U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 23, 2020

The Honorable Russell Vought
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Director:

This letter provides the views of the Department of Justice ("Department") on enrolled bill S. 4996, Bankruptcy Administration Improvement Act of 2020, and its recommendation that the President sign the bill.

Section 3 of the Act addresses the quarterly fees paid in chapter 11 reorganization cases (primarily business debtors) that are used to help fund the Department's U.S. Trustee Program ("USTP"), which oversees the administration of bankruptcy cases. Quarterly fees are payable under 28 U.S.C. § 1930(a)(6) and are deposited into the U.S. Trustee System Fund ("Fund"), along with a portion of filing fees paid by all consumer and business debtors when they commence a bankruptcy case under any chapter of the Bankruptcy Code. 28 U.S.C. § 589a. The USTP is funded solely through appropriations that are offset by the amount on deposit in the Fund.

The legislation: (1) reduces the amount of quarterly fees paid in chapter 11 cases; (2) provides $5.4 million to offset the cost of extending the 25 bankruptcy judgeships identified in section 4 of the bill; (3) ensures adequate funding of the USTP by continuing to provide for the offset of its appropriations; and (4) uses a portion of any surplus to provide the first increase in nearly 30 years of the fee paid to private trustees appointed in chapter 7 liquidation cases, including cases that convert from chapter 11 to chapter 7, and to pay the costs of the Administrative Office of the U.S. Courts in administering these payments. Any excess funds are deposited back into the Fund.

The bankruptcy system is self-funded, at no cost to the American taxpayer. And because the bankruptcy system is interconnected, Congress has developed a scheme of fees paid by those that use the system—including filing fees, quarterly fees in chapter 11 cases, and other fees—that together fund the courts, judges, the USTP, and chapter 7 case trustees.

Notably, the legislation reduces the schedule of quarterly fees payable in chapter 11 cases under 28 U.S.C. § 1930(a)(6). The current fee schedule, which went into effect on January 1, 2018, has seven tiers. and based on a debtor's total disbursements during a quarter, provides for fees ranging from $325 for disbursements of less than $15,000 to a maximum of $250,000 for disbursements of at least $25 million. This has resulted in the balance of the Fund increasing to exceed the USTP's appropriations. The legislation streamlines the quarterly fee schedule into two tiers—disbursements below $1 million and disbursements of $1 million and above.

Under S. 4996, quarterly fees assessed in almost every chapter 11 case will decrease and no case will see an increase in fees. The percentage reductions from the current fee schedule range from 18 to 75 percent. Nevertheless, the balance in the Fund is expected to continue to increase, although Congress has provided a justification that helps mitigate the risk of litigation challenging the size of the Fund's surplus.

Section 4 of the legislation extends 25 temporary bankruptcy judgeships. Although the Department takes no position on these judgeships, it seems reasonable given the anticipated rise in corporate chapter 11 bankruptcy cases. Through December 6 of the first quarter of fiscal year 2021, chapter 11 cases increased by 14 percent. Furthermore, the use of quarterly fees as a funding mechanism for judgeships is consistent with the 2017 law that amended 28 U.S.C. § 1930(a)(6).

Thank you for the opportunity to present the Department's views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

MBHankey

Mary Blanche Hankey
Acting Assistant Attorney General