3d 523 (1st Cir. 1997) (upholding conviction of debtors who concealed bank account). In addition, if a court or trustee is aware of bad acts, reference must be made to the United States Attorney. *See* 18 U.S.C. § 3057 (1993).

[181] *See* Letter from Hon. Joe Lee, Bankruptcy Judge - E.D. Ky, to National Bankruptcy Review Commission regarding random audits (May 8, 1997) (based on 35 years experience as bankruptcy judge, concluding that allegations of fraud in system are largely apocryphal).

[182] *See* Meridian Bank v. Alten, 958 F.2d 1226, 1230 (3d Cir. 1992) (Creditors should not be forced to undertake independent investigation of debtor's affairs; rather, they have right to be "supplied with dependable information on which they can rely in tracing a debtor's financial history").

data will ultimately lead to informed policy determinations about improving the system.

The United States trustees are vested with discretionary general administrative oversight of cases filed under all chapters of the Bankruptcy Code.[183] They delegate in part to Chapter 7 and Chapter 13 trustees, who attempt to review debtors' schedules and search for assets that may be missing. While trustees make good efforts to review and ensure the accuracy of the information, the sheer volume of Chapter 7 and 13 filings and limited resources preclude full review of a sufficient number of schedules without additional directives and/or funding.[184] Moreover, without standardized forms and better access to information already in the system, it is difficult to develop system-wide techniques for evaluating information and detecting fraud.

To increase confidence in the accuracy of the scheduled information and to complement other efforts to enhance the integrity of the system, the Commission recommends the introduction of random case audits by Chapter 7 and Chapter 13 trustees. The U.S. trustee would direct the case trustees to audit a sample of the cases assigned to them. Information could be verified by the submission of recent pay stubs, tax returns if available, and other similar documentation. Trustees would report material irregularities to the bankruptcy courts. The Executive Office for United States Trustees ("EOUST") could develop auditing guidelines and initiate pilot programs.[185] The EOUST also could evaluate the success of various auditing approaches and determine the amount and kind of auditing that is most likely to enhance the quality of available information. The guidelines should ensure that audits are commenced and completed in a reasonably timely fashion. Whether irregularities warrant revocation of discharge or criminal prosecution would be subject to the discretion of the parties and Department of Justice, as under current law.[186]

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[183] *See* 28 U.S.C. § 586 (1994).

[184] *See generally* Hon. Stephen A. Stripp, "An Analysis of the Role of the Bankruptcy Judge and the Use of Judicial Time" 23 SETON HALL L. REV. 1330 (1993) (discussing whether administrative oversight functions are being performed regularly or consistently).

[185] Letter from Francis M. Allegra, Deputy Associate Attorney General, U.S. Department of Justice, to Brady C. Williamson 5 (June 18, 1997) (supporting an audit system, surmising that pilot programs might be advisable to develop cost estimates).

[186] *See* Hon. C. Michael Stilson, Bankruptcy Judge, N.D. - Ala., Comments on the National Bankruptcy Review Commission Consumer Bankruptcy Working Group's May 6, 1997 Draft 2 (June 6, 1997) (noting that threshold standards for criminal statutes should not be altered substantively by audit Proposal).

This Recommendation is intended to reinforce, not relinquish, the responsibility of debtors and their attorneys to be careful and forthright in making disclosures. By instituting effective auditing procedures, the system will send a clear signal that the information provided by debtors is important and that carelessly completed forms yield negative consequences.[187] Although debtors and their attorneys should make every effort initially to complete their schedules correctly, sometimes the schedules must be amended upon discovery of inadvertently omitted information that must be included for the sake of completeness and accuracy. Attorneys who make repeated changes to schedules may become more careful in advising clients. For example, if attorneys have their clients review lists of possible items that debtors routinely forget, attorneys could help ensure that their clients make full disclosure and improve the quality of the information in the system overall.[188]

To supplement this Recommendation, the Commission suggests that the Advisory Committee on Bankruptcy Rules of the Judicial Conference revisit the current informational requirements in debtors' petitions. Creditors have recommended that account numbers and social security numbers accompany all bankruptcy filings, notices, schedules and other communications to creditors.[189] This requirement would enable creditors to identify their borrowers in bankruptcy quickly, accurately and cheaply. Along the same lines, the credit industry has commented that its constituency would be aided significantly if creditors could designate a single address where the clerk of court could send relevant notices. This Recommendation correlates with the Commission's overall intent to make recommendations that enhance the efficient operation and reduce the costs of the bankruptcy system.

1.1.3 *False Claims*

Courts should be authorized to order creditors who file and fail to correct materially false claims in bankruptcy to pay costs and the debtors' attorneys' fees involved in correcting the claim. If a creditor knowingly filed a false claim, the court could impose appropriate additional sanctions.

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[187] *See* Letter from Wendell J. Sherk, Eric Taylor & Assoc., (July 31, 1997) (lawyer who primarily represents debtors stating that "the random audit of debtor assets is a serious deterrent to fraud . . . But the audit lets the system determine whether there is as much abuse as the prevailing perception.").

[188] Jean Braucher, *Counseling Consumer Debtors To Make their Own Informed Choices-A Question of Professional Responsibility*, 5 AM. BANKR. INST. L. REV. 165 (1997).

[189] *See* Testimony of National Consumer Bankruptcy Coalition to the Subcommittee on Administrative Oversight and the Courts, Committee on the Judiciary, U.S. Senate (Apr. 11, 1997).

Along with improving the accuracy and consistency of debtor-provided information, creditors should take increased responsibility for the accuracy of information they add to the system. Most lenders monitor and record payment and debt information, and debtors typically rely on creditors' statements of amounts owed when they list their outstanding obligations. Creditors that make mistakes in their bankruptcy claims must correct those errors when identified, just as debtors must amend their schedules if they omit pertinent information. This process generally proceeds without difficulty. However, if creditors improperly add fees to their claims,[190] or make mistakes and then willfully refuse to correct their claims, individual debtors are faced with a difficult choice: they can pay attorneys' fees to contest the claim, or they can remit the excess amount wrongfully included in the claim. In addition to the expense, the difficulty involved in the computations, the burdens of proving that they have made payments, and other information barriers make it difficult and expensive for many debtors to challenge creditors' claims. As a matter of economics and logistics, debtors may have no choice but to refrain from contesting the claim. With no right to recoup costs if they successfully challenge a false claim, few debtors are able to challenge creditors' calculations of remaining loan balances or object to excessive claims. Intentionally-inflated claims can affect the interests of other creditors that may be competing for an extremely limited pool of assets, not to mention trustees and their attorneys. If creditors file claims that they know are false and refuse to adjust them, they should bear the costs of correcting the claims and face sanctions.

Just as there is no system-wide hard evidence that debtors intentionally misrepresent their finances on statements and schedules, there is no empirical evidence that creditors wilfully file false claims on a widespread basis. However, to improve the integrity of the system on all sides, it is important that the proper tools are available to handle this situation when it arises. While some courts have punished this type of activity,[191] and current law provides some general authority for imposing sanctions on lenders and their attorneys for this behavior,[192] most courts are reluctant

[190] A mortgage lender, for example, may continue to accrue monthly late charges even after a debtor confirms a Chapter 13 repayment plan, although the court-approved plan specifies that the debtor is entitled to cure the mortgage arrearage without accruing late charges every month that the cure is not yet complete. Or, a creditor might add attorneys' fees into its claim inappropriately.

[191] *See In re* 1095 Commonwealth Ave. Group, (*In re* Bishay), 204 B.R. 284 (Bankr. D. Mass. 1997) (bank's false claim warranted payment of debtor's costs in challenging section 506(b) motion); *In re* Cambell, 140 B.R. 35 (Bankr. E.D.N.Y. 1992) (attorney who had filed fraudulently inflated proof of claim for mortgage lender would be sanctioned under Rule 9011 and required to pay $5,000 in attorneys's fees and $15,000 to debtor).

[192] *See* Chambers v. NASCO Inc., 501 U.S. 32, 33, *reh'g denied*, 501 U.S. 1269 (1991) ("[c]ourt may safely rely on its inherent power [to impose attorney's fees as a sanction] if, in its informed discretion, neither the statutes nor the rules are up to the task.").

to impose penalties when the Bankruptcy Code provides limited guidance on false proofs of claim. Statutory authorization would give all courts a basis for protecting debtors and other creditors when excessive claims must be challenged. This Proposal parallels the approach of the Fair Credit Billing Act,[193] which permits a consumer to collect for actual damages, civil penalties of double the finance charges, court costs, and reasonable attorneys' fees for willful failure to comply with the statute's requirements. This provision would supplement the current criminal penalties for fraudulent claims under 18 U.S.C. § 152.

1.1.4 *Rule 9011*

The Commission endorses the amended Rule 9011 of the Federal Rules of Bankruptcy Procedure, to become effective on December 1, 1997, which will make an attorney's presentation to the court of any petition, pleading, written motion, or other paper a certification that the attorney made a reasonable inquiry into the accuracy of that information, and thus will help ensure that attorneys take responsibility for the information that they and their clients provide.

Like their clients, attorneys face criminal sanctions for aiding and abetting fraudulent acts.[194] In the majority of cases that involve no criminal activity, however, the scope of the attorney's role is more uncertain. While some believe that a lawyer is entitled to rely on a client's representations without further inquiry, Rule 9011 of the Federal Rules of Bankruptcy Procedure takes the attorney's obligation one step further. When an attorney helps to prepare and signs documents containing false information without making a reasonable inquiry into the accuracy of that information, courts can subject that attorney to sanctions.[195] Disclosure is a primary obligation in the bankruptcy system, thus attorneys for both debtors and creditors in both business and consumer cases have a heightened responsibility to ensure the accuracy of the information put into the system.

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[193] 15 U.S.C. § 1666 et seq. (1993).

[194] United States v. Webster, No. 97-1189, 1997 WL 564219, (7th Cir. Sept. 12, 1997) (indicting attorney).

[195] *See* Caldwell v. Unified Capital Corp., 77 F.3d 278 (9th Cir. 1996) (sanctioning under Rule 9011 for false statement of affairs); *In re* 1095 Commonwealth Ave. Group (*In re* Bishay), 204 B.R. 284 (Bankr. D. Mass. 1997) (sanctioning creditor's attorney under Rule 9011(a) for debtor's costs of objecting to inflated claim that was pursued under section 506(b)). *See In re* Cambell, 140 B.R. 35 (Bankr. E.D.N.Y. 1992) (attorney who had filed fraudulently inflated proof of claim for mortgage lender would be sanctioned under Rule 9011 and required to pay $5,000 in attorneys's fees and $15,000 to debtor).

The recent amendment to Rule 9011, effective December 1, 1997, will make a wider range of submissions, including some not signed by the attorney, subject to the "reasonable inquiry" standard and will help ensure that attorneys take responsibility for the information that they and their clients provide.[196] Because this change should improve the accuracy of disclosures, the Commission endorses this amendment, consonant with other measures the Commission suggests to enhance the integrity of the bankruptcy system.

The Commission, however, recommends to the Rules Committee that the language be changed to make explicit that an attorney's responsibility to make a reasonable inquiry into the accuracy of information extends to the bankruptcy schedules, statement of affairs, lists and amendments. The schedules are the primary source of substantive information about the debtor's financial affairs, and attorneys generally appear to play a central role in the completion of those documents. They should make reasonable efforts to ensure that the schedules accurately reflect the

[196] Effective December 1, 1997, absent contrary Congressional action, the Rule is amended to read as follows:

> **Rule 9011. Signing of Papers; Representations to the Court;** Sanctions; Verification and Copies of Papers
> **(a) Signature.** Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.
> **(b) Representations to the court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,
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> > **(1)** it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> > **(2)** the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> > **(3)** the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> > **(4)** the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

debtor's assets, income, liabilities, and other relevant information contained therein, whether the debtor is a business or an individual.

1.1.5 *Financial Education*

All debtors in both Chapter 7 and in Chapter 13 should have the opportunity to participate in a financial education program.

When consumer debtors emerge from bankruptcy, whether Chapter 7 or 13, they inevitably continue to participate in consumer credit transactions.[197] A legal fresh start may not prevent repeated financial failure if debtors do not have the skills to manage the credit marketplace.[198] Repeated financial failure does not benefit debtors, creditors or the public interest.

There is an emerging consensus for the need for pre- and postbankruptcy financial education for all families. New financial devices join the consumer lending market each year. In addition to home mortgages, credit cards, finance company loans, car loans, and retail installment credit, consumers now may be offered financial devices that did not exist just a few years ago, such as preapproved home equity lines of credit, live checks, and overdraft accounts. Managing the family budget is a greater challenge than ever before in a world of compound interest, rent-to-own contracts, FIFO accounting on repayment of secured consumer loans, teaser rates, grace periods, minimum payments based on unknown amortization schedules, declining balances, and other financial terms imbedded in consumer loan contracts. Even for consumers not beset by job losses or unexpected medical emergencies, household budgeting is not an easy task. The people who file for bankruptcy often have demonstrated the pressing need for heightened understanding of family finances.

Representatives from every part of the consumer bankruptcy system–creditors, debtors, trustees, judges, and academics–have spoken to the Commission about the unique opportunity for education that is presented when debtors go through the bankruptcy system. They note that a financial catastrophe is an appropriate time to

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[197] Michael Staten, Credit Research Center, Krannert School of Management, Purdue University, Working Paper No. 58 - The Impact of Post Bankruptcy Credit on the Number of Personal Bankruptcies (January 1993) (creditors now solicit debtors for new credit shortly after discharge); *See also* Karen Gross, FAILURE AND FORGIVENESS: REBALANCING THE BANKRUPTCY SYSTEM 6 (1997).

[198] *See* Karen Gross, "Introducing a Debtor Education Program into the U.S. Bankruptcy System: A Roadmap for Change," submitted to the National Bankruptcy Review Commission 6 (July 7, 1997). The 1973 Report of the Commission on the Bankruptcy Laws of the United States recognized that debt discharge did not equate with rehabilitation. REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, H.R. DOC. 93-137, parts I and II, at 109 (1973).

reestablish their economic equilibrium and learn important lessons on financial management.[199]

Financial counseling of debtors in bankruptcy is hardly a new notion.[200] While the subject has been discussed for decades, however, the current system still does not meet the need for debtor financial education in a systematic way. The Chapter 13 trustees in several judicial districts have established programs that have been the subjects of praise.[201] Far more districts have no analogous programs in either Chapter 13 or Chapter 7. One roadblock to development has been lack of specific authorization to expend funds to initiate and run such programs; apparently, the authority of Chapter 13 trustees to use funds for education programs has been challenged, as has the amount of funds that can be used.[202] In the meantime, some debtors' attorneys assume the roles of financial counselors, but many do not. This type of individualized counseling may not be available to debtors with the greatest need.[203]

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[199] *See, e.g.*, Letter of Kay L. Cambell, Compliance Officer, McDonnel Douglas West Federal Credit Union (Aug. 1, 1997); Letter from John D. Leahy, Chief Executive Officer, Cinfed Employees Federal Credit Union (Apr. 28, 1997) ("Implementing a financial education program is also a step forward. Debtors with large budgets are not all exaggerating expenses. Many debtors mismanage their finances.").

[200] *See* Hon. Joe Lee, "The Counseling of Debtors in Bankruptcy Proceedings," 45 AM. BANKR. L. J. 387 (1971) (advocating bankrupt debtor counseling, which should not be restricted to financial counseling); *see also* DAVID STANLEY AND MARJORIE GIRTH, BANKRUPTCY: PROBLEMS, PROCESS, REFORM, at 197 (1971) (recommending financial counseling services for debtors). The 1973 Report of the Commission on the Bankruptcy Laws of the United States recognized that debt discharge did not equate with rehabilitation. *See also* REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, H.R. DOC. 93-137, parts I and II, at 109 (bankruptcy system inadequately counseled individuals on their future financial affairs).

[201] The Consumer Bankruptcy Working Group held a session on debtor education in December 1996, where several Chapter 13 trustees spoke about their programs. *See, e.g.*, Tom Powers and Tim Truman, Standing Chapter 13 Trustees U.S. Bankruptcy Court, Northern District of Texas, Dallas/Fort Worth Divisions, The Dallas-Fort Worth Debtor Education/Credit Rehabilitation Handbook (3d Ed. Rev. 1996). *See* Pamela Stokes, *Moving from Bankruptcy to Solvency: An Educational Experience that Works*, BUS. CREDIT 20-25 (June 1995) (reporting on Texas Chapter 13 education program and finding that 80% of participants believed that the program improved their financial management skills).

[202] These challenges also were discussed at the December 1996 consumer bankruptcy working group session.

[203] *See, e.g.*, Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L. J. 501 (1993); Gary Neustadler, *When Lawyer and Client Meet: Observation of the Interviewing and Counseling Behavior in the Consumer Bankruptcy Law Office*, 35 BUFF. L. REV. 177 (1986).

The Commission will not attempt to spell out the details of a bankruptcy education program. Better suited parties already are developing more specific details about the kinds of programs to be offered, how they might be evaluated, who should administer them, how content should be determined and how they could be funded. To enhance these efforts, the Commission endorses the exploration of various alternatives, potentially through the development of pilot programs. However, education should be initiated at every level, and need not wait for any specific program.

The Commission's Recommendation focuses on authorizing and increasing the availability of voluntary education programs. It contemplates that bankruptcy judges could, in their discretion, require debtors to participate in education programs in appropriate circumstances. Some parties strongly advocate mandatory programs in all cases. Mandatory programs may be unduly coercive and difficult to administer. Mandatory education might also impose a hardship on a debtor whose job interferes with the class schedule, or who lives in a rural area. Voluntary programs are the preferable course of action until various types of postbankruptcy educational programs can be evaluated.

A Recommendation for postbankruptcy consumer financial education should not diminish support for other financial education programs that might avert financial crises in the first place. Creditor associations and individual banks and credit unions provide some financial education resources and budget counselors to help their present and future borrowers avoid bankruptcy.[204] Improving individuals' knowledge of financial matters and money management can and should be encouraged on several fronts.

[204] For example, the International Credit Association has testified to the Commission on its extensive involvement with financial education, and the National Council for Economic Education does curriculum development as well. Kathryn Greiner, Budget Counselor for First of Washtenaw, testified before the Commission in Detroit on June 17, 1997 about assisting financially troubled credit union members at Dearborn Federal Credit Union. Carol Walker, President of Financial Fitness Centers has shared her written and audiovisual materials and thoughts with the Commission. Both VISA, U.S.A., Inc. and MasterCard Int'l have financial education programs for children. In addition, NationsBank has developed a program and a video for helping its customers work through its financial difficulties without resorting to bankruptcy.