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APPROVED

FEB 27 1976

§ 2/27/76

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: February 28

February 23, 1976

Postal
2/27/76

To archive
2/27/76

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON

SUBJECT:

H.R. 6184 - Compensation
of Referees in Bankruptcy

Attached for your consideration is H.R. 6184, sponsored by Representative Edwards, which repeals the authority of the Judicial Conference of the United States to fix the salaries of full-time referees in bankruptcy at a rate below the statutory maximum and increases the salary for these court officers to a maximum of \$37,800.

A detailed discussion of the bill is provided in OMB's enrolled bill report at Tab A.

The Administrative Office of the U.S. Courts recommends disapproval of H.R. 6184.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill. In addition, Max indicates that he has received calls in support of the bill from Senators Eastland, McClellan, Burdick and Hruska.

RECOMMENDATION

That you sign H.R. 6184 at Tab B.



10 A



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 20 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 6184 - Compensation of
referees in bankruptcy
Sponsor - Rep. Edwards (D) California

Last Day for Action

February 28, 1976 - Saturday

Purpose

Increases the salary of full-time referees in bankruptcy to the maximum authorized by law and repeals the authority of the Judicial Conference to establish lower rates for these court officers.

Agency Recommendations

Office of Management and Budget	Approval
Civil Service Commission	Approval
Department of Justice	No objection
Administrative Office of the U. S. Courts	Disapproval (Veto message attached)

Discussion

H.R. 6184 would repeal the existing authority of the Judicial Conference to fix the salary of full-time referees in bankruptcy at a rate below the statutory maximum for such positions. It would establish the current statutory maximum of \$37,800 as the salary for these employees, subject to future adjustment under the procedures prescribed by law for executive, legislative, and judicial salaries. The bill would also provide a maximum annual salary rate of \$18,900 for part-time referees in bankruptcy--half that of full-time referees--but would continue to allow these salaries to be fixed by the Judicial Conference, based on numbers and types of cases closed, and other factors.



Based on the congressional committee reports and the views of the Administrative Office of the U. S. Courts, this enrolled bill appears to be the product of a seven-year controversy between the Congress and the Judicial Conference about the salaries of full-time referees in bankruptcy. The executive branch was not asked to report, and took no position on this legislation, in the course of congressional consideration.

Background

Under present law, the maximum salary for full-time referees is set every four years under the procedures of the Federal Salary Act of 1967. Pursuant to that Act, the quadrennial Commission on Executive, Legislative and Judicial Salaries recommends salary adjustments for high-level Government positions to the President, who transmits his recommendations to the Congress. The rates proposed by the President are effective within 30 days unless either House disapproves. As a result of the enactment last year of P.L. 94-82, referees' compensation is now also subject to annual automatic adjustment by operation of the "comparability" pay law, with the result that the maximum referee rate was increased from \$36,000 to \$37,800 in October 1975.

Referees do not receive the maximum salary authorized by law, however, because of action by the Judicial Conference under the Bankruptcy Act. That Act authorizes the Judicial Conference to set referee salaries at less than the statutory maximum to accord with individual variations in caseload and size of estates administered. This authority dates back to 1946, when referees were converted from a fee-basis to a salary system and there was significant variation in caseload among referees throughout the country.

A further relevant background factor is that, under the Magistrates Act of 1968, the compensation of full-time U. S. magistrates is set at a rate not to exceed that for referees, subject to a ceiling of 75% of the salary of a District Court judge.

The position of the Judicial Conference is that (1) referees should receive the same salary as U. S. Magistrates and (2) both of these groups should receive 75-80% of a district judge's salary. Accordingly, in recent years, the Judicial Conference has held the compensation for both referees and magistrates below the maximum. In 1969, the referee/magistrate rate established by the Conference was \$30,000--75% of the



then District Court Judge rate of \$40,000--instead of the \$36,000 maximum. At present, the rate is \$33,500--about 80% of the judge's rate of \$42,000--instead of \$37,800 which the enrolled bill would mandate for referees. All full-time referees and magistrates are currently being paid the same salary rate.

The major arguments advanced in support of H.R. 6184 in the congressional committee reports are:

-- The action of the Judicial Conference in setting referee salaries below the maximum is a "studied rejection of congressional standards in the exercise of delegated power" which "more than warrants Congress' cancellation of the delegation and reassumption of the authority itself."

-- The need for delegation of the salary fixing power has been eliminated since the Conference has set a uniform salary for all referees, thereby implicitly recognizing that the original differences in caseloads no longer exist.

-- The creation in 1967 of the quadrennial Commission procedures has obviated the need for the Conference to supervise the salary levels of the bankruptcy referees.

-- The increased judicial responsibilities of the bankruptcy referees and the increased case volume warrants implementation of the maximum salary authorization. The quality and effectiveness of the bankruptcy bench is being endangered by resignations based on "salary inequity."

The major arguments advanced in opposition to H.R. 6184 by the Administrative Office of the U.S. Courts are:

-- The increase in salaries of full-time referees required by the bill is not consistent with the internal alignment of salaries of court officials, as determined by the Judicial Conference at its October 1971 session and steadfastly adhered to since.

-- The bill would place referees in a more favored position than magistrates, although the Conference regards the responsibilities of both groups as officers of the courts to be on an equal basis and meriting the same salary.

-- Until there is an increase in the salary of district judges, to whom referees are subordinate, it would be a mistake to alter referee compensation by separate legislation.

Agency Recommendations

The Administrative Office of the U. S. Courts, on behalf of the Judicial Conference, strongly recommends a veto of this bill.

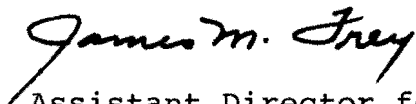
The Civil Service Commission recommends that the enrolled bill be approved, stating that it appears that the administrative flexibility vested in the Judicial Conference is no longer needed and that "the issue here does not seem to us to be of sufficient importance to justify a veto." The Justice Department has no objection to approval.

* * * * *

We concur with the Civil Service Commission that this legislation does not warrant disapproval. The question of salary parity between referees in bankruptcy and magistrates does not appear to be at the heart of the issue; the same day that the Senate passed H.R. 6184, it also passed S. 2923, which provides that magistrates will receive the same compensation as referees.

It appears, therefore, that the issue relates more directly to the effect of the enrolled bill in closing the gap between the salaries of referees and District Court judges, within the broader context of dissatisfaction with the salary levels of judges (and Government executives) generally--as evidenced by the current judges' suit for "back pay."

The enrolled bill will not, in our view, materially affect this larger issue either favorably or adversely and, accordingly, we recommend its approval.



Assistant Director for
Legislative Reference

Enclosures



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

February 11, 1976

Honorable James T. Lynn
Director
Office of Management and Budget

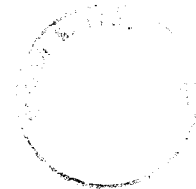
Attention: Assistant Director for
Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views and recommendations of the Civil Service Commission on H.R. 6184, an enrolled bill "To amend section 40 of the Bankruptcy Act to fix the salaries of referees in bankruptcy."

The purpose of this enrolled bill is to remove from the Judicial Conference of the United States the authority to fix the salaries of full-time referees in bankruptcy at a rate below the statutory maximum, and thereby to require that all full-time referees be paid at the statutory maximum, now \$37,800. Part-time referees in bankruptcy would continue to have their pay fixed by the Judicial Conference, at rates not to exceed one-half of the rate for full-time referees. A retired referee assigned to serve on a full-time basis in the territory of a part-time referee would be paid at the rate of full-time service.

For nearly thirty years, the Judicial Conference has been empowered to fix the pay of full-time referees in bankruptcy, in accordance with certain criteria in the Bankruptcy Act relating to caseload, and subject to a statutory maximum pay rate. Since 1969, however, the Judicial Conference has chosen to exercise this authority by paying all full-time referees at the same rate, substantially below the statutory maximum. At present, for example, the full-time referees are all paid \$33,500, although the statutory maximum for their positions is \$37,800. We understand that the Judicial Conference has apparently chosen to keep the pay rate for full-time referees below the maximum in order to maintain an internal alignment pattern the conference believes to be appropriate between the salaries of referees and other officers and employees of the judicial branch, including district judges.

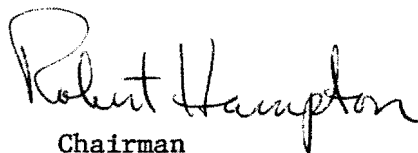


Since the Judicial Conference, by deciding to pay all full-time referees at the same rate, has recognized that there are no longer such variations in the workload of the different full-time referees as to require different salaries, it appears that the administrative flexibility vested in the Judicial Conference by the 1946 Referees' Salary Act is no longer needed. Therefore, the practical effect of the enrolled bill will be to supersede the Judicial Conference's determination of what differentials should exist between the salaries of full-time referees and other officers and employees of the judicial branch.

Although we understand from the Administrative Office of the U.S. Courts that the judicial branch has been opposed to this bill, because it would interfere with the internal alignment of judicial salaries, the issue here does not seem to us to be of sufficient importance to justify a veto. Therefore, the Civil Service Commission recommends that the President sign enrolled bill H.R. 6184 into law.

By direction of the Commission:

Sincerely yours,


Chairman

Department of Justice
Washington, D.C. 20530

February 10, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 6184, "To amend section 40 of the Bankruptcy Act to fix the salaries of referees in bankruptcy."

The enrolled bill would amend the Bankruptcy Act to set the salary of a full-time referee in bankruptcy at \$37,800 per annum, subject to adjustment in accordance with the Federal Salary Act of 1967 and section 461 of title 28 of the United States Code. Annual salaries for part-time referees in bankruptcy would be limited to \$18,900 and subject to the same adjustments applicable to full-time referees as well as to adjustment within limits by the Judicial Conference.

The Department of Justice has no objection to Executive approval of this bill.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR

WILLIAM E. FOLEY
DEPUTY DIRECTOR

February 9, 1976

Mr. James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Washington, D. C. 20503

Re: Enrolled Bill H.R. 6184

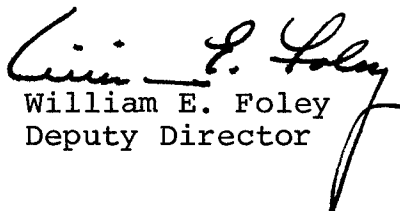
Dear Mr. Frey:

This will refer to enrolled bill request on
H. R. 6184, dated February 6, 1976.

The proposed legislation has been considered
and strongly disapproved by the Judicial Conference of
the United States and, accordingly, Executive dis-
approval is strongly recommended on behalf of the
Judicial Conference.

Attached hereto is a summary of the position of
the Judicial Conference.

Sincerely,


William E. Foley
Deputy Director

PROPOSED LEGISLATION TO INCREASE THE SALARIES
OF FULL-TIME REFEREES IN BANKRUPTCY BY STATUTE

At its September 1975 session, the Judicial Conference of the United States strongly disapproved S. 582, a bill similar to H.R. 6184, which would amend the Bankruptcy Act to fix the salaries of full-time referees by statute at \$36,000 per annum (now \$37,800). The Judicial Conference took the position that such legislation was not consistent with the alignment of salaries of court officials as determined by the Judicial Conference at its October 1971 session. The alignment of salaries adopted by the Judicial Conference in 1971 for ungraded officers of the court is as follows:

(1) Circuit Court Executive -

80 to 85% of a circuit judge's salary
(but not to exceed 90% of a district
judge's salary).

(2) Full-time Referee in Bankruptcy -

75 to 80% of a district judge's salary.

(3) Full-time United States Magistrate -

75-80% of a district judge's salary.

(4) Clerks of Court -

At least 50 but no more than 75% of a
district judge's salary, the salaries
to be proportioned as follows:

- (a) Clerk, Courts of Appeals and Court of Customs and Patent Appeals - 70-75%
- (b) Clerk, Large District and Court of Claims, 70-75%
- (c) Clerk, Medium District - 65-70%
- (d) Clerk, Small District, including Territorial Court - 50-60%

Since that time the Conference has steadfastly adhered to the necessity of maintaining this alignment of salaries. As recently as February 3, 1976, the Committee on Court Administration voted against approval of an increase in the salaries of the clerks of court which would bring the salary scale out of alignment insofar as clerks are concerned.

In addition, the Conference has consistently taken the position that the salaries of full-time referees in bankruptcy and the salaries of full-time United States magistrates shall be on a parity. The salaries of United States magistrates are fixed by statute at \$30,000 per year, although the magistrates did benefit by the five percent cost-of-living increase adopted in the fall of 1975.

The views of the Judicial Conference on the Senate bill, S. 582, were communicated to the Senate Committee in response to its request. The House Committee did not solicit the views of the Judicial Conference.

In view of the position steadfastly maintained by the Judicial Conference, Executive disapproval of the proposed enrolled bill is strongly recommended.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR

WILLIAM E. FOLEY
DEPUTY DIRECTOR

February 10, 1976

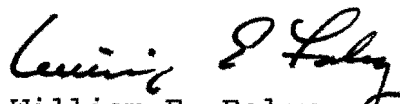
Mr. James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Washington, D. C. 20503

Re: Enrolled Bill H.R. 6184

Dear Mr. Frey:

In accordance with the request of your
office, I am enclosing herewith a proposed draft
of a veto message relating to enrolled bill
H.R. 6184.

Sincerely,


William E. Foley
Deputy Director

Enclosure

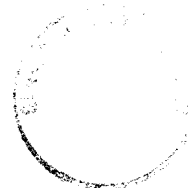
PROPOSED VETO MESSAGE

I am returning herewith without approval H.R. 6184, a bill to increase the salaries of full-time referees in bankruptcy. Referees in bankruptcy are an integral part of the federal judicial system. Their salaries have through the years been set by the Judicial Conference of the United States in accordance with the provisions of the Bankruptcy Act.

Referees in bankruptcy are ungraded officers of the court, as are circuit court executives, full-time United States magistrates and clerks of court. The Judicial Conference of the United States in 1971 provided that the salaries of full-time referees in bankruptcy and full-time United States magistrates should be on a parity and should be between seventy-five and eighty percent of the salary of a United States district judge.

The proposed legislation would have the effect of taking from the Judicial Conference the authority to fix the salaries of the referees in bankruptcy and would place them in a more favored position insofar as the United States magistrates are concerned though the Judicial Conference of the United States regards the responsibilities of both of these officers of the court to be on an equal basis and meriting the same salary.

Until such time as there is a change in the salary base of the United States district judge, therefore, I believe it is a mistake by separate legislation to make any alteration in the salaries of these court officers, especially in view of the strong opposition thereto by the Judicial Conference of the United States.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 20 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 6184 - Compensation of
referees in bankruptcy
Sponsor - Rep. Edwards (D) California

Last Day for Action

February 28, 1976 - Saturday

Purpose

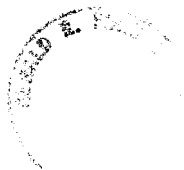
Increases the salary of full-time referees in bankruptcy to the maximum authorized by law and repeals the authority of the Judicial Conference to establish lower rates for these court officers.

Agency Recommendations

Office of Management and Budget	Approval
Civil Service Commission	Approval
Department of Justice	No objection
Administrative Office of the U. S. Courts	Disapproval (Veto message attached)

Discussion

H.R. 6184 would repeal the existing authority of the Judicial Conference to fix the salary of full-time referees in bankruptcy at a rate below the statutory maximum for such positions. It would establish the current statutory maximum of \$37,800 as the salary for these employees, subject to future adjustment under the procedures prescribed by law for executive, legislative, and judicial salaries. The bill would also provide a maximum annual salary rate of \$18,900 for part-time referees in bankruptcy--half that of full-time referees--but would continue to allow these salaries to be fixed by the Judicial Conference, based on numbers and types of cases closed, and other factors.



10-
J. Conroy
2-20-76
6:15 P.M.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 28

Time: 700pm

FOR ACTION: Dick Parsons *pk* cc (for information): Jack Marsh
 Max Friedersdorf *pk* Comments Jim Cavanaugh
 Ken Lazarus *pk*

FROM THE STAFF SECRETARY

DUE: Date: February 23

Time: 300pm

SUBJECT:

H.R. 6184 - Compensation of referees in Bankruptcy

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 20

Time: 700pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: February 23

Time: 300pm

SUBJECT:

H.R. 6184 - Compensation of referees in Bankruptcy

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

I recommend approval. PJ

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

FOR [unclear]

THE WHITE HOUSE
WASHINGTON

February 23, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *m.l.*
SUBJECT: H. R. 6184 - Compensation of referees
in Bankruptcy

The Office of Legislative Affairs concurs with the agencies
that the bill be signed.

Attachments

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 20

Time: 700pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: February 23

Time: 300pm

SUBJECT:

H.R. 6184 - Compensation of referees in Bankruptcy

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Recommend approval on the merits and also wish to note that I have received a number of phone calls expressing support for H. R. 6184 by Senators Eastland, McClellan, Burdick and Hruska.

Ken Lazarus 2/23/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James P.
For [unclear]

REVISION OF THE SALARY FIXING PROCEDURE FOR BANKRUPTCY JUDGES

—————
FEBRUARY 3, 1976.—Ordered to be printed
—————

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

REPORT

[To accompany S. 582]

The Committee on the Judiciary, to which was referred the bill (S. 582) to improve judicial machinery by amending the procedure for fixing the salaries of bankruptcy judges and to implement the Congressional salary authorization of 1969 and for other purposes, having considered the same, reports favorably thereon and recommends that the bill as amended, do pass.

AMENDMENT

The Committee proposes amendments to the bill as follows:
On page 1, line 10, after the words (81 Stat. 643) delete the period and insert the words:
and Sec. 461 of Title 28, United States Code, Public Law 94-82, August 7, 1975, (89 Stat. 419).

PURPOSE OF THE AMENDMENT

S. 582 provides that the salary of Bankruptcy Judges shall be subject to adjustment pursuant to Public Law 90-206, title II, December 16, 1967, 81 Stat. 643. Recent congressional action authorized a cost of living increase for referees in bankruptcy.

The purpose of this amendment is to specifically provide that the salary of each full-time referee in bankruptcy shall be subject to adjustment as provided by Congress in Public Law 94-82, August 9, 1975. The salary of the full-time bankruptcy judge shall be \$37,800 and the maximum salary of the part-time bankruptcy judge shall be \$18,400.

PURPOSE OF THE BILL

The purpose of the Bill is to amend the salary setting procedure (11 U.S.C. 40) of the Bankruptcy Act. The bill would restore to the Congress the sole and exclusive authority to fix salaries of full-time bankruptcy judges. The bill would implement the Congressional salary authorization of 1969.

STATEMENT

This bill restores to the Congress the sole and exclusive authority to fix salaries of full-time bankruptcy judges and it implements the salary authorization made by Congress in 1969. It does not affect the authority of the Judicial Conference to fix salaries of part-time bankruptcy judges within the maximum set by Congress.

Under current law, the salary of a full or part-time bankruptcy judge is determined in four steps. First, the Commission on Executive, Legislative, and Judicial Salaries forwards suggested salary levels for various judicial officers and employees to the President. The President with such changes as he deems appropriation, transmits the suggested salaries to the Congress and the salaries thus recommended become effective unless Congress takes contrary action. Congressional approval is final as to all recommended salaries except full and part-time bankruptcy judges. The Judicial Conference, using criteria prescribed by Congress in section 40a of the Bankruptcy Act is given the authority to determine the salary of individual bankruptcy judges within the statutory maximum.

HISTORY

The delegation of salary fixing authority for bankruptcy judges was enacted by Congress as a solution to a specific dilemma. Prior to 1946 bankruptcy judges were compensated by the universally deplored fee system. Congress, while decrying the fee system, determined that it would not be appropriate to grant a uniform salary level for bankruptcy judges as, in 1946, unlike today, there was a wide disparity in caseloads and geographical boundaries for the various bankruptcy courts. It was obviously impractical for Congress itself to monitor the bankruptcy system on a continual basis. The only practical alternative was to delegate salary fixing authority to the Judicial Conference while, at the same time, limiting this authority by the imposition of specific statutory standards and maxima which would insure that the implementation of this power would be within Congressional limits.

Historically, the Judicial Conference invariably and without exception authorized most full-time bankruptcy judges to receive the maximum salary permitted by section 40a.

The first statutory ceiling under the Referees' Salary Act, effective July 1, 1947, was immediately allowed to become effective as to all but 16 full-time bankruptcy judges.¹ The \$12,500 maximum authorized by the Act of July 7, 1952 was allowed to the bulk of full-time bankruptcy judges by Judicial Conference action in the fall of 1952.² The maximum \$15,000 salary authorized by the act of May 10, 1956 was

¹ 22 Ref. J. 25 (1948).

² 28 Ref. J. 8 (1954).

approved by the Judicial Conference for most full-time bankruptcy judges, effective October 1, 1963.³ The statutory maximum of \$22,500 as fixed by Public Law 88-426 in 1964 was approved for the overwhelming majority of referees by the Judicial Conference on September 23-24, 1964 and was made retroactive to June 30, 1964.⁴

In 1969 two decisions of the Judicial Conference significantly altered the salary setting authority authorized by Congress in 40a of the Bankruptcy Act. The Judicial Conference adopted the policy that all full-time bankruptcy judges should be paid at the same rate.⁵ The Conference report dated November 1, 1969, also approved elimination of the criteria originally set by Congress in Section 40a.⁶ Thus, the Judicial Conference decided to ignore the very statutory standards which accompanied the grant of salary fixing authority.

Second, the Judicial Conference went on record as favoring salary parity between bankruptcy judges and U.S. magistrates. The policy decision also served to set the maximum salary which could be paid bankruptcy judges at 75-80 percent of the salary authorized Federal district judges.

The result of these policy changes was the refusal, for the first time, to permit any bankruptcy judge to receive the maximum salary authorized by section 40a. In 1968 the newly created Postal Revenue and Federal Salary Commission recommended that full-time bankruptcy judges receive \$40,000. The President reduced this recommended salary to \$36,000 and Congress, taking no contrary action, approved his recommendation. The Judicial Conference, acting on its new policy, ignored the congressional salary maximum by applying criteria nowhere authorized by statute and limited all full-time bankruptcy judges to a salary of \$30,000.

There are three reasons for enacting this legislation which will restore to the Congress the sole and exclusive authority to fix salaries of full-time bankruptcy judges and to implement the salary authorization made by Congress in 1969. They are:

- (1) the Judicial Conference rejection of the criteria established legislatively by Congress in 40a of the Bankruptcy Act has eliminated the reason for the original congressional delegation of power;
- (2) the Congressional authorizations of a salary of \$36,000 is even more warranted by circumstances today than in 1969;
- (3) the impact of the denial of the maximum salary authorization has threatened the quality of the bankruptcy bench at the most crucial period in its history.

NEED FOR DELEGATION OF SALARY FIXING POWER HAS BEEN ELIMINATED

The Judicial Conference in adopting the single salary policy which would be determined by criteria other than that prescribed by Congress has eliminated the justification or purpose for the Congressional

³ Report of Proceedings of the Judicial Conference of the U.S. Sept. 19-20, 1946, at 18 (Administrative Office of the U.S. Courts, 1956).

⁴ Report of Proceedings of Judicial Conference of the U.S. Sept. 23-24, 1964 at 71 (Administrative Office of the U.S. Courts, 1964).

⁵ Report of Proceedings of the Judicial Conference of the U.S. Oct. 31-Nov. 1, 1969, at 76 (Administrative Office of the U.S. Courts, 1969).

⁶ *Ibid.*

grant of authority in 1946. The creation of the Commission on Executive, Legislative, and Judicial Salaries to conduct quadrennial reviews of the salary rates of designated federal judicial officers, including bankruptcy judges gives Congress the necessary capability to recommend the appropriate rates and relationships for federal bankruptcy judges' salaries. The Commission on Executive, Legislative and Judicial Salaries has in fact twice recommended that full-time bankruptcy judges receive a uniform salary of \$36,000. These recommendations were made in 1969 and 1973.

Judge Cyr in his opening statement at the hearings before the Subcommittee on Improvements in Judicial Machinery on May 1, 1975, questioned whether the Judicial Conference was equipped to exercise its salary fixing authority for bankruptcy judges. He stated:

The Conference generally meets but two days in March and two days in October of each year. It is comprised of twenty-five circuit and district judges who are concerned primarily with the administrative and judicial problems confronted in the effort to cope with the expanding caseloads of their own busy courts. The Conference functions through a number of committees, including its Bankruptcy Committee, whose decisions are invariably adopted by the Conference itself. . . .

Bankruptcy judges have never been permitted to appear either before the Conference or its Bankruptcy Committee. Of course, no bankruptcy judge has been allowed membership on the Bankruptcy Committee * * * nor in any advisory capacity either to the Conference or its Bankruptcy Committee.

In summary, as the Judicial Conference has ignored the criteria established by Congress in setting bankruptcy judges' salaries, the reason for the original delegation of power has been eliminated. The creation of the Commission on Executive, Legislative and Judicial Salaries' gives Congress the requisite assistance necessary to exercise the salary-fixing power. No further delegation of this authority is necessary.

JUSTIFICATION FOR IMPLEMENTING 1969 SALARY AUTHORIZATION

A. INCREASED VOLUME OF BANKRUPTCY FILINGS

In the years from 1948 to 1974 the number of filings in the bankruptcy courts climbed from 18,510 to 189,513. Since fiscal 1974, the number of bankruptcy cases has continued to grow at an explosive rate. Testimony presented at the May 1 hearings indicates that during the first 9 months of fiscal 1975, 184,655 bankruptcy filings were reported as compared to 136,597 in the first 9 months of fiscal 1974. This represents an increase of 48,058 filings or 35.2 percent as can be seen in the following tables.

The increase in the number of bankruptcy filings does not indicate the full measure of the increased strain on the resources of the bankruptcy courts. In fiscal year 1974, 20,746 business bankruptcies were

filed which represents an increase of 18.6 percent over the prior fiscal year. The following table illustrates the number of business and non-business bankruptcies filed since 1969.

	Fiscal year—		Numerical increase	Percentage increase
	1975 (7 mos)	1974 (7 mos)		
Voluntary straight	111,025	85,253	+25,772	+30.2
Involuntary straight	780	542	+238	+43.9
Chapter IX	1	1		
Chapter X	123	63	+60	+95.2
Chapter XI	1,875	1,162	+713	+61.4
Chapter XII	142	74	+68	+91.9
Chapter XIII	23,976	16,268	+7,708	+47.4
Section 77	0	15	-15	
Total	137,822	103,378	+34,544	+33.4

1st 9 mo fiscal year	Number of filings	Increase	Percentage of increase
1975	184,655	48,058	35.2
1974	136,597		

Fiscal year	Non-business	Percent of total	Business	Percent of total	Total filings
1969	169,500	91.7	15,430	8.3	184,930
1970	178,202	91.7	16,197	8.3	194,399
1971	182,249	90.5	19,103	9.5	201,352
1972	164,737	90.1	18,132	9.9	182,869
1973	155,707	89.9	17,490	10.1	173,197
1974	168,767	89.1	20,746	10.9	189,513

When the Salary Commission recommended a salary level of \$36,000 in 1969 the total business filings numbered 15,430. In 1974, there were 20,746 filings representing an increase of 5,136 filings or 39.7 percent.

In addition, the increasingly heavy caseload which brings more and more complex issues before the bankruptcy court falls on a relatively static number of bankruptcy judges. As the following table indicates, the number of full-time bankruptcy judges serving as of March 1975 has increased by seven with a corresponding decrease of five in the number of part-time bankruptcy judges serving on the bench.

Date	Number full-time bankruptcy judges	Number part-time bankruptcy judges	Total
April 1969	183	35	218
March 1975	190	30	220

Thus, the individual bankruptcy judge must, through his own increased workload, cushion the ever heavier number of bankruptcy case filings.

B. THE INCREASED JUDICIAL RESPONSIBILITY OF THE BANKRUPTCY JUDGE

The bankruptcy judge is in reality a trial judge of the bankruptcy court.⁸ This is not a new concept by any means. With the passage of Public Law 91-467 the so-called "Dischargeability Bill," and the adoption of the Rules of Bankruptcy Procedure, the judicial responsibilities of bankruptcy judges have been greatly expanded,⁹ vesting the bankruptcy court and specifically the bankruptcy judge with jurisdiction to determine the dischargeability of debts, and render judgments thereon,¹⁰ to conduct jury trials, to determine and punish for contempt and to issue writs of habeas corpus.¹¹

As Judge Conrad Cyr testified at the May 1st, hearings:

The jurisdictional responsibilities of bankruptcy judges embrace a wide gamut of cases. Their cases range from exceedingly large and complicated multiplaintiff and multi-defendant adversary proceedings involving vast sums of money and intricate interpretations of the appropriate inter-relationships of the complex provisions of the Bankruptcy Act with those of State and Federal commercial, tax, constitutional and other laws, to the relatively simple, but no less important, consumer cases wherein the rights of ordinary citizens to be relieved from the burdens of unmanageable indebtedness are the critical issues presented.

The increased jurisdictional responsibilities of the bankruptcy judges, coupled with the increase in bankruptcy filings since 1969 have given the bankruptcy courts a truly staggering caseload, both in regard to the number of filings and the complexity of legal issues presented by these filings. A random sampling of bankruptcy judges resulted in reports from 56 of the total 190 full-time and 31 part-time bankruptcy judges which are authorized for the 92 judicial districts.

Type of case	Number of cases	Number of creditors	Dollar amount of assets	Dollar amount of liabilities
Chapter 10.....	80	110,882	\$973,261,000	\$861,449,000
Chapter 11.....	1,569	593,102	3,978,686,000	4,683,750,000
Chapter 12.....	73	9,024	140,165,000	93,884,000
Total.....	1,722	713,008	5,092,112,000	5,639,083,000

As the data reflects, approximately one-third of the bankruptcy judges in the country are handling 722 business reorganization cases involving 713,000 creditors with dollar assets of over \$5 billion and dollar amounts of liabilities extending to almost \$6 billion. Significantly, these statistics do not include many of the heavy chapter XI areas. For example, the following localities are not included in the first 7 months of fiscal 1975 calculations: Tucson, Ariz.—13 filings; Eureka, Calif.—13 filings; San Francisco, Calif.—17 filings; Los Angeles, Calif.—134 filings; Tallahassee, Fla.—12 filings; Baltimore, Md.—13 filings; Grand Rapids, Mich.—10 filings; Nebraska—19 fil-

⁸ 20 Ref. J. 105 (1946).

⁹ 10 Ref. J. 48, 52 (1936).

¹⁰ Public Law 91-467, §§ 1 and 8 (Oct. 19, 1970).

¹¹ See, e.g. Rules 201(a) (3), 810, 913 and 920(a) of the Rules of Bankruptcy Procedure.

ings; New York-New Jersey—26 filings; Brooklyn, N.Y.—27 filings; Westbury, N.Y.—20 filings; Philadelphia, Pa.—46 filings; San Juan, Puerto Rico—73 filings; Memphis, Tenn.—15 filings; San Antonio, Tex.—21 filings; Roanoke, Va.—16 filings; and Milwaukee, Wis.—21 filings. Thus, there are 505 additional filings just in those limited areas which due to the incomplete reporting in this fiscal year are not included in the above data.

IMPACT OF THE DENIAL TO IMPLEMENT CONGRESSIONAL SALARY AUTHORIZATION

The refusal of the Judicial Conference to implement the maximum salary authorized by Congress of \$36,000 has had an economic impact on the bankruptcy bench which is severe and threatens to become irrevocable. Since April, 1969 when the salary of fulltime bankruptcy judges was set by the Judicial Conference at a level of \$30,000, 20 percent below the maximum authorized by Congress, the purchasing power of that salary has eroded to \$17,400 which is 23 percent below the \$22,500 the bankruptcy judge was receiving in 1965. Furthermore, even though corrective action were to be taken at once to restore the salaries to the statutory maximum, more than \$30,000 will have been irretrievably lost by every full-time bankruptcy judge in the country, due to the 6-year refusal of the Judicial Conference to permit implementation of the \$36,000 salary authorized by Congress. Likewise, immediate congressional action in returning these salaries to the statutory maximum historically allowed would at best give bankruptcy judges approximately the same purchasing power enjoyed in 1968.

But the harsh erosive effects alone do not indicate the full brunt of the economic impact of the Judicial Conference action on the bankruptcy judges. As the Salary Commission itself expressly stated:

The matter of retirement benefits ought to be considered in any comparative salary study.

A compulsory contribution of 7 percent of the bankruptcy judge's gross annual salary is required to provide the relatively meagre Civil Service retirement benefits available to him,¹² whereas district judges receive full salary upon retirement without having made any financial contribution whatever. Even if section 40a of the Bankruptcy Act did authorize the Judicial Conference to set the salaries of bankruptcy judges on the basis of a comparison with district judges salaries, it would be patently unrealistic and unfair to ignore that each full-time bankruptcy judge must now contribute more than \$2,200 each year toward his retirement fund.

The effect of the 6-year salary freeze imposed by the Judicial Conference has seriously endangered the quality and effectiveness of the bankruptcy bench.

The latest records of the Bankruptcy Division of the Administrative Office of the U.S. Courts indicates that in the past 5½ years 14 bankruptcy judges have resigned giving salary inequity as the reason for their resignation. Two such resignations occurred in 1970, none in 1971, three in 1972, two in 1973, five in 1974, and four through

¹² Report of Proceedings of the Judicial Conference of the United States, Sept. 17 and 18, 1963, at 85. (Administrative Office of the U.S. Courts, 1963).

the first half of 1975. The following listing gives the name and location of bankruptcy judges who have resigned since 1970 because the Judicial Conference refused to implement the congressional salary authorization.

June 30, 1975: John J. Dillenschneider, Columbus, Ohio (Return to private practice).

June 30, 1975: Joseph Patchan, Cleveland, Ohio (Return to private practice).

June 25, 1975: Dudley H. Bower, Savannah, Georgia (Return to private practice).

June 1, 1975: James E. Yacos, Miami, Florida (Return to private practice).

December 31, 1974: Raymond J. Pellman, Cincinnati, Ohio (Retirement compensation).

December 31, 1974: Authur Moller, Houston, Texas (Return to private practice).

December 1, 1974: Stephan J. Covey, Peoria, Illinois (Assume State judgeship).

November 7, 1974: Edward A. Quinnell, Marquette, Michigan (Assume State judgeship).

October 5, 1974: Daniel Cowans, San Jose, California (Return to private practice).

November 16, 1973: Robert P. Fullerton, Denver, Colorado (Assume State judgeship).

September 1, 1973: Jerold L. Strashein, Omaha, Nebraska (Return to private practice).

July 31, 1972: William Corrigan, St. Louis, Missouri (Assume State judgeship).

June 15, 1972: Robert Ervin, Tallahassee, Florida (Return to private practice).

February 15, 1972: Charles T. Hamlin, Fresno, California (Assume State judgeship).

June 30, 1970: Edward J. Houston, Miami, Florida (Return to private practice).

While the 3-year period 1970 thru 1972 saw four resignations, a period of 2 and one-half years, 1973 thru June 30, 1975 has seen the number of resignations nearly triple to 11.

Among those who resigned are three former law professors, two former State court judges, and one of the authors of the prestigious Collier on Bankruptcy. Other bankruptcy judges are on the verge of returning to State courts or private practice in the absence of prompt relief from their economic problems. Not surprisingly, the Bankruptcy Division of the Administrative Office of the U.S. Courts advises that recruitment is already becoming markedly more difficult because qualified attorneys are apprehensive over the existing inadequacies and the long range prospects for salary relief and security for bankruptcy judges.

In hearings before the Subcommittee on Improvements in Judicial Machinery, Judge Joseph Patchan, Northern District of Ohio, urged that Congress take corrective action. Judge Patchan, who had recently resigned his judgeship testified:

The more long range reason for my departure is the continuing failure of the Judicial Conference to fix salaries as

Congress has directed. For 6 years, in disregard of the criteria provided by Congress, the Conference has substituted its own salary policy. The effect is to deny all bankruptcy judges the full \$36,000 figure authorized by Congress in 1969. Thus, the only hope for many sorely pressed to remain in this bench is in Congress, via (the) amendment to Section 40 of the Bankruptcy Act. Unless Congress returns to itself the exclusive power to fix bankruptcy judges' salaries in whatever relation it deems proper to other judicial officers, I believe the already high rate of resignations from the bankruptcy bench will increase substantially.

With 1975 already well on its way to becoming the year with the largest number of filings in history, the committee deems it altogether imperative to rectify the salary inequities experienced by bankruptcy judges over the past several years.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,

Washington, D.C., April 25, 1975.

HON. QUENTIN N. BURDICK,
Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR SENATOR BURDICK: This is in response to your letter of April 22, 1975, extending the opportunity to testify or submit a statement on behalf of the Administrative Office at the hearing to be held on May 1, 1975, on S. 582, a bill to amend Section 40 of the Bankruptcy Act.

As you know, the Judicial Conference of the United States and this office have urged the Congress to enact legislation to increase the compensation of all federal judicial officers. While we, of course, favor an increase in the salaries of referees in bankruptcy, we believe it would be unfortunate to increase the salaries of one segment of the federal judiciary without doing so for the judges of the United States Courts of Appeals, the United States District Courts, and the United States Magistrates. Furthermore, the Judicial Conference of the United States is on record as favoring parity in the salaries of magistrates and referees in bankruptcy and the provisions of S. 582 are limited solely to referees in bankruptcy.

The foregoing represents the position both of the Judicial Conference and of the Administrative Office of the United States Courts and is submitted in response to your letter. In the circumstances I do not believe it will be necessary for any further testimony to be submitted on behalf of either the Conference or the Administrative Office.

Sincerely,

WILLIAM E. FOLEY, *Deputy Director.*

COST

The anticipated cost of this legislation is \$1,218,545. This figure represents the projected increase of \$6,150 per year to the maximum salary of \$37,800 for 190 full-time bankruptcy judges and the maximum salary of \$18,900 for 30 part-time bankruptcy judges.

SECTION-BY-SECTION ANALYSIS

Section (a)—This section amends subdivisions a and b of section 40 of the Bankruptcy Act.

Subdivision a (1) is amended to provide that all full-time referees in bankruptcy shall receive a salary of \$36,000 per annum, subject to adjustment pursuant to Public Law 90-206, title II, December 16, 1967 (81 Stat. 643). The salary authorization is final and would not be subject to adjustment by the Judicial Conference.

Subdivision a (2) provides a maximum salary of \$18,000 for part-time referees in bankruptcy subject to gradation by the Judicial Conference based on average number and types of, and the average amount of gross assets realized from, cases closed and pending in the territory the referee is to serve, during the last preceding period of 10 years and to such other factors as may be material.

Section d(2) is amended to provide that compensation paid retired referees who have been recalled to perform specified duties shall be based on the salary paid the referee serving the territory except if the referee is assigned to serve on a full-time basis in the territory of a part-time referee he shall receive the rate for full-time service.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows:

SECTION 40 OF THE BANKRUPTCY ACT

[(a) Referees shall receive as full compensation for their services salaries to be fixed by the conference, in the light of the recommendations of the councils, made after advising with the district judge of their respective circuits, and of the Director, at rates not more than \$36,000 per annum for full-time referees, and not more than \$18,000 per annum for part-time referees. In fixing the amount of salary to be paid to a referee, consideration shall be given to the average number and the types of, and the average amount of gross assets realized from, cases closed and pending in the territory which the referee is to serve, during the last preceding period of ten years, and to such other factors as may be material. Disbursement of such salaries shall be made monthly by or pursuant to the order of the Director.]

[(b) The conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, may increase or decrease any salary, within the limits prescribed in subdivision (a) of this section, if there has been a material increase or decrease in the volume of business or other change in the factors which may be considered material in fixing salaries: *Provided, however,* That during the tenure of any full-time referee his salary shall not be reduced below that at which he was originally appointed under this amendatory Act, and during any term of any such referee his salary shall not be reduced below the salary fixed for him at the beginning of that term.]

* * * * *

[(d) (2) Any referee who has retired or been retired under the provisions of paragraph (1) of this subdivision may, if called upon by a judge of a court or bankruptcy, perform such duties of a referee, conciliation commissioner, or special master under this title, within the jurisdiction of the court, as he may be able and willing to undertake. The retired referee shall receive as compensation for his services, either full or part time, the salary authorized for the referee serving the territory to which the retired referee is assigned. However, the rate of compensation of a retired referee assigned to serve on a full-time basis in the territory of a part-time referee shall be the minimum rate established by the Judicial Conference of the United States for full-time service. Salaries authorized under this paragraph shall be subject to the provisions of section 8344(a) of Title 5.]

(a) *The compensation of referees in bankruptcy shall be as follows:*

(1) *Each full-time referee in bankruptcy shall receive a salary of \$36,000 per annum, subject to adjustment pursuant to Public Law 90-206, Title II, December 16, 1967 (81 Stat. 643) and Sec. 461 of Title 28, United States Code, Public Law 94-82, August 7, 1975, (89 Stat. 419).*

(2) *Each part-time referee in bankruptcy shall receive a salary of not more than \$18,000 per annum, subject to adjustment pursuant to Public Law 90-206, title II, December 16, 1967 (81 Stat. 643), and subject to further adjustment by the conference, in the light of recommendations of the councils, made after advising with the district judges of their respective circuits, and the Director. In fixing the amount of the salary to be paid to a part-time referee, consideration shall be given to the average number and types of, and the average amount of gross assets realized from, cases closed and pending in the territory which the part-time referee is to serve, during the last preceding period of ten years, and to such other factors as may be material.*

(3) *Disbursement of salaries of referees shall be made monthly by or pursuant to order of the Director.*

(b) *The conference, in light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, may increase or decrease the salary of any part-time referee, within the limit prescribed in subdivision a (2) of this section, if there has been a material increase or decrease in the volume of business or other change in the factors which may be considered material in fixing salaries.*

* * * * *

(d) (2) *Any referee who has retired or been retired under the provisions of paragraph (1) of this subdivision may, if called upon by a judge of a court of bankruptcy, perform such duties of a referee, conciliation commissioner, or special master under this Act, within the jurisdiction of the court, as he may be able and willing to undertake. The retired referee shall receive as compensation for his services, either full or part time, the salary authorized for the referee serving the territory to which the retired referee is assigned. However, the rate of compensation of a retired referee assigned to serve on a full-*

time basis in the territory of a part-time referee shall be the rate for full-time service. Salaries authorized under this paragraph shall be subject to the provisions of section 13(b) of the Civil Service Retirement Act.

RECOMMENDATIONS

The committee believes that S. 582 is meritorious and recommends it do pass.



REVISION OF SALARY FIXING PROCEDURE FOR BANKRUPTCY JUDGES

SEPTEMBER 10, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. EDWARDS of California, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 6184]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6184) to amend Section 40 of the Bankruptcy Act to fix the salaries of referees in bankruptcy, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to restore to the Congress the sole and exclusive authority to fix the salaries of full-time bankruptcy judges, as it now has with respect to all other Federal judicial officers.

STATEMENT

This bill restores to the Congress the sole and exclusive authority to fix the salaries of the full-time referees in bankruptcy.

Referees in bankruptcy, now called bankruptcy judges under the recently adopted Rules of Bankruptcy Procedure, are full judicial officers. Though under the original Bankruptcy Act of 1898, it was contemplated that District Court judges would be the bankruptcy judges, and the referees would act only as special masters in certain cases, evolution of practice among the District Courts, and the enactment of the Chandler Act in 1938 have conferred greater status and responsibilities on the referees in bankruptcy. Presently, in nearly all judicial districts, the bankruptcy judge, or referee, presides over all aspects of bankruptcy cases. During the course of a case there may be several full scale trials, initiated by a complaint, and tried before the court as in any court of general jurisdiction. The bankruptcy judge's orders and decisions are final in every such proceeding, unless appealed to the District Judge. The scope of their responsibilities is

wide, for the nature of litigation that finds its way into bankruptcy court knows no bounds. A bankruptcy judge in even an uncomplicated case may hear contract, tort, tax, family law, property or labor causes of action. He must hear evidence, make findings, and render a decision just as his brethren on the District Court or a State court of general jurisdiction do. In addition, the bankruptcy courts in this country deal with tens of billions of dollars of assets every year in both straight bankruptcy cases and arrangements and reorganizations, and presided over more than 248,000 new cases in fiscal 1975 alone.

The current procedure for setting the salaries of full-time referees in bankruptcy is as follows: The Commission on Executive, Legislative, and Judicial Salaries reviews salary levels of top Federal employees, including all Federal judges and bankruptcy judges, every four years. It forwards its recommendations to the President, who, after review and with such changes as he deems appropriate, transmits the recommendations to the Congress. If Congress does not act within 30 days, the recommendations become effective. Congressional approval is final with respect to all salaries covered by the Commission's mandate, except those of full- and part-time referees in bankruptcy. Currently, Congressional approval of the salary recommendations of the Salary Commission for full- and part-time referees in bankruptcy is then subject to review by the Judicial Conference of the United States. Under Section 40 of the Bankruptcy Act, the Judicial Conference of the United States is to set the salaries of the full- and part-time bankruptcy judges according to specific statutory criteria and within the statutory maximum that was last set by the Congressional salary authorization of 1969.

The reason for this anomaly is historical, and has been eliminated both by the current uniformity of salaries among the full-time bankruptcy bench, and by the creation, by Congress, in 1967, of the Commission of Executive, Legislative and Judicial Salaries. Prior to 1946, referees in bankruptcy were compensated on the universally deplored fee-system—in essence, in a commission on the size of the estate administered. This system gave the referees the appearance of partiality in their deliberations, because their fees depended on the outcome of the litigation over which they presided. Congress established the Referees' Salary and Expense Fund in 1946, and put all referees, both full- and part-time, on a salary basis. However, at that time, the caseloads of even full-time referees varied widely around the country. In order to facilitate the transition to the salary system, the Congress delegated to the Judicial Conference the power to determine the salary each referee would receive, according to specific statutory guidelines, such as caseload and size of estates administered and subject to a statutory maximum. For 23 years, the Judicial Conference set salaries for full-time referees according to the statutory criteria and periodically increasing maxima. Nearly all full-time referees were given the full amount authorized by law.

In 1967, Congress created the Commission on Executive, Legislative and Judicial Salaries. The Commission issued its first recommendation in 1968, suggesting a salary of \$40,000 for full-time referees in bankruptcy. The President reduced this recommendation to \$36,000 before transmitting the recommendations to Congress. Congress approved

these recommendations in 1969, thus amending Section 40a of the Bankruptcy Act to authorize a maximum salary for full-time referees of \$36,000. According to Section 40a, however, the Judicial Conference had to act before the referees could be given the salary increase.

Instead of following its previous policy of granting the full amount authorized by law to the great bulk of the full-time referees, the Judicial Conference articulated a new policy. First, it determined to pay all full-time referees the same amount. That is, it acknowledged that the differences in caseloads among referees around the country that had warranted Judicial Conference supervision on referees' salaries in 1946 no longer existed. Their workloads were fairly uniform, and thus their salaries would be the same. That action alone would have warranted Congressional action to regain the sole and exclusive control over Federal judicial salaries that Congress had traditionally exercised. In addition, however, the Judicial Conference at the same time decided to ignore the statutory maximum and criteria in setting the salaries of full-time referees. The reasons advanced included the uniformity of workload among the referees, and consequent lack of need for statutory standards to measure differences in salary entitlement. The studied rejection of Congressional standards in the exercise of a delegated power more than warrants Congress' cancellation of the delegation and re-assumption of the authority itself. Thus, it is now time for the Congress to regain its sole and exclusive authority in the setting of judicial salaries—authority which the Judicial Conference has exercised in clear violation of the 1969 Congressional mandate.

There are three reasons for this change. First, the Judicial Conference has adopted a policy contrary to that expressed by Congress six years ago, in refusing to grant to any full-time referee the full amount allowed by the increased statutory ceiling of \$36,000 set by Congress in 1969. That Congress fully expected the Conference to grant that increase to nearly all full-time referees is evidenced by the Conference's actions with respect to prior Congressional Authorizations. The Judicial Conference invariably and without exception authorized nearly all full-time referees to receive the maximum salary permitted by Section 40a.

The first statutory ceiling under the Referees' Salary Act, effective July 1, 1947, was immediately allowed to become effective as to all but 16 full-time bankruptcy judges.¹ The \$12,500 maximum authorized by the Act of July 7, 1952 was allowed to the bulk of full-time bankruptcy judges by Judicial Conference action in the fall of 1952.² The maximum \$15,000 salary authorized by the Act of May 10, 1956 was approved by the Judicial Conference for most full-time bankruptcy judges, effective October 1, 1963.³ The statutory maximum of \$22,500 as fixed by Public Law 88-426 in 1964 was approved for the overwhelming majority of referees by the Judicial Conference on September 23-24, 1964 and was made retroactive to June 30, 1964.⁴

¹ 22 Ref. J. 25 (1948).

² 28 Ref. J. 8 (1954).

³ Report of proceedings of the Judicial Conference of the United States Sept. 19-20, 1946, at 18 (Administration Office of the U.S. Courts, 1956).

⁴ Report of proceedings of Judicial Conference of the United States, Sept. 23-24, 1964, at 71 (Administrative Office of the U.S. Courts, 1964).

However, when Congress raised the maximum to \$36,000 in 1969, the Conference did not follow suit. Instead, it set its own ceiling of \$30,000 on the referees' salaries. Congress must now reassert its position as the policy-making body for the nation's top judicial officers, and implement the 1969 decision to pay the bankruptcy judges.

Second, the Judicial Conference has recognized that the original factors that required the delegation of authority no longer exist. In 1946, there was insufficient uniformity in workload among full-time referees such that Congress could set a single salary appropriate for all. It would have been nearly impossible for the Congress to supervise the details of the transition from the fee system to the salary system. Since 1969, the Judicial Conference has set the salaries of all full-time bankruptcy judges uniformly across the country. This means that the detailed supervision required thirty years ago is no longer necessary. Congress may now set a uniform salary that will be appropriate for all full-time bankruptcy judges.

Finally, the creation in 1967 of the Commission on Executive, Legislative, and Judicial Salaries has obviated the need for the Judicial Conference to supervise the salary levels of the bankruptcy judges. Their salaries are reviewed every four years by the Commission. The President gives additional thought to the matter, before transmitting the Commission's recommendations to the Congress. Congress also has an opportunity to consider the salary recommendations before they become law. Further review by the Judicial Conference not only duplicates these efforts, but it allows the Conference to thwart the will of Congress, as it has done for the past 6 years. Passage of this bill would restore to Congress the sole and exclusive authority to fix judicial salaries via the mechanism of periodic review of the Salary Commission's recommendations for bankruptcy judges' salaries, just as the Congress does for all other judicial salaries.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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 italic, existing law in which no change is proposed is shown in roman) :

SECTION 40 OF THE BANKRUPTCY ACT

§ 40. Compensation of Referees; Referees' Salary and Expense Fund; Retirement of Referees. [a. Referees shall receive as full compensation for their services salaries to be fixed by the conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, at rates, in the case of full-time referees, not more than the rate determined for such referees under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted under section 461 of title 28, United States Code, and in the case of part-time referees, not more than one-half of such rate, as so adjusted. In fixing the amount of salary to be paid to a referee, consideration shall be given to the aver-

age number and the types of, and the average amount of gross assets realized from, cases closed and pending in the territory which the referee is to serve, during the last preceding period of ten years, and to such other factors as may be material. Disbursement of such salaries shall be made monthly by or pursuant to the order of the Director.

[b. The conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, may increase or decrease any salary, within the limits prescribed in subdivision a of this section, if there has been a material increase or decrease in the volume of business or other change in the factors which may be considered material in fixing salaries: *Provided, however,* That during the tenure of any full-time referee his salary shall not be reduced below that at which he was originally appointed under this amendatory Act, and during any term of any such referee his salary shall not be reduced below the salary fixed for him at the beginning of that term.]

(a) *The compensation of referees in bankruptcy shall be as follows:*

(1) *Each full-time referee in bankruptcy shall receive a salary of \$36,000 per annum, subject to adjustment in accordance with section 225 of the Federal Salary Act of 1967.*

(2) *Each part-time referee in bankruptcy shall receive a salary of not more than \$18,000 per annum, subject to adjustment in accordance with section 225 of the Federal Salary Act of 1967, and subject to further adjustment by the conference, in the light of recommendations of the councils, made after advising with the district judges of their respective circuits, and the Director. In fixing the amount of the salary to be paid to a part-time referee, consideration shall be given to the average number and types of, and the average amount of gross assets realized from, cases closed and pending in the territory which the part-time referee is to serve, during the last preceding period of ten years, and to such other factors as may be material.*

(3) *Disbursement of salaries of referees shall be made monthly by or pursuant to order of the Director.*

(b) *The conference, in light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, may increase or decrease the salary of any part-time referee, within the limit prescribed in subdivision a (2) of this section, if there has been a material increase or decrease in the volume of business or other change in the factors which may be considered material in fixing salaries.*

* * * * *

d. (1) All referees in bankruptcy and employees in the offices of such referees shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of the Civil Service Retirement Act.

(2) Any referee who has retired or been retired under the provisions of paragraph (1) of this subdivision may, if called upon by a judge of a court of bankruptcy, perform such duties of a referee, conciliation commissioner, or special master under this Act, within the jurisdiction of the court, as he may be able and willing to undertake. The retired referee shall receive as compensation for his serv-

ices, either full or part time, the salary authorized for the referee serving the territory to which the retired referee is assigned. However, the rate of compensation of a retired referee assigned to serve on a full-time basis in the territory of a part-time referee shall be the [minimum rate established by the Judicial Conference of the United States for] rate of full-time service. Salaries authorized under this paragraph shall be subject to the provisions of section 13(b) of the Civil Service Retirement Act.

COST OF LEGISLATION

Pursuant to the requirement of clause 7 of rule XIII of the Rules of the House of Representatives the following estimate of costs incurred in carrying out the provisions of this bill are submitted.

The anticipated cost of this legislation would be \$826,500. There are presently 190 full-time bankruptcy judges and the cost would be \$4,350 per full-time bankruptcy judge.

STATEMENTS UNDER CLAUSE 2(1)(3) OF RULE X OF THE RULES OF THE HOUSE OF REPRESENTATIVES

A. *Oversight Statement.*—No oversight findings or recommendations have previously been filed with respect to this area.

B. *Budget Statement.*—Clause 2(1)(3)(B) of rule XI is not applicable. Section 308(a) of the Congressional Budget Act of 1974 will not be implemented this year. See last paragraph of House Report No. 94-25, 94th Congress, 1st Session (1975).

C. No estimate or comparison from the Director of the Congressional Budget Office was received.

D. No related oversight findings and recommendations have been made by the Committee on Government Operations under clause 2(g)(2) of rule X.

STATEMENT UNDER CLAUSE 2(1)(4) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES CONCERNING ANY INFLATIONARY IMPACT ON PRICES AND COSTS IN THE OPERATION OF THE NATIONAL ECONOMY

The committee concludes that in view of the modest increased expenditure which would result from enactment of this legislation, there will be no inflationary impact on prices and costs in the operation of the national economy.

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Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To amend section 40 of the Bankruptcy Act to fix the salaries of referees in bankruptcy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the portion of section 40 (11 U.S.C. 68) of the Bankruptcy Act which appears before subsection (c) of such section is amended to read as follows:

"a. The compensation of referees in bankruptcy shall be as follows:

"(1) Each full-time referee in bankruptcy shall receive a salary of \$37,800 per annum, subject to adjustment in accordance with section 225 of the Federal Salary Act of 1967 and section 461 of title 28 of the United States Code.

"(2) Each part-time referee in bankruptcy shall receive a salary of not more than \$18,900 per annum, subject to adjustment in accordance with section 225 of the Federal Salary Act of 1967 and section 461 of title 28 of the United States Code, and subject to further adjustment by the conference, in the light of recommendations of the councils, made after advising with the district judges of their respective circuits, and the Director. In fixing the amount of the salary to be paid to a part-time referee, consideration shall be given to the average number and types of, and the average amount of gross assets realized from, cases closed and pending in the territory which the part-time referee is to serve, during the last preceding period of ten years, and to such other factors as may be material.

"(3) Disbursement of salaries of referees shall be made monthly by or pursuant to order of the Director.

"b. The conference, in light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, may increase or decrease the salary of any part-time referee, within the limit prescribed in subdivision a(2) of this section, if there has been a material increase or decrease in the volume of business or other change in the factors which may be considered material in fixing salaries."

SEC. 2. The next to final sentence of section 40d(2) of the Bankruptcy Act is amended by striking out "However, the rate of compensation" and all that follows down through the end of the sentence and inserting in lieu thereof the following: "However, the rate of compensation of a retired referee assigned to serve on a full-time basis in the territory of a part-time referee shall be the rate of full-time service."

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*