Congressional Budget Office
Cost Estimate

May 26, 2022

At a Glance

H.R. 4777, Nondebtor Release Prohibition Act of 2021

As ordered reported by the House Committee on the Judiciary on November 3, 2021

By Fiscal Year, Millions of Dollars	2022	2022-2027	2022-2032
Direct Spending (Outlays)	*	*	*
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	*	not estimated

Statutory pay-as-you-go procedures apply?	Yes	**Mandate Effects**	
		Contains intergovernmental mandate?	No
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	No	Contains private-sector mandate?	Yes, Over Threshold

* = between -$500,000 and $500,000.

Bill Summary

In bankruptcy cases under Chapter 11 of the bankruptcy code (which governs business bankruptcies), creditors and third parties sometimes make claims against nondebtors who are associated with the debtor, such as the debtor's directors and officers, committee members, lenders, private equity sponsors, advisors, and other stakeholders. Under current law, federal courts that oversee the implementation of plans that restructure such businesses have the authority to release nondebtors from liability and can do so without the consent of the interested parties.

H.R. 4777 would prohibit a bankruptcy court from releasing or modifying a nondebtor's liability. Specifically, the bill would:

- Limit nondebtor releases to circumstances where interested parties, such as creditors, have affirmatively consented to the release, and
- Allow third parties to appeal any order that would bar them from suing the entity that holds the assets of the original debtor.

See also *CBO's Cost Estimates Explained*, www.cbo.gov/publication/54437;
How CBO Prepares Cost Estimates, www.cbo.gov/publication/53519; and *Glossary*, www.cbo.gov/publication/42904.

Estimated Federal Cost

The estimated budgetary effects of H.R. 4777 fall within budget function 750 (administration of justice). For this estimate, CBO assumes that the legislation will be enacted late in fiscal year 2022.

Effects of Bankruptcy Filings and the U.S. Trustee System

If enacted, CBO expects that H.R. 4777 could marginally affect the number of petitions filed for bankruptcy under Chapter 11. Businesses that file for bankruptcy pay fees to the federal judiciary. Those fees are recorded in the budget as a combination of revenues and as offsets to the annual appropriation for the U.S. Trustee System (USTS), which oversees the administration of bankruptcy cases. The judiciary can spend those revenues without appropriation to cover administrative costs, which is recorded as direct spending. USTS can spend the offsetting collections, subject to appropriation, to cover its costs.

The bill would prohibit debtors from filing petitions in cases where their intent is to place liabilities into a bankrupt entity. That prohibition would reduce the number of petitions filed each year. At the same time, CBO expects that the bill would lead some nondebtors who are currently shielding their assets to file for bankruptcy in order to discharge their liabilities. CBO cannot predict the magnitude of each effect and whether the bill would result in a net increase or decrease in filings. However, on balance, and based on conversations with officials from the USTS, CBO expects that enactment of the bill would only affect a small number of cases each year and that the net effect on filing fees collected by the federal judiciary would not be significant.

Fees Assessed by USTS on Debtor's Estates

The operations of the USTS are also funded in part by quarterly fees assessed on debtors' estates. Those fees are recorded as offsets to the annual appropriation of USTS. Because the bill would affect the number of cases filed under Chapter 11—and in turn the amount of assets subject to those fees—CBO expects that enactment of the bill could affect the amount of fees collected by the USTS. Based on conversations with agency officials, however, CBO expects that the net effect on those collections would not be significant.

Uncertainty

The budgetary effects of H.R. 4777 are subject to significant uncertainty, principally because CBO cannot predict how debtors and nondebtors would respond to incentives created by the bill. The amount of filing fees collected by the judiciary would depend on the change in the number of bankruptcy filings, and the magnitude of that change is difficult to predict. In addition, the amount of bankruptcy fees assessed by the USTS would depend on how many entities enter Chapter 11 bankruptcy and how much of their assets become subject to those fees. Depending on the decisions made by the affected entities, the bill could result in higher or lower collections of revenue than CBO estimates. In turn, spending of those amounts by the judiciary and USTS could also be higher or lower than estimated.

The value of debt and nondebtors' assets that could be subject to the bill's requirements is also subject to uncertainty, including the number of pending cases involving liable nondebtors and the value of assets from mergers and other business reorganizations that the courts could include in a reorganization plan under the bill. The value of additional assets included in pending cases would depend on each case and the courts' decisions.

Pay-As-You-Go Considerations:

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that H.R. 4777 would not have a significant effect on direct spending or revenues over the 2022-2032 period.

Long-Term Deficits:

CBO estimates that enacting H.R. 4777 would not increase on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2033.

Mandates:

H.R. 4777 would impose private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the mandates would exceed the threshold established in UMRA ($170 million in 2021, adjusted annually for inflation).

The restrictions on judicial protections for nondebtors would be retroactive to pending cases as of the enactment date. That retroactive change would impose a private-sector mandate on nondebtors whose assets could now be included in a pending bankruptcy case to pay creditors. The aggregate cost of the mandates would be the value of assets or amounts that would be paid to creditors by liable nondebtors as part of the bankruptcy reorganization plan.

According to the most recent data from the Federal Judicial Center (FJC), about 9,221 business bankruptcy cases under Chapter 11 were pending as of December 31, 2021, with a total known debt of $69 billion. Federal courts are not required to report detailed data on business bankruptcy cases; as a result, only a third of these cases contain financial information, thus, the reported total is the lower bound of the total.

CBO cannot estimate a precise aggregate cost of the mandates given the level of uncertainty previously addressed. However, given the total debt of pending cases, even if the bill affects a small number of them, CBO estimates that in at least one of the first five years the mandate is in effect, more than $170 million in assets of nondebtors could be subject to liability.

The bill would not impose intergovernmental mandates as defined in UMRA.

Estimate Prepared By

Federal Costs: Jon Sperl

Mandates: Lilia Ledezma

Estimate Reviewed By

Justin Humphrey
Chief, Finance, Housing, and Education Cost Estimates Unit

Kathleen FitzGerald
Chief, Public and Private Mandates Unit

Leo Lex
Deputy Director of Budget Analysis

Theresa Gullo
Director of Budget Analysis