Testimony of Travis B. Plunkett
On behalf of the
Consumer Federation of America, the National Consumer Law Center and the U.S. Public Interest Research Group
Before the
Subcommittee on Commercial and Administrative Law
Of the
House Judiciary Committee

Regarding
Implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

July 26, 2005
Washington, D.C.

Good afternoon. My name is Travis B. Plunkett. I am the Legislative Director of the Consumer Federation of America.[1] I appreciate the opportunity to offer my comments on the implementation of the new bankruptcy law on behalf of CFA, the National Consumer Law Center[2] and the U.S. Public Interest Research Group.[3]

As you may know, our organizations opposed the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act because we feared that it would harm families hit by genuine financial misfortune, such as the loss of a job, crippling medical bills and divorce. We were concerned that this major overhaul of the Bankruptcy Code erects dozens of new barriers that will keep Americans who need a fresh financial start in bankruptcy from receiving it. We also pointed out that the law does virtually nothing to curb reckless and abusive lending practices by credit card companies that have contributed to the rising bankruptcy rate in this country.

Our organizations will be closely monitoring the implementation of this law over the next few years. We sincerely hope that our fears are not realized. Since the law has yet to take effect, I would like to focus my comments on two new provisions on which important implementation decisions will be made in the next few months. Both of these provisions have far-reaching consequences for debtors. One requires consumers to receive credit counseling before filing for personal bankruptcy, and then again before being discharged. This section is being implemented as we speak by the Executive Office of the United States Trustee. The second requires broad disclosure of tax returns by debtors, which raises significant privacy concerns. The Act gives the Administrative Office of the U.S. Courts significant discretion to restrict access to tax returns as necessary to protect privacy. I will address these issues individually.

I. Credit Counseling under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

The Act includes two major new credit counseling requirements. The Bankruptcy Code (11 U.S.C.) is amended to require debtors to obtain a credit counseling "briefing" from an approved nonprofit organization within 180 days of filing for bankruptcy (section 109(h)(1)). Debtors are also required to complete a personal financial management "instructional course" before being discharged from chapter 7 (section 727(a) of the Code) or chapter 13 (section 1328). A new section 111 of the Code requires agencies that provide either the briefing or the instructional course to meet a number of specific standards regarding fees that can be charged, the management of finances, financial incentives provided to counselors, the provision of counseling and other criteria.

[1] The **Consumer Federation of America** is a nonprofit association of over 280 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers' interests through research, advocacy and education.

[2] The **National Consumer Law Center** is a non-profit organization specializing in consumer issues on behalf of low income people. NCLC works with thousands of legal services, government and private attorneys, as well as community groups and organizations, who represent low-income and elderly individuals on consumer issues. These comments are submitted on behalf of NCLC's low income clients.

[3] The **U.S. Public Interest Research** Group serves as the national lobbying office for state public interest research groups, which are nonpartisan, nonprofit consumer and environmental advocacy organizations.

Our organizations strongly support credit counseling, if it is properly administered by a legitimate nonprofit agency that offers a range of services. Credit counseling and the credit card consolidated payment plans administered by credit counseling agencies can play an important role in helping some consumers pay down unsecured debt and start to recover from financial difficulties.

However, our organizations were among the first in the country to call attention to serious turmoil in the credit counseling industry that was harming consumers. In a report released in 2003,[4] the National Consumer Law Center and the Consumer Federation called attention to a number of serious problems in the industry.

- Starting in the mid-1990s, the credit counseling industry underwent an alarming transformation. Consumer demand for credit counseling grew, funding to agencies was sharply reduced, and an aggressive new class of credit counseling agencies emerged. As this new generation of credit counseling agencies gained market share, complaints about deceptive practices, improper advice, excessive fees and abuse of non-profit status grew.

- Traditional credit counseling agencies offered a range of services, including financial and budget counseling and community education, as well as debt consolidation plans, known as debt management plans, or DMPs. Newer agencies, in contrast, often pushed consumers into DMPs even if they did not benefit.

- New creditor policies, lax oversight of non-profit corporations by the states and the Internal Revenue Service, and consumer demand for contact with agencies via the telephone and Internet contributed to the rise of agencies that aggressively sell DMP services.

- Credit card banks and issuers significantly cut back funding for agencies during this period. As available revenue declined, most agencies curtailed the range of services they offered and increased the fees they charged to consumers. Creditors have recently made some efforts to stop the trend toward low-quality credit counseling "mills." However, in doing so, they have significantly increased the administrative burdens on and costs to agencies.

- Creditors also reduced the concessions they offer to those who enter a DMP, such as lower interest rates. Low creditor concessions cause more consumers to drop off DMPs and to declare bankruptcy. According to a survey by VISA USA, one-third of those who failed to complete a DMP would have stayed on if creditors had further lowered interest rates or waived fees.[5] Almost half of those who dropped off a DMP had or were going to file for bankruptcy.

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[4] *Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants*, National Consumer Law Center and Consumer Federation of America, April 2003.

[5] *Credit Counseling Debt Management Plan Analysis*, Visa U.S.A. Inc., January 1999.

- Not all new credit counseling agencies exhibited these problems. Some were above-board and have pioneered consumer-friendly practices, such as flexible hours, electronic payments and easy access by phone and by Internet.

Key problems highlighted in the report included:

- **Deceptive and Misleading Practices**. Consumer complaints and government investigations have focused on agencies that do not pay consumers' DMP payments on time, that deceptively claim that fees are voluntary, and that do not adequately disclose fees to potential clients.

- **Excessive Costs**. As creditors have reduced funding, some reasonable fee increases are to be expected. However, in an industry that rarely charged for counseling and other services a decade ago, one major counseling trade association, the National Foundation for Credit Counseling (NFCC) now reports that about eighty-eight percent of its agencies charge monthly DMP fees. A survey of non-NFCC agencies found that almost ninety-three percent said they charged some type of fee for debt management plans. Some agencies charge as much as a full month's consolidated payment simply to establish an account. Monthly DMP fees and costs for non-DMP services are also growing.

- **Abuse of Non-Profit Status.** "Non-profit" credit counseling agencies are increasingly performing like profit-making enterprises. Nearly every agency in the industry has non-profit, tax-exempt status. Nevertheless, many of these agencies function as virtual for-profit businesses, aggressively advertising and selling DMPs and a range of related services. Some agencies appear to be in clear violation of Internal Revenue Service (I.R.S.) rules governing eligibility for tax-exempt status. Credit counseling organizations should not qualify under I.R.S. rules if they are organized or operated to benefit individuals associated with the corporation or if they are not operated exclusively to accomplish charitable or educational purposes.

Since this report was issued, state and federal regulators have begun to root out unscrupulous agencies in the industry, but there are still significant problems. In March of this year, the Federal Trade Commission announced settlements with three debt services operations (including one credit counseling organization) that had scammed consumers out of more than one hundred million dollars.[6] It also announced that it had reached a settlement with the credit counseling agency AmeriDebt that it would shut down, because of numerous abusive practices in the last few years.[7] The Senate Permanent Subcommittee on Investigations recently issued the final results of its investigation of profiteering and abusive acts in the industry and called for

[6] "Debt Settlement Services Operations Settle FTC Charges," Federal Trade Commission News Release, March 30, 2005.

[7] "FTC Settles with AmeriDebt: Company to Shut Down," Federal Trade Commission News Release, March 21, 2005.

state and federal regulators to take a number of steps to prevent these problems in the future.[8] The IRS says that it is auditing 50 of the largest nonprofit agencies in the country. It has begun to revoke the non-profit status of a few existing agencies and to reject new applicants for this status.[9] In addition, a number of states have begun to enact new laws that attempt to better regulate these agencies.

Given the ongoing problems in the credit counseling industry, this is a very dangerous time to be requiring over a million new consumers to see credit counselors.[10] Unless the law is implemented rigorously, Congress could be creating a situation in which it has forced consumers into the hands of unscrupulous agencies. I strongly urge the Subcommittee to exercise vigorous oversight of the implementation of this requirement in the next year.

The Act does require the Executive Office of the U.S. Trustees (EOUST) and bankruptcy administrators to scrutinize agencies before allowing them to offer credit counseling. Among other things, agencies are required to:

- Maintain nonprofit status;
- Provide "adequate counseling;"
- Assist consumers without regard to their ability to pay. If the agency charges a fee, it must be "reasonable;"
- Fully inform consumers of their fees, funding sources, counselor qualifications and the possible impact of credit counseling on credit reports. Counselors must be adequately trained and not be paid more for placing consumers in a DMP; and
- Safeguard client funds, through employee bonding and an annual audit.

However, unless these requirements are rigorously enforced on a continuous basis, it is quite possible that a new bankruptcy law will only exacerbate the serious problems that currently exist in the credit counseling industry. The EOUST is certainly trying to avoid this outcome, but their implementation process is just beginning and it is too early to tell what will happen. The initial guidance they have offered regarding the criteria they will use to approve agencies for counseling under this requirement raises as many questions as it answers. To make matters worse, the EOUST has not responded to numerous requests by consumer representatives to discuss its plans for implementing and enforcing this section of the law. Our organizations have followed the credit counseling industry closely for a number of years and sincerely want to help ensure that this requirement works fairly and reasonably. We can't do that, however, if the EOUST does not respond to our inquiries.

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[8] *"Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling,* Permanent Senate Subcommittee on Investigations. April 13, 2005.

[9] "IRS Revokes Tax-Exempt Status of 4 Credit-Counseling Agencies," Washington Post, Wash Post, July 17, 2005.

[10] Although some debtors who declare bankruptcy now seek credit counseling first, the legislation is likely to dramatically increase the number of Americans in credit counseling. According to the Administrative Office of the U.S. Courts, just under 1.5 million people declared personal bankruptcy in last year.

There are three overriding consumer protection principals that the EOUST should seek to achieve in implementing this law:

- Financial abuses and violations of privacy should not occur.
- Debtors who need access to bankruptcy quickly should not be unduly delayed by the credit counseling requirement. To achieve this goal, it will be particularly important that the EOUST ensure the fair and reasonable implementation of exceptions to the credit counseling requirement for debtors facing "exigent" circumstances or unable to obtain credit counseling with five days from an approved agency (section 109(3)(A) of the Code.)
- Consumers should receive quality credit counseling and financial education courses at a price that they can afford.

Each of these particular principals poses a significant challenge for the EOUST, given the requirements of the law and pervasive problems in the credit counseling industry. Based on the initial guidance that EOUST has offered on its web site and in limited public remarks on this requirement, our organizations have several specific concerns.

Meeting the Counseling Capacity Requirements of the Law While Maintaining High Credit Counseling Standards

Given the problems in the industry that we have outlined, it is not at all clear that adequate capacity of quality counseling exists to meet the requirements of the law. To the best of our knowledge, the EOUST has offered no guidance on how it will determine that adequate credit counseling capacity exists, or what it will do if such capacity does not exist. Such a determination is very important. It would be catastrophic to many consumers if the EOUST approved inferior or unscrupulous agencies to offer counseling because it was trying to ensure that adequate counseling capacity existed.

Conversely, we would also be concerned if the EOUST did not ensure that adequate capacity of all three types of credit counseling existed. Under the law, counselors can offer in-person, telephone or internet based counseling to meet both the briefing and the instructional course requirements. In our view, it is very important that adequate capacity exist for each of these three separate delivery channels in all parts of the country. Some debtors will prefer to receive in-person counseling, while many others might find it more convenient to do their counseling on the phone. Debtors should have a meaningful choice about how they want to receive counseling, not be forced to talk to a counselor by phone or over the Internet because no in-person services are available on a timely basis in the area in which they live.

Assuring adequate counseling of high quality may prove to be an especially challenging task for pre-discharge instructional courses. Very few of these courses exist at the current time. It may require a significant amount of "due diligence" on the part of the EOUST to ensure that courses of high quality are offered throughout the country.

We urge the EOUST to offer its guidelines immediately for assuring adequate counseling for both counseling requirements – and regarding a back-up plan if adequate counseling does not exist. We urge the Office to seek public and agency comment on these guidelines.

Affordability of Counseling Services

As mentioned above, agencies approved for credit counseling under the law must offer services at "reasonable" fees without regard for the ability of a debtor to pay. The EOUST has yet to offer much guidance on how either of these requirements will be administered. At the same time, the EOUST has determined that the average length of a pre-filing "briefing" should be 90 minutes. Our organizations strongly support the provision of thorough, effective counseling, but it will not be cheap for agencies to provide high-quality sessions of one and one-half hours. Moreover, as stated above, many of the abuses that have occurred in the industry have involved overcharging. It will be very important that the EOUST issue detailed guidelines soon on how much agencies can charge for pre-filing "briefings" and pre-discharge "instructional courses" and on serving debtors without ability to pay.

Assuming that most debtors considering bankruptcy have much, if any, "ability to pay" would be a mistake. Studies have consistently shown that the average income of chapter 7 filers hovers around $20,000 a year, well below the national median. Chapter 13 filers have slightly higher incomes but are still earn less than $30,000 yearly.[11] Research has also shown that the vast majority of individuals who enter bankruptcy do so because of a significant loss in income, high medical bills or divorce, meaning that their ability to pay for credit counseling will likely be very limited.

The reasonableness of fees for the pre-petition briefing and the financial education instructional course must also be viewed in the context of the other substantial increases in the costs of bankruptcy relief brought about by the 2005 Act. As a result of section 325 of S.256, and section 6042 of H.R. 1268, the total filing fee for a chapter 7 bankruptcy case will be increased from $209 to $274, as of October 17, 2005. In addition to this $65 increase and the new counseling costs, many bankruptcy attorneys have indicated that their fees for representation of clients will increase as a result of the new filing requirements and other burdens imposed by the 2005 Act. And while programs that provide pro bono representation are helpful, they assist only a small percentage of low-income consumers, and many pro bono coordinators have stated that they will lose many of the their volunteers as a result of the new attorney liability provisions.

If the EOUST does not take affirmative steps to ensure that the new counseling fees are truly reasonable and that appropriate fee waivers are available, many low-income consumers will be shut out of the bankruptcy system due to the substantial new costs. Agencies will be tempted to "cherry pick" the clients that they believe can pay higher fees. In establishing these fees, the EOUST should not just consider the direct costs of providing the service by agencies. The

[11] *Personal Bankruptcy: A Report on Petitioners' Ability-To-Pay*, Monograph #33, John M. Barron, Michael E. Staten, Credit Research Center, Georgetown School of Business, Georgetown University, 1997, p. 16. Barron and Staten reported that average household income for surveyed chapter 7 filers was $19, 620, after-taxes. Chapter 13 filers had an average income of $26, 334.

nonprofit organizations that will be providing briefings prior to a bankruptcy filing are required by law to be charitable in nature and to seek diverse funding sources for their services.[12]

We suggest that EOUST require agencies to administer a sliding scale of fees based upon a fair and rigorous assessment of ability to pay, and that it cap the amount that can be charged for a counseling session. We also urge the EOUST to develop the capacity to affirmatively investigate whether agencies are truly charging based on ability to pay in individual cases. This is a far more effective approach than passively providing agencies with a "safe harbor" if they can prove that they are not charging a certain percentage of the clients that see them. Given the vast demographic and regional differences that affect the ability of debtors to afford credit counseling, such a number would be hard to set fairly. It would also encourage agencies to violate the law and not serve particular consumers, once that target number is met.

Ensuring that Agencies and Creditors Offer Meaningful DMP Concessions

The EOUST should be complimented in its decision not to require approved counseling agencies to offer debt management plans. However, in setting out the minimum requirements for adequate credit counseling services by those agencies which do provide debt management plans, the EOUST should require that approved agencies make such plans available to consumers in a manner that is consistent with the intent of Congress as reflected in section 502(k). In this new section of the Bankruptcy Code, the debtor may attempt to negotiate through an approved nonprofit budgeting and credit counseling agency a "reasonable alternative repayment schedule." If the creditor unreasonably refuses to negotiate such a schedule, a debtor who later files bankruptcy, perhaps as a result of the creditor's unreasonableness, may ask the court to reduce the creditor's claim by 20 percent.

As stated above, the National Consumer Law Center and Consumer Federation of America have documented in recent years how creditors have actually reduced the concessions they offer to consumers in repayment plans, such as lower interest rates (while telling Congress that too many debtors were irresponsibly ignoring alternatives to bankruptcy like credit counseling).[13] This provision is clearly premised on the assumption that creditors must do more to offer viable alternatives to bankruptcy.

For this provision to apply, the consumer's offer must be made at least 60 days before a bankruptcy is filed and it must provide for payment of at least 60 percent of the amount of the outstanding debt over a period not to exceed the debt's repayment period. Importantly, by setting out these requirements, section 502(k)(1) provides that a repayment schedule is reasonable even if it offers payments by the consumer of an amount less than 100% of the debt. In fact, an offer of 60 percent of the amount owed may be deemed reasonable and invoke the court's authority under this provision to reduce the creditor's claim.

Moreover, by requiring that the offer must be made at least 60 days before filing through a nonprofit agency approved under section 111, it is clear that Congress intended for consumers

[12] *Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants*, National Consumer Law Center and Consumer Federation of America, April 2003, p. 28.
[13] Ibid, p. 22.

to be able to negotiate repayment schedules that involve a compromise of the debt as part of the new credit counseling sessions.[14] Thus, section 502(k) must be read in connection with the new credit counseling requirements, and it apparently reflects the intent of Congress to encourage both debtors and creditors to take steps before bankruptcy which might actually prevent the bankruptcy filing. Given this purpose, the EOUST should require that approved counseling agencies which offer debt management plans must be prepared, if the consumer requests, to offer reasonable alternative repayment schedules that are consistent with the requirements of such offers under section 502(k).

Credit Counseling Agencies and Bankruptcy "Advice"

The credit counseling requirements of the bankruptcy law place several requirements on agencies regarding the kind of counseling they must offer during the pre-filing briefing. Section 111(c)(2)(E) requires agencies to provide "adequate counseling with respect to a client's credit problems that includes an analysis of such client's current financial condition, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amoritization of debt."

There is not a single requirement in the Act that agencies provide debtors with substantive advice about whether or not to file bankruptcy, and for good reason. For one thing, agencies that did so might well violate state laws against practicing law without a license. Even if these laws didn't exist, credit counselors typically know very little about the bankruptcy process. After all, credit counseling was created by the credit card industry as an alternative to bankruptcy. Credit counseling agencies still receive a significant amount of "fair share" funding from credit card issuers based on the quantity of credit card debt each agency handles. Even legitimate, reputable credit counseling agencies often have counselors with an imperfect understanding of the bankruptcy process and of its benefits and hazards, not to mention an institutional bias against it. (Just as bankruptcy attorneys often have an institutional bias against credit counseling.) Unscrupulous agencies have a bigger problem: a conflict of interest. They allow the funds they receive from creditors to bias the recommendations they offer to consumers.

For all of these reasons, we believe it is very important that EOUST monitor approved agencies carefully to ensure that they are not exceeding the requirements of the law and offering specific bankruptcy advice to debtors, and that any information that agencies do provide about bankruptcy is accurate and balanced.

Nonprofit Status of Agencies that Offer Pre-Filing Briefings

Section 111(c)(2) of the Act requires that agencies that are approved to offer pre-filing briefings are "nonprofit". (No such requirement exists for organizations that offer pre-discharge instructional courses.) The Act does not specify that agencies that offer briefings be 501(c)(3)

[14] It is worth noting that Congress did not require the use of counseling agencies approved by the EOUST in all of the new provisions in the 2005 Act which involve repayment plans. For example, new section 362(i) states that a case may be considered filed in good faith if it is filed after an earlier case dismissed due to the creation of a repayment plan, but there is no requirement that the plan be negotiated through an approved counseling agency.

nonprofit organizations, as approved by the IRS. This lack of exclusivity could be a positive factor if it encourages a variety of nonprofit organizations, such as social welfare organizations (501(c)(4)), business leagues (501(c)(6)), credit unions (501(c)(15)), and legal services clinics (501(c)(20)) to offer quality credit counseling under the Act. It would be an especially positive development if these other types of nonprofits offered promising new forms of credit counseling or counseling without the provision of a DMP.

However, given all of the abuses that have occurred in the industry by profit-oriented "nonprofits", it is absolutely essential that the EOUST establish tight standards to ensure that profiteering by phony nonprofits does not occur. We strongly encourage the EOUST to propose these standards immediately and to request public comment on them.

II. Protecting Debtor Privacy under the Act

The Act has a number of new provisions dealing with access to and the privacy of information submitted by debtors in a bankruptcy proceeding. The most far-reaching privacy issue raised by the Act involve new provisions requiring the disclosure of tax returns by debtors. The Act requires debtors to provide tax returns or transcripts of returns to the trustee (Section 521(e) 11 U.S.C., the Bankruptcy Code) and, under certain conditions, to file them with the court (section 521(f) of the Code). Both sections require debtors to provide these returns to creditors upon request. However, this requirement is subject to section 315(c) of the legislation (S. 265), which mandates that the Administrative Office of the U.S. Courts "shall establish procedures for safeguarding the confidentiality of any tax information provided," which "shall include restrictions on creditor access." These procedures must be in place within 180 days of the date of enactment of the Act – October 17, 2005.

In order to fulfill the intent of the Act <u>and</u> protect the privacy of the Americans who file bankruptcy every year, it is essential that the Administrative Office restrict the disclosure of tax filings to creditors and limit their use of this information. The primary purpose of requiring debtors to produce tax filings under the Act is to allow the bankruptcy trustee, supervised by the U.S. Trustee Program of the Department of Justice, to verify the accuracy of the income and expense information that debtors will now be required to provide for both chapter 7 and chapter 13 bankruptcies. Creditors should only be allowed access to tax returns in limited circumstances when they can show that there is a specific need for the creditor – as opposed to the Trustee – to have access to the information.

The reason that creditor access to tax filings has to be controlled so closely is that the information is exceedingly sensitive; much of what is provided on tax filings is not relevant to a bankruptcy proceeding and this information could easily be misused or abused on a broad scale that causes substantial harm to debtors. These documents include unique personal identifiers and information that is particularly susceptible to misuse and abuse.

First, the extraordinarily large and frequent security breaches of confidential information held by creditors, retailers and data brokers that have come to light in recent months clearly illustrate how vulnerable sensitive financial data is to theft and abuse right now. Imagine what

this country's increasingly sophisticated identity thieves[15] could do if they were able to breach creditor databases that contained the mother lode of all financial and personal information: tax filings. Filings contain information like Social Security Numbers, dates of birth, bank account numbers, income and other tax information, market value of real property and other assets, alimony and support payments, expenses, purchases and personal spending habits.

Second, tax filings contain much information that has no bearing on bankruptcy filings in most cases, such as information about children, past medical treatment and about the finances of spouses who are not in bankruptcy. This information could be subject to inappropriate secondary uses by the creditor, its employees, its affiliated companies or even third parties. Creditors, for example, will be tempted to use tax information for marketing purposes (including, with unscrupulous lenders, the provision of predatory loans) unless access to filings is strictly limited to the specific requirements of the Act and not allowed to be aggregated in the firm's general shared administrative databases.

Further, under no circumstances should the Administrative Office allow this sensitive information to be sold to data aggregators, incorporated into an internal marketing database or distributed to affiliated entities by creditors.

We suggest that the Administrative Office apply the following specific standards to the distribution and use of tax filings as soon as possible, so that they are in place when the Act takes effect:

1. **No tax returns or transcripts should be in public files or available on the Internet.** The procedures for handling tax returns could track those already in use for Social Security Numbers, in which the numbers are submitted to the court but not placed in public files.

2. **Creditors must be required to show cause to gain access to a particular tax filing.** Creditors should not be able to file a form request in every case giving them access to millions of debtor tax returns. We do not object to disclosure of tax returns in appropriate cases, as defined by narrow rules under section 315(c) of the legislation. However, a determination of appropriateness must be made on an individualized basis by requiring creditors to show cause. They should be required to state why a Trustee cannot adequately check a debtor's filings for accuracy, why the tax information is relevant to a particular claim the creditor has, and that the information that the creditor seeks cannot be obtained from other sources. It is important to note that much information is already widely available to creditors in bankruptcy, including a debtor's income and expenses (including 60 days of pay stubs), ages of children, and prior residences.

3. **Interested parties should be forbidden from redistributing the information in any fashion unless approved by the court, including to affliates**. This would include, at a minimum, creditors and panel trustees. There are currently no rules limiting the use of

[15] A 2003 survey sponsored by the Federal Trade Commission suggests that incidents of identity theft are on the rise in the United States. The survey reveals that 12.7% of Americans have been victimized by some form of identity theft in the last five years, and that the total cost of this crime is estimated at $50 billion per year.

information creditors obtain in bankruptcy cases. There should be strict guidelines restricting the disclosure of the information to only the creditors' counsel and the few people in the creditor's organization who are actually participating in the bankruptcy case.

4. **Creditors should be required to keep a record of the receipt of all tax information and of each internal disclosure or use (within the company) that is made of this information.** The court, the United States Trustee and the debtor should have access to this database.

5. **Interested parties should also be required to meet security requirements regarding the use and storage of this information.** This would, at a minimum, include creditors and panel trustees. A good model for this standard would be the security requirements that government agencies have to meet under subsection (e)(9) of the Privacy Act. They must "establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of data and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual." Such a requirement should also establish rules of conduct for all persons allowed to access this information by creditors.