Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors

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Abstract

Just three years ago, Congress enacted controversial amendments to the Bankruptcy Code. The proponents claimed that the changes would drive the “can pay” debtors (of which there were supposedly many) from the bankruptcy courts with tough new income-based eligibility requirements. And indeed, after the enactment of the amendments, the number of people filing for bankruptcy plunged. In this Article - the initial report of the 2007 Consumer Bankruptcy Project - the authors analyze the first national, random sample of post-amendments bankruptcy filers. Contrary to the advocates’ claim that high-income filers would be driven from the system and, by implication, that those remaining would have more modest incomes, the data show no change in the income levels of bankruptcy filers after the amendments. These findings thus cast doubt on the suggestion that those purged from the bankruptcy courts - approximately 800,000 in 2007 alone based on trend extrapolation - were high-income deadbeats; they instead appear to have been ordinary American families in serious financial distress. The data also show that debtors filing for bankruptcy in 2007 have even greater debt loads than their counterparts from 2001, a development that seems to track a national trend of increasing consumer debt. The findings thus align with at least two predictions of some legal scholars. The first is that the bankruptcy reform bill was not aimed at high-income abusers but was instead a general assault on all debtors, regardless of their financial circumstances. The second is that debtors are waiting longer - and incurring more debt - before ultimately seeking bankruptcy relief, consistent with the so-called ”sweat box” theory of credit card lending.
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AN EMPIRICAL STUDY OF CONSUMER DEBTORS

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An Empirical Study of Consumer Debtors

by
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I. INTRODUCTION

Before 2005, many people went broke and many filed for bankruptcy. After 2005, many people still go broke, but not so many file for bankruptcy. Why has the number of bankruptcies declined? Surely it is not the economy. All throughout the 2000s, families have been under increasing economic pressure. Median family incomes have declined,1 basic expenses have risen,2

*Professor Pottow is corresponding author for this manuscript. The co-authors’ names appear in alphabetical order, however, to reflect the significant contribution made by each in various ways beyond writing the draft, including statistical analysis, data gathering, and study design. In addition to the six co-authors, four others serve as co-principal investigators of the 2007 Consumer Bankruptcy Project (“CBP”): David U. Himmelstein, Associate Professor of Medicine, Harvard Medical School; Melissa B. Jacoby, George R. Ward Professor of Law, University of North Carolina School of Law; Teresa A. Sullivan, Provost and Executive Vice President for Academic Affairs, and Professor of Sociology, University of Michigan, Ann Arbor; and Steffie Woolhandler, Associate Professor of Medicine, Harvard Medical School. We are deeply grateful to our four colleagues for all their assistance with this project. All members of the CBP express gratitude to our research assistants who helped with this article, Nosson Stoll, University of Michigan J.D. Class of 2008, Gina Lavarda, University of Iowa J.D. Class of 2009, and Elizabeth Ogburn, Ph.D. Candidate in Biostatistics, Harvard University; our database designers and supervisors, Alex Warren and Mark Thorne; our administrative coordinator, Carol Bateson; the leader of the data entry and telephone survey team, Denise McDaniel; and all the bankruptcy court and AACER personnel (especially Mike Backford at the latter) without whom we would not have been able to gather a national sample. Funding was provided in part through grants from the American Association of Retired Persons, the Harvard Law School, the Robert Wood Johnson Foundation, the University of Michigan Office of Vice President for Research, and the University of Michigan Law School. The co-authors’ institutional affiliations follow: Robert M. Lawless, Professor of Law and Galowich-Huizenga Faculty Scholar, University of Illinois College of Law (lawless@illinois.edu); Angela K. Littwin, Assistant Professor of Law, University of Texas School of Law (alittwin@law.utexas.edu); Katherine M. Porter, Associate Professor of Law, University of Iowa College of Law (katie-porter@uiowa.edu); John A. E. Pottow, Professor of Law, University of Michigan Law School (pottow@umich.edu); Deborah K. Thorne, Assistant Professor of Sociology, Ohio University (thorne@ohio.edu); Elizabeth Warren, Leo Gottlieb Professor of Law, Harvard Law School (cbateson@law.harvard.edu).

and families are shouldering unprecedented debt loads.\(^3\) Defaults remain high for credit cards\(^4\) and car loans,\(^5\) while mortgage foreclosures have soared.\(^6\) By 2008, over half of all Americans reported that their incomes were falling behind their cost of living.\(^7\) These data all point in the same direction: people are still going broke in large numbers.

Yet despite this evidence of growing financial distress, the number of families seeking bankruptcy protection dropped abruptly after adoption of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA").\(^8\) Some of this shift can be explained by a sharp increase in the number of people filing shortly before the amendments went into effect – a


\(^3\)By the fourth quarter of 2007, total outstanding consumer debt was approximately $2.557 trillion. Federal Reserve Statistical Release, Consumer Credit, G.19, available at http://www.federalreserve.gov/releases/g19/Current. In 2001 total outstanding consumer credit was $1.963 billion (in 2007 dollars), see id. at Release Date Jan. 8, 2007, available at http://www.federalreserve.gov/releases/g19/20070108, which means there was an increase of $594 billion in the six-year time span.


\(^5\)See Jenn Abelson, Entering the Repossession Lane: Default Rate Soars on Auto Loans in Pattern Likened to Mortgage Crisis, THE BOSTON GLOBE, Mar. 7, 2008, at 1A (reporting increase in regional and national auto foreclosures).

\(^6\)The Mortgage Bankers Association reported that the percentage of loans in the foreclosure process was 2.47% at the end of the first quarter of 2008. The percentage of loans on which foreclosure actions were started during the quarter was 0.99% on a seasonally-adjusted basis. Both the percentage of loans in foreclosure and the percentage of loans on which foreclosure actions were started were the highest since 1979. Press Release, Mortgage Bankers Association, Mortgage Bankers Association National Delinquency Survey (June 5, 2008), available at http://www.mbaa.org/NewsAndMedia/PressCenter/62036.htm; see also Vikas Bajaj & Michael M. Grynsbaum, A Rising Tide of Mortgage Defaults, Not All on Risky Loans, NY TIMES, June 6, 2008, at C1 (reporting data from the Mortgage Bankers Association); Robert B. Avery, Kenneth P. Brevoort & Glenn B. Canner, The 2006 HMDA Data, FEDERAL RESERVE BULLETIN, Dec. 2007, at A102, available at http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf.


\(^8\)Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005). There were 1.6 million filings in the twelve months that ended on June 30, 2005, the last annual period unaffected by the implementation of BAPCPA. Administrative Office of the U.S. Courts, Bankruptcy Statistics, available at http://www.uscourts.gov/bankruptcystats/statistics.htm quarterly (last visited Sept. 3, 2008) (follow "2005 by Chapter" hyperlink under "12-month period ending June") because our sample was generated using data from the Automated Access to Court Electronic Records ("AACER"), all 2006 and 2007 national bankruptcy filing statistics also are from AACER. Filing data before 2006 are not available from AACER. Because data from the Administrative Office of the U.S. Courts ("AO") include transferred and reopened cases as new filings and the AACER data do not, the AO data may overstate bankruptcy filings by 2 to 3%. See Posting of Robert M. Lawless to Credit Slips, Why
sudden rush to the courthouse of “transition filings” that might have drained
the pool of troubled families that otherwise would have filed over a longer
time horizon.9 But the number of bankruptcy filings continued to remain low,
even after the transition. If bankruptcy filings had continued at the same level
as they had been immediately before enactment of BAPCPA, about 1.6 mil-
ion petitions would have been filed in 2007—about twice as many as the
827,000 bankruptcies that actually occurred.10 The sharp reduction in filings
after the amendments represents about 800,000 families that would have filed
but did not. In the face of deteriorating economic circumstances, the absence
of these families from the bankruptcy system is strong evidence that
BAPCPA has had a powerful effect on families in financial trouble.

For some, the plunge in bankruptcy filings alone proves that BAPCPA
has been a success, with no further discussion required. 11 But a meaningful
measure of success requires more nuanced analysis. In lobbying for the pas-
sage of BAPCPA, proponents promised it was not a random and arbitrary
tool designed solely to cut the bankruptcy rolls, but a carefully tailored and
principled mechanism to screen out the can-pays and high-income crowd who
were purportedly abusing the bankruptcy system:

[P]eople under the median income in our country who apply
for bankruptcy almost certainly will be accorded almost au-
tomatically the fresh start which their financial circum-
stances dictate. But we also said that if the income is over
the median income, then that set of financial circumstances
should be more closely scrutinized to determine if any money
can be repaid to this debt that has been accumulated. That is
a very balanced and a fair way to approach the economic
system of our Nation.12

(May 13, 2008).

9 Administrative Office of the U.S. Courts reports that there were 667,431 bankruptcy filings in the
final quarter of 2005 (630,228 of which were filed in October 2005—before BAPCPA went into effect).
Contrast this to the 371,668 filings reported in the fourth quarter of 2004. Press Release, Administrative
Office of the U.S. Courts, Bankruptcy Filings Surge in Calendar Year 2005 (Mar. 24, 2006), available at

10 See supra note 8.

11 “We have seen bankruptcy rates fall dramatically from about 2 million bankruptcies in 2005 to the
point where I doubt there will be over 1 million bankruptcies in 2006, if current trends continue . . . [F]or
now, almost one year later, bankruptcy reform seems to have been a success.” 152 Cong. Rec. S10647–48
Cases Rise Despite Reforms, REUTERS, June 12, 2006 (“Some people think that merely reducing the
number of filings regardless of who they are and what kinds of problems they have is a success. . . .”)
(quoting Professor Melissa Jacoby) (internal quotation marks omitted).

(2005), which summarized that a “factor motivating comprehensive reform is that the present bankruptcy
The new law was not the Bankruptcy Numbers Reduction Act; it was the Bankruptcy Abuse Prevention Act. The President himself assured the American people that the change targeted only can-pay debtors.\textsuperscript{13} The lobbyists also promised it was not going to keep bankruptcy’s prototypical “honest and unfortunate debtor”\textsuperscript{14} with median or below income from getting relief: “People who are truly in need of relief will be able to get it.”\textsuperscript{15} As one of BAPCPA’s most prominent legislative champions summed up:

So that I am crystal clear, people who do not have the ability to repay their debts can still use the bankruptcy system as they would have before. The bill clearly provides that people of limited income can still file under chapter 7 and get that fresh start . . . so their debts can be wiped away, as is done right now.\textsuperscript{16}

We, the co-investigators of the Consumer Bankruptcy Project, have marshaled data from the first large-scale, national sample of bankrupt households after BAPCPA to examine whether the amendments have had their promised effect. Consistent with a principled analysis, our metric of success is not simply a head count of the number of people filing for bankruptcy. Rather, we examine who is filing after 2005 (and, by implication, who has been pushed out of the system). If there is a reduction of can-pay debtors—abusers—in bankruptcy, then BAPCPA should be declared a success. But if the reduction of filers is random and arbitrary, then it should be condemned as a failure that imposes senseless pain on families that need help.

BAPCPA was built upon a controversial “means test” to restrict eligibility for relief under Chapter 7.\textsuperscript{17} The central feature of that means test was an income screen: “The heart of this [BAPCPA] bill is the means test. It requires the bankruptcy trustee to examine the income and expenses of high-income debtors and determine whether they have the ability to pay some-system has loopholes and incentives that allow and—sometimes—even encourage opportunistic personal filings and abuse. . . . [S]ome bankruptcy debtors are able to repay a significant portion of their debts, according to several studies. Current law, however, has no clear mandate requiring these debtors to repay their debts.”

\textsuperscript{13}President George W. Bush, Remarks at the Signing of Bankruptcy Abuse Prevention and Consumer Protection Act (Apr. 20, 2005), available at http://www.whitehouse.gov/news/releases/2005/04/20050420-5.html (“[T]oo many people have abused the bankruptcy laws. They’ve walked away from debts even when they had the ability to repay them. . . . Under the new law, Americans who have the ability to pay will be required to pay back at least a portion of their debts.”).

\textsuperscript{14}Hanover Nat. Bank v. Moyses, 186 U.S. 181, 192 (1902).


\textsuperscript{17}See 11 U.S.C. § 707(b) (2006).
thing toward their debts.” Accordingly, we use income as our primary metric in examining our sample of post-BAPCPA debtors.

The data indicate that those who filed in 2007 largely have the same income profile as those who filed in 2001; there has been no shift in the income levels of filers that would have occurred if 800,000 high-income abusers had been pushed from the system. These income data suggest that instead of functioning like a sieve, carefully sorting the high-income abusers from those in true need, the amendments’ means test functioned more like a barricade, blocking out hundreds of thousands of struggling families indiscriminately, regardless of their individual income circumstances.

Even worse for consumers, the new data also reveal a dark side to bankruptcy and to the American credit market. Continuing a trend begun in the early 1980s, the families in bankruptcy are much more deeply laden with debt. Their net worth, which has always been negative, sank further, and their debt-to-income ratios rose higher. In short, with each succeeding study over the past twenty-five years of the Consumer Bankruptcy Project, the data show that the families filing for bankruptcy are in ever-increasing financial distress. The 2005 amendments did nothing to halt this trend.

The data showing rising debt loads are consistent with the view that troubled families are delaying bankruptcy—struggling longer with their bills and building up bigger loads of debt before succumbing. The data also support the “sweat box” theory of consumer lending, in which lenders profit if failing customers can be persuaded to make high-interest payments for a few extra months, suggesting that the 2005 amendments delivered a very different benefit to the credit industry than its supporters claimed. By this analysis, creditors gain from BAPCPA less because of any effect on carefully targeted can-pay debtors and more because they have a stronger hand to press the debtors—all debtors, regardless of income—to struggle outside the bankruptcy system.

II. DESCRIPTION OF DATA

This is the first in-depth report of the 2007 Consumer Bankruptcy Project, a joint effort of law professors, sociologists, and physicians. We use this occasion to sketch the basic profile of the debtor who files for bankruptcy in the wake of the 2005 amendments and to compare this profile with the one that emerged from similar studies in 1981, 1991, and 2001. All the data reported in this Article are from the Consumer Bankruptcy Project.

19 Ronald J. Mann, Consumer Bankruptcy and Credit in the Wake of the 2005 Act: Bankruptcy Reform and the “Sweat Box” of Credit Card Debt, 2007 U. ILL. L. Rev. 375, 398 fig.2.
20 For more details on the Consumer Bankruptcy Project, see infra Appendix I.
A unique feature of this study is its scope. The 2007 Consumer Bankruptcy Project examines the first nationwide random sample of households in bankruptcy.\textsuperscript{21} The absence of a single, national repository for bankruptcy court records has always required district-by-district data collection; time and resource constraints have generally meant that only a limited number of districts could be analyzed in prior studies. The advent of Automated Access to Court Electronic Records ("AACER"), a private business designed to collect data each day about every bankruptcy case in the country, transformed the data landscape.\textsuperscript{22} With generous help from Mike Bickford of AACER, we drew a national random sample of debtors filing for bankruptcy in February and March 2007. With the help of bankruptcy courts in every judicial district,\textsuperscript{23} we obtained the court records of those sampled debtors through the automated U.S. Courts "PACER" system for online court files.\textsuperscript{24} Without AACER's data and the access provided by the courts, judges and staff, we could never have collected these data or made this report. We are very grateful for their assistance.

The decision to study debtors who filed for bankruptcy in 2007 was a difficult one. By that date, enough time had plausibly elapsed after the October 1, 2005 effective date of BAPCPA so that the enforcement of the new law had reached a normal state. In 2007, bankruptcy filings seemed to have recovered from the sharp increase that preceded implementation of the amendments and from the sharp drop that followed it. Month-over-month bankruptcies increased during 2007 for nine of the twelve months.\textsuperscript{25} Although monthly filing rates continued to climb in 2008, the growth rate was far more modest than the rapid climb of 2006.\textsuperscript{26} These trends led us to conclude that 2007 would yield a representative data pool of post-BAPCPA cases, minimally influenced by obvious transition effects.

Appendix I provides a detailed report of the methodology; we offer here only a brief overview. For the 2007 CBP, we selected 5000 randomly drawn cases to study from all judicial districts in the United States. We mailed an

\textsuperscript{21}In order to arrive at nationally representative estimates, we weighted the data to adjust for the slight underrepresentation of respondents who filed under Chapter 13. For more details, see infra Appendix I, Part C.


\textsuperscript{23}We obtained a PACER fee waiver in every district except the Southern District of Texas, a consolidated district in which the district court, not the bankruptcy court, decides PACER fee waivers.


\textsuperscript{25}See Posting of Robert M. Lawless to Credit Slips, Monthly Filings, Jan. 2006-Mar. 2008, http://www.creditslips.org/creditslips/2008/04/monthly-filings.html (Apr. 17, 2008). The three exceptions were April, May, and December. Because the number of business days per month varies, we used the daily averages for each month.

\textsuperscript{26}See id.
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eight-page questionnaire to the home of each debtor selected.\textsuperscript{27} Half of the debtors responded, providing us with a total sample of approximately 2500 cases. For each respondent, we recorded extensive data from corresponding court records, which we matched on a debtor-by-debtor basis with the questionnaires. We also downloaded court records for a sample of nonrespondents to determine whether the nonrespondents were statistically distinguishable from those who responded. They were not.\textsuperscript{28}

The data presented here are based on the information reported in these bankruptcy court files. We recorded hundreds of separate pieces of data from each court record, but here we focus on key economic indicators. We compare the 2007 data with similar data collected from debtors filing in 1981,\textsuperscript{29} 1991,\textsuperscript{30} and 2001.\textsuperscript{31} The details of those studies are reported in detail elsewhere and summarized in Appendix I.\textsuperscript{32}

In addition to the earlier data reported here, we add information gleaned from telephone interviews with a subset of 1000 of the families filing in 2007 who completed a questionnaire. We compare the information from the 2007 telephone interviews with data from comparable 2001 interviews.\textsuperscript{33}

With close to a thousand pieces of information collected from written surveys and court records from each of 2500 families, and with answers from several hundred more questions posed by telephone to more than 1000 of these families, we have far more information about the families that filed bankruptcy in 2007 than we can possibly report in a single article. We anticipate a number of reports from the 2007 Consumer Bankruptcy Project over the next months and years. But we thought it fitting to begin the process of reporting our findings with the baseline information about the economic circumstances of bankrupt families that we, along with our colleague Professor Jay Lawrence Westbrook, have been collecting and reporting for many

\textsuperscript{27}The questionnaire is reproduced in Appendix II, infra.

\textsuperscript{28}We detected no economically meaningful or systematic response bias. Non-respondents were similar to respondents with regard to income, assets, debts, net worth, market value of homes, and prior bankruptcy history. For more details, see infra Appendix I, Part B(3).

\textsuperscript{29}TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT AND BANKRUPTCY IN AMERICA (Oxford University Press 1989) [hereinafter AS WE FORGIVE].

\textsuperscript{30}TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT (Yale University Press 2000) [hereinafter FRAGILE MIDDLE CLASS].

\textsuperscript{31}ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS AND FATHERS ARE GOING BROKE (Basic 2003) [hereinafter TWO-INCOME TRAP].

\textsuperscript{32}Our prior studies were not random national samples but random samples drawn from five judicial districts. We have no reason to believe this affects the comparisons we make to these earlier cohorts of bankruptcy filers.

\textsuperscript{33}We have no reason to suspect a bias in the composition of this subset. Indeed, 86.7% of respondents indicated that they were willing to participate in a follow-up telephone interview. See infra Appendix I, Part B(4) (discussing statistical testing suggesting lack of response bias).
III. FINDING I: THE SAME INCOMES

The debates over the bankruptcy amendments centered around the claim that debtors who could repay their debts were using bankruptcy to avoid doing so: “[U]nder current bankruptcy law, an individual can get full debt cancellation in chapter 7 with no questions asked.” The solution to that problem, said the proponents, was to replace the substantial abuse test that called for ample judicial discretion to determine eligibility to file for Chapter 7 relief with a means test that called for a stringent and automated screen based predominately on a debtor’s income. As its supporters explained:

This [BAPCPA] bill would make it harder for individuals who can repay their debt to file for bankruptcy under chapter 7 . . . .

This bill does this by providing for a means-tested way of steering people who are filers, who can repay a portion of their debts, away from chapter 7 bankruptcy. This test employs a legal presumption that chapter 7 proceedings should be dismissed or converted into chapter 13 whenever the filers earn more than the State median income . . . .

Based on a complex formula, debtors with incomes above the median for their states are scrutinized more closely for bankruptcy eligibility and, depending on the formula, pressed into Chapter 13 or tossed out of bankruptcy altogether. Proponents promised that such a test focusing on above-median

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37Id.

38Id.

income debtors would give the best of both worlds: catch the abusers but have no effect on those who were in genuine financial distress.\textsuperscript{40} This celebrated income-driven means test was the central feature of the 2005 amendments. Summarized one supporter: “[T]he heart of the bill is the means test.”\textsuperscript{41}

There are two ways in which an income-based means test should affect the financial profile of bankruptcy filers. First, the means test, by barring most high-income debtors from Chapter 7, is designed to shunt some of them from Chapter 7 to Chapter 13. If effective, that test should differentiate bankrupt debtors by income, causing the Chapter 7 debtors to be relatively poorer and Chapter 13 debtors to be relatively richer after 2005.\textsuperscript{42} Second, because Chapter 13 itself also has eligibility requirements,\textsuperscript{43} we should additionally expect some debtors to be bounced from the system altogether—pushed out of Chapter 7 and ineligible (or simply unwilling) to repay in Chapter 13. Again, if effective, this attribute of the means test would lead us to predict the overall income profile of bankruptcy filers—regardless of chapter—to become poorer after 2005.\textsuperscript{44} We address these hypotheses in reverse order, considering first the overall income profile of all filers in 2007 versus earlier years and then the incomes of the subset of Chapter 7 and Chapter 13 filers in 2007 versus earlier years.

\textsuperscript{40}See, e.g., 151 CONG. REC. S1813-6, S1856-57 (daily ed. Mar. 1, 2005) (statements of Sens. Frist and Grassley).


\textsuperscript{42}We should articulate a necessary assumption: that there was not a trend of rising income among those who tend to file for bankruptcy. If such a hypothetical trend were true, then merely showing similar incomes between bankruptcy filers before and after BAPCPA would suggest that BAPCPA succeeded in driving out the even higher-income debtors that we would have expected to see in bankruptcy pursuant to this trend. In light of the flat incomes of the U.S. population generally, see supra note 1, and our prior research suggesting that bankruptcy filers generally have lower (and stably lower) incomes than the general population, see Less Stigma, supra note 34, at 222, we would find it difficult to construct a model predicting such a trend.


\textsuperscript{44}We also recognize another assumption in this methodology: that the number of high-income abusers in the system was sufficient to have an effect on median income (and distribution). If Congress was trying to target only one or two bad apples, then presumably their exclusion by a successful means test would be difficult to detect in looking at the median incomes of a random national sample of the hundreds of thousands of bankruptcy filers. If, by contrast, Congress were going after a scourge of deadbeats, then we would expect to see some change in income patterns. We think that while some members of Congress tried to soothe that the means test wouldn’t affect that many people, see notes 12 and 16 and accompanying text, they insisted at the same time that there was a “bankruptcy crisis” of debtors who could pay their debts. 151 CONG. REC. S1853-56 (daily ed. Mar. 1, 2005) (statement of Sen. Grassley). Accordingly, we take these advocates at their word that the nation was facing an epidemic “bankruptcy crisis” that had “contributed to the fraying of the moral fiber of the nation.” Id. at S1856. (We incidentally note that in our analysis of the distribution of incomes among the 2007 filers, see infra Figure 2, we find similar distributions of incomes among the subset of debtors with above-median incomes, even those with median household incomes above $60,000, which suggests little change in income profile amongst the highest income echelons of filers.)
If the means test were responsible for the precipitous decline in bankruptcy filings after the law changed, then the median income of individuals filing for bankruptcy in 2007 should be lower than that of groups filing in earlier years. Yet in contrast to the promise of BAPCPA’s proponents that only the high-income debtors would be pushed out of bankruptcy, the data tell a very different story. Instead of the predicted downward shift in income profiles, the incomes of debtors filing in 2007 were essentially indistinguishable from the incomes of those filing in 2001 and 1991. For all three time periods, the median income fluctuated within a narrow band of only $714. (All dollar amounts used throughout this Article are adjusted for inflation and reported in constant 2007 dollars unless specifically noted.) As Figure 1 illustrates, incomes among families filing for bankruptcy were much higher in 1981, a time that might be characterized as the Golden Age of Low Bankruptcy Filings. They fell during the 1980s and have remained essentially flat ever since.

Of course, median income as a measure of central tendency is only the midway point between the highest and lowest figures. It is possible that the distribution of income changed in some important way that a median statistic overlooks. Indeed a Wilcoxon rank-sum test shows that the total distribution between 2001 and 2007 did, in fact, shift slightly. We therefore disaggregated the debtors by income so that we could compare the distribution of debtors at different income levels. We isolated those debtors earning at the lowest income level (under $10,000 annually) and compared their proportions in the 2001 and 2007 samples. We then repeated the exercise in $10,000 increments, ending with incomes above $100,000. The results, shown in Figure 2, demonstrate that across income levels, the 2001 and 2007 filers are quite similar. The 2007 filers had a somewhat greater percentage of persons with incomes from $10,000–$20,000 as compared with the 2001 filers and a somewhat lesser percentage of filers in the $20,000–$30,000 range. Because both of these income ranges are well below the lowest median income that would require a screen under the means test, we do not think the shift is of any real importance (at least as regards BAPCPA). Moreover, at the highest

45The 1981–2007 difference is significant (p < .0001). The 1991–2007 difference is not significant (p < .92). The 2001–2007 difference is not significant (p < .86). For more details, see infra Appendix III.


47The 1981 income figure is significantly greater than the incomes of the debtors in 1991, 2001, and 2007 (p < .0001). For precise numbers, see Appendix III. See also infra note 52 (regarding debtor income data recently released by the Administrative Office of the U.S. Courts).

48See supra note 46 (2007 compared with 2001).
Income levels, where the proponents of BAPCPA predicted the law would have the greatest effect, the percentages of income distribution remain the same. Accordingly, we think the overall income distribution trends accord with the median income findings: no real change.

Figures 1 and 2 suggest that the enormous drop in bankruptcies following the 2005 amendments was not driven by the new income screen that is the central element of the means test. The presumptively abusive “rich” (at least as measured by income) debtors are not being squeezed out. Instead, the 2005 amendments have had the effect of squeezing all income groups alike—from the highest income to the lowest. The families deterred from filing seem largely indistinguishable from the families that filed bankruptcy before the amendments were adopted. In terms of pushing only the high-income, can-pay debtors from the bankruptcy system, the means test appears to have been a failure.

But what of the narrower goal of the means test to shunt high-income families into Chapter 13 by virtue of the restrictions on access to Chapter 7? Here again, the data at first blush might paint BAPCPA as a success in changing the Chapter 7/13 mix. Following the adoption of the amendments, the proportion (albeit not the absolute numbers) of Chapter 13 filings rose. In 2004, the last full year before the amendments, Chapter 13 cases were 29%
FIGURE 2: HOUSEHOLD INCOME IN $10,000 INCREMENTS OF BANKRUPTCY FILERS, 2001 AND 2007

Source: Consumer Bankruptcy Project (see text)

of the non-business bankruptcies, and in 2007, Chapter 13 cases had risen to 41%. Yet, just as before, it would be misleading to gauge BAPCPA’s success solely by the decline in relative number of Chapter 7 bankruptcies. The shift in the ratio of Chapter 7 and Chapter 13 filers could be the result of a number of different factors. But there is a more accurate measure: if the increase in the proportion of Chapter 13 filers was caused by the income-driven means test, then the debtors shifted to Chapter 13 should be the higher-income “can-pay” targets who, before BAPCPA, were allegedly abusing the system by remaining in Chapter 7.50

49There were 465,878 Chapter 13 cases of 1,618,062 non-business cases filed in fiscal year 2004 compared with 276,649 Chapter 13 cases of 673,615 non-business cases filed in fiscal year 2007. See Press Release, Administrative Office of the U.S. Courts, Bankruptcy Filings Drop 61 Percent in March 2007 12-Month Period (June 27, 2007), available at http://www.uscourts.gov/Press_Releases/bankruptcyfilings062707.html. The fiscal year for these data ends March 31.

50Whether Chapter 13 filers have the same income as their Chapter 7 counterparts is technically distinct from the dividend to unsecured creditors those Chapter 13 filers pay. One new study (drawn only from the Tenth Circuit) finds that Chapter 13 filers proposed to pay higher dividends to unsecured creditors in their plans in the year immediately following BAPCPA than in the year immediately before. See Bruce M. Price & Terry Dalton, From Downhill to Slalom: An Empirical Analysis of the Effectiveness of BAPCPA (and Some Unintended Consequences), 26 YALE L. & POL’Y REV. 135, 193–94 (2007). It will
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The Consumer Bankruptcy Project data permit us to explore whether
the income screen in the means test pushed those high-income debtors who
were more able to pay over to Chapter 13. Figure 3 suggests that this did not
happen. Median income among Chapter 7 filers in 2001 was $23,761, while
median income among Chapter 7 filers in 2007 was a virtually identical
$23,136.51 Similarly, there is no statistically significant difference between
the median incomes of Chapter 13 filers from 2001 and those from 2007,
which were $33,742 and $35,688 respectively.52

These data indicate that by yet another measure, BAPCPA seems to
have failed its announced mission. The means test has pushed a higher pro-
portion of bankruptcy debtors into Chapter 13, but it has not pushed a
targeted group of presumptively abusive high-income earners. The large sort-
ing effects based on income that the means test was supposed to produce
simply did not occur. Instead, the principal effect of the new law was appar-
ently random and arbitrary—the antithesis of what the supporters of the

be interesting to see whether these proposals translate into a change in actual dividends. If anything, what
we know about actual dividends to unsecured creditors in Chapter 13 is discouraging: the median payment
is $0. See Scott F. Norberg, The Chapter 13 Project: Little Paid to Unsecureds, 26 AM. BANKR. INST. L.J.
1, 54–56 (2007); Scott F. Norberg & Andrew J. Velkey, Debtor Discharge and Creditor Repayment in

51Wilcoxon Z = 1.718, p = .086.
52Wilcoxon Z = -.894, p = .371. Our data on income in Chapter 7 and 13 are consistent with, but
somewhat lower than, recently released data from the Administrative Office for U.S. Courts (“AO”). See
ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 2007 REPORT OF STATISTICS REQUIRED BY THE  BANK-
bankruptcy statistics statutorily required by BAPCPA). The AO data are interesting but difficult to
compare with the CBP data because of the AO’s reporting conventions, some of which were dictated by
the statutory mandate. See generally 28 U.S.C. § 159 (2006). For example, because it was required to
report on all cases filed in 2007, the AO report includes two related (and apparently abusive) mean-
skewing Chapter 13 cases that listed almost $24 billion in assets. Id. at 6 n.4. Removing these two outlier
cases alone drops the mean value of total assets from $175,234 to $160,187. Without knowing the under-
laying distribution of the data in the AO report, it is impossible to make meaningful comparisons of means
between the variables reported in it and the CBP study. Nevertheless, one variable for which the AO
reports median statistics as does the CBP is debtor income. The AO finds median monthly income of
$2,150 and $3,146 in Chapter 7 and 13 cases respectively. These data, however, exclude cases where the
debtor reported debts “predominately of a business nature” and where “any information on the schedules
was incomplete.” Id. at tbl. 1A n.1 (reporting general caveat on data collection procedures). Selecting
similar cases from the CBP database produces roughly comparable median monthly income figures
of $1,926 and $3,033 for Chapter 7 and 13 cases respectively. While these numbers appear statistically
significantly lower than the AO numbers, the absolute dollar difference is not large. More importantly,
this comparison is at best a guess regarding what algorithms the AO used to exclude “incomplete” data.
For example, our hand-coding allowed us to record barely legible handwritten petitions from pro se debtors
(who by hypothesis might have lower incomes), but the AO’s dataset may exclude these figures. We
cannot know. Thus the mild apparent divergence between the AO data and CBP data remain untroubling
given the necessary imperfection of coding “incomplete” bankruptcy records. More importantly, we note
that our approach biased our results against our conclusions; if we were to use the AO data of slightly
higher debtor incomes, our convictions of BAPCPA’s inefficacy would only strengthen.
amendments promised.\textsuperscript{53}

The main message from these first Consumer Bankruptcy Project data is

\textsuperscript{53}While most members of Congress charged ahead, some academics worried that BAPCPA would have just this perverse outcome. In a joint letter to Congress (signed by some of us), about one hundred law professors explained:

Our problem is not with means-testing per se. Our problem is with the collateral costs that this particular means-test would impose. This is not a typical means test, which acts as a gatekeeper to the system. It would instead burden the system with needless hearings . . . and arbitrarily deprive families of needed relief.

Letter from Bankruptcy and Commercial Law Professors to Senators Specter and Leahy (Feb. 16, 2005), available at http://www.abiworld.org/pdfs/LawProfsLetter.pdf. Special prescience in this regard goes to Professor Jean Braucher, who wrote in a 2002 symposium right in the midst of the debates:

The current debate is not really about whether to means-test bankruptcy, but about whether it is possible to do a better job of catching the system's abusers without excluding many "honest but unfortunate" debtors in the process . . . With only modest gains possible in catching abusers and increasing collections in bankruptcy, it is particularly appropriate to ask whether any given proposal for reform will do more harm than good, imposing new costs for minimal returns. We should be asking: would the proposed changes make for a better system than we currently have?

The pending consumer bankruptcy legislation fails this test. It would make access to bankruptcy more difficult for all, imposing new costs and hurdles and thus pricing the worst off out of the system.
that despite BAPCPA, incomes of those filing for bankruptcy have not changed in any meaningful way. Part of the reason for this lack of change may simply be that incomes did not have far to fall. As reported in Appendix III, median household income for bankrupt debtors in 2007 was about $27,100—statistically indistinguishable from the $27,800 in 2001 and $27,100 back in 1991. Median household income across the United States in 2006 (the most recent year available) was $48,200. These figures put the income of the median bankrupt household in 2007 a full 45% below the income of the median household in the general U.S. population. In 2001, the story was the same. The median income for those filing for bankruptcy was 44% below the then-median income for all households. The families that file for bankruptcy have traditionally had—and continue to have—quite modest incomes.

Whatever the underlying reasons, these data suggest that the biggest apparent effect of the 2005 amendments—the plunge in the number of bankruptcies—was not driven by the most heralded aspect of the amendments, the income-driven means test. Similarly, the data also suggest that the shift in the proportions of Chapter 13 and Chapter 7 filings was not attributable to the BAPCPA income screen. Our data seem inconsistent with the conclusion that the means test worked as its proponents promised it would. If anything, when measured by the criteria announced by its supporters, the data suggest the opposite: BAPCPA’s much-touted means test was a failure.

IV. FINDING II: DEBTORS IN A DEEPER HOLE

The debates over the 2005 amendments focused very much on income and very little on assets; those who claimed that the bankruptcy system was rife with abuse showed scant interest in reducing the amount of property a bankrupt debtor could keep. In fact, the only real interest in assets came from opponents of BAPCPA, who argued to impose a cap on homestead protections to rein in millionaires from exempting mansions in Florida, Texas, and a handful of other states. (They essentially lost, gaining only modest con-
straints on mega-homestead protection. 60)

Other than the sidebar debate over mansions, assets and asset exemptions received virtually no attention in the bankruptcy debates. Similarly, the net worth (assets minus liabilities) of families in bankruptcy or ability to pay as measured by debt-to-income ratios received minimal interest. No advocates of change argued that high net worth or low debt-to-income ratios demonstrated abuse, and no amendments to the bankruptcy laws focused on these issues. It was all about income. In spite of this lack of legislative interest, however, a complete analysis of the financial circumstances of bankrupt debtors pre- and post-BAPCPA requires a review of other indicia of financial condition. Ironically, here is where important differences emerge.

A. TOTAL ASSETS

After the 2005 amendments, families file for bankruptcy owning substantially more property than pre-amendment debtors owned. Median total assets reported by bankrupt debtors jumped 25% from 2001 to 2007.

FIGURE 4: MEDIAN TOTAL ASSETS OF BANKRUPTCY FILERS

As Figure 4 suggests, the 2007 increase is unlikely to be the byproduct of


60 See e.g., 11 U.S.C. § 522(p) (2006) (restricting under certain circumstances homestead exemptions to $125,000 in equity).
a change in the laws in 2005. Instead, a secular trend that began well before BAPCPA seems present. The increase in assets in 2007 follows a longer-term development that started in 1991. Median assets climbed from about $19,300 in 1991, to $42,600 in 2001, to $53,100 in 2007.61

B. TOTAL DEBTS

Review of the asset data alone, however, is incomplete without also considering debts. As Figure 5 indicates, for households in bankruptcy, assets and debts follow similar trend lines. As total assets rise, so do total debts, increasing from about $47,400 in 1981 to $87,300 in 2007.62 Today’s families seeking bankruptcy relief owe more than twice as much as they did in earlier generations.

C. SECURED DEBT: ENCUMBERING THE ASSETS

For a household in bankruptcy—like most middle class households—the family home is its largest asset. Not surprisingly, the data reported about both assets and debts are heavily influenced by homes and home mortgages. The data suggest that rising home values played an important role in rising asset values.63 The median home listed in a bankruptcy petition in 2001 was valued at $103,700, while the median home in 2007 was $110,400.64 While this difference is not statistically significant, the variation widens with the comparison of mean home prices. From 2001 to 2007, mean home value jumped from $118,800 to $143,400, a statistically significant increase that is pushed by a larger number of higher-priced homes in 2007.65

Of course, homeownership carries its own price: the mortgage. From 2001 to 2007, median mortgage debt for bankruptcy filers increased from $91,600 to $102,000.66 The median mortgage grew by 11.4%, almost double the 6.5% increase on the median home value. While home values increased, the data suggest that the mortgages to buy those homes increased even more.

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63 Since 1981, the proportion of families filing for bankruptcy who own their own homes has remained fairly constant at about half of all debtors. About 51.6% of the filers in 2007 lived in their own homes, a difference that is not statistically significant from the 54.1% who did in 2001 (p = .165). In 1991, about half of all the non-Philadelphia debtors were homeowners, although only about 43.9% of the total sample were homeowners. FRAGILE MIDDLE CLASS, supra note 30, at 202. (The authors believe that the higher proportion of legal service clients in Philadelphia drove down the average homeownership rates in that district unrepresentatively. See Ten Years Later, supra note 35, at 132.) In 1981, 52% of the debtors were homeowners. AS WE FORGIVE, supra note 29, at 129.

64 Wilcoxon Z = -1.314, p = .189.

65 t-test = 4.62, p < .0001.

66 Wilcoxon Z = -2.230, p = .026.
Increases in the value of homes and the size of mortgages were not bankruptcy-specific phenomena. Homeowners across the country experienced run-ups in the values of their homes and in the mortgages to pay for those homes. In the same 2001-2007 period, average home prices around the country rose 27% from $171,700 to $217,900. Average mortgage obligations rose 22% from $82,600 in 2001 to $100,900 in 2005 (the latest year for which we have available data, although we continue to report all figures in 2007 dollars). Thus, it is noteworthy that while home values and mortgages rise effectively...
in tandem for the population as a whole, mortgages are galloping upward at
twice the rate of home values for those who end up in bankruptcy.

In addition to homes, families in bankruptcy—like families everywhere—
have other assets and secured debts too. In fact, about half of the bankrupt
families are not homeowners. For them, these other secured debts, such as car
loans, are their main secured obligations. Homeowners often owe secured
loans for cars, appliances and other purchases as well.

As Figure 6 shows, just like mortgage debt, other secured debt has been
rising for bankruptcy filers. From 2001 to 2007, median non-mortgage sec-
cured debt jumped from $36,000 to $46,000—an increase of nearly 28%. The
rise is all the more notable due to the relatively small increase in—and
modest absolute value of—non-home assets, which rose only 18% (from
$11,200 to $13,200). In other words, apart from their homes, these debtors
own very little; the $13,200 median package of non-home assets includes the
value of all cars, furniture, clothes, tools, books, pets, savings, retirement ac-
counts, lawnmowers, wedding rings, cash on hand, and other valuables. That
the average load of non-mortgage secured debts climbed 28% from $36,000 to
$46,000 in the face of these modest non-home assets tells another story (in
fact, an even starker one) of debtors encumbering their assets faster than
those assets’ values have risen.

D. Unsecured Debt: Encumbering the Debtor

The debtors who filed for bankruptcy in 2007 also looked worse than their
2001 counterparts in another respect: they had much more credit card, medi-
cal, utility, and other unsecured debt—debt that is either due immediately
(utility) or very expensive when financed long-term (credit card).

Once again, those in bankruptcy followed a predictable trend line. Each
successive study of the Consumer Bankruptcy Project suggests that the un-

\[\text{Wilcoxon } Z = -7.9629, p < .0001.\]

\[\text{Mean (median) non-home assets in 2001 were }$24,229 ($11,123)\text{ and in 2007 were }$27,488
($13,227). The difference in means was almost statistically significant } (t = 1.73, p = 0.084), \text{while a
Wilcoxon rank-sum test showed a statistically significant difference between the distributions } (z = 2.21, p
= 0.027).\]

\[\text{There is not a perfect correspondence between non-mortgage debt and non-home assets. Tax liens,
for example, are non-mortgage debt that can encumber both home and non-home assets. Accordingly, our
data cannot be read to assume that the median debtor has encumbered his non-home assets by 300%.}\]

\[\text{See Sumit Agarwal, John C. Driscoll, Xavier Gabaix & David Laibson, Learning in the Credit Card
www.nber.org/papers/w13822.pdf (last visited Sept. 3, 2008), at Appendix A, which reports a panel
dataset that contains three years of credit card statements, representing 120,000 consumers and 4,000,000
credit card statements. The issuer of the analyzed credit cards in 2002-04 was charging average annual
late/overlimit/cash advance fees of}$141 \text{ per account and}$226 \text{ in penalty interest. These charges were on
accounts that showed a mean monthly balance of}$1735 \text{ (with a standard deviation of}$1978). \text{This
surcharge was roughly 21% above the base APR. For a set of }120,000 \text{ cardholders, the issuer would net
}$44 \text{ million per year from these fees and penalty interest charges.}\]
secured debt loads of bankrupt households are increasing. Moreover, this trend is more pronounced than the one in the secured debt distribution. During the six-year period from 2001 to 2007, the growth rate in unsecured debt listed by families in bankruptcy (shown in Figure 7) was more than double the growth rate in reported secured debt.73

The cumulative effects of the growth in debt have been staggering. In the six years from 2001 to 2007, families that filed for bankruptcy were collectively carrying 20.8% more secured debt and 43.6% more unsecured debt—all on incomes that remained static. Additionally, this deterioration in family circumstances appears to have been accelerating. While our data points are widely spaced, they suggest unsecured debt loads for bankrupt families grew from 1981 to 1991 at an average annual rate of about 1.4% (not compounded). From 1991 to 2001, the increase doubled to about 3% per year, and from 2001 to 2007, the rate of growth in the debt loads more than

73Total secured debt grew at a 3.5% average annual, non-compounded rate. In the same time period, unsecured debt listed in bankruptcy, which had grown at about 3% per year from 1991 to 2001, increased by about 7.3% annually from 2001 to 2007. By contrast, income stagnated at about $27,000 from 1991 forward. See supra note 46 and accompanying text; infra Appendix III
doubled again, to 7.3%. As Figure 8 reveals, the depth of the troubles facing bankrupt families has been accelerating for more than two decades.

The data on unsecured debt reinforce the conclusions about net worth and secured debt: the households filing for bankruptcy after BAPCPA are in markedly more financial trouble than their earlier counterparts, but the differences are continuations of trends that were discernible long before the amendments were adopted.

E. ADDING IT UP—BALANCE SHEETS AND INCOME STATEMENTS

The balance sheet—assets minus debts—is a static snapshot that summarizes the outcome of a financial life to that point in time. For families in bankruptcy, both assets and debts are rising. But they are not rising at the same rates; debts are outpacing assets as families’ balance sheets have worsened across the time periods studied. As Figure 9 indicates, in 1981, the negative net worth of a median household in bankruptcy was $11,200. By 2007, the median filer had a negative net worth of nearly $24,400. From 1981 to 2007, the hole in which the debtors stood, as measured by net worth, was more than twice as deep.\(^7\)

\(^7\)The exact medians, calculated on a debtor-by-debtor basis, using constant 2007 dollars, are reported in Appendix IV, infra, along with Wilcoxon Z and p values that show the differences between all years.
FIGURE 8: AVERAGE ANNUAL PERCENT CHANGE IN MEDIAN UNSECURED DEBT OF BANKRUPTCY FILERS

Source: Consumer Bankruptcy Project (see text)

The 2007 families were managing substantially larger debt loads than were their earlier counterparts, but they had no more property to show for their bigger debt burdens. In fact, they had proportionately less when measured by net worth.

Because the balance sheet tells only about accumulated assets and debts, however, it misses the more dynamic picture of the match between income and expenses. For families in bankruptcy, it is possible to explore one aspect of that relationship by comparing income with debt. With the flat incomes and rising debt loads already reported, these findings are unsurprising. In addition to studying the overall numbers on debts and incomes, however, our unique dataset permits us to construct a debtor-by-debtor analysis, so that the debts and income of each debtor can be compared. This makes it possible to get a better sense of the immediate pressure facing the families who turn to bankruptcy.75

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75Debt-to-income ratios are just one measure of financial distress. There are others. Consider the Debt Service Ratio (DSR) and the Financial Obligations Ratio (FOR), two measures of after-tax income availa-
The debtor-by-debtor results confirm what the aggregate income and debt data already suggest. Since the first collection of data in 1981, household debt-to-income ratios have been rising. Each successive Consumer Bankruptcy Project study has demonstrated that the families filing for bankruptcy are carrying larger debt-to-income loads than their predecessors.

The differences shown in Figure 10 are not small. In 1981, the median bankrupt debtor owed about one year and five months of income (which is gross income, with no allowances for outlays such as income taxes or even food), for a total debt-to-income ratio of 1.4. By 2007, the median bankrupt debtor owed about three years and four months of income, for a debt-to-income ratio of 3.3.76 In other words, families filing today do not come into...
bankruptcy until, relative to their incomes, they are in about twice as much financial trouble as families were a generation ago.

The debt-to-income ratios illustrated in Figure 10 are calculated using total debt. Of course, mortgage debt is not due immediately. While the family must make its mortgage payments in order to avoid losing its home, the entire debt can be spread over many years. Car loans can also be managed in monthly payments. Thus, the ratio of unsecured debt to income may give a more accurate sense of the immediate crisis facing these families. Unlike mortgage payments and car loans, the unsecured debt burden carries the risks of sharply increasing interest rates and multiple fees that can wreak havoc on household budgets. For example, once credit card debt is past due, it carries interest rates and penalty fees that can double the amount outstanding in a relatively short time.77

Compared with the total debt-to-income ratios, the unsecured debt-to-income ratios have grown even faster, as shown in Figure 11. In 1981, the median household in bankruptcy owed just under six months of income in credit cards, medical debts, and other unsecured credit, for an unsecured
debt-to-income ratio was 3.272. For 2007 compared with 1981, the difference is statistically significant (Wilcoxon Z = -22.531, p < .0001).

77See generally Mann, Sweat Box, supra note 19, at 389–92.
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debt-to-income ratio of 0.46. By 2007, the median household owed nearly 15 months of income to unsecured creditors, for an unsecured debt-to-income ratio of 1.22. This means that by 2007, the ratio of unsecured debt to income was two and a half times larger than the ratio in 1981. When the 1981 data were first revealed, the authors characterized the debt-to-income ratios as “staggering,” a comment that now seems almost quaint.

FIGURE 11: UNSECURED DEBT-TO-INCOME RATIO OF BANKRUPTCY FILERS

In sum, when looking at measures beyond just income, the families filing for bankruptcy today are in worse shape than those filing in earlier years. Family by family, median net worth continues to sink, and bankrupt households are struggling with ever-larger mortgages and total debt loads.

Might these final data regarding debt (especially unsecured debt) at last be some positive news, albeit grim, for the supporters of BAPCPA? The data suggest that although they appear similar in terms of their income levels, the bankruptcy filers still around after BAPCPA are in measurably worse balance sheet and debt service circumstances than their counterparts from 1981, 1991, and 2001. Could we thus infer that those no longer relying on the system, while having similar incomes, at least have greater capacity to manage.

78The difference is statistically significant (Wilcoxon Z = -24.279, p < .0001).
79Folklore and Facts, supra note 34, at 320.
their unsecured debts—that they are indeed the better-off, can-pay debtors targeted by those who lobbied for BAPCPA?

There are at least two reasons to doubt this conclusion. First, this interpretation of the data runs contrary to the legislative design of BAPCPA itself. In crafting the means test, Congress made no effort to target relatively higher net worth individuals even if they had lower incomes.\(^8\) In fact, as mentioned earlier, suggestions to cap property exemptions were firmly rejected.\(^8\) As for a nuanced consideration of debt-to-income ratios, suffice it to say such complex metrics had no place in the sponsors’ press packages. This does not eliminate the possibility that the law had such an effect, but it shows that any such outcome would have to have been indirect and, at least as a matter of the public debates, unexpected. At best it would be a positive legislative blunder: BAPCPA succeeding in spite of itself, not because of itself.\(^8\)

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\(^8\)See supra notes 57-60 and accompanying text.

\(^8\)The only way to stretch BAPCPA to indicate some interest in net worth is to re-envision the credit counseling requirement as a way to screen “can-pay” debtors in an undifferentiated, unspecified way wholly distinct from the means test’s income screen. Thus it could be, at least theoretically, that while the means test failed, credit counseling “worked” by inducing the stronger debtors (in terms of net worth and debt-to-income ratios) to soldier on and stay out of bankruptcy. While possible, this theory strikes us as deeply implausible. Credit counseling has been offered by independent providers who are unlikely to coordinate an effort to herd families in the same direction. Indeed, credit counselors that work through lawyers, as do many of the largest services, have a positive incentive to move debtors directly into bankruptcy quickly and cheaply. If they failed to do so, their supply of debtors from referring lawyers would presumably diminish. See National Association of Consumer Bankruptcy Attorneys website, which provides links/advertisements for two major credit counseling firms on its “Tools of the Trade” webpage: http://www.nacba.org/tools.php (last visited Sept. 3, 2008). Moreover, credit counseling is perceived, and may well be, a largely pro forma technicality with little substantive effect. See Debt Relief Lowdown, Is Credit Counseling a Waste of Time?, Mar. 1, 2006 (describing National Association of Consumer Bankruptcy Attorneys study finding only 3% of 61,000 surveyed debtors had enough financial cushion that pre-bankruptcy counseling would have helped avoid bankruptcy), available at http://www.debtrelieflowdown.com/credit_counseling/index.html. We also note that the credit counseling services often provide the mandatory debtor education courses within bankruptcy, see Brett Weiss, Why I Hate Pre-Bankruptcy Credit Counseling, BANKRUPTCY LAW NETWORK, Apr. 6, 2007, available at http://www.bankruptcylawnetwork.com/2007/04/06/why-i-hate-pre-bankruptcy-credit-counseling, which could create yet another incentive to move debtors quickly to a bankruptcy filing so that the customer can return for the mandatory course.

Similarly, it is difficult to characterize specific amendments that apply across the board to all debtors (not just high-income ones) as designed to screen can-pay debtors from can’t-pay ones. See, e.g., 11 U.S.C. § 1325 (2006) (anti-cramdown expansion for Chapter 13 plans); 11 U.S.C. § 506(a)(2) (2006) (valuation rules for debtor collateral); 11 U.S.C. § 523 (2006) (expansion of non-dischargeability provisions). We see these provisions as designed to help specific constituencies of lobby-favored creditors. That they have an indirect effect on the debtor is necessarily true; that they were designed to ferret out “can-pay” debtors in the same way that the means test was expressly designed to do is not.

Finally, we are unable to explain Congress’s motivation in passing random punitive provisions designed for all debtors, such as the expansion of discharge intervals. See, e.g., 11 U.S.C. §§ 727(a)(8)-(9), 1328(i) (2006). Needless to say, we do not recall any arguments in the debates that the marginal debtor who “can pay” her debts is one who is attracted by the prospect of returning to bankruptcy in seven years but who will hunker down and pay her creditors if she faces an eight-year bar.
Second, and perhaps of more significance economically, debt loads were getting worse for everyone during this period.\textsuperscript{83} If the general population’s debt loads had stayed relatively constant, then we might infer from the worsening debt loads of those filing for bankruptcy after BAPCPA that the amendments worked in keeping “regular” debt-load consumers (“can-pays”) from filing for bankruptcy with the result being that only “worsened” debt-load consumers (“can’t-pays”) remained in the system. But family debt loads across America did not stay constant. The general population faced the relentless climb of consumer credit that had been going on for decades; families in 2007 had even more consumer debt on an aggregate level than ever before. Given this run-up in debt among the general population, it is plausible that the worsened debt loads of those filing for bankruptcy in our 2007 sample show the consequences of a population-wide trend of increasing debt loads and decreasing debt-service capacity.\textsuperscript{84} Accordingly, we are loath to predict that the comparatively worsened financial straits of bankruptcy filers in 2007 compared with 2001 suggest a back-door success of BAPCPA. If anything, they confirm an ominous trend of American families fighting a losing struggle with debt.

F. THE MISSING 800,000

Before discussing our findings in more depth and considering possibly explanatory theories, we want to comment on what our income and our debt-load findings imply for the missing 800,000 families driven from the bankruptcy system after BAPCPA. Our data suggest that the families filing for bankruptcy in 2007 had equivalent incomes to those filing in 2001 and 1991 but that they carried larger debts. But what, if anything, can we say about the families who did not enter the bankruptcy system—the 800,000 families who we would have expected to file but for BAPCPA? To be sure, we have no device to detect and study these would-have-filed families directly, but we can draw at least some inferences from the data and trend lines.

As reported earlier, although the number of petitioners filing for bankruptcy relief in 2007 was half the number immediately preceding BAPCPA, those who filed in 2007 looked no different in income profile from those who

\textsuperscript{83}Median incomes in the general population have declined slightly from 2005 to 2007. Total outstanding debt has increased, and both revolving and consumer debt have been on the rise from 2005 to 2007. See G.19, supra note 3. We think these data suggest a worsening (or at best a stagnating) financial position, not an improving one, in the general population.

\textsuperscript{84}We cannot analyze the variance of the general population data. Accordingly, we also cannot exclude the possibility that BAPCPA was sorting those with worsened debt loads from those with much worsened debt loads, with the latter being the “can’t-pays” still in the system and the former the “can-pays” driven from it. As we mention below, see infra text accompanying notes 86-88, we do not recall rhetoric in the BAPCPA debates that Congress was planning to bar low-income people from filing bankruptcy who had debt loads even worse than the 2001 median debtor in bankruptcy.
filed in earlier studied years. The logical inference is that, when measured by income profile, the 800,000 families that did not file, as a statistical group, also looked like those who did file—both those who filed before the 2005 amendments and those who still managed to file after the amendments became law.

It is possible that a horde of rich people suddenly filed for bankruptcy relief beginning in 2002 (after our earlier data collection) and that they were then pushed back out of the system by the 2005 amendments, but such a tale has no empirical support. It also requires two massive changes in behavior, undetected (or at least unreported) by any judge, lawyer, academic, creditor or other observer of the bankruptcy system.85 If, instead, we assume that there were no seismic changes in the composition of the debtors prior to 2005, then the data support the inference that the 800,000 families pushed out of bankruptcy had incomes roughly equivalent to those who filed.

Yet the debtors who filed in 2007 were substantially different from their earlier counterparts in one critical respect: they were in a much deeper financial hole. This change, however, is part of an ongoing trend, making it an unlikely consequence of BAPCPA. Doctor Sullivan and Professors Warren and Westbrook reported in earlier work that from 1981 through 2001, debt loads rose and debt-to-income ratios increased for households in bankruptcy.86 The 2007 findings were directly in line with these trends.

What does this allow us to conclude about the 800,000 who did not file? We think there are two possibilities, given that the debt loads and debt-to-income ratios for the population as a whole were also deteriorating during this same period. First, it could be that the missing 800,000 had debt loads and debt-to-income ratios similar to the (worsened) profiles of those filing for bankruptcy in 2007. Second, it could be that they had better debt loads and debt-to-income ratios than those who filed for bankruptcy in 2007—that they were, relatively, better off—but that they still had worse loads and ratios than those who were filing for bankruptcy in 2001.87 Neither strikes us as an encouraging development.

If the debt loads and debt-to-income ratios of the 800,000 squeezed out were just as bad as those who still filed for bankruptcy in 2007, then we have yet more evidence of BAPCPA’s pernicious effects in excluding people randomly from financial relief. If the debt loads and debt-to-income ratios were better (even if their incomes were the same), then there is still no cause to

85It also requires a peculiar twisting of the bankruptcy filing data of steady year-by-year increases from 2001 through 2004: it would have to assume that the supply of low-income debtors had reached a cap and all subsequent filers were exclusively high-income.
86See Less Stigma, supra note 34, at 229-31, 238-40.
87We dismiss as implausible in light of the general population data the possibility that they had better financial circumstances than their 2001 counterparts.
celebrate. This is because if the 800,000 non-filing families looked like their counterparts who filed back in 2001 (itself an already optimistic assumption given the deteriorating financial circumstances of the general population’s debt loads and debt-to-income ratios), then according to the 2001 data, they were still struggling with total debts that exceeded two and a half years of income and short-term debts that matched about nine months of income, all without seeking protection that had once been readily available to them. If this latter scenario were true, then BAPCPA represents an implicit policy conclusion that this is a desirable steady state of debt for an American family and an appropriate place to deny bankruptcy protection. That claim was never part of the political debate that preceded the adoption of BAPCPA.

BAPCPA was advanced with a narrative that while some could not afford to pay their creditors in bankruptcy, many others could, and the new law would sort the can-pays from the can’t-pays. But even with our most optimistic assumptions regarding the debt loads of the 800,000 non-filing families—that they were lighter than those still filing—we still cannot escape the fact that those debt loads were worse than they were for those going bankrupt in 2001. Thus, even with these best-case assumptions, BAPCPA does not appear to be sorting can-pays from can’t pays; it appears to be sorting can’t-pays with high debt loads from similar income range can’t-pays with even higher debt loads.

If either of these interpretations of the debt load data is correct—that any financial sorting was either non-existent or at best a gradation of inability to pay—then it may be that the 800,000 in 2007 who might otherwise have filed will find their way to bankruptcy in 2008 or 2009. As Professor Robert Lawless has demonstrated, national consumer debt loads and bankruptcy filing rates tend to work in tandem over the long term. Perhaps BAPCPA will magnify the lag time between incurring the debts and filing for bankruptcy, rather than reduce the debt-bankruptcy connection. The answer to such speculation lies in the future. For now, we stick to what we know: the families filing for bankruptcy in 2007 were in more desperate financial shape than their counterparts of earlier years, but those differences bear no apparent link to BAPCPA’s means test. Worse yet, we have no reason to think that the 800,000 left behind were in meaningfully better financial shape.

V. DISCUSSION: STRATEGIC ACTORS, SHOCKS, SWEAT BOXES, SUBTERFUGE, STIGMA AND MORE

The data from this first report of the 2007 Consumer Bankruptcy Project shed somber light on the efficacy of BAPCPA. Those hoping for a quick fix

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88See supra note 84.

to complex problems surely took heart in the initial reports that the absolute number of people filing for bankruptcy declined after the amendments, even after adjusting for likely transition effects.\footnote{152 CONG. REC. S10647-48 (daily ed. Sept. 20, 2006) (statement of Sen. Grassley).} By 2007, an estimated 800,000 families that otherwise would have filed did not seek bankruptcy protection. But the more pressing question is not whether people left the system, but who left the system (and why). To try to understand that puzzle, we turn to prominent academic theories of consumer bankruptcy to see if they help explain our data and account for the missing 800,000 squeezed from the system after BAPCPA.

First, we consider the strategic actor model that has been advanced by a number of scholars and policymakers to explain the consumer bankruptcy system. In an important article supporting BAPCPA, Judge Edith Jones and Professor Todd Zywicki claimed that tougher bankruptcy laws would cause people to reduce their own debt loads.\footnote{Id. at 209 ("If discharge of debts is easy in bankruptcy, debtors will incur more debt. Conversely, if obtaining bankruptcy relief is difficult, debtors will be more reluctant to incur debts."); see also id. at n.114.} Following classical economic logic, they explained that the then-current bankruptcy law created a moral hazard because people knew they had a safety net. If a strict means test were added to the bankruptcy law, they reasoned, fewer people would seek bankruptcy because they would exercise greater discipline over their spending to reduce their reliance on the (toughened) bankruptcy system when debts got out of control.\footnote{Id. at 208.} With fewer people needing bankruptcy, bankruptcy filings would decline.\footnote{Id. at 209.} When bankruptcy filings spiked before the new laws went into effect, Professor Zywicki suggested these transition filers were the very strategic debtors he envisioned, shrewdly seeking relief in advance of the tough new laws.\footnote{Professor Zywicki explains: Do consumers respond to incentives to file bankruptcy? The experience of the past few months strongly suggests "yes." Although this is obviously very casual empiricism, it is backed by a volume of economic theory that predicts that consumers would respond to anticipated changes in the bankruptcy laws exactly as they apparently have—by rushing to file bankruptcy before the new law takes effect. Posting of Todd J. Zywicki to The Volokh Conspiracy Blog, http://volokh.com/archives/archive_2005_06_19-2005_06_25.shtml#1119645927 (June 24, 2005).}

By 2007, the strategic actors envisioned by Jones and Zywicki should have been cleaned out of the system. They supposedly swelled the bankruptcy filing numbers on the eve of implementation of BAPCPA and then were gone. Yet our data show that while the bankruptcy numbers declined, the debt loads did not fall. In fact, they rose. Both inside and outside bankruptcy, net equity plunged and debt-to-income ratios soared. Thus the pre-
dicted belt-tightening after the exorcism of these strategic actors does not seem to have happened. While Professor Zywicki and Judge Jones may have correctly presented classical economic theory, the data, at least so far, have not borne out their claims.95 As such, we need to look elsewhere for a theory that helps explain our data.

An alternative model of consumer bankruptcy has been advanced by Dr. Sullivan and Professors Warren and Westbrook.96 They argue that exogenous shocks trigger many bankruptcies. Families are driven to bankruptcy when they suffer serious economic dislocations, such as job loss, medical problems or family breakups.97 From their perspective, Jones-Zywicki belt-tightening predictions are largely beside the point because bankruptcy has little to do with profligate spending. Yet the Sullivan-Warren-Westbrook model also cannot explain our findings on its own. It does not predict the sharp decline in bankruptcy filings we see in our data. Because there have been no dramatic improvements in health care delivery, employment prospects or family stability, their model would predict constant, not diminished, rates of filing.98

Similarly, if bankruptcy filings are related either to the high debt loads that are fostered by the structure of the payment systems, as suggested by Professors Ronald Mann99 and Robert Lawless,100 or by rising economic pressure on middle class families, as suggested by Professor Warren and Ms. Amelia Tyagi,101 then the changes in bankruptcy laws were similarly unlikely to have had a significant effect on behavior. These models are consistent with rising debt loads among families who file, but not with the concomitantly pronounced decrease in bankruptcies observed after the adoption of the amendments.

The data are consistent, however, with at least one theory of consumer debt: Professor Mann’s sweat box theory of lending. Mann argues that the

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95 We recognize that debts are accrued over months and years and that turning an ocean liner takes time. So while we express some hesitation at BAPCPA’s prospects in reducing debt acquisition, we reserve final judgment to a later point in time after many more data have been gathered.

96 See, e.g., FRAGILE MIDDLE CLASS, supra note 30.


98 When bankruptcy filings decline sharply, the exogenous shock model is consistent with the continuing presence of families in need of bankruptcy. If they are indeed out there, as we suspect they are, then it likely means they are being excluded from bankruptcy inefficiently and unfairly.


100 See Lawless, supra note 89, passim.

101 TWO-INCOME TRAP, supra note 31, at 180.
goal of the means test in BAPCPA was never to sort out can-pay debtors or to squeeze more payments from families in bankruptcy. Instead, he argues that what lenders really wanted from BAPCPA was more delay before filing bankruptcy. Mann observes that many credit card lenders have developed business models and fee structures that will allow a substantial boost of profit whenever families delay a bankruptcy filing. Mann thus reasons that the aspects of BAPCPA that should have the biggest impact on debtors are those that increase costs, insert more delays or otherwise raise the bar of desperation that a family must feel before making the decision to file for bankruptcy. Provisions that increase the amount of paperwork and documentation debtors must produce, that require debtors to engage in pre-bankruptcy and during-bankruptcy counseling, and that drive up the costs for attorneys to provide their services would, according to this model, have a far greater impact on whether cash-strapped families in financial trouble turn to bankruptcy than a means test. The post-BAPCPA families’ higher debt loads, declining net worths, and higher debt-to-income ratios offer data that are consistent with his analysis.

Professor James J. White takes a similar position, speculating that BAPCPA was a game of subterfuge. The true goal of the legislation may have been to make bankruptcy more undesirable to all, not just to the rich. White argues that the amendments were designed to impose a death by a thousand cuts through low-visibility procedural burdens, and that high-visibility, substantive provisions, such as the means test, were simply distracting bonuses. With a mixture of apparent cynicism and admiration, White implies that the bankruptcy reform effort was an attempt to attack distressed consumers all along the income spectrum—an effort that was hidden behind the more politically acceptable rhetoric of the means test’s focus on high-income deadbeats:

By raising the cost in hundreds of little ways, you might make bankruptcy unpalatable to many who currently take bankruptcy. . . . Nor would you be obliged to admit that the

102Mann, supra note 19, at 378–79.
103Id. at 392–97.
107One interesting new study conducted after BAPCPA finds not only that the change in law has been profitable for credit card lenders, but that none of that surplus has been shared with consumers. See Michael Simkovic, The Effect of 2005 Bankruptcy Reforms on Credit Card Industry Profits and Prices (Working Paper, July 8, 2008), available at http://ssrn.com/abstract=1157158 (finding consumers are paying higher interest rates, late fees and overlimit fees after the amendments’ implementation despite the lobbying promise that BAPCPA would eliminate alleged “bankruptcy tax” on non-bankrupt borrowers).
true reason for advocating these bureaucratic changes was to degrade the machinery of bankruptcy; these rules could be justified as palliatives for acknowledged ills of the system.109

Mann’s theory of the creditors’ sweat box, White’s speculation on the real intent of BAPCPA, and our own findings about the increases in debt loads caused us to analyze two additional pieces of data. We report them here, in our discussion, because it was only after we reflected on our primary findings that we saw the importance of these results.

In both 2001 and 2007, the telephone surveys of the families in bankruptcy included questions about how long they had been seriously struggling with their debts before they filed for bankruptcy and about their experiences with debt collectors. The how-long-seriously-struggling options were blunt, pre-set categories. Indeed, the responses suggest that when we designed the question we had not fully anticipated how long people struggled with debts before filing. The modal answer was the longest interval category available: more than two years. More importantly for these purposes, the proportion of debtors choosing “more than two years” jumped significantly from 32.6% in 2001 to 43.8% in 2007.110 Thus it may not be that the 800,000 non-filers have truly left the system; they may just be circling the drain longer.111 Again, more time will be needed to know what will ultimately happen to families squeezed from the bankruptcy system.

The increase in the length of time that people postpone filing for bankruptcy is consistent with creditor efforts to trap debtors longer in the sweat box, regardless of whether they eventually end up in bankruptcy. The increase in time struggling in the 2007 sample is particularly noteworthy because of the sharp increase in “transition bankruptcies” in 2005. Based on the Jones and Zywicki predictions about strategic behavior, it would be reasonable to assume that people on the margin economically would have joined the rush to file for bankruptcy before the new law went into effect in 2005. To the contrary, our data suggest that many families that were already in trouble resisted “unstrategically,” only to end up in bankruptcy two years later.

The data offer another possible explanation of why 800,000 families in serious financial trouble could be missing from the bankruptcy rolls. In the telephone survey of those who filed in 2007, 82% of households reported

\[109\] Id. at 874.

\[110\] Pearson chi-square = 37.370, p < .001; Cramer’s v = .153, p < .001. It is significant that we can offer internal comparison with our 2001 data. For those who think our respondents self-congratulate themselves regarding how long they struggled before filing, we offer this comparative perspective: whatever the level of self-congratulatory distortion is (if any), there is no reason to assume it varies over time. Thus, the relative increase from 2001 to 2007 is noteworthy.

\[111\] See Lawless, supra note 89, passim (presenting data on long-term correlation between debt and bankruptcy).
calls from debt collection agencies. Of these families, nearly a quarter—23.6%—said the debt collectors had raised the subject of bankruptcy explicitly, threatening what would happen if they filed. More than half who received such warnings recount being told by the debt collector that it was “illegal” to file for bankruptcy, or that, if they filed, they might go to jail, the I.R.S. would audit them, or they could lose their jobs. The remainder received a mix of misinformation, including the oft-repeated “you won’t qualify.” These data suggest that after the 2005 amendments, the newly emboldened debt collectors may have had an important influence on people’s willingness to file. In the wake of the publicity about the changes in the laws,

\[112\text{Of the 845 debtors who had been contacted by a debt collector, these were the recorded responses:}

1. It was illegal to file bankruptcy: 4.9% (n=41)
2. You might go to jail if you filed: 3.9% (n=33)
3. I.R.S. would audit you if you filed: 7.3% (n=62)
4. You might lose your job if you filed: 8.5% (n=72)
5. Something else might happen if you filed: 19.4% (n=164) (text fields recorded).

Overall, 12.9% (n=133) reported one or more responses in categories 1 through 4. The total with a response in any of 1 through 5 was 23.6% (n=244).
debt collectors apparently worked hard to make debtors believe bankruptcy relief was now cut off.

At least one expert shares this view. According to Bankruptcy Judge Michael Williamson:

> I don’t think [the low filing rate] is a sign that people are not in financial difficulties. It's just a sign that they have been scared off. From the anecdotal feedback we get, people apparently are being told by debt collectors that bankruptcy is no longer available.

Judge Williamson’s description strikes us as plausible. If one in four of the families that made their way to bankruptcy had been receiving direct, personal advice that they would be ineligible for bankruptcy (including, for some, that it was “illegal” to file) or some other cautionary advice, perhaps more people waited to file, which would explain why these debtors are in much worse shape by the time they muster the courage—or resignedly accept the need—to do so. But we are able to survey only those who heard this advice and filed anyway. It is interesting to speculate about the kind and amount of advice that debt collectors gave to the 800,000 similar families who were also in serious trouble but decided not to file.

The importance of these additional findings is two-fold. First, these data reinforce Mann's sweat box theory by suggesting creditors’ desires to scare away debtors from bankruptcy for as long as possible to maximize the sweating. Second, they provide an explanation for the decline in filings despite the continuing evidence that families are in serious trouble. Recall the prognostications of the Sullivan-Warren-Westbrook adverse event theory, the Mann theory linking bankruptcies and consumer debt, and the Warren-Tyagi theory that today’s families are in much more economic trouble. All predict steady or rising bankruptcy filings; yet the data here suggest increasing hardship in the face of diminished filings. Mann and White, however, predict both diminished filings and increased delay and struggle prior to bankruptcy—exactly what we see. We may be witnessing a system for which need is growing, as the scholars cited above have predicted for various reasons, but for which relief is now placed out of reach by debt collectors who enjoy greater success in deterring debtors from filing. The seemingly random reduction of the bankruptcy ranks may be driven by who succumbs and who survives (or avoids or evades) the emboldened efforts of these collectors.

No discussion of who files for bankruptcy and why would be complete without at least some mention of stigma. Before BAPCPA, many argued that

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bankruptcy’s stigma had diminished,114 which indeed motivated some legislators’ support of the bill.115 Bankruptcy filings had presumably risen because personal bankruptcy had lost much of its stigma. In earlier work, however, Sullivan, Warren and Westbrook examined the data from 1981, 1991 and 2001, and questioned whether the flat incomes and rising debt loads that families carried when they filed for bankruptcy were consistent with the premise that the stigma of bankruptcy was declining.116 If bankruptcy were not personally embarrassing, they reasoned, more cases would be filed by individuals who were relatively better able to repay their debts. Instead, the data pointed to the opposite conclusion; filers were not getting richer, they were getting poorer.117

Although it ran contrary to much political rhetoric surrounding the debate on the amendments, Sullivan, Warren and Westbrook’s indirect evidence of persistent stigma was also buttressed by sociological research.118 For example, in an important analysis of bankrupt debtors, Drs. Deborah Thorne and Leon Anderson found that stigma remains a pervasive feature of the landscape of contemporary consumer bankruptcy.119 Direct interviews showed that newly bankrupt individuals rely upon a wide range of management techniques that are typically employed by members of other stigmatized groups, such as the homeless, victims of HIV and AIDS, and gays and lesbians. Thorne and Anderson’s interview respondents reported that, prior to their bankruptcies, they shared the prevailing social sentiment that people who file are deadbeats who intentionally “rip off the system.”120 When confronted with their own financial failures, they relied upon recognized techniques to manage the stigma—they tried to hide their circumstances from others, to differentiate themselves from those people whom they believed would fit the stereotype of illegitimate bankruptcy filers, and provided justifications and excuses for their financial transgressions.121

This research suggests that the death of bankruptcy stigma might have been greatly exaggerated. If so, then one possible reason for the decline in bankruptcy filings after the amendments may have been heightened stigma.

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115Bankruptcy has become so common that it has lost the stigma it had even a short generation ago. Today it is just another method for getting out of debt, a tool just to get out of debt.” 151 Cong. Rec. S1813 (daily ed. Mar. 1, 2005) (statement of Sen. Frist).
116See Less Stigma, supra note 34, at 238.
117Id. at 239.
118Sullivan, Warren & Westbrook also cite direct evidence on persisting stigma. See Less Stigma, supra note 34, at 243 (self-assessments of negative life events). See id. at 246 (hiding bankruptcy from friends and family).
120Id. at 83.
121See id. at 90.
Indeed, BAPCPA may have accelerated trends of increasing stigma already afoot. For example, in reflecting on their own findings on stigma, Sullivan, Warren and Westbrook noted that although a 1981 bankruptcy filing was quite unlikely to be discovered by anyone who was not a creditor, a filing in 2001 was readily discoverable with a few clicks on the internet.\textsuperscript{122} Perhaps the increased disinclination to file in 2007 across all income groups reveals an intensified sting of social penalty. The stigma of bankruptcy—already rising in an increasingly fishbowl culture—may have become stronger after the high-profile public debates of BAPCPA in which bankruptcy filers were portrayed as deadbeats who abused the system.\textsuperscript{123} We cannot say much for sure at this time, but we can present this possibility, and we look forward to reporting in subsequent articles on the further measures of stigma we gathered in our research. For now, we simply pause to reconsider the political debates surrounding the amendments. When Congress promised that high-income can-pay debtors would be forced out of bankruptcy, did it really mean, as our data could indicate, that “can-pay” actually meant “the most easily shamed or intimidated”?\textsuperscript{124}

\textbf{VI. CONCLUSION}

The Consumer Bankruptcy Project is the first random national sample of families that filed for bankruptcy after the 2005 amendments. Our initial findings should dampen the enthusiasm with which some trumpet BAPCPA’s success in reducing the number of bankruptcies. The principal feature of the amendments was an income-based screen that was supposed to differentiate can-pay debtors from their can’t-pay counterparts. The data suggest that this failed: there is no differentiation based on income, either for the sample as a whole or for the division of families into Chapter 7 and Chapter 13. Instead, the data suggest that the incomes of the families filing for bankruptcy after the amendments are indistinguishable from the incomes of the families filing for bankruptcy before the amendments.

By its own design, the means test focused on income. It did not take account of the overall financial condition of debtors; net worth and debt-to-

\textsuperscript{122}See Less Stigma, supra note 34, at 243.

\textsuperscript{123}“Personal bankruptcies are soaring because Americans have lost their sense of shame.” Julie Kosterlitz, \textit{Over the Edge}, 29 NAT’L. J. 870, 871 (1997) (quoting then-Federal Reserve Board Chairman Alan Greenspan).

\textsuperscript{124}When the 1978 Code was enacted, express steps were taken to reduce the stigma of bankruptcy. The National Bankruptcy Review Commission Report observed, “The Code, for instance, replaced the term ‘bankrupt’ with ‘debtor’ and described a case filing as seeking an ‘order for relief.” EDITH H. JONES & JAMES I. SHEPARD, NAT’L BANKR. REV. COMM’N, ADDITIONAL DISSENT TO RECOMMENDATIONS FOR REFORM OF CONSUMER BANKRUPTCY LAW, available at http://govinfo.library.unt.edu/nbrc/report/24commvi08.html (last visited Sept. 3, 2008). We are unaware of any express efforts to cast more shame on and raise the sense of stigma of all debtors under BAPCPA.
income ratios were irrelevant to the new law. While secured debt received some favored treatment, the size and impact of unsecured debt loads, such as credit card and medical debt, were largely ignored. With only slight exceptions, families that owe a little and families that owe a lot of unsecured debt are equally eligible for Chapter 7 relief once they have survived the income-based means test. Yet this is where our additional findings reveal important differences with the 2007 filers. After the amendments, families filing for bankruptcy owe more debt, particularly more unsecured consumer debt, than their counterparts from 2001 and are having a much harder time servicing that debt with disposable income.

The higher debt-to-income ratios among the families that filed bankruptcy in 2007 suggest that Americans are struggling harder than ever before they collapse into bankruptcy. Whether they are discouraged by the negative publicity surrounding the 2005 amendments, concerned about the stigma associated with bankruptcy, or dissuaded by aggressive debt collectors who bully them into believing they can no longer file for bankruptcy, it is clear that families are not turning to bankruptcy even when they have great need. This is a result Congress neither intended nor promised.

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APPENDIX I: DETAILED METHODOLOGY

The Consumer Bankruptcy Project ("CBP") consists of four empirical studies of the economics and demographics of consumer bankruptcy debtors. The studies have frequently been identified in two ways: the year in which the sample of debtors filed bankruptcy (1981, 1991, 2001, and 2007) and a Roman numeral to label each study (CBP I, CBP II, etc.).\textsuperscript{127} As the investigators have learned more about the people who file for bankruptcy, each iteration of the CBP has differed slightly in its approach. Collectively, however, the studies offer a rich profile of the families in bankruptcy over the last two and a half decades. This section summarizes the methodology of the three prior studies in the CBP series and provides a detailed methodology of the newest CBP study ("CBP IV"), which collected data on consumers who filed bankruptcy in 2007.

All four CBP studies share certain attributes. In each study, only individuals filing under Chapter 7 or Chapter 13 of the Bankruptcy Code were included in a sample. Individual (non-entity) debtors can file bankruptcy under other chapters of the Bankruptcy Code, but these cases are very rare and were excluded from all studies.\textsuperscript{128} There is no single, perfect standard for classifying a case as a consumer case, rather than a business case.\textsuperscript{129} If the debtor's name on the bankruptcy petition was not that of an individual person (i.e., it was a legal entity such as a corporation or a partnership), the case was treated as a business matter. All four CBP studies consistently applied that standard.

All four studies also owe their success to the contributions of many people. Each study has been a collaboration of several scholars. From the beginning, the CBP was interdisciplinary in its approach. This orientation has strengthened in successive years. Each study relied to at least some extent on the cooperation of the U.S. bankruptcy courts or bankruptcy professionals who facilitated the research. All studies were funded by grants from government agencies or non-profit institutions. In this Article, we identify and thank the people and organizations that facilitated the current 2007 study, CBP IV. Because of the tangible or financial support of such parties, the CBP has expanded its research aims.

\textsuperscript{127} See \textit{Less Stigma}, supra note 34, at 218 (describing the prior studies by year and numeral).


A. THE THREE PRIOR STUDIES

1. CBP I (1981)

The first project (CBP I) examined consumer bankruptcy cases filed in 1981. The sample was built from the systematic selection of individual bankruptcy cases filed during the entire 1981 calendar year. Inclusion in the sample did not rely on voluntary participation from bankruptcy debtors. By filing a bankruptcy case, any debtor had an equal chance of being included in the sample. The CBP I had a limited geographic scope. The sample consisted of 150 cases filed in each of the ten federal judicial districts in three states: Illinois, Pennsylvania and Texas. The sample reflects the proportion of Chapter 7 and Chapter 13 cases that were filed in six of the districts. In four of the districts, because of the very low proportion of cases filed in Chapter 13, there was an oversampling of Chapter 13 cases.

The quantitative data in the CBP I come solely from the bankruptcy petition and schedules and the court docket. These sources provided a detailed profile of debtors' financial conditions at the time of bankruptcy, including income, assets, and debts. The researchers supplemented these data with interviews with bankruptcy judges and lawyers who were asked to describe the consumer bankruptcy system.

2. CBP II (1991)

The CBP II studied consumer bankruptcy cases in 1991. Just as with the CBP I, the second project collected data on income, assets and debts from bankruptcy court records. The CPB II used a different sample selection method and added a second research instrument, a written questionnaire that gathered demographic data that are not available in the court records.

Debtors were included in the CBP II sample if they filed a consumer bankruptcy case during the first half of 1991 and completed a written questionnaire. The questionnaires were given to debtors who filed cases in the states of Illinois, Pennsylvania, Texas, California, and in two judicial districts.

130 Teresa A. Sullivan, Elizabeth Warren and Jay Lawrence Westbrook were the three principal investigators of CBP I.
131 Ten Years Later, supra note 34, at 125; see also As We Forgive, supra note 29 (describing the sampling method as a “systematic procedure that approximates random sampling”).
132 Ten Years Later, supra note 34, at 150; Less Stigma, supra note 34, at 219.
133 Ten Years Later, supra note 34, at 125.
134 As We Forgive, supra note 29, at 344; id. at 348 tbl.A2 (reporting sampling fractions).
135 Ten Years Later, supra note 34, at 125.
136 As We Forgive, supra note 29, at 63–69.
137 Less Stigma, supra note 34, at 218; As We Forgive, supra note 29, at 351–53.
138 Ten Years Later, supra note 34, at 125.
139 The same trio of researchers in CBP I were the principal investigators of CBP II.
140 Ten Years Later, supra note 34, at 125.
141 Fragile Middle Class, supra note 30.
in Tennessee. Most commonly, the questionnaires were distributed to debtors at the required meeting with the bankruptcy trustee assigned to their case, but sometimes the questionnaire was given to the attorney or debtor at the time of the bankruptcy filing. Those who did not complete or partially complete a questionnaire were excluded from the sample. This procedure was subject to response bias, but prior analysis found minimal evidence of such an effect in the financial data. Thousands of questionnaires were returned.

The written questionnaire was voluntary and confidential. It was a single page, consisted almost entirely of closed-ended questions, and was made available in both English and Spanish. The questionnaire gathered demographic data on each debtor’s age, gender, education, occupation, marital status, educational background, and race or ethnicity. Debtors were asked to provide their names, case numbers, and reasons for their bankruptcy.

Using this information, the researchers matched a sample of the questionnaires to the corresponding debtors’ public court records. This subsample consisted of 150 randomly selected cases from one district in each of the states of Illinois, Pennsylvania, Texas, California, and Texas. Numerous details on each debtor’s financial condition were coded from the court records, providing comparable data to the CBP I sample.

3. CBP III (2001)

The CBP III studied people who filed consumer bankruptcy cases in 2001. For this third project, the size and interdisciplinary orientation of the research team expanded, and additional research instruments were added to enrich the amount and type of data. The CBP III sample was constructed by distributing written questionnaires to consumer bankruptcy debtors at the required meeting with their trustees in the first half of 2001. The geographic scope of the sample was the same five districts used...
to collect the five-district court record sample in CBP II, except that the Northern District of Texas replaced the Western District of Texas.\textsuperscript{156} In each district, 250 returned questionnaires were collected,\textsuperscript{157} resulting in a total sample of 1250.\textsuperscript{158} The sample reflected the proportion of Chapter 7 and Chapter 13 questionnaires filed in each district.\textsuperscript{159}

The CBP III questionnaire was voluntary and confidential as with CBP II,\textsuperscript{160} but was considerably more comprehensive than the prior study’s questionnaire.\textsuperscript{161} Demographic data and reasons for bankruptcy were gathered again, as well as information on each debtor’s medical bills, homeownership and home loans, self-employment status, and prebankruptcy situation. On its last page, the CBP III questionnaire offered $50 to debtors who would complete follow-up telephone interviews.\textsuperscript{162}

For each of the returned questionnaires, the researchers coded data from the debtor’s corresponding bankruptcy court records.\textsuperscript{163} The coded information included debtors’ income, assets and debts as reported in the petition and schedules, including all fields coded in 1981 and 1991.\textsuperscript{164}

Telephone interviews were conducted with all sample members who indicated a willingness to be interviewed and provided valid contact information.\textsuperscript{165} From the CBP III sample of 1250 cases, an initial one-hour telephone interview was conducted in 2002 for about half the cases (602 debtors) for a response rate of 48.1%. This interview was conducted approximately one year after the bankruptcy cases were filed and had four main sections: 1) general questions; 2) questions on medical issues; 3) questions on small business ownership; and 4) questions on homeownership. The latter three subsections were only asked of debtors whose responses to the questionnaire or the general telephone questions indicated that such topics would be applicable.\textsuperscript{166} In 2004, approximately three years after the debtors in the CBP III sample had filed bankruptcy, a second round of interviews was conducted with all debtors who completed the one-year interview and could be reached. This sample consisted of 474 families from the core questionnaire sample of 1250 cases. This translates into a response rate for the three-year interview of

\textsuperscript{156}Less Stigma, supra note 34, at 219.
\textsuperscript{157}TWO-INCOME TRAP, supra note 31, at 182–83.
\textsuperscript{158}A supplemental sample of additional debtors who were homeowners was also collected. This Article uses only the core sample of 1250 cases described in the text.
\textsuperscript{159}TWO-INCOME TRAP, supra note 31, at 182.
\textsuperscript{160}See id. at 183–85 (explaining that some debtors completed the questionnaires and some did not).
\textsuperscript{161}A copy of the 2001 questionnaire is reprinted in Elizabeth Warren, Bankrupt Children, 86 MINN. L. REV. 1003 (2002).
\textsuperscript{162}TWO-INCOME TRAP, supra note 31, at 185.
\textsuperscript{163}Id. at 186.
\textsuperscript{164}Less Stigma, supra note 34, at 218.
\textsuperscript{165}TWO-INCOME TRAP, supra note 31, at 185.
\textsuperscript{166}Id. at 186.
37.9%. The telephone interviews were conducted by a team of trained researchers using computer-assisted interviewing technology.

Each of the first three CBP studies collected data from the court records of consumer bankruptcy debtors. While the geographic scope and sample size of these studies varied somewhat, the court record data offer a consistent set of variables that measure the economic profiles of people who filed bankruptcy cases. Collectively, these data provide a backdrop for examining the financial pressures facing families who enter the consumer bankruptcy system.


The current CBP builds upon the findings of our prior studies to establish the largest and most complete database of consumer bankruptcy debtors collected to date. The main methodological improvement in CBP IV is its use of a random, national sample of all bankruptcy cases to solicit respondents. The CBP IV is also the largest study to date, with court record data and questionnaire data available for approximately 2500 consumer bankruptcy cases.

1. Sample

Beginning in the first week of February 2007 and continuing for five consecutive weeks, we collected the following information from every bankruptcy petition that had been filed in the United States during that week: petitioners’ names, addresses, and chapter filed. Approximately 12,500–15,000 cases were filed each week. From this population, the following cases were deleted: (1) cases filed outside the fifty states and the District of Columbia (e.g., cases filed in Guam and Puerto Rico), (2) cases that were not Chapter 7 or 13 cases, and (3) cases in which the bankruptcy debtor was not an individual person, i.e., the debtor was a legal entity such as a corporation or partnership. From the remaining pool, we randomly selected a weekly sample of 1000 cases, for a total of 5000 cases during the five-week period. A questionnaire, described in the next section, was mailed to the debtors in these cases. Although the questionnaires were mailed promptly after the bankruptcy filings, addresses for some debtors were not valid and hence some correspondence was returned as undeliverable. To replace those cases, an additional random sample of 255 cases was drawn from cases filed in the last week of March and the first week of April 2007. The same procedures were followed with these cases.

A supplemental sample of bankruptcy cases filed by a person aged 65 years or older was gathered to study the financial problems of older Americans. This Article uses only the random sample of all consumer bankruptcy cases described in the preceding paragraph.

---

167The 2007 national filing data were supplied through the generous assistance of Mike Bickford and his colleagues at Automated Access to Court Electronic Records (“AACER”), an Oklahoma City-based bankruptcy data and management company.
2. Questionnaire

Immediately after each week’s sample was collected, we mailed potential respondents a letter that briefly described the study and explained that they would receive a questionnaire in the mail within the next few days. This letter included a brief note in Spanish that asked anyone who needed a Spanish version of the questionnaire to call a toll-free number.168 Approximately one week after sending the initial letter, questionnaires were mailed to all respondents. The questionnaire packet included a cover letter, the questionnaire, a stamped return envelope, and $2 in cash as a token of appreciation.

The questionnaire asked for demographic information similar to that gathered in CBP II and CBP III. It also asked questions that were designed to reveal whether a particular situation applied to a debtor, such as whether the debtor owned his or her home, had student loan debt, or was self-employed. The responses to these questions were used in identifying certain debtors for subsets of specialty questions in the telephone interviews described in Part 4, infra. The questionnaire also asked debtors what they did to cope financially before they filed for bankruptcy and what circumstances contributed to their bankruptcies. The questionnaire also provided empty space for debtors to tell the stories of their bankruptcies in their own words. The final page of the questionnaire asked debtors if they would be willing to complete a telephone interview, for which they would be paid $50 for their time. The entire questionnaire is reprinted in Appendix II.

One week after the questionnaires were mailed, thank you/reminder letters were sent. Research assistants also attempted to contact respondents by phone to remind them to return the questionnaires. The phone numbers either came from the debtors’ bankruptcy court records or were found using an online name-driven search engine.

Approximately one month after initial questionnaires were mailed, replacement questionnaires, along with another $2 in cash, were mailed to those households that had not yet responded to the initial questionnaire mailing. A flyer accompanied the replacement questionnaires that advised debtors of two alternate methods for returning the questionnaire: by calling a toll-free number and talking with a research assistant or by visiting a secure website.

In July 2007, we sent a final letter to any bankruptcy debtors who had not completed a questionnaire and offered them $50 to complete the questionnaire over the phone or on-line.

We received responses from over half (50.6%) of all cases in the random sample. This includes those questionnaires returned either complete or incomplete or responses from those who indicated that they did not wish to participate. Details of the response rate are provided in the box below.

---

168 The questionnaire was translated into Spanish by a graduate student of Spanish. To improve the quality of the translation, a different graduate student translated the Spanish version back into English. This back-translation was compared with the English version of the questionnaire.
Questionnaire Response Rate

- 5231 questionnaires were mailed to Chapter 7 or Chapter 13 filers\(^{169}\)
- 275 (5.2%) were returned as undeliverable
  4976 questionnaires delivered

From these 4976 delivered questionnaires:
- 2455 (49.3%) questionnaires did not generate any response
- 2521 (50.7%) questionnaires resulted in a response

Of these 2521 responses:
- 2314 (91.8%) questionnaires were returned complete
- 124 (4.9%) questionnaires were returned incomplete
- 83 (3.3%) questionnaires resulted in the debtor responding that he or she did not wish to participate

Total Response Rate: 50.7%, includes questionnaires returned complete, returned incomplete, or refused to participate (combined n = 2521) from all deliverable questionnaires (n = 4976).

For this Article, which relies primarily on court record data that are available for all bankrupt debtors, we use the sample of all respondents who were willing to participate. Thus, the base number of this Article’s sample is 2438, which excludes the 83 “refusers” from the 2521 responses. This sample corresponds most closely to the samples used in the prior studies.

Questionnaires were sent to individual debtors who filed either Chapter 7 or Chapter 13 bankruptcies. Chapter 7 debtors returned 66% of the 2438 questionnaires, and Chapter 13 debtors returned the remaining 34%. These numbers vary only slightly from the distribution of cases across the nation between Chapter 7 and Chapter 13. The government data show that during the period in which the questionnaires were distributed, 62.3% of all non-business cases were Chapter 7 bankruptcies and 37.7% were Chapter 13 bankruptcies.\(^{170}\) Thus, Chapter 7 debtors appear to be somewhat over-represented in the respondent sample. For this Article, we control for this effect with weighting, as discussed in Part C, *infra*.

\(^{169}\)Four petitioners who filed chapters other than 7 or 13 were incorrectly included in the sample. Thus, the total sample size is 5231 rather than 5255. The 5231 includes the original 5000 case sample plus the 275 cases selected as replacements for those debtors in the original sample to whom correspondence was returned as undeliverable.

\(^{170}\)We used the data for non-business cases from the months of February 2007 and March 2007 and used only the numbers of Chapter 7 and Chapter 13 cases (excluding other chapters of relief) in calculating the percentages by chapter in the distribution. Administrative Office of the U.S. Courts, June 2007 Filings Drop When Compared to 2006 But Slow Upward Crawl Seen in Filings, Table F-2, available at http://www.uscourts.gov/bankruptystats/june2007/bankrupt_12rilmn.xls (last visited Sept. 3, 2008) (follow “Table F-2, 12-month” hyperlink).
The respondent sample was similar to the entire population of all consumer bankruptcy cases in distribution between joint petitions (declaring the bankruptcy of both husband and wife) and single petitions (used either for single persons or for one spouse filing on his or her own). For 2007, 29% of bankruptcy cases were joint petitions.\textsuperscript{171} In the respondent sample, joint petitions were 29.9\% of the cases. In both distribution instances (joint-single and Chapter 7-Chapter 13) for which data are available for the entire bankrupt population, the respondent sample is extremely close to the population.\textsuperscript{172}

Returned questionnaires were coded into a custom-designed Microsoft Access database. Each coder who input these questionnaire data received extensive training, including instruction on the coding protocols, coding of practice questionnaires, and individual review of each coder’s first set of questionnaires. A written instruction manual established consistent protocols, and a single investigator, Dr. Thorne, answered all questions. She also reviewed any suspected errors in the questionnaires (e.g., inconsistencies in a respondent’s answers) that coders flagged.

Tests of inter-coder reliability and coding error procedures show a very high degree of data quality. Initially, all data were cleaned of obvious errors and inconsistencies.\textsuperscript{173} Also, 10\% of questionnaires (approximately 250 questionnaires) were re-coded a second time by a different coder using a blind procedure (i.e., the second coder did not know the case was being recoded and initial coder did not know the case would be selected for recoding). For each case, the coding for the recoded sample was compared with its original sample and any inconsistencies in coding were identified and individually reviewed for correction. For every 100 cases, there were approximately 10,400 data points and 19 errors. This translates into an error rate of less than 0.2\%.

3. Court Records

After a debtor responded to the questionnaire (either by returning a complete or incomplete questionnaire or by indicating a refusal to participate), the bankruptcy court records for the debtor were collected using the federal court’s electronic system, Public Access to Court Electronic Records (“PACER”). For every case, the docket sheet, petition, financial schedules, the Statement of Financial Affairs (Form 7), and the Statement of Intention (Form 8) were downloaded. The docket sheet permitted researchers to see the list of all filings and all court orders in every case.

If debtors had amended their schedules, the amendments were

\textsuperscript{171} This figure was provided courtesy of Mike Bickford and his colleagues at AACER. See supra note 167.

\textsuperscript{172} See note 28, supra, for more analysis of potential response bias.

\textsuperscript{173} For example, spouses were not to be coded as dependents. If a case had been incorrectly coded this way, the coding was changed to remove the spouse as a dependent. These cleaning criteria were applied to all cases.
downloaded and coded instead of the original schedules. We also downloaded motions seeking relief from the automatic stay or a dismissal of the case, as well as any court orders disposing of these motions. All reaffirmation agreements in the court records were downloaded, and in Chapter 13 cases, additional documents, such as confirmed Chapter 13 plans, were also downloaded. A second round of court record coding was completed over a year after the initial filing to ensure that all relevant motions and reaffirmation agreements were captured.

For each case, these court records were coded into a specially designed database. The variables coded fell into two broad groups: 71 variables of information about the debtor, the court, or the proceedings in the case, and 120 variables of financial information about the debtor. The court record variables for CBP IV were designed to create data that was comparable to the prior CBP studies but with modifications in a few instances to improve the completeness or reliability of the data.

The court record coders were law students who were trained and supervised by principal investigators and by Jeff Paulsen, a University of Illinois law research assistant with experience in the bankruptcy software industry. In turn, Mr. Paulsen worked under the direct supervision of one of the project’s principal investigators. The training for coders required them to read a 38-page coding training manual that explained basic principles of bankruptcy law and the purpose of each court record. The manual also described the goals of the data collection and how to code each variable from each record. To ensure their preparation and competency, coders practiced on at least one case from Chapter 7 and Chapter 13. These cases were checked for errors or misunderstandings. Additionally, the coders attended regular group meetings for additional training. Slight variations in court forms, local orders or practices, and attorney idiosyncrasies meant that some information differed in its presentation despite the national uniformity of the bankruptcy petition and schedules. Mr. Paulsen coordinated all inquiries to ensure consistent responses and also sent these responses to the principal investigator overseeing the court record coding. Additionally, an “error” variable was available. If this field was marked, the case received special review, in consultation with the principal investigator, and if necessary, its coding was corrected. The codebook and training manual were updated to reflect the resolution of these situations and to provide consistent guidance.

To test inter-coder reliability, a random sample of 10% of the court records were blind coded a second time concomitantly with the regular coding. Again, coders were not aware whether a particular case would be selected for recoding, or if the case they were coding was an original coding or a recoding. The coding of the 258 recoded cases was compared with the original coding of these same cases, and discrepancies were checked for errors.

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174 258 cases were blind recoded from the core sample, which is 10% of the respondent sample of 2521.
in the original coding. In each case, 132 discrete variables were examined. In the original coding, 297 errors were identified among the 34,036 variable entries, for an error rate of 0.8%.

To test for response bias, we coded and analyzed major financial variables from the court records of 100 non-respondent debtors (people who did not return questionnaires and therefore did not participate in the study). Income, debts, assets, monthly expenses, and prior bankruptcy status were some of the financial variables that were included in the analysis. These data were compared with those from the participants who constituted the core random sample. The analysis suggested that respondents and non-respondents shared similar characteristics on major financial variables and thus that there was no significant sample bias.

4. Telephone Interviews

The end of the written questionnaire offered debtors the opportunity to complete a telephone interview for which they would be paid $50. Of the 2314 completed questionnaires that were returned from the random sample, 2007 (86.7%) of respondents indicated that they were willing to participate in a follow-up telephone interview. Interviews were completed with 1032 respondents, which is 51.4% of those willing to be interviewed, with no indication of a response bias. The telephone interviews were conducted between September 2007 and February 2008. Thus, all interviews were finished no later than one year after the debtors filed their bankruptcy cases.

The telephone interview comprised five sections: general, medical, hous-

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175 The variables that categorize non-priority unsecured debts listed on Schedule F by type were excluded from the error check because by necessity and design they required coders to exercise some discretion in coding. These variables are Def Credit Card, Prob Credit Card, Student Loans, Rent, Utilities, and Medical. Debts that did not fit into one of these categories were not categorized but were included in the total unsecured debt.

176 For three variables relating to tallies of creditors, a greater margin of error was used to determine if an error existed. Many schedules contain debts listed “for notice only” or that duplicate prior debts yet are scheduled again to ensure a collection agency or law firm employed by the creditor is listed on the matrix of creditors. In some cases, it was not clear whether a debt was being scheduled for one of these quasi-supervisory purposes. Thus, some discretion had to be exercised in determining the number of different creditors. For the variables Tally Priority E and Tally Sec Debt, a recheck of the original coding was performed only if the original coding and recoding differed by three or more. For the variable Tally Unsec F, a recheck of the original coding was performed only if the original coding and recoding differed by five or more. If the difference between the original coding and the recoding were within these margins, no rechecking was performed.

177 The decision to interview 1032 respondents was based on a goal of conducting at least 1000 interviews. The interviewers were given lists of names from the 2007 volunteers from which they tried to make contact by telephone, email or letter to schedule an interview. If no contact could be made within three weeks (leaving a maximum of three messages), the volunteer was removed from the list and replaced with another. Coincidentally, by the time the goal of 1000 interviews had been achieved, the interview team had exhausted the pool of volunteers. To test for possible response bias, the group of volunteers who completed interviews were compared with the group of volunteers who could not be tracked down and thus did not complete interviews. No significant differences emerged regarding filing status, filing chapter, total assets, total debts, total priority debts, monthly income, home value or other variables.
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ing, small business, and military. Broadly speaking, questions in the general section addressed the following issues: employment, credit cards, student loans, insurance, psychological and familial effects of indebtedness, health situations, privations before bankruptcy, and financial circumstances after bankruptcy. The general questions were asked in all interviews. If applicable to their circumstances, debtors participated in subsequent sections of the interview. For example, if a respondent or spouse owned a small business at any time during the two years before bankruptcy, the small business component of the interview was deployed. Thus, most debtors completed multiple sections of the interview, but relatively few participated in all five components. The median length of the interviews was one hour, fifteen minutes.

The interviews were conducted using computer-assisted telephone interviewing. The questions were pre-tested using mock interviews. The interviewers received extensive training on both the computer-assisted telephone interview database and on interview techniques. Specifically, each interviewer completed at least two mock interviews with one another, and one mock interview with Dr. Thorne, the principal investigator who oversaw the telephone interviews, and received feedback. Doctor Thorne also reviewed each person’s first interview with a debtor in the sample and maintained frequent contact with the interviewers. Despite a variety of hurdles that are inherent in this type of research, the interviewers achieved a high rate of consistency and interview completion. Logic tests were applied to the telephone database to eliminate inconsistencies or obvious errors, and if necessary, responses to the telephone interview were compared with data from the questionnaire to ensure appropriate corrections.

C. DATA ANALYSIS FOR THIS ARTICLE

This Article compares findings from the new CPV IV with the prior studies. Thus, we employed procedures to ensure that the data from the different studies were standardized as much as possible.

In CBP IV, the sample includes anyone who responded to the mailed questionnaire. To ensure that the CBP IV sample is consistent with the national population it represents, we weight the data by chapter of bankruptcy to mirror the national population of debtors. Because a slightly higher per-

178 All of the interviewers were women. They ranged in age from their mid-20s to late-50s. The lead interviewer, Denise McDaniel, has worked on several prior empirical studies of bankruptcy, including interviewing debtors as part of CBP III.

179 For example, some respondents scheduled interviews but could not be reached at the arranged time or had phones that were disconnected in the interim, which required interviewers to make repeated efforts to complete the interview. Many debtors had irregular work schedules that required interviewers to contact them very early in the morning or late in the evening. In some instances, the stories of many debtors were sufficiently distressful or emotionally draining that interviewers could complete only a few interviews before they experienced fatigue. Note also that a small number (n=69) of initial volunteers subsequently requested not to complete the telephone interview for reasons ranging from illness to disinclination to spend cellular phone airtime minutes.
centage of Chapter 7 debtors responded than exist among all filings nationally, Chapter 13 cases were proportionately weighted to correct for this difference. This procedure controls for the slight response differences in debtors in each chapter.180 The three prior studies are not nationally representative.

Because the studies span over 25 years, the value of the dollar has changed. We adjusted all data to 2007 dollars using the Consumer Price Index, by multiplying each individual piece of data from the prior studies (1981, 1991, and 2001) by the appropriate multiplier.181 The analyses were then performed. All data herein are reported in 2007 dollars. 182

As with prior studies, we examined the data for outlying observations. In the first CBP, three criteria for outlying cases were developed. Cases were eliminated as outliers if any one of the following was true: total assets exceeded $500,000 in 1981 dollars, total debt exceeded $500,000 in 1981 dollars, or annual income exceeded $65,000 in 1981 dollars. These criteria were inflation-adjusted for each study’s year,183 and then applied to each of the four inflation-adjusted samples. The proportion of cases removed as outliers was very small and varied only slightly among the four samples.184

180 We ran all analyses using the unweighted data as well. The comparative findings with the prior studies were identical using either the weighted or unweighted CBP IV sample.
181 The inflation-adjustment figure used was for the first half of 2007 from the Consumer Price Index—All Urban Consumers—Not Seasonally Adjusted (Series ID CUUR0000SA0). That figure was 205.709 with a base period of 1982-1984. See Bureau of Labor Statistics, http://www.bls.gov/cpi (last visited Sept. 3, 2008) (follow “Databases & Tables” hyperlink; then follow “Top Picks” hyperlink next to “All Urban Consumers (Current Series) (Consumer Price Index—CPI)”).
182 Because the data were inflation-adjusted to 2007 dollars, the numbers reported for these samples do not match the numbers in prior published studies in which the data were inflation-adjusted to a different year. To check that our analyses were consistent with our past findings, we also ran the original data (without inflation-adjustment) for each year and compared it with prior published findings of such data.
183 The outlier criteria inflation-adjusted to 2007 dollars and applied to the CBP IV sample were: total assets greater than $1,129,756, total debt greater than $1,129,756, and income greater than $146,869.
184 From the 1981 sample, 1.8% (n=27) of the cases were eliminated as outliers. From the 1991 sample, 0.9% (n=6) of the cases were eliminated as outliers. From the 2001 sample, 0.9% (n=11) of the cases were eliminated as outliers. From the 2007 sample, 0.7% (n=18) of the cases were eliminated as outliers.
APPENDIX II: QUESTIONNAIRE FROM 2007 CONSUMER BANKRUPTCY PROJECT

--- FAMILY ---

1. What is your current marital status?  
   [ ] Never married  
   [ ] Divorced  
   [ ] Separated  
   [ ] Single (not married)  
   [ ] Other

2. Do you live with a spouse or permanent partner?  
   [ ] Yes  
   [ ] No

3. Are you, or a spouse or partner, FINANCIALLY RESPONSIBLE for ANYONE (for example, any children, any siblings, parents, or in-laws)?  
   [ ] Yes  
   [ ] No  
   a. [ ] Help is Question 4

4. Please indicate the age, their relationship to you (for example, daughter, brother, cousin, or spouse), and whether or not they live with you:  
   a. [ ] Age: relationship to you: does he/she live with you?  
   b. [ ] Age: relationship to you: does he/she live with you?  
   c. [ ] Age: relationship to you: does he/she live with you?  
   d. [ ] Age: relationship to you: does he/she live with you?  

5. If you are financially responsible for more than five people, please use the lines below to indicate their ages, relationship to you, and whether or not they live with you:  

6. REGARD the bankruptcy, did your debts or financial problems negatively affect your children?  
   [ ] Yes  
   [ ] No

5. REGARD the bankruptcy, did your debts or financial problems cause increased stress between you and your spouse or partner?  
   [ ] Yes  
   [ ] No
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If you currently live with a SPOUSE or PERMANENT PARTNER, please provide answers to BOTH columns.

<table>
<thead>
<tr>
<th>6. What is your race?</th>
<th>Male</th>
<th>Female</th>
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<td></td>
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<th>7. What is your age?</th>
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<th>8. With which group do you identify? (Check all that apply.)</th>
<th>African-American or Black</th>
<th>Hispanic or Latino/a</th>
<th>Other</th>
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<th>9. What is the highest degree or level of school completed?</th>
<th>Some high school</th>
<th>GED</th>
<th>GED, but not completed, or equivalent</th>
<th>Completed high school</th>
<th>Some college, but not completed</th>
<th>Completed college</th>
<th>Some college (examples: AA, BA, BS, BFA, BSB, BSW, BSN, MLS, MD, JD, MD)</th>
<th>Professional degree (example, MD, JD, MD)</th>
<th>Other</th>
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| 10. If you, or a spouse or partner, were FINANCIALLY RESPONSIBLE for any STUDENT LOANS in the three years prior to the filing of this case, were you or the student responsible for any student loan? |
|---------------------------------------------------------------------------------|-----------------|      |
| Yes                                                                             | No              |      |

---

### HOME

11. What is the TOTAL amount of student loans you and your spouse or partner were FINANCIALLY RESPONSIBLE for?

<table>
<thead>
<tr>
<th>Amount</th>
<th>Less than $1,000</th>
<th>$1,000-$5,000</th>
<th>$5,001-$10,000</th>
<th>$10,001 or more</th>
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12. Did you own a home or ANY time during the last five years?

<table>
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<tr>
<th>Ownership</th>
<th>Yes</th>
<th>No</th>
<th>Skip to Question 15</th>
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13. During that time, did you or your spouse or partner ever live in a home or have a financial interest in a home owned by someone else? (Check all that apply.)

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<th>Yes</th>
<th>No</th>
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### HEALTH

14. Are you CURRENTLY insured by any form of health insurance? This includes private insurance, an employer's plan, or any other plan purchased, military or government health care, Medicare, Medicaid or other.

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<tr>
<th>Insured</th>
<th>Yes</th>
<th>No</th>
<th>Skip to Question 15</th>
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15. Did you know health insurance CONTINUOUSLY throughout the two years before your bankruptcy?

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<tr>
<th>Insured</th>
<th>Yes</th>
<th>No</th>
<th>Skip to Question 15</th>
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16. Did ANY of your dependents listed in Question 1 CURRENTLY have health insurance? (Not applicable, as dependent.)

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<tr>
<th>Insured</th>
<th>Yes</th>
<th>No</th>
<th>Skip to Question 15</th>
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DID BANKRUPTCY REFORM FAIL?  

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--- EMPLOYMENT ---

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WHAT WENT WRONG?

25. People file bankruptcy for a number of different reasons. Why did you, or a spouse or partner, file bankruptcy? Check all that apply.

- Loss of income
- Financial problems that resulted from losing self-employment
- Illness or injury that caused you, or your spouse or partner, to lose two weeks or more of work
- Medical problems experienced by you or your spouse or partner
- Medical problems of other family members (such as siblings or parents)
- Medical or health-care costs, including prescription medications
- License or membership fees in your hometown (for example through birth, adoption, or change in living arrangements)
- Death of a family member
- Family breakup because of divorce or separation
- Your mortgage payment increased beyond what you could afford
- You wanted to discharge your mortgage to keep your mortgage payments, but you couldn’t
- A judge (inspector) to examine on your house
- Foreclosure conceding payment
- Conceded or defaulted (for example, by landlord, tenant, or sub-tenant)
- Renters and debtors could not meet their obligations
- A judge (inspector) to examine on your house
- Foreclosure conceding payment
- Cost to financially help another family or close friend
- Victims of disaster (for example, flood or fire)
- Something else (please specify):

HELP US LEARN MORE ABOUT BANKRUPTCY SO WE CAN HELP OTHERS

We would like to contact you in 9 months following your bankruptcy to discuss with you some of these issues. During the interview, you will be asked questions similar to the data collected above.

If you are interested in participating, please fill out the information below.

We hope you will be willing to further help us with the research and accept the $20 we will thank you.

Name (please provide): ____________________________
Phone number: ____________________________
E-mail address: ____________________________

If your telephone number changes, please feel free to call us toll-free at 866-398-3323 or email us at research@bankruptcy.org.

Again, all of your responses are completely confidential. Your name will never be associated with any of your answers, and no one will see the research paper that you provide.

If you are comfortable sharing it with us, we would like to learn the story of your bankruptcy and what happened to you. Please feel free to write as much as you want in the space below.

THANK YOU VERY MUCH FOR YOUR HELP WITH THE RESEARCH
## APPENDIX III: BASIC ECONOMIC DATA
OF BANKRUPTCY FILERS

(reported in constant 2007 dollars, weighted by chapter)

<table>
<thead>
<tr>
<th></th>
<th>1981 income</th>
<th>assets</th>
<th>total debt</th>
<th>unsecured debt</th>
<th>secured debt</th>
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<tbody>
<tr>
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### 2001 Data

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#### t-test compared with 2007

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<td>4.96</td>
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#### Wilcoxon compared with 2007

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### 2007 Data

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APPENDIX IV: NET WORTH DATA OF BANKRUPTCY FILERS
(reported in constant 2007 dollars, weighted by chapter)

<table>
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<th></th>
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<tr>
<td>mean</td>
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| t-test compared with 1991 | 1.1      | —       | —       | —       |
| P value                   | 0.2721   | —       | —       | —       |
| t-test compared with 2001 | 1.56     | 1.12    | —       | —       |
| P value                   | 0.1201   | 0.2648  | —       | —       |
| t-test compared with 2007 | 4.25     | 3.05    | 0.42    | —       |
| P value                   | <0.0001  | 0.002   | 0.6777  | —       |

| Wilcoxon compared with 1991 | −4.345   | —       | —       | —       |
| P value                     | <0.0001  | —       | —       | —       |
| Wilcoxon compared with 2001 | −8.0415  | 2.6312  | —       | —       |
| P value                     | <0.0001  | 0.0085  | —       | —       |
| Wilcoxon compared with 2007 | 14.2847  | 7.141   | 5.2585  | —       |
| P value                     | <0.0001  | < 0.0001| < 0.0001| —       |