

[From the Washington Post, Feb. 23, 2001]  
 WATERSHED RULING ON RAPE  
 SERBS FOUND GUILTY OF 'CRIME AGAINST  
 HUMANITY'

(By Peter Finn)

BERLIN, Feb. 22.—Three Bosnian Serbs were found guilty today by a U.N. war crimes tribunal of the rape, torture and enslavement of Muslim women during the Bosnian war. It was the first time an international court ruled that rape is a "crime against humanity"

The three men were sentenced to between 12 and 28 years in prison for sex crimes committed near the town of Foca, southeast of Sarajevo, in 1992 and 1993, at the height of Bosnia's ethnic conflict. Human rights groups have estimated that tens of thousands of women, mostly Moslems, were raped during the war.

The judges found the three men's crimes to be part of a pattern of violent sexual abuse and intimidation condoned by the wartime Bosnian Serb leadership. "What the evidence shows is that the rapes were used by members of the Bosnian Serb armed forces as an instrument of terror," said Presiding Judge Florence Mumba as she sentenced the men at the International Criminal Tribunal for the former Yugoslavia at the Hague.

Today's decision was also significant for breaking old patterns by which international courts considered rape during war to be some lesser offense, if an offense at all. The decision "opens a whole new category" of war crime, said Eugene R. Fidell, of the National Institute of Military Justice, a nonprofit organization in Washington.

During World War II, the Japanese and German armies systematically enslaved thousands of women to serve as prostitutes for their soldiers. Dutch authorities tried Japanese officers who enslaved Dutch nationals, but the international war crimes tribunals that the allies created after the war did not treat the women's enslavement as a war crime, or crime of any kind.

Likewise, international courts have generally not treated as war crimes rape and other sexual violence that soldiers in combat zones commit of their own volition, assuming the soldiers were prosecuted at all.

In today's decision, Dragoljub Kunarac, 40, was sentenced to 28 years on 11 counts, including rape, torture and enslavement as crimes against humanity. Radomir Kovac, 39, was sentenced to 20 years on four counts. And Zoran Vukovic, 45, was sentenced to 12 years after the court dismissed most of the charges against him but convicted him on four counts.

The crimes occurred as Bosnia, formerly a republic of Yugoslavia, was the scene of war between its three main ethnic groups, Serbs, Muslims and Croats.

After Foca, a largely Muslim town, was overrun by Bosnian Serb forces, its mosques were burned and its civilian population rounded up and imprisoned in separate camps for males and females.

Sixteen rape victims and other witnesses testified at the eight-month trial that Serb paramilitary forces entered the women's detention centers and selected women and girls as young as 12 for nightly gang rapes and sexual torture. Many of the women were left with permanent gynecological and psychological damage.

In an impassioned and scathing judgment today, Mumba said, "Muslim women and girls, mothers and daughters together [were] were robbed of the last vestiges of human dignity."

## EXTENSIONS OF REMARKS

"Women and girls [were] treated like chattels, pieces of property at the arbitrary disposal of the Serb occupation forces."

Lawyers for the convicted men had argued that the women were willing sexual partners.

As Kunarac stood before the three-judge panel, Mumba said, "You abused and ravaged Muslim women because of their ethnicity, and from among their number, you picked whomsoever you fancied on a given occasion." Kunarac briefly bowed his head as his sentence of 28 years was read.

"I remember he was very forceful. He wanted to hurt me," one witness testified about Kunarac during the trial. "But he could never hurt me as much as my soul was hurting me."

Sentencing Kovac, the court said that it was particularly appalled at his treatment of a 12-year-old girl, who was identified only as A.B. None of the 16 victims who testified, or other victims, was identified, so as to shield them from further trauma.

A.B., the court said, was "a helpless little child for whom you showed absolutely no compassion whatsoever, but whom you abused sexually in the same way as the other girls. You finally sold her like an object in the knowledge that this would almost certainly mean further sexual assaults by other men."

The court noted that eight years later, A.B. has never been heard from.

Sentencing Vukovic to 12 years, the judges found that he raped a 15-year-old girl after threatening her mother with death if she did not tell him where her daughter was hiding. Mumba recalled case after case, summarizing the catalog of horror before she issued the prison terms.

In one instance, she noted, Kunarac "personally raped Witness FWS-183 and aided and abetted her rape by the two other soldiers by encouraging the other men while they were raping her. You further mocked the victim by telling the other soldiers to wait for their turn while you were raping her, by laughing at her while she was raped by the other soldiers, and finally by saying that she would carry Serb babies and that she would not know the father."

Noting that the three soldiers were not the masterminds of the war—Bosnia Serb leaders have been indicted but remain fugitives—the court said that "lawless opportunists should expect no mercy [from the court], no matter how low their position in the chain of command may be."

Foca now lies in the Serb zone of Bosnia and was renamed Srinje after the war. There are few Muslims in the town today.

Dirk Ryneveld, the lead prosecutor in the case, welcomed the verdicts and commended "the bravery of the victims who came forward to tell their stories."

### BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001: CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

**HON. F. JAMES SENSENBRENNER, JR.**

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 28, 2001

Mr. SENSENBRENNER. Mr. Speaker, on Thursday, March 1, 2001, the House is scheduled to consider H.R. 333, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001." On February 15, 2001, the Com-

February 28, 2001

mittee on the Judiciary ordered reported favorably the bill H.R. 333 and the report thereon was filed on February 26, 2001. The Congressional Budget Office ("CBO") cost estimate, however, was not available for filing on February 26. Therefore, I hereby submit the CBO cost estimate for printing in the CONGRESSIONAL RECORD.

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, February 27, 2001.

Hon. F. JAMES SENSENBRENNER, 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. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs), Erin Whitaker (for the revenue impact), Shelley Finlayson (for the state and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

BARRY B. ANDERSEN  
 (for Dan L. Crippen, Director).

Enclosure

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE  
 H.R. 333—Bankruptcy Abuse Prevention and  
 Consumer Protection Act of 2001

Summary: CBO estimates that implementing H.R. 333 would increase discretionary costs primarily to the U.S. Trustees by \$256 million over the 2002-2006 period. At the same time, the bill would slightly increase the fees charged for filing a bankruptcy case, and would change how some of these fees are currently recorded in the budget. We estimate that implementing the bill would increase the amount of bankruptcy fees that are treated as an offset to appropriations by \$279 million over the five-year period, resulting in a net decrease in discretionary spending of \$23 million over this period.

In addition, CBO estimates that enacting this bill would decrease governmental receipts (revenues) by \$260 million over the 2002-2006 period because bankruptcy fees that are currently recorded as revenues would be reclassified as offsetting collections and offsetting receipts. Finally, enactment of H.R. 333 would result in filling additional judgeships, and we estimate that their mandatory pay and benefits would cost \$18 million over the next five years. Because the bill would affect direct spending and governmental receipts, pay-as-you-go procedures would apply. Assuming appropriation of the necessary amounts to implement the bill, CBO estimates that its enactment would reduce budget surpluses by \$255 million over the 2001-2006 period.

H.R. 333 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates the costs would be insignificant and would not exceed the threshold established in that act (\$55 million in 2000, adjusted annually for inflation). Overall, CBO expects that enacting this bill would benefit state and local governments by enhancing their ability to collect outstanding obligations in bankruptcy cases.

H.R. 333 would impose private-sector mandates, as defined by UMRA, on bankruptcy attorneys, creditors, bankruptcy petition preparers, debt-relief agencies, and credit and charge-card companies. CBO estimates

that the direct costs of these mandates would exceed the annual threshold established by UMRA (\$109 million in 2000, adjusted annually for inflation).

Major provisions: In addition to establishing means-testing for determining eligibility for chapter 7 bankruptcy relief, H.R. 333 would:

Require the Executive Office for the United States Trustees (U.S. Trustees) to establish a test program to educate debtors on financial management;

Authorize 23 new temporary judgeships and extend five existing judgeships in 21 federal districts;

Permit courts to waive chapter 7 filing fees and other fees for debtors who could not pay such fees in installments;

Require that at least one of every 250 bankruptcy cases under chapter 13 or chap-

ter 7 be audited by an independent certified public accountant;

Require the Administrative Office of the United States Courts (AOUSC) to receive and maintain tax returns for certain chapter 7 and chapter 13 debtors;

Require the AOUSC and the U.S. Trustees to collect and publish certain statistics on bankruptcy cases; and

Increase chapter 7 and chapter 13 bankruptcy filing fees and change the budgetary treatment of such fees.

Other provisions would make various changes affecting the bankruptcy provisions for municipalities and the treatment of tax liabilities in bankruptcy cases.

Estimated cost to the Federal Government: As shown in the following table, CBO estimates that implementing H.R. 333 would result in a net decrease in discretionary

spending of \$23 million over the 2002–2006 period, subject to appropriation actions. In addition, we estimate that mandatory spending for the salaries and benefits of bankruptcy judges would increase by less than \$500,000 in 2001 and by \$18 million over the 2002–2006 period. Enacting the bill’s provisions for adjusting filing fees would reduce revenues by \$260 million over the next five years. That change in revenues would be more than offset, however, by increased collections to be credited against discretionary spending if future appropriation actions are consistent with the bill. (The estimated net decrease in discretionary spending of \$23 million reflects an increase in

	By fiscal year, in millions of dollars					
	2001	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Means-Testing (Section 102)						
Estimated Authorization Level .....	0	11	10	10	10	9
Estimated Outlays .....	0	9	10	10	10	9
GAO, SBA, and U.S. Trustees Studies (Sections 103, 230, and 443)						
Estimated Authorization Level .....	0	1	1	0	0	0
Estimated Outlays .....	0	1	1	0	0	0
Debtor Financial Management Training (Section 105)						
Estimated Authorization Level .....	0	3	1	0	0	0
Estimated Outlays .....	0	2	1	1	0	0
Credit Counseling Certification (Section 106)						
Estimated Authorization Level .....	0	4	3	3	4	4
Estimated Outlays .....	0	3	3	3	4	4
Maintenance of Tax Returns (Section 315)						
Estimated Authorization Level .....	0	1	2	2	2	2
Estimated Outlays .....	0	1	2	2	2	2
Changes in Bankruptcy Filing Fees (Sections 325 and 418)						
Estimated Authorization Level .....	0	-51	-59	-59	-55	-55
Estimated Outlays .....	0	-51	-59	-59	-55	-55
U.S. Trustee Site Visits (Section 439)						
Estimated Authorization Level .....	0	3	2	2	2	3
Estimated Outlays .....	0	2	2	2	2	3
Compiling and Publishing Data (Sections 601–602)						
Estimated Authorization Level .....	0	0	8	8	7	7
Estimated Outlays .....	0	0	8	8	7	7
Audit Procedures (Section 603)						
Estimated Authorization Level .....	0	0	14	17	18	19
Estimated Outlays .....	0	0	14	17	18	19
Additional Judgeships—Support Costs (Section 1224)						
Estimated Authorization Level .....	1	7	13	14	15	14
Estimated Outlays .....	1	7	13	14	15	14
FTC Toll-Free Hotline (Section 1301)						
Estimated Authorization Level .....	0	2	1	1	1	1
Estimated Outlays .....	0	2	1	1	1	1
Total Discretionary Changes	1	-19	-5	-2	4	4
Estimated Budget Authority .....	1	-24	-5	-2	4	4
Estimated Outlays .....						
CHANGES IN DIRECT SPENDING						
Additional Judgeships (Section 1224)						
Estimated Budget Authority .....	1	2	4	4	4	4
Estimated Outlays .....	1	2	4	4	4	4
CHANGES IN REVENUES						
Changes in Revenue from Filing Fees						
Estimated Revenues .....	0	-45	-53	-54	-54	-54

<sup>1</sup> Less than \$500,000.  
 Note: GAO = General Accounting Office.  
 SBA = Small Business Administration.  
 FTC = Federal Trade Commission.

Basis of Estimate: For purposes of this estimate, CBO assumes that H.R. 333 will be enacted during the third quarter of fiscal year 2001 and that the amounts necessary to implement the bill will be appropriated for each fiscal year.

*Spending subject to appropriation*

Most of the estimated increases in discretionary spending would be required to fund the additional workload that would be imposed on the U.S. Trustees. These increases would be more than offset by changes in bankruptcy filing fees that would be recorded as offsetting collections under the bill. CBO estimates that implementing H.R. 333 would result in a net reduction in discretionary costs of \$23 million over the 2002–2006 period.

Means-Testing (Section 102). This section would establish a system of means-testing

for determining a debtor’s eligibility for relief under chapter 7. Under the means test, if the amount of debtor income remaining after certain expenses and other specified amounts are deducted from the debtor’s current monthly income exceeds the threshold specified in section 102, then the debtor would be presumed ineligible for chapter 7 relief. A debtor who could not demonstrate “extraordinary circumstances,” which would cause the expected disposable income to fall below the threshold, could file under other chapters of the bankruptcy code.

Although the private trustees would be responsible for conducting the initial review of a debtor’s income and expenses and filing the majority of motions for dismissal or conversion, CBO expects that the workload of the U.S. Trustees would increase under the means-testing provision. The U.S. Trustees

would provide increased oversight of the work performed by the private trustees, file additional motions for dismissal or conversion, and take part in additional litigation that is expected to occur as the courts and debtors debate allowable expenses and other related issues. Although CBO cannot predict the amount of such litigation, we expect that, during the first few years following enactment of the bill, the amount of litigation could be significant, as parties test the new law’s standards. In subsequent years, litigation could begin to subside as precedents are established. Based on information from the U.S. Trustees, CBO estimates that the U.S. Trustees would require 115 additional attorneys, paralegals, and analysts to address the increased workload. As a result, CBO estimates that implementing this provision

would cost \$48 million over the next five years.

General Accounting Office (GAO), Small Business Administration (SBA), and U.S. Trustees Studies (Sections 103, 230, and 443). Section 103 would require the U.S. Trustees to conduct a study regarding the use of Internal Revenue Service expense standards for determining a debtor's current monthly expenses and the impact of these standards on debtors and bankruptcy courts. Section 230 would require GAO to conduct a study regarding the feasibility of requiring trustees to provide the Office of Child Support Enforcement information about outstanding child support obligations of debtors. Section 443 would require the Administrator of SBA, in consultation with the Attorney General, the U.S. Trustees, and the AOUSC, to conduct a study on small business bankruptcy issues. Based on information from U.S. Trustees, GAO, SBA, CBO estimates that completing the necessary studies would cost up to \$1 million in 2002, and less than \$500,000 in 2003.

Debtor Financial Management Test Training Program (Section 105). This section would require the U.S. Trustees to establish a test training program to educate debtors on financial management. The test training program would be authorized for six judicial districts over an 18-month period. Based on information from the U.S. Trustees, CBO estimates that about 90,000 debtors would participate if such a program were administered by the U.S. Trustees in fiscal years 2002 and 2003. At a projected cost of about \$40 per debtor, CBO estimates that this provision would cost \$4 million over the 2002-2004 period.

Credit Counseling Certification (Section 106). This section would require the U.S. Trustees to certify, on an annual basis, that certain credit counseling services could provide adequate services to potential debtors. Based on information from the U.S. Trustees, CBO estimates that the U.S. Trustees would require additional attorneys and analysts to handle the greater workload associated with certification. CBO estimates that enacting this provision would cost \$17 million over the next five years.

Maintenance of Tax Returns (Section 315). This section would authorize the AOUSC to receive and retain debtors' tax returns for the year prior to the commencement of the bankruptcy for chapter 7 and chapter 13 filings. Such collection and storage of tax returns would commence only at the request of a creditor. Based on information from the AOUSC, CBO expects that creditors will request tax information in about 25 percent of such cases. CBO estimates that implementing H.R. 333 would cost \$9 million over the next five years to store and provide access to over two million tax returns.

Changes in Bankruptcy Filing Fees (Sections 325 and 418). Section 325 would increase chapter 7 and chapter 13 bankruptcy filing fees and change the distribution of such fees. In addition, the bill would allow the U.S. Trustee System Fund to collect 75 percent of chapter 11 filing fees. Under current law, the filing fee for chapter 7 and chapter 13 is \$155 and is divided between the U.S. Trustee System Fund, the AOUSC, the private trustee assigned to the case, and the remainder is recorded as a governmental receipt (i.e., revenue). Under H.R. 333, the filing fee for a chapter 7 case would be \$160, and income from this fee would be recorded in two different places in the budget. Of the \$160, \$65 would be recorded as an offsetting collection to the appropriation for the U.S. Trustee

System Fund, and \$50 would be recorded as an offsetting receipt and spent without further appropriation by the AOUSC. The remainder of this fee would be spent by the private trustees assigned to each case. The bill would reduce the filing fee for a chapter 13 case to \$150 and change how the fee is recorded in the budget. The U.S. Trustee System Fund would receive \$105 and the AOUSC would receive \$45 per case. Under H.R. 333, no portion of chapter 7, chapter 11, or chapter 13 filing fees would be recorded as governmental receipts.

Section 418 would permit a bankruptcy court or district court to waive the chapter 7 filing fee and other fees for a debtor who is unable to pay such fees in installments. Based on information from the AOUSC, CBO expects that in fiscal year 2002 chapter 7 filing fees would be waived for about 3.5 percent of all chapter 7 filers and that the percentage waived would gradually increase to about 10 percent by fiscal year 2005.

Considering the expected reduction in the use of chapter 7 because of means-testing and the provision that would allow fee waivers, CBO estimates that implementing the new fee structure and changes in fee classifications would result in an increase in offsetting collections totaling \$279 million over the 2002-2006 period.

U.S. Trustee Site Visits in Chapter 11 Cases (Section 439). This section would expand the responsibilities of the U.S. Trustees in small business bankruptcy cases to include site visits to inspect the debtor's premises, review records, and verify that the debtor has filed tax returns. Based on information from the U.S. Trustees, CBO estimates that implementing section 439 would require about 20 additional analysts to conduct over 2,300 site visits each year. CBO estimates that implementing this provision would cost about \$11 million over the next five years for the salaries, benefits, and travel expenses associated with these additional personnel.

Compilation and Publication of Bankruptcy Data and Statistics (Sections 601-602). H.R. 333 would require the AOUSC to collect data on chapter 7, chapter 11, and chapter 13 cases and the U.S. Trustees to make such information available to the public. CBO estimates that it would cost about \$30 million over the 2002-2006 period to meet these requirements. Of the total estimated cost, about \$26 million would be required for additional legal clerks, analysts, and data base support. The remainder would be incurred by the U.S. Trustees for compiling data and providing Internet access to records pertaining to bankruptcy cases.

Audit Procedures (Section 603). Beginning 18 months after enactment, H.R. 333 would require that at least one out of every 250 bankruptcy cases under chapter 7, chapter 11, and chapter 13, plus other selected cases under those chapters, be audited by an independent certified public accountant. Based on information from the U.S. Trustees, CBO estimates that about 1.6 million cases would be subject to audits in fiscal year 2003, increasing to about 1.9 million in fiscal year 2006. CBO assumes that about 0.8 percent of those cases would be audited and that each audit would cost about \$1,000 (in 2001 dollars). CBO also expects that the U.S. Trustees would need about 10 additional analysts and attorneys to support the follow-up work associated with the audits. We estimate that implementing this provision would cost \$68 million over the 2003-2006 period.

Additional Judgeships—Support Costs (Section 1224). This provision would extend five temporary bankruptcy judgeships and

authorize 23 new temporary bankruptcy judgeships for 21 federal judicial districts. Based on information from the AOUSC, CBO assumes that about half of the 23 new positions would be filled by the beginning of fiscal year 2002 and the rest would be filled by the start of fiscal year 2003. Also, we anticipate that all five temporary judgeships would be filled by fiscal year 2003. We expect that discretionary expenditures for support costs associated with each judgeship would average about \$460,000 annually (in 2001 dollars). CBO estimates that the administrative support of additional bankruptcy judges would require an appropriation of less than \$500,000 in fiscal year 2001 and \$63 million over the 2002-2006 period. (Salaries and benefits for the judges are classified as mandatory spending, and those costs are described below.)

Federal Trade Commission Toll-Free Hotline (Section 1301). This section would require the Federal Trade Commission (FTC) to operate a toll-free number for consumers to calculate how long it would take to pay off a credit card debt if they were to make only the minimum monthly payments. Based on information from the FTC about the demand for the agency's other credit-related hotline, CBO expects that the FTC would receive about 20,000 calls each month. CBO estimates that the equipment and personnel necessary to serve this volume of inquiries would cost \$2 million in 2002 and \$6 million over the 2002-2006 period, subject to the appropriation of the necessary amounts.

#### *Direct spending and revenues*

Additional Judgeships (Section 1224). CBO estimates that enacting the means-testing provision (section 102) would impose some additional workload on the courts. Section 128 would authorize 23 new temporary bankruptcy judgeships and extend five existing temporary judgeships. Based on information from the AOUSC and other bankruptcy experts, CBO expects that the increase in the number of bankruptcy judges would be sufficient to meet the increased workload. Assuming that the salary and benefits of a bankruptcy judge would average about \$155,000 a year (in 2001 dollars), CBO estimates that the mandatory costs associated with the salaries and benefits of these additional judgeships would be less than \$500,000 in fiscal year 2001 and about \$18 million over the 2002-2006 period.

Changes in Bankruptcy Filing Fees (Sections 102, 325, and 418). Section 325 would change the classification of where bankruptcy filing fees are recorded in the budget. Under current law, filing fees are divided between the U.S. Trustee System Fund, the AOUSC, the private trustee assigned to the case, and the remainder is recorded as governmental receipts (i.e., revenues). The percentage of the fees allocated to these different parts of the budget varies by chapter. Under the fee structure specified in the bill, the portions of chapter 7, chapter 11, and chapter 13 filing fees that are now recorded as governmental receipts would be recorded as offsetting collections or offsetting receipts. Therefore, CBO estimates that enacting H.R. 333 would reduce governmental receipts by \$260 million over the 2002-2006 period. (The change in offsetting receipts would be matched by additional spending, resulting in no net change in direct spending.)

Tax Provisions (Title VII). Title VII of H.R. 333 would alter several provisions related to tax claims. It would alter the treatment of certain tax liens, disallow the discharge of taxes resulting from fraudulent tax returns under chapter 13 or chapter 11 of the

bankruptcy code, require periodic cash payments of priority tax claims, and specify the rate of interest on tax claims. Title VII also would change the status of assessment periods for tax claims and would alter various administrative requirements. Based on information from the Internal Revenue Service and the Joint Committee on Taxation, CBO estimates that these provisions would in-

crease revenues, but that any increase would be negligible.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The means-testing, waiver of fees, and changes in filing fees provisions would affect receipts, and the additional judgeships would

increase direct spending; hence, pay-as-you-go procedures would apply. The net changes in outlays and governmental receipts are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays .....	0	2	4	4	4	4	4	4	2	2	2
Changes in receipts .....	0	-45	-53	-54	-54	-54	-54	-54	-54	-54	-54

Estimated impact on state, local, and tribal governments: H.R. 333 contains intergovernmental mandates as defined in UMRA, but such costs would not be significant and would not exceed the threshold established in that act (\$55 million in 2000, adjusted annually for inflation). Overall, CBO expects that enacting this bill would benefit state and local governments by enhancing their ability to collect outstanding obligations in bankruptcy cases.

*Mandates*

Section 227 of the bill would preempt state laws governing contracts between a debt relief agency and a debtor, but only to the extent that those state laws are inconsistent with the federal requirements set forth in this bill. Such preemptions are mandates as defined in UMRA. Because the preemption would not require states to change their laws, CBO estimates the costs to states of complying with this mandate would not be significant.

Section 719 would require state and local income tax procedures to conform to the Internal Revenue Code with regard to dividing tax liabilities and responsibilities between the estate and the debtor, the tax consequences of partnerships and transfers of property, and the taxable period of the debtor. CBO estimates that this provision would increase costs for the administration of state and local tax laws, but would not require state and local tax rates to conform to the federal rates. Such administrative costs would not be significant and would likely be offset by increased collections.

Section 1310 would prohibit state courts from recognizing or enforcing certain foreign judgments. Based on the small number of potential cases and the small likelihood that those cases would be heard in state courts, CBO estimates that there would be no significant costs associated with complying with this mandate.

*Other impacts*

The changes to bankruptcy law in the bill would affect state and local governments primarily as creditors and holders of tax or child support claims against debtors. In addition, it would change some of the state statutes that govern which of a debtor's assets are protected from creditors in a bankruptcy proceeding.

A 1996 survey of the 50 states conducted by the Federation of Tax Administrators and the States' Association of Bankruptcy Attorneys, the most recent data available, indicated that more than 360,000 taxpayers in bankruptcy owed claims totaling about \$4 billion. Of these claims, states reported collecting only about \$234 million. Total bankruptcy filings have increased since 1996. While CBO cannot predict how much more money might be collected, it is likely that

states and local governments would collect a greater share of future claims than they would under current law.

Exemptions. Although bankruptcy is regulated according to federal statute, states are allowed to provide debtors with certain exemptions for property, insurance, and other items that are different from those allowed under the federal bankruptcy code. (Exempt property remains in possession of the debtor and is not available to pay off creditors.) In some states debtors can chose the federal or state exemption; other states require a debtor to use only the state exemptions. The bill would reduce the value of a debtor's homestead exemption under certain circumstances and create a new exemption for certain retirement funds and education savings plans. This bill also would place a ceiling of \$100,000 on the exemptions for the value of certain property acquired in the two years prior to a bankruptcy filing under certain circumstances.

These exemption standards would apply regardless of the state policy on exemptions. The new homestead exemption and property-value limitation could make more money available to creditors in some cases, while the exemptions on retirement and education savings generally would make less money available.

Domestic Support Obligations. The bill would significantly enhance a state's ability to collect domestic support obligations, including child support. Domestic support obligations owed to state or local governments would be given priority over all other claims, except those same obligations owed to individuals. The bill would make these debts nondischargeable (not able to be written-off at the end of bankruptcy). The bill also would require that filers under chapter 11 and 13 cases pay domestic support obligations owed to government agencies or individuals in order to receive a discharge of outstanding debts. In addition, under this bill, the automatic stay that is triggered by filing bankruptcy would not apply to domestic support obligations owed by debtors or withheld from regular income, as it currently does. The bill also would require bankruptcy trustees to notify individuals with domestic support claims of their right to use the services of a state child support enforcement agency, and notify the agency that it has done so. The last known address of the debtor would be a part of the notification.

Tax Payment Plans. The bill would require that payment plans for tax liabilities be limited to five years and that payment amounts be regular and not less favorable than payments for other obligations. Under current law, taxing authorities sometimes face payment plans that include a series of small payments over time followed by a large balloon payment near the end of the planned

payment stream. At that point, the debtors often fail to complete their payments. This provision would require that taxes be paid at a rate proportionate to those of other debts, but does not specifically prohibit balloon provisions. It also would establish interest rates to be applied to outstanding tax liabilities. Under current law, any interest charges on outstanding tax liabilities are determined at the discretion of the bankruptcy judge.

However, this status is granted only if a tax is assessed within a specific period of time from the date of the bankruptcy filing. If that filing is subsequently dismissed and a new filing is made, the tax claim may lose its priority status. The bill would make adjustments to this provision, allowing more time to pass in some circumstances, thus increasing the likelihood that state or local tax claims would maintain their priority status.

Taxes and Administrative Expenses. Under current law, certain expenses and the priority of claims reduce the funds that would otherwise be available to pay tax liens on property. The bill would increase the priority of those liens in certain circumstances against certain expenses and claims, thereby making it more likely that funds would remain available to cover tax obligations. Governmental units would not be required to file a request for certain administrative expenses as a condition of being allowed such an expense. The bill also would allow state and local governments to claim administrative expenses for costs incurred by closing a health care business.

Fuel Tax Claims. Under current law, all states owed fuel tax under the International Fuel Tax Agreement have to file separate claims against debtors under the bankruptcy code. The bill would allow a state designated under the agreement to file a single claim on behalf of all states owed the fuel taxes. This would simplify the filing process.

Tax Return Filing. A number of provisions in the bill would require debtors to have filed tax returns, and in some cases to be current in their tax payments, before a bankruptcy case may continue. These provisions would help states identify potential claims in bankruptcy cases where they may be owed delinquent taxes.

Priority of Payments. In some circumstances under current law, debtors have borrowed money or incurred some new obligation that is dischargeable (able to be written-off at the end of bankruptcy) to pay for an obligation that would not be dischargeable. This bill would give the new debt the same priority as the underlying debt. If the underlying debt had a priority higher than that of state or local tax liabilities, state and local governments could lose access to some funds. However, it is possible that the

underlying debt could be for a tax claim, in which case the taxing authority would face no loss. Because it is unclear what types of nondischargeable debts are covered by new debt and the degree to which this new provision would discourage such activity, CBO can estimate neither the direction nor the magnitude of the provision's impact on states and localities.

**Single Asset Cases.** One provision of the bill would allow expedited bankruptcy proceedings in certain single asset cases (usually involving a large office building). State and local governments could benefit to the extent that real property is returned to productive tax rolls earlier as a result of this provision.

**Municipal Bankruptcy.** The bill would clarify regulations governing municipal bankruptcy actions and allow municipalities that have filed for bankruptcy to liquidate certain financial contracts.

*Estimated impact on the private sector*

*Mandates*

H.R. 333 would impose new private-sector mandates on bankruptcy attorneys, creditors, bankruptcy petition preparers, debt-relief agencies, and credit and charge-card companies. Consumer bankruptcy attorneys would be required to make reasonable inquiries to confirm that the information in documents they submit to the court or to the bankruptcy trustee is well grounded in fact. Creditors would be required to make disclosures in their agreements with debtors and provide certain notices to courts and debtors. Bankruptcy petition preparers and debt-relief agencies would also be required to provide certain notices to debtors. Credit and charge-card companies would be required to disclose specified information in monthly billing statements, new account introductory rate offers, and internet-based solicitations. CBO estimates that the direct costs of these mandates would exceed the annual threshold established by UMRA (\$109 million in 2000, adjusted annually for inflation).

Section 102 of the bill would make bankruptcy attorneys liable for misleading statements and inaccuracies in schedules and documents submitted to the court or to the trustee. To avoid sanctions and potential civil penalties, attorneys would need to verify the information given to them by their clients regarding the list of creditors, assets and liabilities, and income and expenditures. Completing a reasonable investigation of debtors' financial affairs and, for chapter 7 cases, computing debtor eligibility, would require attorneys to expend additional effort. Information from the American Bar Association indicates that this requirement would increase attorney costs by \$150 to \$500 per case. Based on the 1.59 million projected filings under chapter 7 (liquidation) and chapter 13 (rehabilitation), CBO estimates that the direct cost of complying with this mandate would be between \$240 million and \$790 million in fiscal year 2002. With a rise in projected filings over the next three years, annual direct costs would reach a peak in fiscal year 2004 at between \$280 million and \$950 million and remain in that range through fiscal year 2006. The additional costs for attorneys would most likely be passed on to debtors.

The bill would require certain notices to be disclosed as part of the bankruptcy process. Section 203 of the bill would require a creditor with an unsecured consumer debt seeking a reaffirmation agreement with a debtor to provide certain disclosures. The agreement reaffirms the debt discharged in bank-

ruptcy between a holder of a claim and the debtor.

These disclosures must be made clearly and conspicuously in writing and include certain advisories and explanations. The required disclosures could be incorporated into existing standard reaffirmation agreements. Section 221 would require bankruptcy petition preparers who are not attorneys to give the debtor written notice explaining that the preparer may not provide legal advice. Section 228 would require a debt-relief agency providing bankruptcy assistance to an assisted person to give certain written notices to the person and to execute a written contract. Such agencies also would be required to supply certain advisories and explanations regarding the bankruptcy process. Most attorneys and debt-relief counselors currently provide similar information. Based on information from bankruptcy practitioners, CBO estimates that the direct costs of complying with these mandates would fall well below the annual threshold established by UMRA.

H.R. 333 also requires credit lenders to provide additional disclosures to consumers. Credit and charge-card companies would be required to include certain disclosures in billing statements with respect to various open-end credit plans regarding the disadvantages of making only the minimum payment. Other disclosures would be required to be included in application and solicitation materials involving introductory rate offers, internet-based credit card solicitations, and for late payment deadlines and penalties. Based on information from credit lenders, CBO estimates that the direct costs of these disclosure requirements would fall below the annual threshold.

*Other impacts*

H.R. 333 also contains many provisions that would benefit creditors. Most significant for creditors are provisions that would shift debtors from chapter 7 to chapter 13 and provisions that would expand the types of debts that would be nondischargeable. By expanding the types of debts that are nondischargeable, some creditors would continue to receive payments on debts that would be discharged under current law. Means-testing in the bankruptcy system would result in more individuals being required to seek relief under chapter 13 rather than chapter 7. Because chapter 13 requires debtors to develop a plan to repay creditors over a specified period, the total pool of funds available for distribution for creditors would likely increase. As long as the likelihood of repayment by debtors and the pool of funds increases by an amount greater than the cost to creditors of administering the new bankruptcy code, creditors would be made better off under the bill.

Under UMRA, duties arising from participation in voluntary federal programs are not mandates. The bankruptcy process is largely voluntary for debtors, and debtor-initiated bankruptcies are equivalent to participation in a voluntary federal program. Consequently, new duties imposed by the bill on individuals who file as debtors do not meet the definition of private-sector mandates, and additional cost for debtors would not be counted as direct costs for purposes of UMRA.

Estimate prepared by: Federal Costs: Lanette J. Walker and Ken Johnson; Revenues: Erin Whitaker; Impact on State, Local, and Tribal Governments: Shelley Finlayson; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

THE DECEPTIVE STORM OF GREED AND PETTINESS

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 28, 2001

Mr. OWENS. Mr. Speaker, In his inaugural address President Bush left us with one profound image: the specter of an "Angel in the Whirlwind" guiding the fate of our nation. Democracy in America has survived and expanded despite the numerous whirlwinds and storms. At several critical periods our ship of state could have been blown off course and been wrecked on the rocks: from the challenges of Aaron Burr and Jefferson Davis, to the grabbing greed which spawned the depression and the racist totalitarian threat of Hitler's Nazism. Always, in the past, the churning American political process has produced the leadership capable of conquering crises. But now we are confronted with a new kind of subtle and invisible emergency. We are confronting an enemy that has no guns. Internal smugness, arrogance, and the lack of empathy and compassion are attacking the moral spinal cord of the nation. In a previous inaugural address President Clinton correctly identified America as the "indispensable nation." Will the "Angel in the Whirlwind" guide us to new leaders who will know how to use our great wealth and power to fulfill this mission? At critical and pivotal points in our past, that great "Angel in the Whirlwind" has delivered saviors: Thomas Jefferson with his bold ideas and actions; Abraham Lincoln, frontier toughness with compassion far beyond any of his peers; Franklin Roosevelt with the vision and decisiveness that ended depression hardships and defeated Hitler. Now prosperity has brought the United States to a different kind of pivotal point in history. The question is, shall a nation with the unprecedented means to enhance survival and the resources to facilitate a less difficult pursuit of happiness for all of its people; shall such a nation at this critical moment choke on its own pettiness and greed thus rendering itself morally disabled forever. We pray for deliverance by the "Angel in the Whirlwind."

ANGEL IN THE WHIRLWIND

Angel in the whirlwind,  
Tell us where you've been;  
Come steer us through the storm,  
Halt all this public sin.  
Angel in the whirlwind  
Blow forth great truths;  
All men are born equal,  
Some men die great;  
Profiles in courage  
Never come too late.  
Lincoln in the whirlwind  
Blew powerful justice down;  
Emancipation proclamation,  
Magnificent sensation,  
Plain ordinary people  
Transformed to noble creations.  
Sailors in the whirlwind  
Forsake all ease,  
Typhoons still lurk near,  
Patriots must not fear.  
Angel in the whirlwind,  
Jefferson at your side,  
Ships ashore at Normandy,  
In every boat you ride,