APPENDIX C-2

Report by Professor Lynn M. LoPucki, "Enhancing the Accessibility and Effectiveness of Bankruptcy Information"

Enhancing the Accessibility and Effectiveness
of Bankruptcy Information

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Papers filed in bankruptcy cases and the dockets of the bankruptcy courts are public records and open to examination by any person at reasonable times without charge.[2] In recent years, the Administrative Office of the U.S. Courts, in cooperation with the various bankruptcy clerks, have made the basic information on individual bankruptcy cases available on-line, the Administrative Office has announced plans to create a nationwide index of bankruptcy cases, and at least one bankruptcy court makes documents filed with that court available on a website.[3] The need for information on bankruptcy cases has, however, outstripped even those laudable and

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[2] Bankruptcy Code §107(a).

[3] www.NYSB.USCOURTS.GOV.

pioneering efforts and problems with the accuracy[4] and the accessibility[5] of the information have surfaced.

From passage of the first permanent bankruptcy law in 1898, the collection and reporting to Congress of statistics on bankruptcy cases have been continuously required.[6] The increase in statistical reporting required by Congress in 1938 was based on the hope that the greater array would be "of practical value for comparative purposes as indicating the efficiency of administration in the several judicial districts."[7] Today, the potential for the speedy, accurate, accessible reporting of bankruptcy information is greater than ever before. But so is the number of cases, adding to the challenge and burden of compiling, analyzing, and disseminating the data. An inexpensive flow of standardized, accurate, current information on bankruptcy cases and

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[4] *See, e.g.*, Jennifer Connors Frasier, *Caught in a Cycle of Neglect: The Accuracy of Bankruptcy Statistics*, 101 COMM. L.J. 307, 328-29 (1996) (using data from Warren and Westbrook's Business Bankruptcy Project to document an error rate in reported bankruptcy data of 12-26%); Lisa Hill Fenning & Craig A. Hart, *Measuring Chapter 11: The Real World of 500 Cases*, 4 ABI L. REV. 119, 1122-29 (1996); Teresa A. Sullivan, Elizabeth Warren, & Jay Lawrence Westbrook, *The Use of Empirical Data in Formulating Bankruptcy Policy,* 50 LAW & CONTEMP. PROBS. 195, 222-24 (1987).

[5] *See* Sullivan, Warren, & Westbrook, *supra* note 4, 14. The amount of bankruptcy information published annually by the Administrative Office has declined in recent decades. *Compare* ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, TABLES OF BANKRUPTCY STATISTICS (1977) with ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, FEDERAL JUDICIAL WORKLOAD STATISTICS for any recent 12 month period. That decline is in accord with the general trend toward less government publication. *See, e.g.*, John Shattuck, *The Right to Know: Public Access to Federal Information in the 1980s*, 5 GOV'T INFO. Q. 369, 371 (1988) (reporting a reduction to access to government information resulting in part from decreased government publication budgets).

[6] Section 53 of the Act of 1898 required that "[T]he Attorney-General shall annually lay before Congress statistical tables showing for the whole country, and by States, the number of cases during the year of voluntary and involuntary bankruptcy; the amount of the property of the estates; the dividends paid and the expenses of administering such estates; and such other like information as he may deem important." THE STATUTES AT LARGE OF THE UNITED STATES OF AMERICA FROM MARCH 1897, TO MARCH 1899 559 (1899). 28 U.S.C. §604(a)(13) currently provides that "the Director [of the Administrative Office of the United States Courts] shall . . . [l]ay before Congress, annually, statistical tables that will accurately reflect the business transacted by the several bankruptcy courts."

[7] H. Rep. No. 1409, 75th Cong., 1st Sess. 17 (1937).

their processing could improve the quality of case handling, lower the cost of operating the bankruptcy system, and ultimately reduce both the incidence of financial distress and failure, and the numbers of bankruptcy cases.

Other recommendations of the National Bankruptcy Review Commission contemplate that judges, debtors, creditors, and other participants will adjust their conduct in prescribed ways to bring together a smoothly functioning system that will serve the needs of those participants and the American economy. But such adjustments can be expected to take place only if there is an effective flow of information. That flow will provide the feedback Congress and future Commissions need to make future adjustments to the system based on its actual rather than its projected function. It will also assist debtors and creditors in responding to the patterns of incentives created by any new legislation. Creditors who understand what is actually occurring in the bankruptcy courts make better credit decisions, both at the time of lending and at the time of bankruptcy. Debtors who know that their conduct will be visible to the court, their creditors, and those from whom they seek loans in the future, are better motivated to do the right thing. Judges who are able to see the effects of a variety of different case management techniques can choose among them. Judges who have the benefit of compilations and analyses of the effects of their earlier decisions can make better decisions later.

The Bankruptcy Courts are particularly well suited to the development of feedback systems designed to improve decision making. The volume of cases is high, in excess of 1.2 million over the past year. The subject matter of the cases in the Bankruptcy Courts is narrow in comparison with the subject matter of those in the District Courts. The fact patterns of bankruptcy cases are highly repetitive. The effect is to make it relatively easy to test innovations, compare techniques, and to discover aberrations. Many of the insights gained from effective information flows regarding the bankruptcy process will be useful in the management of other kinds of cases, in both the federal and the state courts.

An effective information system is also needed to implement existing law and other Commission recommendations. For example, current law requires filing debtors to report their earlier bankruptcy filings and the Commission will recommend to Congress that debtors be prohibited from refiling for some period of time. But no master list of earlier filings current exists against which a debtor's denial of earlier filing can be checked. This proposal would, among other things, provide such a list. The Commission also will recommend the establishment of educational programs for debtors and the

study of those programs to determine their effectiveness. The cost-effectiveness of those studies will be increased by the ready availability of base line information on all bankruptcy cases.[8] Similarly, no system currently exists from which a lender can establish that a particular person or organization has *not* filed bankruptcy. Even a check with every clerk's office would probably be foiled by confusingly similar names and incomplete or unverifiable social security or tax identification numbers. The proposed system will provide a single, integrated index to all filings.

A. Structure of the information system.

Bankruptcy data are generated from several sources. Much of the data is supplied by the debtor to the clerk at the time of the filing of the case. More is added when creditors file their proofs of claim and as officials in the clerk's office track the filing of documents and the conduct of hearings. The United States Trustee receives a copy of each case filing and from it enters data not entered by the clerks. Trustees under Chapters 7 and 13 generate electronic records as they receive and disburse the proceeds of sales of assets and payments under Chapter 13 plans. These activities are occurring under the direction of more than 300 bankruptcy judges and nearly 200 bankruptcy clerks' offices.

Under the proposed system, each of these information generators would transmit the new data in their computers to a central computer nightly. The central computer will reformat the data to an Electronic Data Interchange (EDI) protocol and post it to an internet site. From this site, secondary providers and large end users -- such as the Administrative Office, the United States Trustee, and the Bankruptcy Courts -- would draw the data they need. Secondary providers would transfer the data to other data bases better suited to the needs of their end users.

B. Anticipated users.

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[8] The same would have been true for other bankruptcy studies contracted for or conducted by government in recent years. *See, e.g.*, UNITED STATES GENERAL ACCOUNTING OFFICE, REPORT TO THE CHAIRMAN, SUBCOMMITTEE ON ECONOMIC AND COMMERCIAL LAW, COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, BANKRUPTCY ADMINISTRATION, CASE RECEIPTS PAID TO CREDITORS AND PROFESSIONALS (1994); UNITED STATES DEP'T OF JUSTICE, EXECUTIVE OFFICE FOR U.S. TRUSTEE, AN EVALUATION OF THE U.S. TRUSTEE PILOT PROGRAM FOR BANKRUPTCY ADMINISTRATION (1983).

Among the most important users of the system will be:

1. *Congress and future National Bankruptcy Review Commissions.* The current Commission has been frustrated by the paucity of data on such basic questions as who files bankruptcy and why, how long cases remain pending, what proportion of all debt is discharged, how much debt remains undischarged, how frequently the same debtors refile and where, whether debtors attempt to repay too much or too little, and how much fraud or dishonesty there is in the system. It was asserted to the Commission that as few as 3% of Chapter 11 cases yielded successful outcomes, but the Commission was unable to discover reliable data on the basis of which it could evaluate this assertion. The proposed system would provide the basic infrastructure for answering such questions on a continuing basis.

2. *The Administrative Office of the U.S. Courts.* The Administrative Office currently collects significant amounts of data from the bankruptcy clerk's offices and uses it for administration of the court system. Among other things, the Administrative Office uses that information to calculate and recommend to Congress the appropriate numbers of judges for each district. Because the Administrative Office has data not aggregated elsewhere, they receive numerous requests for release or publication from other parts of government and from the private sector. Under the proposed system, both the Administrative Office and the requestors would draw data directly from the internet site. Not only would the Administrative Office be relieved of the burden of responding to these requests for information, the amount of information available to the Administrative Office for court administration would be expanded and its quality improved.

3. *The United States Trustee.* The United States Trustee is charged with supervising numerous aspects of the administration of bankruptcy cases, including the timely filing of documents, delays in administration, and the references of fraud cases for prosecution.[9] To perform these functions, the United States Trustee needs quick access to data in the clerks' offices, which will make it a major consumer of data from the proposed system. The United States Trustee also obtains copies of bankruptcy schedules and enters data that is not entered by the clerks' offices, making it potentially a producer as well as a consumer of data for the proposed system. The clerks' offices will benefit from ready access to the data input by the United States Trustee.

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[9] *See* 28 U.S.C. §586.

4. *Bankruptcy judges.* Much of the information that will be released through the internet site will originate in the computers of the various bankruptcy clerks' offices. That information is already available to the local bankruptcy judges, who use it daily in the administration of their cases. But through release and aggregation with data from other bankruptcy courts, in the same state, the same region, or the entire country, the data can become exponentially more useful. Judges will be able to compare the effects of their case management with the results achieved by other judges using different techniques. Data can also inform the judges' substantive decision making. For example, before the court confirms a Chapter 13 plan, Bankruptcy Code §1325(a)(6) requires a finding that "the debtor will be able to make all payments under the plan and to comply with the plan." Nevertheless, more than two-thirds of Chapter 13 debtors fail to complete their plans.[10] The system is malfunctioning, but the information currently available is insufficient to discover with precision either the nature and causes of these failures or the sizes of the adjustments in payments that would be necessary to achieve higher success rates. The proposed system would provide information from which judges could determine how much various kinds of debtors are able to pay. It would also be useful in understanding the wide differences in filings and outcomes from district to district that have been documented in empirical studies of the bankruptcy system.[11]

5. *Participants in bankruptcy cases.* Debtors, creditors, their lawyers, and other participants in bankruptcy cases frequently need information about their cases. The need for information about a particular bankruptcy case is currently served by bankruptcy clerks and by PACER (Public Access to Court Electronic Records), a dial-in computer system designed by the Federal Judicial Center, Innovations and Systems Development division and

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[10] *See* William C. Whitford, *The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer Protection, and Consumer Protection in Consumer Bankruptcy,* 68 AM. BANKR. L.J. 397, 411 (1994) (data showing 31% of Chapter 13 cases closed as completed).

[11] For example, some judges have been able to achieve Chapter 13 success rates about double the national average. *See* Michael Bork & Susan D. Tuck, Chapter 13 Dispositions (Working Paper 2) (unpublished manuscript on file with the author) (reporting that five districts had Chapter 13 discharge rates of over 50% and that the Central District of California had a Chapter 13 discount rate of only 15%); Marjorie L. Girth, *The Role of Empirical Data in Developing Bankruptcy Legislation for Individuals,* 65 IND. L. REV. 17, 40-42 (1989) (reporting that 63% of Chapter 13 plans were completed successfully in the Buffalo Division of the Western District of New York).

maintained locally by each of the approximately 200 clerk's Offices. Some bankruptcy courts have locally developed PACER service, referred to by the acronym "NIBS."[12] The fragmentation of this system among the clerk's offices is its principal shortcoming. Users with interests in cases in several courts must learn the nuances of each local PACER system and dial in to each local PACER system separately. The proposed system will enable users to learn only a single system and get all the information they need with a single phone call.

6. *Credit extenders, in the private sector and in government.* A variety of organizations already collect information on individual debtors and cases from the bankruptcy clerks, and use it for credit reporting and evaluation. The proposed system would make this process more efficient by improving the accuracy of the information and reducing the burden on the clerks in responding to requests for information. That in turn will improve the quality of decision making by lenders, increase the supply of credit to those who are able to repay, and lower the cost of credit.

7. *Academic researchers.* A few dozen empiricists, in law schools, business schools, and social science departments, are currently engaged in research on various aspects of the bankruptcy system. Their numbers are so few largely because of the difficulty of obtaining bankruptcy data.[13] With an adequate flow of data, other researchers will join them. Together, they will help to provide the data analysis that Congress and future Commissions need for making bankruptcy policy.

8. *Journalists.* Each year, journalists write thousands of stories on particular bankruptcy cases or patterns of cases in the bankruptcy courts. Because sufficient information is not readily available, many of those stories portray the courts and system inaccurately. That, in turn, confuses bankruptcy debate, raises the general level of anxiety, and makes the jobs of everyone in the system more difficult. A quick, accurate flow of information can focus

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[12] "NIBS" stands for National Integrated Banruptcy System. UNITED STATES COURTS, PACER SERVICE CENTER, PUBLIC ACCESS TO COURT ELECTRONIC RECORDS: USER MANUAL 1 (1997).

[13] *See* Teresa A. Sullivan, Elizabeth Warren, & Jay Lawrence Westbrook, *The Use of Empirical Data in Formulating Bankruptcy Policy,* 50 LAW & CONTEMP. PROBS. 195 (1987).

concern where it belongs, and thereby turn it into a constructive force in public dialog.

9. *Bankruptcy service businesses and professions.* Dozens of professions and small industries serve the flow of cases through the bankruptcy courts. Among them are bankruptcy lawyers, accountants, appraisers, auctioneers, claims traders, stock traders, bankruptcy book publishers, financial advisers, credit counsellors, and turnaround managers. Those engaged in these businesses and professions are among the most avid consumers of bankruptcy information. They use it both to seek clients and to better advise the ones they already have.

10. *Persons reported on.* Most bankruptcy information is about individuals and organizations. Each of those individuals and organizations has an important interest in the information about himself, herself, or itself. The proposed system will give them convenient access to the information so they can initiate correction of any errors. In this regard, the proposed system promises to greatly improve the accuracy of the credit reporting of bankruptcy cases.

The information needs of these users of bankruptcy data are highly varied. Government cannot possibly anticipate all of the questions they might wish to ask or all of the uses of information they might like to make. For that reason, the strategy of the proposed system is to make available the data already generated within the system and to allow the users to aggregate and analyze it in the ways that best serve each's own purpose. This proposal contemplates that the release of bankruptcy data will spawn a new industry that converts and customizes the data for resale to end users.

C. Critical elements of the system.

The critical elements of this system are that the data be standardized nationally, that they be compatible with census and other data with which they will be compared, that the data have maximum information content, that they be accurate, and that they be delivered quickly. Each of these elements is discussed in this section.

1. *Standardization of data.* To enable users of the system to compare bankruptcy cases from different districts and to compile meaningful regional and national statistics, the system must collect and report the same data from each district. To accomplish that, the persons reporting and entering the data

in each district must have the same explicit instructions in the form of data protocols. For example, if the debtor is required to state whether the case is a "consumer" case or a "business" case, the protocols must define those terms such that the debtors can understand the distinction. That will require, at the very least, a reminder that businesses can file cases under Chapter 13 and consumers can file cases under Chapter 11. The person in the clerk's office who enters the data should be instructed what to do if the debtor fails to answer a question or fails to answer it in the specified manner.[14] These instructions should be on the bankruptcy forms as the forms are completed by the debtor and on the computer screen as the information is entered. They must also be available to users of the information, so that the users can understand what has been collected.

Not only must the protocols for data collection *be* uniform throughout the United States, they must also be *applied* uniformly. To assure that they are, audits should be conducted from time to time to determine the extent to which the persons supplying and entering data understand the protocols and respond appropriately. If the accuracy of response to a particular protocol is low, the protocol should be changed.

Adjustments will also become necessary for other reasons. As the system learns more about the bankruptcy process, it will realize the importance of information not yet being collected and the importance of particular nuances in the information that is being collected. The information needs of the system will evolve as the system itself evolves over time. Yet each adjustment in the protocols will be costly, both to the system and its end users. People in the system must change what they do each time a protocol changes. To understand a particular item of information, users must know the historical protocol under which it was collected. Protocol changes should be minimized and carefully coordinated.

To assure minimal, coordinated changes in the protocols, system wide authority and responsibility for the protocols should be with a single government official. This authority and responsibility should be for both the forms that elicit the information and the protocols for computer entry.

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[14] *See* Jennifer Connors Frasier, *Caught in a Cycle of Neglect: The accuracy of Bankruptcy Statistics*, 101 COMM. L.J. 307, 328-29 (1996) (describing severe inaccuracies in existing data resulting largely from inconsistent local protocols for dealing with these situations).

Possible locations for the system would include the Justice Department, which reported bankruptcy data to Congress from 1898 to 1946 and now includes the Office of the U.S. Trustee, a major generator of bankruptcy data; the Administrative Office of the U.S. Courts, which has reported bankruptcy data to Congress since 1946 and is the principal collector and disseminator of bankruptcy data at the national level today; and the General Accounting Office, which also has experience in collecting and reporting bankruptcy data to Congress.

To assure that users can determine the historical protocol under which information was collected, all protocols adopted should be made permanently available in the same manner as the information. Each piece of data should be accompanied by a "tag" identifying the protocols under which it was collected and entered. This will give the data maximum information content and permit users to determine which protocols are equivalent to which others for their purposes, and hence, which data are comparable for their purposes.

2. *Compatibility with other information systems.* Researchers often need to compare bankruptcy data with data from other sources, such as U.S. Census data. Data from two sources can be compared effectively only if they are collected and aggregated according to the same protocols. For example, to make possible a comparison of the incomes of bankrupt and nonbankrupt households, both the U.S. Census and the bankruptcy system must define "income" and "household" in the same manner. Identity of protocol becomes even more important when the information in either or both sources is available only in aggregations rather than on a person by person or case by case basis -- as is true of census data and nearly all published bankruptcy data. It follows that, where possible, the proposed system should use protocols already in use elsewhere. This need for compatibility also suggests that a single government official should have authority and responsibility for the bankruptcy information collection protocols.

3. *Maximization of information content.* Much of the information content of data is lost in the process of collection. For example, under the current system the debtor estimates the value of the debtor's assets, the amount of the debtor's liabilities, the number of the debtor's creditors, and the numbers of the debtor's employees and equity securities holders by selecting among several wide ranges. The seven ranges within which debtor's estimate the values of their assets are (1) under $50,000, (2) 50,000 to 99,000, (3) 100,000 to 499,000, (4) 500,000 to 999,000, (5) 1,000,000 to 9,000,000, (6)

10,000,000 to 99,000,000, and (7) 100,000,000 and over.[15] Entry of the data in this form results in loss of the precise value initially estimated by the debtor. Depending on the use to which the estimate is to be put, the loss of this information content may or may not make a difference. The categories may be sufficiently precise to serve as a basis for estimating the amount of judicial time that should be applied to the various categories of cases; the time a judge spends on a $200 million case may not be significantly different from the time the judge spends on a $2 billion case. But for other uses, the loss of information content may be critical. For example, researchers studying consumer bankruptcies would find that nearly all of the cases in their sample were in the first two categories, leaving them with little basis for distinguishing among cases. Similarly, the data would be useless to a researcher who sought to discover the relationship between the value of the assets as estimated by the debtor and the price for which those assets are eventually liquidated or to a researcher who sought to determine how frequently publicly held companies listed their assets above or below book value.

The proposed system contemplates that the same information will be used in many different ways. To facilitate that use, information should always be entered in its most specific form, thereby preserving the maximum content. This means that, in the previous example, the debtor's estimated assets would be entered and reported as a specific dollar amount. Even though the "estimates" will never be precise, the collection system will preserve their maximum information content.

4. *Correction of inaccuracies*. Even the best information gathering systems generate error. Informants may supply erroneous data (inadvertently or intentionally), the data may be entered incorrectly, or the data may later be contaminated. The most accurate data are those that are constantly being used, cross-checked, and corrected. Persons working with the data will notice errors and cause them to be corrected. For that reason, the highest quality data in the bankruptcy system probably is the data most intensively used by judges, clerks, and trustees for processing individual cases. If, for example, someone incorrectly enters the date of a hearing or an amount authorized to be paid, some other interested party is likely to notice the error and force a correction. By contrast, when information is collected solely for purposes of statistical reporting, no one may be sufficiently interested to examine the information

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[15] Official Form 1, Voluntary Petition.

carefully, check its source, or force a necessary correction.[16] It follows that the system should focus on information that is intensively used by others, that is, information already collected and used in the clerk's offices, the U.S. trustees' offices, the offices of Chapter 13 standing trustees, and other places.

Because errors will be discovered and corrected during the case, bankruptcy data will be of higher quality at the end of the case than at the beginning. It follows that some data should be collected and reported only at the end of a case; other data may be so important that it should be collected and reported at the beginning of the case, corrected, and reported again at the end.

Multiple uses of the same pool of information are critical to maintaining a high level of accuracy across a wide range of information. Particular constituencies will tend make intensive use of particular items of information, and therefore make intensive contributions to the accuracy of those items. That heightened level of accuracy can then be enjoyed by other constituencies that would not themselves have forced such a high level of accuracy with regard to the particular information. The contributions of the various constituencies will combine to produce a broad array of bankruptcy information of a quality unachievable in compartmentalized systems serving isolated constituencies.

Most bankruptcy information relates directly to a particular person or organization -- the financial condition of a debtor, the decision of a judge, or the collection activities of a creditor. Because of the self-interest, that person or organization can often be counted on to examine the information and initiate necessary corrections. In that regard, they can make a substantial contribution to the accuracy of the information. But they will do that only to the degree that they have easy access to the information and convenient channels exist for demonstrating the errors and forcing the corrections. As the Privacy Protection Study Commission put it: "by opening up record-keeping practices and by giving an individual opportunities to interact easily with a record keeper, particularly at crucial points in a record-keeping relationship,

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[16] Serious inaccuracies in the face sheet data currently collected illustrate the problem. *See* Frasier, *supra* note 4, 14 at 330-40 (study based on data from the Business Bankruptcy Project).

both individuals and [record-keeping] organization will benefit."[17] The same theory operates in the credit reporting system.[18]

The "openness" of a data reporting system is generally understood to have three elements. First, at the time data are gathered, the persons from whom it is gathered should be advised, in terms as specific as possible, of "the principal purpose or purposes for which the information is intended to be used" and the manner in which the information is likely to be distributed.[19] In the case of a debtor, the notice should be given before the debtor files bankruptcy, so that the debtor can decide, in light of the consequences, whether to make the filing and disclose the information. This requirement can be met by a standard form disclosure to debtors immediately prior to filing together with the advice of the debtors' bankruptcy lawyers. Second, the subject of data reporting should have access to the information *as it is reported*. This requirement can be met by providing free, convenient access to that portion of the information that is about oneself. Third, there must be an open and effective procedure for correcting erroneous data at any time. To be fully effective, corrections must be made at the point where the data enters the system and then flow through to end users. Ordinary citizens cannot be expected to identify those points on their own. The public official with authority and responsibility for the information system should also have responsibility for assuring the existence of appropriate procedures for receiving complaints and inquiries, and making necessary corrections in all places where appropriate.

5. *Information overnight.* The most recently generated bankruptcy information is, of course, the most useful and the most intensively used. A system that posted bankruptcy information on the internet a year after it was generated in the clerk's offices would be useful for academic research, basic policy making, and some aspects of credit reporting. But a system that posts the information the day after it is generated will be many times as useful and for a wider variety of purposes.

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[17] PRIVACY PROTECTION STUDY COMMISSION, PERSONAL PRIVACY IN AN INFORMATION SOCIETY 14 (1977).

[18] *See, e.g.*, 15 U.S.C. § 1681g (requiring consumer credit reporting agencies to disclose to consumers the information in their files).

[19] Privacy Act, 5 U.S.C. 552(e)(3).

Inexpensive technology already exists by which the clerk's offices could transmit their newly entered and the corrected data for the previous day. That information could be automatically posted to the internet site on the morning following transmission. Not only would the accessibility of the data be greatly enhanced, but the amount of time expended by employees of the clerks' offices in responding to requests for information should undergo a dramatic reduction. The only persons who would still need to contact the clerk's offices for information would be those who needed information more current than the previous night's posting, those who needed information of a type not included in the reporting system, or those who did not have access to the internet. Even allowing for the time necessary to transmit their data, the result should still be a considerable net savings in time for the clerks' offices.

Some of the information in the system would originate with smaller collection sites, such as a local office of the U.S. Trustee, a Chapter 7 trustee, or a Chapter 13 standing trustee. Ideally, this information would also be reported directly to the internet site. However, practical considerations of data transfer may require that it be reported first to the local bankruptcy clerk's office and aggregated with the clerk's data for transfer to the internet site.

6. *Matched and matchable case data.* Data relevant to specific bankruptcy cases is available from a variety of sources. Most comes from the clerk's offices. But data are also available from Chapter 7 and Chapter 13 trustees, from the records of the U.S. Trustee, from Securities Exchange Commission filings, from the records of governmental and nongovernmental creditors, from newspaper and magazine stories, from UCC filing systems, and from other sources. When information from several sources can be combined on a case by case basis, the information becomes exponentially more useful in research. To combine data from one database with data from another, the researcher must have some way of "matching" the records in the two bases that relate to the same person or case.

Typically, researchers will match bankruptcy case data by case number or by debtor's name and social security or tax ID number. In some instances, matching may have to be accomplished without case numbers. One example would be searches to determine whether debtors are "serial filers." Their names and social security numbers may be the only data by which they can be linked to their earlier filings. Because of the importance of correct matching, the bankruptcy court -- and the generators of other data -- should verify the names and numbers with some official source. That is, a debtor's name should be checked against some source such as the debtor's driver's license at the

filing of the case; social security and tax ID numbers should be checked against the government's own data base. If the government elects not to permit verification of these numbers, the bankruptcy system should develop either an alternative means of verification or adopt a different system of identification (for example, individuals' dates and places of birth, or corporations' charter numbers).

D. Privacy concerns.

All of the information proposed to be collected from the bankruptcy clerks are already public records. Anyone who made a request over the counter to the appropriate bankruptcy clerk would be given the information. No law would prevent that person from posting the information on the internet. In fact, dozens of firms, including Dun & Bradstreet and the Bankruptcy DataSource, are already in the business of obtaining bankruptcy data from the clerks' offices and reselling it. Whatever privacy generally may be gained through the "practical obscurity" of information placed on the public record but not effectively reported, there is little left to be had in bankruptcy.

Nor is there any compelling reason not to disclose bankruptcy information. The accessibility of information achieved through the proposed system would bring new pressures to bear on the parties to cases, the judges who decide them, and the other public officials who participate in processing them. Measuring and documenting conduct -- by debtors, creditors, judges, or other participants -- tends to alter that conduct. The alteration, however, is usually for the better. For example, if the system measures how quickly judges resolve their cases, judges will tend to resolve them at the speed their most important constituencies think most appropriate. If bankruptcies are generally regarded as shameful for the debtors, debtors may take steps to avoid them. Adjustment to the information age will in some respects be difficult, but the benefits should be apparent.

Return to an earlier era in which information about a person that is a matter of public record in a bankruptcy clerk's office is effectively private as a result of its practical obscurity is impossible. PACER information on a single individual is available for a few dollars and already can be "plastered all over the internet." The principal effects of the changes proposed here will be to make information about individuals more accurate and to sharply lower the cost of aggregate data.

The alternative to learning to live with unprecedented flows of information is try to stop them. Absent Congressional action, the private sector will create the equivalent of the proposed system by aggregating information compiled through thousands of contacts with clerks offices -- at considerably higher cost to both the public and private sectors and with fewer safeguards for accuracy. To prohibit such aggregation may be beyond the Constitutional authority Congress. Even if a prohibition on aggregating bankruptcy information were valid, in a world of quick, inexpensive transmission and compilation of information, its enforcement would be problematic. The principal effect of an attempt to protect the "practical obscurity" of public record information would only be to introduce inefficiencies into the system and discriminate against persons of limited financial means.

Those who would limit the availability of bankruptcy information usually focus on the names of the debtors. That is, they would redact the names from the information before release. Their purpose is to save those debtors from the embarrassment and stigma associated with bankruptcy. Redaction would, however, come at a high cost to the functioning of the bankruptcy system. Every creditor subject to an automatic stay potentially needs to confirm the filing of the bankruptcy case. The debtor's name is the single item of information that makes confirmation possible. To facilitate confirmation, the names of nearly all debtors have been available on PACER for several years. To deal with the common problem of the creditor who thinks its debtor may have filed, but does not know the district in which the filing was made, the Administrative Office is working on an on-line national index which will include the names and case numbers for all debtors. Unless these indexes were removed and some other means devised for confirming the filing of a bankruptcy case, the redaction of debtor's names from information released by the bankruptcy courts would make research a little more difficult (because the researchers would have to reattach the names to the cases), but it would do nothing to protect the identity of debtors.

Nor should debtors be saved from the reputational consequences of a bankruptcy filing. The filing of a bankruptcy case does not necessarily indicate the blameworthiness of the debtor. But it is information that suggests caution and further inquiry. Only if accurate information on bankruptcy filings is easily accessible, can extenders of credit and others determine who has *not* filed bankruptcy and grant them the reputational benefits they have earned.

Recommendations to Accompany
Enhancing the Accessibility and Effectiveness
of Bankruptcy Information

Lynn M. LoPucki

Congress should enact legislation that:

1.   Authorizes and funds a single government official to:

   a.   design and recommend Official Bankruptcy Forms

   b.   design and require the Bankruptcy Clerks, U.S. Trustees and panel trustees to follow national, standardized protocols for the entry of data from those forms to their databases

   c.   design and require the Bankruptcy Clerks, U.S. Trustees, and panel trustees to follow national, standardized protocols for the recording of case events

   d.   design and contract for a database system that draws data from the internet site, and can be used by any member of the public, over the internet, without charge, to examine data in the system regarding that person

   e.   establish national, standardized procedures for the Bankruptcy Clerks, U.S. Trustees and panel trustees to receive complaints regarding the accuracy of data and correcting inaccuracies

2.   Funds the establishment of an internet site to be used by all government agencies involved with bankruptcy data as the means of exchanging that data.

3.   Requires each Clerk's office to transmit the changes to the data in its database, including all matters of public record, to the site each night.

4.   Requires that each U.S. Trustee's office transmit the changes to the data in its case filings database to the site each night.

5.   Requires that each panel trustee transmit the changes to the data in its case filings database to the site each night.

6.	Requires the posting of that data on the internet site in a fully documented, fixed format by the following morning.

7.	Entitles any person, including government agencies, private businesses, and the general public, to download the contents of the site daily.