

BANKRUPTCY JUDGESHIP ACT OF 2010

MARCH 9, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
 submitted the following

R E P O R T

[To accompany H.R. 4506]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4506) to authorize the appointment of additional bankruptcy judges, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 4506 authorizes 13 new bankruptcy judgeships on a permanent basis, converts 22 temporarily authorized bankruptcy judgeships to permanent status, and extends the temporary authorization for 2 bankruptcy judgeships for another 5 years. These additional bankruptcy judgeships reflect the recommendations of the

Judicial Conference of the United States (“Judicial Conference”).¹ H.R. 4506 also increases bankruptcy filing fees by \$1.00 for filings under Chapter 7 and Chapter 13 of the Bankruptcy Code and by \$42.00 for filings under Chapter 11 of the Code to pay for the 13 new permanent bankruptcy judgeships.

BACKGROUND AND NEED FOR THE LEGISLATION

A. AUTHORITY AND FUNCTION OF BANKRUPTCY JUDGES

Congress conferred jurisdiction over bankruptcy issues upon Federal district courts, with bankruptcy courts deriving their power from that jurisdictional grant and functioning as units of the district court.² Unlike Federal district or circuit judges or Supreme Court justices, bankruptcy judges are not appointed pursuant to Article III of the Constitution, and therefore lack the tenure and salary protections that Article III judges enjoy.³ Also, unlike Article III judges, bankruptcy judges are not chosen by the President subject to Senate confirmation.⁴ Instead, bankruptcy judges are appointed to 14-year terms by the Court of Appeals for each circuit, and serve as judicial officers of the district court.⁵ Bankruptcy judges may be reappointed upon the expiration of their terms, and can be removed prior to the expiration of their terms only for incompetence, misconduct, or disability, and only by the judicial council of the circuit in which the judge’s official duty station is located.⁶ A bankruptcy judgeship can be authorized on either a permanent or temporary basis.⁷

Bankruptcy judges receive compensation that is equal to 92 percent of a district judge’s salary.⁸ They are also authorized to hire law clerks and other assistants.⁹

The scope of issues that a bankruptcy judge must address can be somewhat broad. Jurisdiction over bankruptcy matters is conferred on Federal district courts by 28 U.S.C. § 1334, while 28 U.S.C. § 157 provides for the referral of bankruptcy matters from district courts to bankruptcy courts. With respect to the bankruptcy case (i.e., the bankruptcy petition and its adjudication) and proceedings “arising under” the Bankruptcy Code or “arising in” a bankruptcy case, bankruptcy judges can issue final determinations and the role of the district court is limited to appellate review.¹⁰ With respect to matters that are “related to” a bankruptcy case (e.g., determina-

¹The Judicial Conference is charged with making policy concerning the administration of the Federal courts. 28 U.S.C. § 331 (2006).

²28 U.S.C. § 151 (2006).

³U.S. Const., art. III, § 1.

⁴See U.S. Const., art. II, § 2 (outlining President’s judicial appointment power and Senate confirmation requirement).

⁵28 U.S.C. § 152(a)(1) (2006).

⁶28 U.S.C. § 152(a)(1), 152(e) (2006).

⁷See 28 U.S.C. § 152 hist. nn. (2006) (noting temporary bankruptcy judgeships authorized in 2005 and 1992). All bankruptcy judges are appointed for 14-year terms. The term “temporary judgeships” refer to offices of bankruptcy judges that are authorized on a temporary basis (usually 5 years). During that temporary authorization period, any vacancy in that office can be filled. After that time period lapses, the first vacancy in the office cannot be filled unless Congress extends the temporary authorization or converts the temporary authorization to a permanent one. Bankruptcy Judgeship Needs: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary, 111th Cong. 3, n.1 (2009) [hereinafter “Bankruptcy Judgeship Hearing”] (statement of the Honorable Barbara M.G. Lynn, Chair, Committee on the Administration of the Bankruptcy System, Judicial Conference of the United States [hereinafter “Lynn Statement”]).

⁸28 U.S.C. § 153 (2006).

⁹28 U.S.C. § 156 (2006).

¹⁰28 U.S.C. §§ 157(b)(1), 158 (2006).

tion of lien priority under state law), bankruptcy judges can issue recommendations, but only the district court can enter a final order or judgment.¹¹

B. NEED FOR ADDITIONAL BANKRUPTCY JUDGES

1. *Growing Volume and Complexity of Cases*

In testimony before the House Committee on the Judiciary Subcommittee on Commercial and Administrative Law (“Subcommittee”) in her capacity as Chair of the Judicial Conference’s Committee on the Administration of the Bankruptcy System (“Bankruptcy Committee”), United States District Judge Barbara M.G. Lynn stated that the need for additional bankruptcy judgeships is “critical, with filings increasing to near-record levels and the bankruptcy courts in peril of losing many of their judicial resources.”¹² Recent bankruptcy statistics appear to confirm the growing volume of cases. According to the Administrative Office of the United States Courts, bankruptcy filings increased from 1,042,086 in fiscal year 2008 to 1,402,816 in fiscal year 2009, a 34.5% increase.¹³ Between fiscal year 2007 and fiscal year 2008, bankruptcy filings increased by 30.2%.¹⁴

The enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”)¹⁵ further added to judges’ workload. As Chief Judge David S. Kennedy of the United States Bankruptcy Court for the Western District of Tennessee testified before the Subcommittee, the workload of bankruptcy judges has become “more complex and more time consuming” in part because of the “approximately 35 additional proceedings (i.e., new motions) that have been added by virtue of the enactment of [BAPCPA].”¹⁶ Judge Lynn concurred, testifying that “BAPCPA increased the work required of bankruptcy judges in each case” and that case “filings have increased steadily since BAPCPA took effect.”¹⁷

In addition to the growing volume of work, Judge Lynn also noted that bankruptcy courts “now face bankruptcy cases that are more complex and time consuming than anything previously handled. Cases such as Chrysler, Circuit City, and other national and international corporate reorganizations consume a tremendous amount of a bankruptcy court’s time.”¹⁸ Similar recent examples of complex, high-profile business bankruptcy cases include the bankruptcies of CIT Group, General Motors, Lehman Brothers, Linens ‘n Things, Delphi, and Delta Air Lines.¹⁹

¹¹ 28 U.S.C. § 157(c)(1) (2006). Parties, however, may consent to allow the bankruptcy court to make a final disposition of these matters. 28 U.S.C. § 157(c)(2) (2006).

¹² Bankruptcy Judgeship Hearing (Lynn Statement at 2).

¹³ Administrative Office of the United States Courts, Bankruptcy Statistics, 2008–2009 Fiscal Year Comparison, available at <http://www.uscourts.gov/bkrpctystats/statistics.htm#fiscal>.

¹⁴ *Id.*

¹⁵ Pub. L. No. 109–8, 119 Stat. 23 (2005).

¹⁶ Bankruptcy Judgeship Hearing (statement of the Honorable David S. Kennedy, Chief Judge, United States Bankruptcy Court for the Western District of Tennessee, on behalf of the National Conference of Bankruptcy Judges [hereinafter “Kennedy Statement”] at 4 and attachment A).

¹⁷ *Id.* (Lynn Statement at 3).

¹⁸ *Id.* at 4.

¹⁹ Tomoeh Murakami Tse, Taxpayers on Hook as Some Bailed Out Firms Prove Frail, *Washington Post*, Nov. 16, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/15/AR2009111502280.html>; Bill Vlasic and Nick Bunkley, Obama is Upbeat for G.M.’s Future, *N.Y. Times*, June 1, 2009, available at <http://www.nytimes.com/2009/06/02/business/02auto.html>; Andrew Ross Sorkin, Lehman Files for Bankruptcy; Merrill is Sold, *N.Y. Times*,

Bankruptcy judges' growing workload ultimately impacts all other participants in the bankruptcy process, including other court staff, debtors and creditors. As Judge Kennedy noted, a "full docket means that court staffs are fielding more inquiries from debtors and creditors[,] taking their time away from processing the case work that they are each assigned."²⁰ Judge Kennedy further noted that the increase in consumer bankruptcy cases in particular has led to a growing number of *pro se* debtors, who require more assistance from court staff in navigating the bankruptcy process.²¹ Judge Kennedy also maintained that even debtors and creditors with counsel are impacted by the increased workload on bankruptcy courts because final rulings on disputed matters may be deferred for an extended time period, delaying payment for creditors and financial relief for debtors.²²

While the workload of bankruptcy courts is increasing, the authorizations for many bankruptcy judgeships are about to lapse. Bankruptcy judgeships were last authorized in 2005 by BAPCPA, and Congress authorized those judgeships only on a temporary basis.²³ These judgeships are set to expire soon.²⁴ The last time Congress authorized permanent bankruptcy judgeships was in 1992.²⁵

2. Judicial Conference Recommendations

Pursuant to 28 U.S.C. § 152(b)(2), the Judicial Conference is required periodically to submit to Congress recommendations regarding the number of bankruptcy judges needed and to identify in which districts they are needed.²⁶ On February 9, 2009, the Judicial Conference transmitted recommendations concerning additional bankruptcy judgeships to the Chairman and Ranking Member of the House Judiciary Committee and to the Majority and Minority Leaders of the House of Representatives.²⁷

The Judicial Conference's bankruptcy judgeship recommendations are the result of a thorough process for assessing bankruptcy judgeship needs. The process begins with a survey of all the Federal judicial circuits and then, applying several factors to determine the workload in a given district, the Judicial Conference formulates its recommendations for Congress.

The Judicial Conference conducts a survey of all the Federal judicial circuits to consider whether a particular circuit needs to add new bankruptcy judgeships, convert existing temporary judgeships to permanent status, or extend the terms of existing temporary judgeships. This survey process consists of five steps:

Sept. 14, 2008, available at http://www.nytimes.com/2008/09/15/business/15lehman.html?_r=1; Mae Anderson, *Linens 'n Things Files for Bankruptcy*, Associated Press, May 2, 2008, http://www.usatoday.com/money/industries/retail/2008-05-02-linens_N.htm; Delphi Files for Bankruptcy, CNNMoney.com, October 8, 2005, available at http://money.cnn.com/2005/10/08/news/fortune500/delphi_bankrupt/index.htm; Chris Isidore, *Delta Air Lines Files for Bankruptcy*, CNNMoney.com, Sept. 15, 2005, available at <http://money.cnn.com/2005/09/14/news/fortune500/delta/index.htm>.

²⁰ Bankruptcy Judgeship Hearing (Kennedy Statement at 9).

²¹ *Id.*

²² *Id.* at 9–10.

²³ 28 U.S.C. § 152, *hist. n.* (2006); Bankruptcy Judgeship Hearing (Lynn Statement at 3).

²⁴ Bankruptcy Judgeship Hearing (Lynn Statement at 3).

²⁵ *Id.*; Pub. L. No. 102–361, 106 Stat. 965 (1992).

²⁶ 28 U.S.C. § 152(b)(2) (2006).

²⁷ Letter from James C. Huff, Secretary of the Judicial Conference of the United States, to the Honorable John Conyers, Jr., Chairman of the H. Comm. on the Judiciary (February 9, 2009) (on file with Subcommittee).

- (1) Each bankruptcy court seeking additional judgeships, or conversions or extensions of existing temporary judgeships, submits its request to the district court, which then forwards the request to the circuit court; alternatively, the district court may submit a judgeship request to the circuit court on its own.
- (2) The circuit's judicial council considers the request; approves, disapproves, or modifies it; and then, if it approves the request, or approves it with modification, submits the request to the Bankruptcy Committee and its Subcommittee on Judgeships.
- (3) The Subcommittee on Judgeships reviews the circuit's requests, conducts on-site evaluations, and submits its findings and recommendations to the Bankruptcy Committee.
- (4) The Bankruptcy Committee considers the Subcommittee's findings, and makes recommendations to the Judicial Conference.
- (5) The Judicial Conference submits its recommendations to Congress.²⁸

At every step of the five-step survey process, the Judicial Conference applies judicial workload factors in assessing bankruptcy judgeship requests. These factors include: (1) weighted case filing data; (2) the nature and mix of the court's caseload; (3) historical caseload data and filing trends; (4) district-specific geographic, demographic, and economic factors; (5) the bankruptcy court's case management efforts; (6) the availability of alternatives to additional judgeships, or converted or extended temporary judgeships; and (7) the impact of additional resources on the court's per judgeship caseload.²⁹

Of the workload factors, the case weights used to determine weighted case filing data are the most significant. The Federal Judicial Center devised the case weight formula in 1991 based on workload data collected over a 1-year period in 1988–89.³⁰ The case weights are intended to more faithfully and accurately measure judicial work than raw case filing numbers alone would indicate. In total, the Judicial Conference categorizes cases into one of 17 different case types based on the form of bankruptcy relief under which a case is filed, the size of the case based on estate assets, and whether the case involves a business or non-business bankruptcy.³¹ In testimony before the Subcommittee, William Jenkins, Jr., Director of Homeland Security and Justice Issues for the Government Accountability Office, stated that the 1991 case weights were “likely to be a reasonably accurate means of measuring the case-related workload of bankruptcy judges.”³²

To support the creation of a new judgeship or the conversion of a temporary judgeship to a permanent one, a bankruptcy court should have weighted caseload filings of 1,500 per judgeship to jus-

²⁸Bankruptcy Judgeship Hearing (Lynn Statement, attachment 4; Kennedy Statement at 7–8).

²⁹Id. (Lynn Statement, attachment 5; Kennedy Statement at 7).

³⁰Id. (Lynn Statement, attachment 5; statement of William Jenkins, Jr., Director, Homeland Security and Justice Issues, Government Accountability Office [hereinafter “Jenkins Statement”] at 4).

³¹Id. (Lynn Statement, attachment 5).

³²Id. (Jenkins Statement at 2).

tify additional resources.³³ This 1,500 weighted caseload threshold for additional resources is based on the Judicial Conference's estimate of an average weighted caseload of 1,280.³⁴

The Judicial Conference also considers actions taken to maximize the use of existing bankruptcy judgeships when determining judgeship recommendations. These actions include the assignment of bankruptcy judges to districts other than their own in order to assist other bankruptcy courts with larger caseloads, recalling retired bankruptcy judges to assist overburdened districts, sharing judgeships with other districts, and employing technology to create better time and workload efficiency.³⁵ Where these alternatives to additional judgeships have been exhausted, additional judgeships or converted or extended temporary judgeships may be warranted.

Based on this exhaustive process, the Judicial Conference proposed the addition of 13 permanent bankruptcy judgeships in 10 judicial districts and the conversion of 22 existing temporary bankruptcy judgeships in 15 judicial districts to permanent status.³⁶ Additionally, the Judicial Conference proposed to extend the temporary authorization for two judgeships for an additional 5 years.³⁷ Overall, the proposal affected 25 judicial districts in 9 of the 12 geographically based Federal judicial circuits (all except the Seventh, Tenth, and District of Columbia Circuits.)³⁸

3. H.R. 4506

H.R. 4506 adopts the Judicial Conference's 2009 bankruptcy judgeship recommendations in full. Accordingly, the bill creates 13 new permanent judgeships, converts 22 temporary judgeships to permanent judgeships, and extends 2 temporary judgeships for 5 more years.³⁹

As noted by both Judge Lynn and Judge Kennedy, the Judicial Conference's recommendations may, in fact, understate bankruptcy judges' workload, because the recommendations rely in substantial part on the 1991 case weights, which do not account for any increase in workload as a result of BAPCPA's enactment in 2005.⁴⁰ While the Judicial Conference is in the process of developing new case weights to account for the changes in judicial workload imposed by BAPCPA,⁴¹ the Committee takes heed of Judge Lynn's response to the question of whether Congress should wait to authorize new bankruptcy judgeships until the Judicial Conference adopts new case weights. As Judge Lynn noted, "the judicial districts for which the Conference has recommended additional bankruptcy judgeships have a sustained and pressing need and cannot wait longer for relief."⁴² Moreover, "the judgeship needs in the districts

³³ Id. (Lynn Statement, attachment 5). In the case of temporary judgeships, if the per-judgeship weighted caseload in a district would exceed 1,500 should the temporary judgeship expire, the Conference would recommend conversion of the judgeship from temporary to permanent status. If, under the same scenario, the per-judgeship weighted caseload would exceed 1,000 but not 1,500, the Conference would recommend extension of the temporary judgeship. Id.

³⁴ Id.

³⁵ Id. (Lynn Statement, attachment 3; Kennedy Statement at 7).

³⁶ Id. (Lynn Statement, attachment 1).

³⁷ Id.

³⁸ Id.

³⁹ H.R. 4506, 111th Cong. §§ 2, 3, 4.

⁴⁰ Bankruptcy Judgeship Hearing (Kennedy Statement at 4; responses to questions for the record of the Honorable Barbara M.G. Lynn).

⁴¹ Id. (Jenkins Statement at 9).

⁴² Id. (responses to questions for the record of the Honorable Barbara M.G. Lynn).

for which judgeships are recommended are so longstanding that many of them existed long before 2005.”⁴³ Given that the “current judgeship recommendation is extremely conservative” because it does not account for the increased work required by BAPCPA, the Committee concludes that delay in authorizing new bankruptcy judgeships is not warranted based on the fact that the case weights used in determining the Judicial Conference’s current recommendations were developed in 1991.⁴⁴

H.R. 4506 would increase filing fees to pay for the 13 new permanent judgeships it creates. Filing fees would be raised by \$1.00 for Chapter 7 and Chapter 13 cases and by \$42.00 for Chapter 11 cases.⁴⁵

The Committee recommends that in the future, a mechanism other than a bankruptcy filing fee increase be adopted to pay for additional bankruptcy judgeships. The Committee is particularly concerned about the already disproportionate burden that high filing fees for Chapter 7 and Chapter 13 cases place on consumer debtors. Any significant increase in filing fees for these types of bankruptcy cases threatens to deny honest but financially distressed debtors the opportunity to obtain bankruptcy relief.

In this instance, the Committee concluded that the filing fee increases contained in H.R. 4506 were necessary to guarantee that bankruptcy courts obtained needed judicial resources in a timely manner in order to ensure the continued efficiency and effectiveness of the Nation’s bankruptcy system. As noted, authorizations for numerous temporary judgeships are set to lapse in the near future at a moment when the workload for bankruptcy judges is increasing. Moreover, Congress has not authorized any permanent bankruptcy judgeships since 1992. Finally, the \$1.00 increase on consumer bankruptcy filing fees is relatively minimal. In light of these considerations, the Committee determined that, in this case, filing fee increases were appropriate. The filing fee increases contained in H.R. 4506, however, should not be taken as a model for determining how to pay for future bankruptcy judgeships. Rather, filing fee increases should be avoided if at all possible.

HEARINGS

The Committee’s Subcommittee on Commercial and Administrative Law held a hearing on “Bankruptcy Judgeship Needs” on June 16, 2009. At that hearing, the Subcommittee considered the Judicial Conference’s bankruptcy judgeship recommendations, as reflected in H.R. 4506. Testimony was received from the Honorable Barbara M.G. Lynn, Judge, United States District Court for the Northern District of Texas, on behalf of the Judicial Conference of the United States; the Honorable David S. Kennedy, Chief Judge of the United States Bankruptcy Court for the Western District of Tennessee, on behalf of the National Conference of Bankruptcy Judges; William Jenkins, Jr., Director, Homeland Security and Justice Issues, Government Accountability Office; and Carey D. Ebert, President of the National Association of Consumer Bankruptcy Attorneys. No separate legislative hearing was held on H.R. 4506.

⁴³ Id.

⁴⁴ Id.

⁴⁵ H.R. 4506, 111th Cong. § 5.

COMMITTEE CONSIDERATION

On January 27, 2010, the Committee met in open session and ordered the bill H.R. 4506 favorably reported without amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 4506.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4506, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 3, 2010.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4506, the Bankruptcy Judgeship Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Daniel Hoople, who can be reached at 226-2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 4506—Bankruptcy Judgeship Act of 2010.

SUMMARY

H.R. 4506 would establish 35 permanent bankruptcy judgeships, increase fees collected by individuals and businesses filing for bankruptcy, and alter how those fees are distributed among government entities. The bill would increase direct spending, revenues, and costs subject to appropriation.

CBO estimates that the mandatory pay and benefits for judgeships not otherwise provided for under current law would increase direct spending by \$12 million through 2015 and \$24 million over the 2010-2020 period. We estimate that changes made to the collection and disposition of filing fees under the bill would increase revenues by about \$13 million through 2015 and by about \$27 million over the 2010-2020 period. In total, the changes to direct spending and revenue made by H.R. 4506 would reduce future budget deficits by about \$1 million over the 2010-2015 period and about \$3 million over the 2010-2020 period.¹

CBO estimates that discretionary expenditures for support staff and office space associated with the additional judgeships would cost \$45 million over the 2010-2015 period, subject to appropriation of the necessary funds.

H.R. 4506 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4506 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010– 2015	2010– 2020
CHANGES IN DIRECT SPENDING													
Estimated Budget Authority	*	2	3	3	3	3	3	3	3	3	3	12	24
Estimated Outlays	*	2	3	3	3	3	3	3	3	3	3	12	24
CHANGES IN REVENUES													
Estimated Revenues	0	2	3	3	3	3	3	3	3	3	3	13	27
NET CHANGE IN THE BUDGET DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES													
Impact on Deficit ¹	*	*	*	*	*	*	*	*	*	*	*	1	3
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Estimated Authorization Level	0	14	9	7	7	7	7	7	7	7	7	45	81
Estimated Outlays	0	12	10	8	7	7	7	7	7	7	7	45	81

Note: * = less than \$500,000. Amounts may not sum to totals because of rounding.

1. Positive numbers indicate decreases in deficits; negative numbers indicate increases in deficits.

¹Different time periods apply for enforcing pay-as-you-go rules. CBO estimates that the changes in direct spending and revenues from enacting the legislation would result in a net decrease of \$1 million in future budget deficits over the 2010-2014 period and a net decrease of \$2 million over the 2010-2019 period.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the legislation will be enacted during fiscal year 2010, that the additional judgeships created by the bill will be filled within one year, and that the amounts estimated to be necessary for additional staff and support will be appropriated in each fiscal year.

Changes in Direct Spending

H.R. 4506 would authorize 13 new permanent judgeships to be added to the bankruptcy courts. Salaries and benefits of bankruptcy judges are provided annually without the need for appropriations. Based on the current-law salaries of bankruptcy judges (about \$160,000) as well as information from the Administrative Office of the U.S. Courts (AOUSC) on the cost of benefits of Federal judges, CBO estimates that the mandatory pay and benefits for those additional judges would total about \$2.5 million a year once all judges have been confirmed, increasing direct spending by \$12 million through 2015 and by \$24 million over the 2010-2020 period.

H.R. 4506 also would make 22 judgeships on the bankruptcy courts that are currently temporary positions permanent. Under current law, those temporary judgeships will remain filled for five years or until a vacancy occurs, whichever is later. CBO cannot predict the timing of vacancies. Therefore, we cannot estimate how the conversion of the 22 judgeships into permanent positions under the legislation would affect the Federal budget over the next 10 years. (The same is true for temporary judgeships that are extended but not made permanent under the bill.) For this estimate, CBO assumes that there would be no effect on the Federal budget from this provision over the next 10 years. However, if any of the temporary judges were to die, retire, resign, or be removed during the next 10 years, the bill would require that position be filled at an additional cost that would not be incurred under current law.

Changes in Revenues

H.R. 4506 would increase the amount collected by the Federal Government from businesses and individuals filing bankruptcy cases. Filing fees for individuals under Chapters 7 and 13 of the bankruptcy statute would increase by \$1 (to \$246 and \$236, respectively). Filing fees for Chapter 11 would increase by \$42 (to \$1,042).

Under current law, amounts collected from those fees are distributed among the judiciary, the U.S. trustees system, private trustees, and the Treasury. H.R. 4506 would adjust the formula that divides the proceeds from filing fees so that additional amounts collected as a result of this bill would be deposited in the Treasury and recorded in the budget as additional revenues. Based on information from the AOUSC, CBO estimates that revenues from bankruptcy filings under the bill would increase by about \$13 million over the 2010-2015 period, and by about \$27 million over the 2010-2020 period.

Changes in Spending Subject to Appropriation

Based on information from AOUSC, CBO estimates that implementing H.R. 4506 would cost \$45 million over the 2010-2015 pe-

riod for administrative support and office space for 13 new judges. Of that amount, about \$10 million would be incurred in the first few years for startup costs, including office construction, furniture, and law books. The remaining amount—\$35 million—would be for annual expenditures (about \$560,000 per judge) for administrative needs, such as support staff and court operations.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4506 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Daniel Hoople
Impact on State, Local, and Tribal Governments: Melissa Merrell
Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4506 authorizes 13 new permanent bankruptcy judgeships, converts 22 temporary judgeships to permanent judgeships, and extends authorization for 2 temporary judgeships for 5 more years.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4506 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. Section 1 sets forth the short title of the bill as the “Bankruptcy Judgeship Act of 2010.”

Section 2. Additional Permanent Offices of Bankruptcy Judges. Section 2 amends 28 U.S.C. § 152(a)(2) to reflect the creation of 13 new permanent bankruptcy judgeships and the conversion of 22 temporary bankruptcy judgeships to permanent bankruptcy judgeships, resulting in the following additional permanent bankruptcy judgeships: 1 additional judge in the Eastern and Western Districts of Arkansas; 2 additional judges in the Eastern District of California; 5 additional judges in the District of Delaware; 1 additional judge in the Middle District of Florida; 1 additional judge in the Northern District of Florida; 2 additional judges in the Southern District of Florida; 2 additional judges in the Northern District of

Georgia; 1 additional judge in the Southern District of Georgia; 3 additional judges in the District of Maryland; 3 additional judges in the Eastern District of Michigan; 1 additional judge in the Northern District of Mississippi; 2 additional judges in the District of Nevada; 1 additional judge in the District of New Hampshire; 1 additional judge in the District of New Jersey; 1 additional judge in the Northern District of New York; 1 additional judge in the Southern District of New York; 1 additional judge in the Eastern District of North Carolina; 1 additional judge in the Western District of North Carolina; 1 additional judge in the Middle District of Pennsylvania; 1 additional judge in the Eastern District of Tennessee; 1 additional judge in the Western District of Tennessee; 1 additional judge in the Eastern District of Virginia; and 1 additional judge in the Southern District of West Virginia.

Section 3. Conversion of Certain Temporary Offices of Bankruptcy Judges to Permanent Offices. Subsection (a) converts a total of 19 temporary bankruptcy judgeships authorized by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) to permanent judgeships. Subsection (b) converts three temporary bankruptcy judgeships authorized by the Bankruptcy Judgeship Act of 1992 to permanent judgeships. These conversions are reflected in the additional judgeships outlined in section 2 of the bill.

Section 4. Extension of Certain Temporary Offices of Bankruptcy Judges Established by Public Law 109–8. Subsection (a) extends BAPCPA’s temporary authorization for two bankruptcy judgeships (one in the Eastern District of Pennsylvania, one in the Middle District of North Carolina) by another 5 years. Subsection (b) clarifies that, except as noted in subsection (a), BAPCPA’s provisions relating to temporary judgeships remain in force.

Section 5. Paygo Offset. Subsection (a)(1) increases the filing fees for Chapter 7 and Chapter 13 filings by \$1.00 each (\$245.00 to \$246.00 for Chapter 7 filings and \$235.00 to \$236.00 for Chapter 13 filings.) Subsection (a)(2) increases the filing fee for Chapter 11 filings by \$42.00 (from \$1,000.00 to \$1,042.00.) Subsection (b) reduces the percentage allocation of filing fees for Chapter 7, Chapter 11, and Chapter 13 cases to the United States Trustee System Fund in proportion to the increased filing fees so that the actual dollar amounts of the allocations remain the same. Similarly, subsection (c) reduces the percentage allocation of filing fees to the Federal judiciary in proportion to the amount of the filing fee increases.

Section 6. Effective Dates. Subsection (a) sets the enactment date as the Act’s effective date except with respect to section 5, which increases filing fees. Subsection (b) specifies that the increase in filing fees pursuant to section 5 will take effect 180 days after the enactment date.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

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PART I—ORGANIZATION OF COURTS

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CHAPTER 6—BANKRUPTCY JUDGES

* * * * *

§ 152. Appointment of bankruptcy judges

(a)(1) * * *

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

Districts	Judges
Alabama:	
Northern	5
Middle	2
Southern	2
Alaska	2
Arizona	7
Arkansas:	
Eastern and Western	[3] 4
California:	
Northern	9
Eastern	[6] 8
Central	21
Southern	4
	* * * * *
Delaware	[1] 6
District of Columbia	1
Florida:	
Northern	[1] 2
Middle	[8] 9
Southern	[5] 7
Georgia:	
Northern	[8] 10
Middle	3
Southern	[2] 3
	* * * * *
Maryland	[4] 7
	* * * * *
Michigan:	
Eastern	[4] 7
Western	3
	* * * * *
Mississippi:	
Northern	[1] 2
Southern	2
	* * * * *
Nevada	[3] 5
New Hampshire	[1] 2
New Jersey	[8] 9
	* * * * *
New York:	
Northern	[2] 3
Southern	[9] 10
Eastern	6

Districts	Judges
Western	3
North Carolina:	
Eastern	[2] 3
Middle	2
Western	[2] 3
* * * * *	
Pennsylvania:	
Eastern	5
Middle	[2] 3
Western	4
* * * * *	
Tennessee:	
Eastern	[3] 4
Middle	3
Western	[4] 5
* * * * *	
Virginia:	
Eastern	[5] 6
Western	3
Washington:	
Eastern	2
Western	5
West Virginia:	
Northern	1
Southern	[1] 2
* * * * *	

PART II—DEPARTMENT OF JUSTICE

* * * * *

CHAPTER 39—UNITED STATES TRUSTEES

* * * * *

§ 589a. United States Trustee System Fund

(a) * * *

(b) For the purpose of recovering the cost of services of the United States Trustee System, there shall be deposited as offsetting collections to the appropriation “United States Trustee System Fund”, to remain available until expended, the following—

(1)(A) [40.46] 40.28 percent of the fees collected under section 1930(a)(1)(A); and

(B) [28.33] 28.15 percent of the fees collected under section 1930(a)(1)(B);

(2) [55] 52.78 percent of the fees collected under section 1930(a)(3) of this title;

* * * * *

PART V—PROCEDURE

* * * * *

CHAPTER 123—FEES AND COSTS

* * * * *

§ 1930. Bankruptcy fees

(a) The parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

- (1) For a case commenced under—
 - (A) chapter 7 of title 11, **[\$245]** \$246; and
 - (B) chapter 13 of title 11, **[\$235]** \$236.

* * * * *

- (3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, **[\$1,000]** \$1,042.

* * * * *

JUDICIARY APPROPRIATIONS ACT, 1990

(Title IV of Public Law 101–162)

* * * * *

TITLE IV—THE JUDICIARY

* * * * *

GENERAL PROVISIONS—THE JUDICIARY

* * * * *

SEC. 406. (a) * * *

(b) All fees as shall be hereafter collected for any service not of a kind described in any of the items enumerated as items 1 through 7 and as items 9 through 18, as in effect on November 21, 1989, of the bankruptcy miscellaneous fee schedule prescribed by the Judicial Conference of the United States under section 1930(b) of title 28, United States Code, **[28.87]** 28.74 percent of the fees collected under section 1930(a)(1)(A) of that title, **[35.00]** 34.77 percent of the fees collected under section 1930(a)(1)(B) of that title, and **[25]** 23.99 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title and shall remain available to the Judiciary until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the Courts of Appeals, District Courts, and other Judicial Services and the Administrative Office of the United States Courts. The Judicial Conference shall report to the Committees on Appropriations of the House of Representatives and the Senate on a quarterly basis beginning on the first day of each fiscal year regarding the sums deposited in said fund.

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