

DEBTOR FRESH START AND CREDITOR REPAYMENT IN CHAPTER 13

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ABSTRACT

The consumer bankruptcy system plays an enormous albeit largely under appreciated role in the United States economy. There were nearly 1.6 million consumer bankruptcy filings in the United States in 2004 – more than twice the number just ten years earlier, and more than one filing for every 70 households in the country. Nearly a third of these filings were under Chapter 13 of the Bankruptcy Code. (Chapter 13 provides for individual debt readjustment pursuant to a repayment plan, whereas Chapter 7 provides for liquidation of assets to pay creditor claims.) Yet, little is known about what debtors and creditors accomplish in Chapter 13 cases or how well the Chapter 13 system serves its intended purposes.

This article reports on the findings of the Chapter 13 Project, a national empirical study of 795 Chapter 13 bankruptcy filings in seven federal judicial districts. Funded by the National Conference of Bankruptcy Judges and the American Bankruptcy Institute, it is the first and only national study of its kind. It provides a detailed portrait of the Chapter 13 system and the extent to which Chapter 13 has fulfilled its principal purposes -- debtor fresh start, on the one hand, and creditor repayment, on the other.

The article first reports on who is using Chapter 13 – the gender, income, indebtedness and other bankruptcy filings of the debtors in the sample. It then reports on the extent to which the debtors in the seven districts completed their plans and obtained a discharge. Next, we consider various debtor characteristics – gender, income, amount and type of debt, debt-income ratio, other filings – and certain plan features – length, proposed distribution to unsecured creditors, income reserved for payment of living expenses – for their relation to case outcome. Regarding creditor repayment, the study reports in detail on the amounts and types of debt that are collected by creditors in Chapter 13 cases.

The Project has produced a wealth of new information and insights into the Chapter 13 system. Some of the highlights include: Most of the debtors in the sample were far less affluent than the population as a whole. At least 50% of the debtors had filed one or more other petitions. Discharge rates varied significantly by district, but overall only one-third of the debtors completed a plan. We found statistically significant correlations between case outcome and debtor income, amount and type of debt, and other filings. Equally revealing, the study found no significant relationship between case outcome and plan feasibility, proposed plan length or proposed distribution to unsecured creditors. Regarding creditor repayment, the study reports that the primary creditor beneficiaries by far of the Chapter 13 system are secured creditors; and that less than a third of trustee disbursements were to general unsecured creditors. The median amount paid to unsecured creditors in all cases was \$0.

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DEBTOR DISCHARGE AND CREDITOR REPAYMENT IN CHAPTER 13

I. INTRODUCTION

There were nearly 1.6 million consumer bankruptcy filings in the United States in 2004. That is more than twice the number just ten years earlier,³ and more than one filing for every 70 households in the country.⁴ Almost 29% of these filings – over 467,000 – were under Chapter 13 of the Bankruptcy Code.⁵ With the dramatic increases in consumer filings, even in prosperous economic times, there has been much debate about the causes of the “bankruptcy epidemic.”⁶ The debate culminated last year in the enactment of extensive reform of U.S. consumer bankruptcy laws. The core of the legal reforms is a “means test” that is designed to limit consumer debtor access to Chapter 7, requiring some debtors to file for relief under Chapter 13 or not at all. Yet, little is known about what debtors and creditors accomplish in Chapter 13 cases or how well the Chapter 13 system serves its intended purposes. The government collects minimal information about consumer bankruptcy filings, and academic research has been limited.

The first national study of its kind, the Chapter 13 Project provides a detailed portrait of the Chapter 13 system and the extent to which Chapter 13 has fulfilled its principal purposes -- debtor fresh start, on the one hand, and creditor repayment, on the other. In addition, the study explores an array of debtor characteristics, Chapter 13 plan features, and district and trustee practices for their relationship to debtor discharge and debt repayment in Chapter 13. Like several other studies before it, the Project also describes the debtors who have used Chapter 13.

II. SUMMARY AND HIGHLIGHTS OF PROJECT FINDINGS

A. Debtor Discharge

The overall discharge rate for the debtors in the seven districts covered by the Project was 33%; 67% of cases were dismissed or converted, 23% before confirmation and 44% after confirmation. As a percentage of cases with a confirmed plan (excluding cases dismissed before confirmation), the discharge rate was nearly 43%.

³ In 1994, there were 780,455 non-business filings. See Administrative Office of the U.S. Courts, 1983-2003 Bankruptcy Filings, 12-month period ending June, by Chapter and District, <http://www.uscourts.gov/bkprctstats/1960-0312-MonthJune.pdf>. Filings increased again, significantly, in 2005. Much or all of this increase is attributable to debtors filing in advance of the effective date of most of the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 in October 2005.

⁴ As of March 2003, there were 111 million households in the United States. See <http://www.census.gov/prod/2004pubs/p20-553.pdf> (last checked Dec. 20, 2004).

⁵ See *supra* note 3.

⁶ See generally Personal Bankruptcy: A Literature Review, CBO Paper, Congressional Budget Office (Sept. 2000) (reviewing the macro-economic literature relating to filing rates, factors leading to personal bankruptcy, the ability of Chapter 7 filers to repay their debts, and how personal bankruptcy affects the supply of credit; with bibliography of studies).

Discharge rates varied considerably across the seven districts in the sample, from a low of 27% (or 20% including cases dismissed before confirmation) in the Western District of Tennessee to a high of 54% (or 47% including cases dismissed before confirmation) in the Middle District of North Carolina. We expected, but did not find, that higher plan completion rates correlate with higher pre-confirmation dismissal rates. This and several other findings support the conclusion that some courts do not carefully screen cases for feasibility at confirmation. On the other hand, the data also reveal that apparent lack of feasibility is not significantly related to case outcome.

One of the more striking findings of the study is that at least 50% of the debtors filed one or more other bankruptcy cases, either before or after the sample case. Thirty percent (30%) filed at least one other case, 10% two other cases, and 10% three or more other cases. There was a statistically significant relation between judicial district and incidence of other filings; about 20% of the debtors in the Middle District of North Carolina filed a later petition, while no less than 56% of the debtors in the Western District of Tennessee have filed more than one case, compared to the overall subsequent refiling rate of 33%. The great majority of the other filings were also under Chapter 13, and most were made within a year of the filing in the sample case. Debtors who filed bankruptcy for the first time in the sample case were significantly more likely to complete their plans than debtors who had filed one or more previous cases. Thirty-eight percent (38%) of first-time filers completed their plans compared to 22.5% who had filed one previous case. The discharge rate plummeted to 14% for debtors who had filed two or more cases before the sample case.

Nearly one in seven (15%) debtors who received a discharge went on to file another case.

Debtors in nearly 45% of the cases in which a proposed distribution was reported proposed to pay no more than 25% of unsecured claims. In 31% of cases the debtors proposed to pay 100%. Relatively few debtors – less than 10% -- proposed to pay between 26% and 99%. There was no significant difference in the proposed percentage to be paid on unsecured debt by debtors in completed cases and debtors in cases that were dismissed or converted.

Notably, a very large percentage of the debtors proposed plans longer than the minimum 36 months required by the Code; the median and modal lengths of the sample debtors' plans were 60 months, or 24 months longer than the standard set out in the Bankruptcy Code. Indeed, the length of plans at the 25th percentile was 47 months, or nearly a year longer than the standard envisioned by the Bankruptcy Code. However, debtors who proposed shorter plans were more likely to complete their plans.

Joint petitioners were significantly more likely to complete a plan than individual filers. The higher completion rate for joint filers could not be tied to the presence of a second income, however. Individual petitioners reporting spousal income did not complete their plans at a statistically significantly greater rate than individual filers who did not report a second income.

Debtors who completed their plans on average owed more total pre-bankruptcy debt, and had higher debt-income ratios, than debtors whose cases were dismissed or converted. Perhaps debtors who were more reluctant to file were more committed to doing what was necessary to complete a plan.

B. Creditor Repayment

The primary creditor beneficiaries by far of the Chapter 13 system are secured creditors. Nationally, the percentage of trustee disbursements to secured creditors ranged between 60% and 69% of total disbursements between 1994 and 2003. Yet, these percentages substantially understate the proportion of all payments by Chapter 13 debtors to secured creditors, because they do not include payments made directly by debtors to secured creditors, in particular mortgage creditors

Less than a third of trustee disbursements were to general unsecured creditors.

Chapter 13 costs, which include debtor attorney's fees, clerk's noticing fees charged to the case, and any § 507(b) awards, were a sizable portion of total trustee distributions to creditors, and equaled a very large percentage of disbursements to general unsecured creditors. The ratio of Chapter 13 costs to total trustee disbursements was quite stable over the years 1994 to 2003, ranging from 15% to 18%. The ratio of Chapter 13 costs to total trustee disbursements to general unsecured creditors ranged between 59% and 75%; in other words, Chapter 13 costs equaled as much as 75% of disbursements to unsecured creditors.

Not surprisingly, creditor collections were greater in cases with a confirmed plan, and greater still in cases that proceeded to discharge of the debtor. Even so, debtors paid no more unsecured debt in cases dismissed before confirmation than in cases dismissed after confirmation.

C. Profile of the Debtors

The debtors in the Chapter 13 Project are very similar in terms of gender, debt-income ratio, and homeownership rates to debtors in previous studies. Most of the debtors in the Chapter 13 Project were far less affluent than the population as a whole. In 1994 dollars, only 25% earned more than \$26,000 per year. Half earned less than \$18,000 in annual gross income, and 25% earned less than \$13,000. The mean debtor household annual income was less than half the mean for all households; and the median was less than 60% of the median for all households in the country.

D. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

The Chapter 13 Project establishes a detailed picture of Chapter 13 outcomes that will serve as a baseline for measuring the much-criticized changes in the law wrought by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The BAPCPA

reforms are complex, and their effects on Chapter 13 outcomes for debtors and creditors are subject to considerable speculation. For example, the new provision limiting strip-down of certain purchase money security interests in Chapter 13⁷ might be expected to further increase the share of Chapter 13 disbursements paid to secured creditors and to correspondingly reduce payments to unsecured creditors. At the same time, this anti-lien stripping provision may lead some debtors who would otherwise file in Chapter 13 to file under Chapter 7 because they can not afford to pay 100% of the claim,⁸ also reducing collections by unsecured creditors. For debtors who are or would be means-tested out of Chapter 7, the means test will determine the amount of their “disposable income” that must be devoted to a Chapter 13 plan.⁹ Whether this test requires more or less in debtor plan payments than the current disposable income test remains to be seen. The new limitations on repeat filings may boost overall discharge rates and thus increase average creditor collections per case. The credit counseling and debtor education requirements also may have far-ranging consequences.

III. DESIGN AND METHODOLOGY OF THE STUDY

The Chapter 13 Project is an empirical study of 795 Chapter 13 cases filed in 1994 in seven federal judicial districts comprising 14 Chapter 13 trusteeships. The seven federal judicial districts are: Northern District of Georgia, Southern District of Georgia, Middle District of North Carolina, Middle District of Tennessee, Western District of Tennessee, District of Maryland, and Western District of Pennsylvania. Collectively, these seven districts accounted for a very large portion – nearly 20% -- of Chapter 13 filings nationally in 1994. There were 240,639 Chapter 13 filings in 1994, including 47,393 in the seven sample districts.¹⁰

In each district, we pulled a quota sample of one percent (1%) of the Chapter 13 cases filed in 1994, but no fewer than 100 cases. The sample includes 165 cases from the Northern District of Georgia, 130 cases from the Western District of Tennessee, and 100 cases from each of the other five districts.

The Chapter 13 Project’s sample of debtors, trusteeships and districts is highly representative of the nation as a whole, notwithstanding that there are significant variations in practice among districts, judges and trustees across the country.¹¹ The

⁷ 11 U.S.C. § 1325(a).

⁸ Chapter 13 Trustee Study (finding that anti-lien-stripping provision would make 21% of Chapter 13 plans unconfirmable, and distributions to unsecured creditors would be substantially reduced in 45% of cases).

⁹ 11 U.S.C. § 1325(b)(3).

¹⁰ See *supra* note 3.

¹¹ The study of the bankruptcy system in the United States poses some difficult challenges in that, while one Code and one set of Rules of Procedure govern all cases in all bankruptcy courts, there are wide variations in the local practices and attitudes of bankruptcy trustees, lawyers and judges. Sometimes referred to as “local legal culture,” these variations often are large and contribute substantially to case outcomes for debtors and creditors alike. See Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 *Am. Bankr. L. J.* 501 (1993); Teresa A. Sullivan, Elizabeth Warren & Jay L. Westbrook., *The Persistence of Local Legal Culture: Twenty Years of Evidence from the Federal Bankruptcy Courts*, 17 *Harv. J. L. & Pub. Pol’y* 801 (1994); William C. Whitford, *Has the Time Come to Repeal Chapter 13*, 65 *Ind. L. J.* 85 (1989); Teresa A. Sullivan, Elizabeth Warren & Jay L. Westbrook,

discharge rate for the 795 debtors, as well as the average discharge rate across the seven districts, was almost identical to the oft-cited national average of 33%.¹² Further, the amounts and types of debt repaid by the debtors were similar to the national averages reported by the Executive Office for United States Trustees for all Chapter 13 cases closed during the same time period.¹³ The percentages of male and female petitioners, and the debt-income ratios of the debtors were comparable to those observed in other studies.¹⁴

While representative of the nation in the key areas of debtor discharge and creditor repayment, the sample is, of course, not a national sample. The sample districts are located mostly in Southern states with higher Chapter 13 filing rates. At the same time, the choice of seven districts that accounted for nearly 20% of all Chapter 13 filings likely contributed to, rather than detracted from, the representativeness of the sample. The representativeness of the sample also was not undermined by the fact that it includes one percent of 1994 filings in NDGA and WDTN, and more than one percent of filings in the other five districts (ranging from 1.9% of Chapter 13 filings in SDGA in 1994 to 11.9% in WDPA).¹⁵ Further, by including a minimum of 100 cases from each district, we were able to run several inter-district analyses and intra-district comparisons.

We use the term “significant” throughout the paper to mean statistical significance. Statistical analyses were performed using the SPSS software package. We used a criterion level of 5%; thus, statistical significance is inferred only where there would be a 5% or less probability that a finding arose by chance. Most of the time, we used chi-square tests for comparisons of nominal and ordinal variables (e.g., district, case disposition, other filings, etc.); and t-tests for comparisons of interval variables (e.g., income, debt, etc.). The statistical analyses do not interpolate or extrapolate the values of missing data. If data were not available, the case was excluded from the relevant analysis. Much of the data analyzed for the study did not meet the criteria to be considered normally distributed in the sample; when normality assumptions were substantially violated and could not easily be resolved by excluding outlying scores (+3 *SD*’s above the mean), non-parametric statistical analyses were used in order to maintain a Type I error rate of less than .05.

Laws, Models, and Real People: Choice of Chapter in Personal Bankruptcy, 13 Law and Soc. Inq. 661, 693-700 (1988).

¹² See *infra* notes 72-74 and accompanying text and Tables 18 and 19.

¹³ See *infra* notes 174-179 and accompanying text and Tables 43 and 44. (While the sample debtors repaid somewhat more secured debt than the estimated national average, the difference was well within the standard deviation for the sample.) In addition, the ratio of trustee disbursements to secured, priority and unsecured creditors, the increases in disbursements over the period 1994-2003, and the ratios of Chapter 13 costs to total creditor and to unsecured creditor disbursements in the sample districts are very closely comparable to the national figures. See *id.*

¹⁴ See *infra* notes 23-23 and accompanying text and Table 1.

¹⁵ Arguably, the statistical analyses of data on all debtors should be performed on the same percentage of cases from each district, in order to assure that district- or trustee-based variations in the data do not disproportionately impact the national picture created by the data set.

At several points in the paper, we compare financial data (e.g., debtor income, average disbursements per case) for one year with data for another year. In doing so, we adjusted the dollar amounts using the commonly used Consumer Price Index.

By way of caveat, there are several limitations inherent in the data with respect to (a) the amounts of long-term secured debt – usually, mortgage debt – owed by the debtors, and (b) the amounts of such debt repaid by the debtors. Long term mortgage debts normally entail two components in Chapter 13 cases: first, a claim for prepetition arrearages, invariably reported as a separate claim, which was to be paid under the plan; and second, a claim for the balance of the mortgage loan, as to which the debtor was to make the regular monthly payments due after filing. Then, as now, districts and trustees followed either of two different practices regarding post filing mortgage payments. In some districts, debtors ordinarily make post filing mortgage payments through the plan, while in other districts they typically make these payments directly to the mortgagee.¹⁶ In the former districts, the payments to secured creditors reported by the trustees naturally were much, much larger than those reported in the other districts, although the debtors in both districts made postpetition mortgage payments. As to this problem, it simply was not possible to ascertain how much debtors might have paid to mortgagees outside a plan, nor was it possible to separate mortgage payments made under a plan from other secured debt payments made under the plan. Thus, the Project data understate debtor payments to secured creditors, because they include ongoing mortgage payments for some debtors (those in districts in which these payments were made through the plan), but not for others (those in districts in which these payments normally were not made under the plan).

Also problematic in some trusteeships or cases, long-term mortgage (non-arrearage) claims may have been included in the trustee's record of secured claims against the debtor, while in other trusteeships or cases these claims were not listed. If included, the debtor's secured and total indebtedness obviously would appear much larger than if these claims are not included. As to this problem, we achieved consistency by excluding long-term mortgage debts from our calculations; the data we report on allowed claims and debtor indebtedness,¹⁷ debt-income ratios,¹⁸ relationship between debt-income ratio and case outcome,¹⁹ and relationship between creditor claims and case outcome²⁰ exclude long-term mortgage debts as best we were able.²¹ As a result,

¹⁶ See Gordon Bermant and Ed Flynn, *Bankruptcy by the Numbers*, Chapter 13: Who Pays the Mortgage?, ABI J. (June 2001), p. 20 (reporting that “in 1999, one-third (58/175) of the standing trustees were making ongoing mortgage payments for at least some of their cases”). See also Gordon Bermant, *Making Post-Petition Mortgage Payments Through the Plan: A Survey of Standing Chapter 13 Trustees*, A First Draft Report of Survey Results to the Endowment Committee of the National Conference of Bankruptcy Judges (July 2004) (manuscript on file with the author) (reporting on survey of standing Chapter 13 trustees regarding practices respecting payment of mortgages under the plan). In his survey of Chapter 13 trustees who make post-petition mortgage payments through the plan, Dr. Bermant found that about half do so only when the debtors owe mortgage arrearages. *Id.* at 16.

¹⁷ *Infra* notes 41-43 and accompanying text and Table 8.

¹⁸ *Infra* notes 44-49 and accompanying text and Table 9.

¹⁹ *Infra* notes 94-106 and accompanying text and Table 27.

²⁰ *Infra* notes 91-93 and accompanying text and Table 26.

however, the data understate the debtors' secured debt, total indebtedness and debt-income ratios to the extent of any long-term mortgage debt.

In all districts and trusteeships, mortgage arrearage claims were reflected in the trustee records, and further, were almost invariably paid under, not outside, the plan. The data that we report regarding amounts of secured and total indebtedness and debt-income ratios includes mortgage arrearages; and the data that we report on debt repayment includes plan payments on mortgage arrearages.

Additional details regarding the design and methodology of the study are included in Appendix A, Design and Methodology of the Study; and Appendix B, the Chapter 13 Project Coding Sheet.

IV. PROFILE OF CHAPTER 13 DEBTORS

As a preface to the following Parts V and VI regarding debtor discharge and creditor repayment in Chapter 13, this Part IV sketches a limited profile of the debtors in the study sample based on information available from the Chapter 13 trustee reports, bankruptcy court case files and PACER. In particular, this Part reports on the gender and household size, income, indebtedness, debt to income ratio, homeowner status, and previous and subsequent bankruptcy filings of the 795 debtors in the study sample.

A. Gender and Household Size of Petitioners

1. Gender

The petitioners were almost exactly evenly divided between men and women.²² As reported in Table 1, women comprised 36.3% of the petitioners, and men comprised 36.9%. The balance was joint petitioners. Other recent studies likewise have found that about 35-40% of bankruptcy petitioners were women filing singly.²³

²¹ A few long-term mortgage debts may not have been excluded; the Chapter 13 trustee case data may not always have correctly typed a mortgage claim as a mortgage claim. There are a few cases in which the debtors owed secured debts greater than \$50,000, but the trustee claim record did not identify it as a mortgage debt. It seems likely that some of these claims were mortgage claims, but we did not exclude them as they were not identified as mortgage claims. The number of these claims is so small that their inclusion would not materially affect the analyses.

²² The form petition, Schedules and Statement of Financial Affairs do not ask the debtor to indicate gender (or race). See Official Bankruptcy Forms 1, 6 & 7. Gender must be inferred from the debtor's first name. It was not possible to make even an educated guess about a debtor's gender in only 18 cases.

²³ The percentage as well as absolute numbers of women filing for bankruptcy relief has increased over time. See Elizabeth Warren, What Is a Women's Issue? Bankruptcy, Commercial Law, and Other Gender-Neutral Topics, 25 Harv. Women's L. J. 19, __ & n. 40 (2002) (reporting findings of 2001 study of Chapter 7 and Chapter 13 debtors in five judicial districts; 39% of petitions were by women filing alone, 28.8% by men filing alone, and 32.0% by husband and wife filing jointly); Teresa Sullivan, Elizabeth Warren & Jay L. Westbrook, The Fragile Middle Class (Yale 2000) 36-37 (study of debtors in 16 judicial districts who filed for bankruptcy under Chapter 7 or Chapter 13 in 1991; finding that 30% of petitions were filed by women, 26% were filed by men, and 44% were joint petitions; and reporting that proportion of petitions filed by women, men and jointly was about the same in Chapter 13 and Chapter 7 cases); Teresa Sullivan & Elizabeth Warren, The Changing Demographics of Bankruptcy, Norton Bankruptcy Law Advisor (Oct.

Table 1. Gender of Petitioners

Gender	Number	Percent of all Petitioners
Female	273	36.3%
Male	276	36.7%
Joint	203	27.0%
Total	752 (43 missing ²⁴)	100.00%

2. Household Size

Table 2 reports that the average household size of the debtors in the sample was 2.69. Household size is the sum of the petitioner(s) and any dependents. Dependents include any children in a joint filing, and any spouse or child in a single filing. The median household size was 2. For joint petitioners, the mean and median were significantly higher than for all debtors, 3.61 and 4, respectively. Female petitioners' households were slightly larger on average than male petitioners', 2.39 compared to 2.32.

Table 2. Household Size of Petitioners by Gender

Petitioner Gender	N	Range	Mean	SD	SEM	25 %	Median	75 %
Female	274	1-7	2.39	1.32	0.08	1	2	3
Male	277	1-11	2.32	1.55	0.093	1	2	3
Joint	203	1-8	3.61	1.34	0.094	2	4	4
All ²⁵	770	1-11	2.69	1.52	0.055	1	2	4
missing	25							

Table 3 reports the frequency of occurrence of each household size between 1 and 11 of the cases in the sample. Just over one quarter of all households were comprised of only the debtor, while nearly another quarter were comprised of two persons. Approximately 37% of households were comprised of three or four persons, including the debtor. Only 12.2% of the households were comprised of more than four persons.

1999), at 1-7 (also reporting results of study of chapter 7 and chapter 13 cases in 2001, finding nearly 39% of filings were by women, 33% joint, and 29% by men); Ed Flynn & Gordon Bermant, Bankruptcy by the Numbers: Demographics of Chapter 7 Debtors, Am. Bankr. Inst. J., Sept. 1999, at 24 (reporting on survey by Executive Office for United States Trustees of 1,452 no-asset chapter 7 cases filed in late 1998 or early 1999, and finding that 34.6% of cases were filed by women, 29.5% by men, and 35% by joint petitioners); Teresa A. Sullivan, Elizabeth Warren & Jay L. Westbrook, Bankruptcy and the Family, Families and Law (ed: Lisa J. McIntyre, and Marvin B. Sussman) The Haworth Press, Inc., 1995, 193, 207 (also reporting on the 1991 study of debtors in the Consumer Bankruptcy Project).

²⁴ Includes 18 cases in which gender could not be determined, and 25 other missing cases.

²⁵ Includes 18 cases in which the gender of the individual petitioner was uncertain.

Table 3. Household Size of Petitioners (frequency)

Household Size	Number	Percent
1	198	25.9%
2	188	24.6%
3	161	21.0%
4	124	16.2%
5	62	8.1%
6-11	32	4.2%
total	765 (30 missing)	100%

3. Number of Dependents

As to be expected, the data on number of dependants closely parallel the data on household size. Table 4 reports that the mean number of dependents was 1.25. The mean for joint petitioners, 1.65, was significantly higher than for male and female petitioners filing individually (0.99 and 1.2, respectively). The mean for female petitioners was somewhat higher than for male petitioners, 1.2 versus 0.99. These latter figures probably obscure, however, that there are more children in cases filed by women individually than in cases filed by men individually,²⁶ but our data on the point are not complete.

Table 4. Number of Dependents by Gender

Petitioner Gender	N	Range	Mean	SD	SEM	25%	Median	75%
Female	273	0-6	1.2	1.23	0.074	0	1	2
Male	276	0-9	0.99	1.3	0.078	0	1	2
Joint	203	0-6	1.65	1.31	0.092	0	2	2
All (incl. "unsure")	770	0-9	1.25	1.3	0.047	0	1	2
missing	25							

Table 5 reports the frequency of occurrence of each number of dependents from one to nine. Nearly 38% of filers had no dependents. Eighty-four percent of households included two or fewer dependents, while only 16% had three or more.

²⁶ See Elizabeth Warren, Bankrupt Children, 86 Minn. L. Rev. 1003 (2002) (reporting findings from Phase III of the Consumer Bankruptcy Project, an empirical study of 1250 cases in five judicial districts, that bankruptcy filing rates for unmarried women are much higher than for married couples or for unmarried men).

Table 5. Number of Dependents per Household (frequency)

Number of Dependents	N	Percent
0	289	37.8%
1	175	22.9%
2	179	23.4%
3	82	10.7%
4	25	3.3%
5-9	15	2.0%
Total	765 (30 missing cases)	100%

B. Income and Indebtedness

1. Debtor and Household Income

Table 6 reports on debtor and household, annual gross and net incomes, in 1994 dollars, as of the time of Chapter 13 filing.²⁷ The mean and median annual gross incomes of the individual debtors in the sample were \$20,578 and \$18,396, respectively, and their mean and median annual net incomes were \$16,824 and \$15,180. The mean and median annual gross incomes of the debtor households were \$25,274 and \$22,314, respectively, while the mean and median annual net incomes of the debtor households were \$20,571 and \$18,246.²⁸ That the means are somewhat greater than the medians indicates that some debtors and households had relatively higher incomes that increased the overall means. The standard deviation²⁹ of the debtors' annual gross incomes, \$11,205, is moderate – approximately one-half the mean – indicating a moderately wide variation in debtor gross incomes. For household annual gross income, the standard deviation, \$13,816, also is moderate – again, nearly half the mean – again indicating a moderately wide variation in debtor household incomes. The standard error of the mean (SEM³⁰) indicates that the true mean debtor annual gross income in the population was between

²⁷ These data were obtained from Schedule I (“Current Income of Individual Debtors”) of the debtors’ Schedules of Assets and Liabilities. See Form 6, Official Bankruptcy Forms. Schedule I requires the debtor to state the debtor’s monthly gross income and payroll deductions; and the debtor’s spouse’s monthly gross income and payroll deductions, if the debtor is married, regardless of whether the petition was a joint petition with the spouse. Thus, as used here, net income refers to gross income minus payroll deductions; and household income refers to the combined incomes of the debtor and any spouse.

²⁸ The median and mean gross incomes of the debtors in the Chapter 13 Project were remarkably similar to, albeit slightly more than, those of the debtors studied by Sullivan, Warren and Westbrook in *The Fragile Middle Class* (Yale 2000), pp. 61-68 & Table 2.3. The *Fragile Middle Class* studied debtors in 16 judicial districts who filed for bankruptcy under Chapter 7 or Chapter 13 in 1991. The median and mean incomes of the debtor households, in 1994 dollars, adjusted for comparison to the Chapter 13 Project sample, were \$19,542 and \$22,099, respectively, compared to \$22,314 and \$25,274 for the debtors in the Chapter 13 Project. The SWW figures include both Chapter 7 and Chapter 13 filers. Because Chapter 13 debtors have higher average incomes than Chapter 7 debtors, it is expected that the figures for Chapter 13 debtors in the Chapter 13 Project would be somewhat higher.

²⁹ The standard deviation is a measure of variability within the sample. In a statistically normal distribution, 68% of all scores are within one standard deviation of the mean, however, the debtor and household incomes are not normally distributed in the Project sample.

³⁰ The standard error of the mean (SEM) is a measure of the reliability of the sample mean’s ability to estimate the “true mean” of the population. The range within which the true mean of the population falls, at a 95% level of confidence, is the mean of the sample, plus or minus 1.96 times the SEM.

\$10,409 and \$12,001. As to mean household annual gross income, the confidence interval of the estimate of mean is \$12,830-\$14,802.³¹

The 25th and 75th percentile amounts provide further insight into the diversity among debtors with respect to personal and household, annual gross and net incomes. Twenty-five percent (25%) of debtors had annual gross income below \$13,110, and annual net income below \$11,040. Twenty-five percent had annual gross income above \$26,220, and annual net income above only \$21,192. The household annual gross income figures are very similar to the debtor annual gross income numbers at the 25th and 75th percentiles: 25% of households had annual gross income below \$13,077 and 25% had more than \$26,436.

The debtor households in the study sample were markedly less affluent than the U.S. population as a whole. In 1994, the mean and median household incomes in the United States were \$50,961 and \$38,119, respectively,³² compared to \$25,274 and \$22,314 for the debtor households. That is, the mean debtor household annual income was less than half the mean for all households; and the median was less than 60% of that for all households.

Table 6. Debtor and Household, Annual Gross and Net Income

	N	Range	Mean	SD	SEM	25%	Median	75%
Debtor Annual Gross Income	761	\$0-\$66,393 ³³	\$20,578	\$11,205	\$406	\$13,110	\$18,396	\$26,220
Debtor Annual Net Income	763	\$0-\$56,400 ³⁴	\$16,824	\$8,657	\$313	\$11,040	\$15,180	\$21,192
Household Annual Gross Income	754	\$0-\$78,324 ³⁵	\$25,274	\$13,816	\$503	\$14,991	\$22,314	\$32,523
Household Annual Net Income	754	\$0-\$65,100 ³⁶	\$20,571	\$10,502	\$382	\$13,077	\$18,246	\$26,436

³¹ Naturally, debtor and household annual *net* incomes, were much less than the gross. As reported in Table 5, the mean and median debtor annual net incomes were \$16,824 and \$15,180, respectively, or 18.3% and 17.5%, respectively, less than the mean and median debtor annual gross incomes. Likewise, the mean and median debtor household annual net incomes were \$20,571 and \$18,246, respectively, or 18.7% and 18.2%, respectively, less than the mean and median household gross incomes.

³² See, e.g., Money and Income in the United States, Current Population Reports, Consumer Income, U.S. Census Bureau (Sept. 2002), Appendix A, Table A-1, p. 21 (available at <http://www.census.gov/prod/2002pubs/p60-218.pdf>) (last visited Dec. 14, 2004).

³³ All income amounts > \$66,393 ($M + 3.0\ SD$) were excluded from descriptive procedures.

³⁴ All income amounts > \$56,400 ($M + 3.0\ SD$) were excluded from descriptive and inferential procedures.

³⁵ All income amounts > \$78,324 ($M + 3.0\ SD$) were excluded from descriptive and inferential procedures.

³⁶ All income amounts > \$65,100 ($M + 3.0\ SD$) were excluded from descriptive and inferential procedures.

2. Income and Gender

The data reveal statistically significant differences in income based on the debtor's gender. As shown in Table 7 below, female petitioners reported significantly less annual income than either male or joint petitioners. Male petitioners reported the highest incomes. Female petitioners reported mean and median annual income of \$15,060 and \$14,220, respectively, compared to \$16,848 and \$15,516 for joint petitioners, and \$18,461 and \$16,848 for male petitioners. While the proximity of the mean and median values within each of the three groups indicates fairly symmetrical distributions in the trimmed data, the amount of variance within each group was still substantial.³⁷

Table 7. Annual Gross Income by Gender of Petitioner

Gender of Petitioner	N	Range	Mean	SD	SEM	25%	Median	75%
Female	271	\$0-\$48,204 ³⁸	\$15,060	\$7,476	\$454	\$10,308	\$14,220	\$18,528
Joint	199	\$0-\$52,248 ³⁹	\$16,848	\$8,485	\$602	\$11,328	\$15,516	\$21,168
Male	276	\$0-\$66,060 ⁴⁰	\$18,461	\$9,259	\$557	\$11,616	\$16,848	\$23,724

3. Debtor Indebtedness

Table 8 below reports the range, mean, median, and 10th, 25th, 75th and 90th percentile amounts of the allowed secured, priority, general, and total claims against the debtors in the study sample in 1994 dollars. The figures for secured claims do not include post filing mortgage debts, but do include pre-filing mortgage arrearage claims.⁴¹

For each type of debt, and total debt, the mean substantially exceeds the median, indicating that a relatively few cases with relatively large claims increased the overall debtor averages. The standard deviations likewise indicate a very wide spread in the amount of debt carried by the debtors in the sample cases.

The mean total debt (excluding post filing mortgage balances) was over \$24,000, while the median amount was nearly \$16,000 and the standard deviation was \$32,755.

³⁷ A small number of cases ($n < 40$) reported gross and net incomes that were substantially greater than the mean of their respective samples. The cases that were more than three standard deviations above their respective sample means were excluded from further analyses. A Kruskal-Wallis, non-parametric analysis indicated that female petitioners reported significantly lower annual income than the overall sample median annual income, $\chi^2(2, N = 754) = 16.74, p \leq .001$; and that female petitioners reported significantly lower annual household income than the overall sample median annual household income, $\chi^2(2, N = 749) = 83.1, p \leq .001$.

³⁸ All income amounts $> \$48,204$ ($M + 3.0 SD$) were excluded from descriptive and inferential procedures.

³⁹ All income amounts $> \$52,248$ ($M + 3.0 SD$) were excluded from descriptive and inferential procedures.

⁴⁰ All income amounts $> \$66,060$ ($M + 3.0 SD$) were excluded from descriptive and inferential procedures.

⁴¹ As discussed above, *supra* notes 16-21 and accompanying text, some trustees include non-arrearage mortgage debts in their record of creditor claims, while others do not. Thus, in order to achieve consistency in the computation of allowed secured claims across trusteeships and debtors, we excluded long-term mortgage claims in calculating amount of secured debt for all debtors.

The median and 10th, 25th, 75th and 90th percentile amounts of total debt further illustrate the spread among debtors in total debt, with a positive skew to the distribution. The figures for standard error of the mean indicate a high level of confidence that the mean debt amounts in the sample approximate the mean debt amounts in the entire population of debtors.

For most debtors, most allowed debt was secured debt. The mean amount of secured debt (excluding non-arrearage mortgage claims) was \$11,593, with a median of \$7,178 and a standard deviation of \$20,395.

The distribution of priority debt was highly skewed. Most debtors had no priority debt, while a few owed very large priority debts. The mean was \$1,857, while the 10th percentile, 25th percentile and median amounts of priority debt were \$0. The 75th percentile amount was only \$925. The 90th percentile was \$3,823, confirming that a very few debtors owed very large amounts of priority debt.

Table 8 is most reliable as to the debtors' general unsecured indebtedness. The mean amount of allowed unsecured debt was \$9,958, and the median was \$5,143, indicating that some debtors owed much more unsecured debt than most.⁴² The standard deviation for unsecured debt was very large, more than two times the mean, confirming the very large spread among debtors in amounts of unsecured indebtedness.

⁴² The Project did not investigate what types of debt comprised the debtors' unsecured indebtedness. In *Collecting Debts from the Ill and Injured: The Rhetorical Significance, but Practical Irrelevance, of Culpability and Ability to Pay*, 51 Am. U. L. Rev. 229 (2001), Professor Melissa Jacoby reports that 48.3% of Chapter 13 cases in an eight-judicial-district study of debtors who filed for bankruptcy in 1999 were "medical-related," that is, the debtors had at least \$1000 in health-related bills and/or reported illness or injury as a cause of their filing. See also David U. Himmelstein, Elizabeth Warren, Deborah Thorne, Steffie Woolhandler, *Illness and Injury as Contributors to Bankruptcy* (forthcoming) (same eight-judicial-district study, reporting that 46.2% of Chapter 7 and Chapter 13 cases were medical-related); Melissa B. Jacoby, Teresa A. Sullivan, Elizabeth Warren, *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 N.Y.U. L. Rev. 375, 389-90 (2001) (same); Melissa B. Jacoby, Teresa A. Sullivan, Elizabeth Warren, *Medical Problems and Bankruptcy Filings*, Norton Bankruptcy Law Advisor (May 2000), p 4, Figure 2 (same study, finding 45.6% of debtors had either medical reason for filing or substantial medical debt).

Table 8. Debtor Indebtedness-Allowed Claims⁴³

Allowed Claims	N	# cases with value = \$0	Range	Mean	SD	SEM	10%	25%	Median	75%	90%
Secured	787 (8 missing)	121 (15%)	\$0 - \$376577	\$11,593	\$20,395	727	\$0	\$1,707	\$7,178	\$14,733	\$26,040
Priority	783 (12 missing)	462 (59%)	\$0 - \$115406	\$1,857	\$7,124	254.58	\$0	\$0	\$0	\$925	\$3,823
General	782 (13 missing)	86 (11%)	\$0 - \$257377	\$9,958	\$19,976	714.34	\$0	\$1,364	\$5,143	\$10,615	\$20,953
Total	772 (23 missing)	33 (4%)	\$0 - \$432084	\$24,294	\$32,755	1178.86	\$2,849	\$8,112	\$15,865	\$28,914	\$51,059

4. Debt-Income Ratio

Debt-to-income ratio is a primary measure of debtor financial distress; the higher the ratio, the more burdened was the debtor with debt, and less able to pay that debt from current income.⁴⁴ As reported in Table 9 below, the mean debt-annual net income ratio of the debtors in the study, excluding long-term mortgage debt, was 1.29.⁴⁵ That is, the average debtor would have to devote all income for a period of more than 15 months to pay short-term debt, without reserving any income for payment of long-term mortgage debt or other living expenses such as rent, food, health care, transportation, and utilities. The median ratio was 0.965, indicating that one half of the debtors had debts greater than nearly one year's net income, while one half had debts of less than one year's net income; and that a relatively few debtors with very high debt-income ratios pulled up the overall mean amount.

The 75th percentile debt-to-annual income ratio was 1.699, indicating a sizable group of debtors with huge debt burdens. At the other end, the 25th percentile debt-

⁴³ This Table includes "other claims" in Total Allowed Claims, but does not separately report such claims, because fewer than 10% of the cases included "other claims" and different trustees classified different sorts of claims as "other claims."

As indicated in the bottom row of this Table, there were 33 cases in which there were no allowed claims. Most or all of these cases were cases in which there were scheduled claims, but no allowed claims. All but six of the 33 cases were dismissed before confirmation. If only cases with confirmed plans are considered in computing allowed claims, the means change minimally and are well within the margins of error of the means reported in the Table. Excluding cases dismissed or converted before confirmation of a plan, the mean secured debt was \$11,257, the mean priority debt was \$1,514, the mean unsecured debt was \$10,636, and the mean total debt was \$24,381.

⁴⁴ Of course, debt-income ratio is not always an accurate indicator of financial distress; it does not account for assets and savings, which also may be used to pay debt. While acknowledging that debt-income ratios historically have closely paralleled consumer bankruptcy filing rates, Professor Todd Zywicki has argued that this "purported measurement [of debtor financial distress] is illogical" because debtors owe a mix of debts, some of which are to be paid over extended periods of time. He maintains that the better measure of debtor financial distress is "equity insolvency," which is a debtor's ability to pay debts as they come due. See Todd Zywicki, *Why So Many Bankruptcies and What To Do About It: An Economic Analysis of Consumer Bankruptcy law and Bankruptcy Reform*, Law and Economics Working Paper Series, George Mason University School of Law, pp. 16-25, 65 (draft on file with the author).

⁴⁵ (SEM = .041). The figures are based on allowed claims, so may slightly understate the extent of debtor indebtedness because not all creditors file their claims. On the other hand, the trustee claims information did not always specify whether a secured claim was secured by a mortgage, automobile, or other collateral, thus a few mortgage claims likely are included in the figures.

income ratio was 0.558; 25% of the debtors had somewhat less than twice as much annual net income as non-mortgage debt. However, these debtors' financial distress is greater than appears from the debt-income ratio. The debtors in this group tended to have more dependents and more people living in the household, and lower incomes, than the other debtors in the sample. Of 181 cases in the 25th percentile, 40% had two or more dependents, and 35% had four or more people living in the household. These cases represent 83% of the 218 cases in the overall sample with four or more people in the household. Additionally, 45% of these cases were by women filing singly, compared to 36.3% in the overall sample of the study; and only 8% of these cases were joint filings, compared to 27% in the overall sample. The median gross annual household income for these cases was \$20,796, and the median net annual household income was \$17,160. These figures compare to the weighted-average poverty level for a household of four in 1994 of \$15,141;⁴⁶ in other words, most of these cases with lower debt-annual net income ratios were near or below the poverty level.⁴⁷

The debt-income ratios of the debtors covered by the Chapter 13 Project are comparable to the debt-income ratios of the Chapter 13 debtors studied by Professors Sullivan, Warren and Westbrook. In their study of debtors who filed for Chapter 13 relief in 1991 in 10 judicial districts in Illinois, Pennsylvania and Texas, they found a mean debt-income ratio, excluding mortgage debt, of 1.01 and a median of 0.74,⁴⁸ compared to 1.29 and 0.965, respectively, for debtors in the Chapter 13 Project. The debt-income ratios for the debtors in the Chapter 13 Project also were similar to those of the debtors in a study of Mississippi Chapter 13 cases filed between 1992 and 1998, who had a mean debt-income ratio of 1.41 and a median of 1.23.⁴⁹

⁴⁶ U.S. Census Bureau; (available at www.census.gov/hhes/poverty/threshld/thresh94.html, checked on May 5, 2005)

⁴⁷ The poverty levels were established by the USDA and are adjusted by annual growth in the Consumer Price Index each year. Because certain costs, such as medical and transportation expenses, have grown at a rate greater than CPI inflation, many agencies such as the Centers for Disease Control, now adjust the U.S. poverty figures upwards to 129% of values published by the Census Bureau. Using this adjustment, the poverty level for a household of four was \$19,531 in 1994.

⁴⁸ Teresa A. Sullivan, et al., *Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981-1991*, 68 Am. Bankr. L. J. 121, 124 (1994). The standard deviation was 0.97, 25th percentile 0.4, and 75th percentile 1.32. In their previous study of debtors who filed for relief in 1981 in 10 of the same judicial districts, Professors Sullivan, Warren and Westbrook found a mean debt-income ratio for Chapter 13 debtors, including mortgage debt, of 1.47 with a standard deviation of 7.45, a 25th percentile of 0.36, a median of 0.62, and a 75th percentile of 1.02. See Teresa A. Sullivan et al., *Folklore and Facts: A Preliminary Report from the Consumer Bankruptcy Project*, 60 Am. Bankr. L. J. 293, 324 (1986). The mean debt-income ratio found for debtors in the Chapter 13 Project were well within the standard deviations of the means found by Professors Sullivan, Warren and Westbrook in their two studies.

In their study of debtors who filed for Chapter 13 relief in 1981 in 10 judicial districts in Illinois, Pennsylvania and Texas, they found a mean and median ratio of non mortgage debt to income of 1.48 and 0.96, respectively, for their sample of Chapter 7 and Chapter 13 debtors. Teresa A. Sullivan, et al., *The Fragile Middle Class: Americans in Debt* (Yale 2000) at 71, table 2.5.

⁴⁹ Scott F. Norberg, *Consumer Bankruptcy's New Clothes: An Empirical Study of Discharge and Debt Collection in Chapter 13*, 7 A.B.I. L. Rev. 415, 456-457 (1999). The Mississippi study included some mortgage debt in the computation of debt-income ratios.

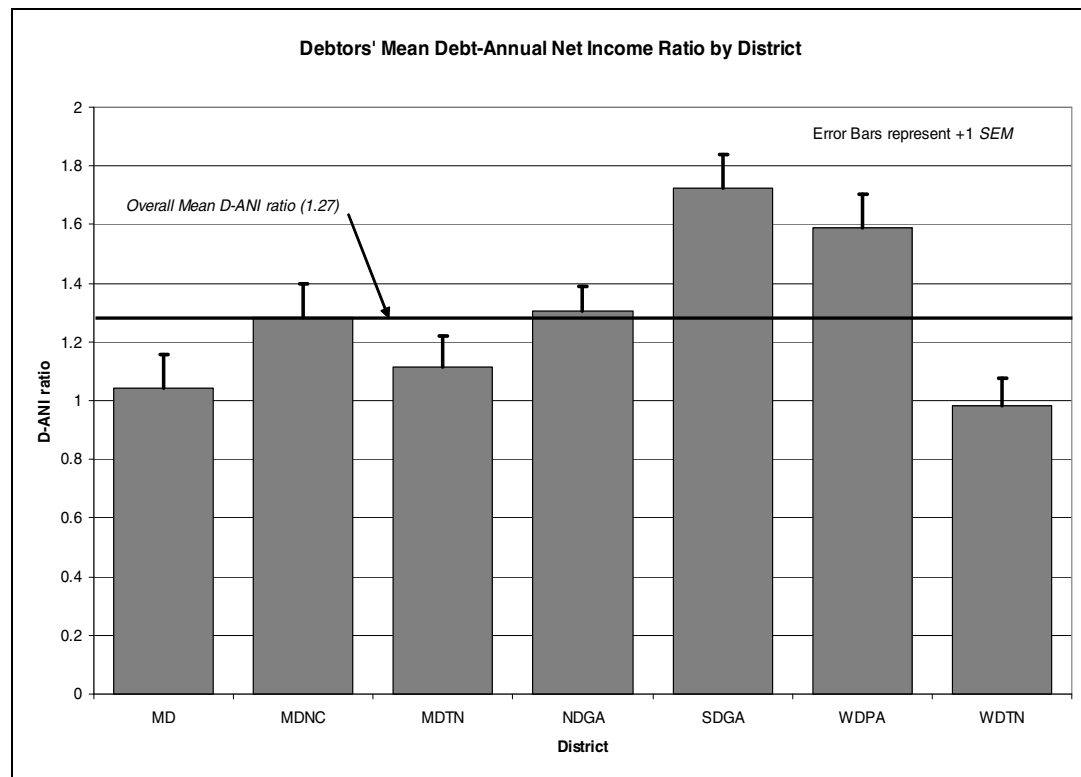
The debt-annual net income ratios (excluding long-term mortgage debt) naturally were somewhat lower when the entire household was taken into account. The mean household debt-annual net income ratio was 1.07, with a median of 0.855 and standard deviation of 0.904.

Table 9. Debt-Annual Net Income Ratios (Excluding Long-Term Mortgage Debt)

	N	Range	Mean	SD	SEM	25%	Median	75%
Debtor D-ANI ratio	746 (49 missing)	0 - 25.17 ⁵⁰	1.29	1.115	0.041	0.558	0.965	1.699
Debtor Household D-ANI ratio	743 (52 missing)	0 - 25.17 ⁵¹	1.07	0.904	0.033	0.479	0.855	1.409

An analysis of the sample debtors' debt-annual net income ratios by district revealed a significant relation.⁵² As reflected in Figure 1 below, debtors in the Western District of Pennsylvania and Southern District of Georgia had significantly higher debt-annual net income ratios than debtors in the Western District of Tennessee, Middle District of Tennessee, and District of Maryland.⁵³

Figure 1. Mean Debtor Debt-Annual Net Income Ratio by District



⁵⁰ All ratios > 5.57 ($M + 3 SD$) were excluded from subsequent descriptive and inferential procedures.

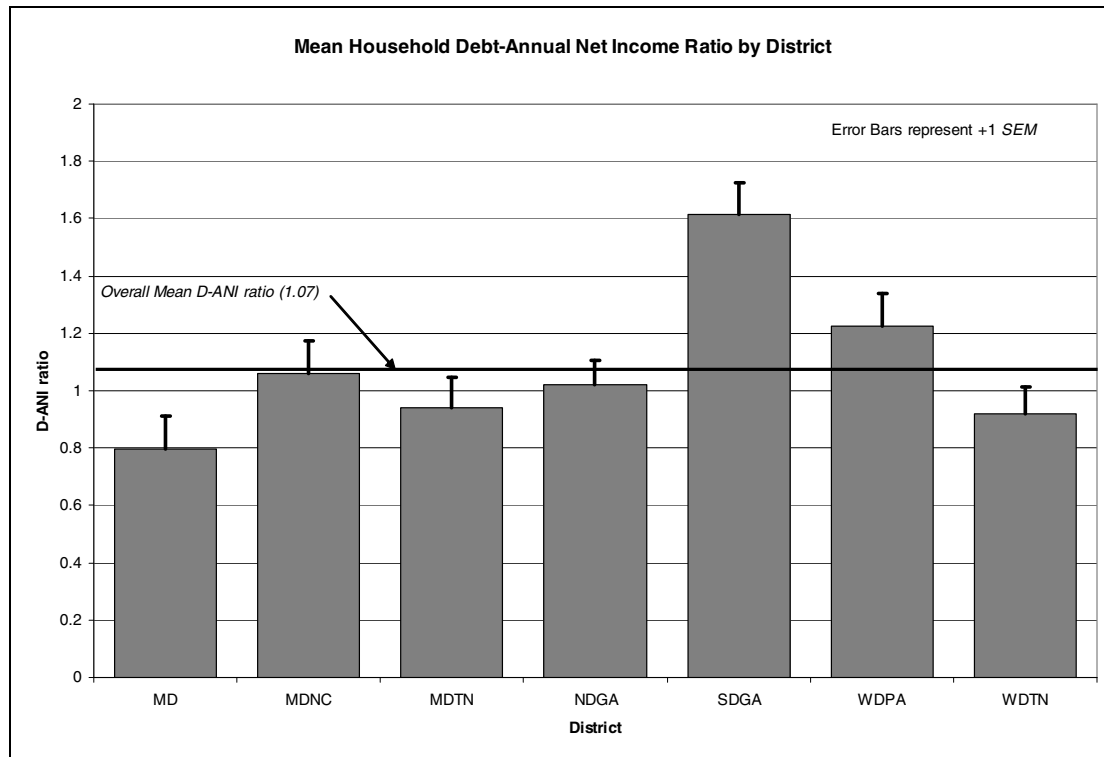
⁵¹ All ratios > 6.76 ($M + 3 SD$) were excluded from subsequent descriptive and inferential procedures.

⁵² $F(6,721) = 6.70, p \leq .001, \eta^2 = .053$.

⁵³ These *post hoc* analyses were performed using Dunnett's T3 test due to the inequality of variances revealed by Levene's test.

There was likewise a significant relation between district and debtor household debt-annual net income ratios.⁵⁴ As shown in Figure 2, the Southern District of Georgia had significantly higher household debt-annual net income ratios than all other districts except the Western District of Pennsylvania.⁵⁵

Figure 2. Mean Debtor Household Debt-Annual Net Income Ratio by District



5. Home Ownership

Approximately 54% of the debtors in the study were homeowners,⁵⁶ compared to the national rate of homeownership in 1994 of 64%.⁵⁷ The rate of debtor homeownership in the Chapter 13 Project is again similar to that found in other studies of consumer

⁵⁴ $F(6,733) = 9.15, p \leq .001, \eta^2 = .069$.

⁵⁵ These *post hoc* analyses were performed using Dunnett's T3 test due to the inequality of variances revealed by Levene's test.

⁵⁶ Neither the Schedules, Official Bankruptcy Form 6, nor the Statement of Financial Affairs, Official Bankruptcy Form 7, includes any direct question regarding homeownership. We inferred home ownership from whether the debtor scheduled a mortgage or mobile home debt. Thus, the rate of home ownership reported here may be understated; some debtors may have owned homes without any mortgage, and some mortgage or mobile home creditors may not have been identifiable as such. 427, or 54%, of the cases indicated a mortgage or mobile home debt. We identified 16 mobile home debts in MDNC, 7 in NDGA, 5 in SDGA and 1 each in MD and MDTN. In MDTN, we identified 42 debtors with mortgage debt, but further estimated that roughly 25 real estate mortgages were listed as priority instead of secured debts. The remaining 372 homeowners were identified as having mortgage debts.

⁵⁷ Robert R. Callis, Current Housing Reports, Moving to America – Moving to Home Ownership: 1994-2002, U.S. Census Bureau (Sept. 2003), available at <http://www.census.gov/prod/2003pubs/h121-03-1.pdf> (last visited Dec. 27, 2004).

bankruptcy filings. In their 1991 study of debtors in 16 judicial districts in California, Tennessee, Illinois, Pennsylvania and Texas, Professors Sullivan, Warren and Westbrook found that about half of the debtors owned a home.⁵⁸

There were substantial variations in homeownership rates among the seven districts. As shown in Table 10, homeownership rates ranged from a low of only 33% -- just half the national rate for all Americans -- in the Middle District of Tennessee to 79% in the Western District of Pennsylvania. These substantial variations imply very different uses of Chapter 13 by debtors in the different districts, that is, that debtors in the Western District of Pennsylvania used Chapter 13 primarily for dealing with mortgage defaults, while the great majority of debtors in the Middle District of Tennessee, and nearly half of the debtors in the Northern and Southern Districts of Georgia and the Western District of Tennessee, sought Chapter 13 relief for other reasons.⁵⁹

Table 10. Frequency of Homeownership by District

District	Do not own home (percent)	Homeowner (percent)
MD	42 (42%)	58 (58%)
MDNC	43 (43%)	57 (57%)
MDTN	67 (67%)	33 (33%)
NDGA	83 (50%)	82 (50%)
SDGA	49 (49%)	51 (51%)
WDPA	21 (21%)	79 (79%)
WDTN	63 (48%)	67 (52%) ⁶⁰
Total	368 (46%)	427 (54%)

C. Previous and Subsequent Bankruptcy Filings

The study also investigated bankruptcy filings by the debtors before and after the sample case. Data were obtained from two sources: the Statement of Financial Affairs, which requires the debtor to disclose any previous filings; and electronic searches of each district's PACER database. The available data probably somewhat understate the

⁵⁸ Teresa A. Sullivan, et al., *The Fragile Middle Class: Americans in Debt* (Yale 2000) at 204. See also Norberg, *supra* note 49, at 457-58 (finding that approximately 60% of Chapter 13 debtors filing between 1992 and 1998 in the Southern District of Mississippi were homeowners); Teresa Sullivan, Elizabeth Warren & Jay L. Westbrook, *AS WE FORGIVE OUR DEBTORS* (1989) (hereinafter AWFOD), at 129 (reporting on study of Chapter 7 and Chapter 13 cases filed in 1991 in 10 judicial districts in Texas, Pennsylvania and Illinois; finding that 52% of Chapter 7 and Chapter 13 debtors were homeowners). Cf. Ed Flynn and Gordon Bermant, *Bankruptcy by the Numbers*, . . . Be it ever so humble, there's no place like home, http://www.usdoj.gov/ust/press/articles/abi_08_2003.htm (reporting national home ownership rate of 42% for Chapter 7 debtors in 5,832 cases filed between 1999 and 2001, with variations among states ranging from 27% to 60.4%); and Ed Flynn and Gordon Bermant, *Bankruptcy by the Numbers*, *The Class of 2000*, ABI J. (Oct. 2001) (reporting 41.8% home ownership rate for Chapter 7 debtors in 1,931 no-asset Chapter 7 cases filed in 2000).

⁵⁹ A chi-square analysis indicated differential rates of homeownership across the districts studied, χ^2 (6, N = 795) = 67.09, p ≤ .001. The homeownership rate in MDTN (32.0%) was lower than expected, and homeownership rates in MD (57%), MDNC (58%) and WDPA (79.0%) were higher than expected. However, chi-square analysis did not reveal a significant relationship between homeowner status and case disposition, χ^2 (4, N = 795) = .664, p = .956.

⁶⁰ Includes 25 cases in which mortgage debt apparently was listed as priority debt.

incidence of other bankruptcy filings by the sample debtors. The PACER databases reach back before 1994 by no more than five years, and are more limited in some districts than others; indeed, the PACER system reaches back only one or two years before 1994 in several of the sample districts.⁶¹ Thus, many previous filings were ascertainable only from the debtor's disclosure in the Statement of Financial Affairs, which is not entirely reliable on this point.⁶² Further, the PACER searches for subsequent filings were done in 2002, so that any filings after that time are not included in the data set; and the district PACER systems are not connected to a national database, and therefore do not reveal when a debtor has filed a petition in another jurisdiction. The searches also might have missed some cases in which the sample case was a joint filing, but a previous or subsequent filing was an individual filing, or vice versa.

1. Other Filings (Previous or Subsequent to the Sample Case)

Among the most remarkable findings of the Project is that at least half of all of the Chapter 13 debtors in the sample had filed one or more bankruptcy cases in addition to the sample case. As shown in Figure 3, the available data reveal that half of the debtors had filed only the sample case, while nearly 30% had filed one other case; 10% had filed two other cases; and 10% had filed three or more other cases.⁶³ (In Part VI below, we consider the relation between other filings and outcome in the sample case.)

⁶¹ The following chart indicates the reach of the PACER system in each district for ascertaining previous bankruptcy filings:

NDGA	SDGA	MDTN	WDTN	MDNC	WDPA	DMD
1992	1989	???	1991	1993	???	1990

⁶² Comparison of the debtors' statements of financial affairs to the PACER search results in the Mississippi study found that nearly 25% of debtors who had filed a previous petition did not report it in their statement of financial affairs in the sample case. Norberg, *supra* note 49, at 458 and n. 128.

⁶³ These Project findings are consistent with findings reported by Jean M. Lown, "Serial Bankruptcy: A 20-Year Study of Utah Filers," *Am. Bankr. Inst. J.* (Feb. 2006), at 24-25, 68-69. Professor Lown's study examined repeat filings by debtors filing for bankruptcy relief in Utah in 1997. She found that 10.7% of the debtors had filed three times within two years or four or more times within 20 years. (She did not report in this article on the numbers of repeat filers who had filed fewer than three times within two years or four times in 20 years.)

Figure 3. Sample Cases With Record of Other Filings

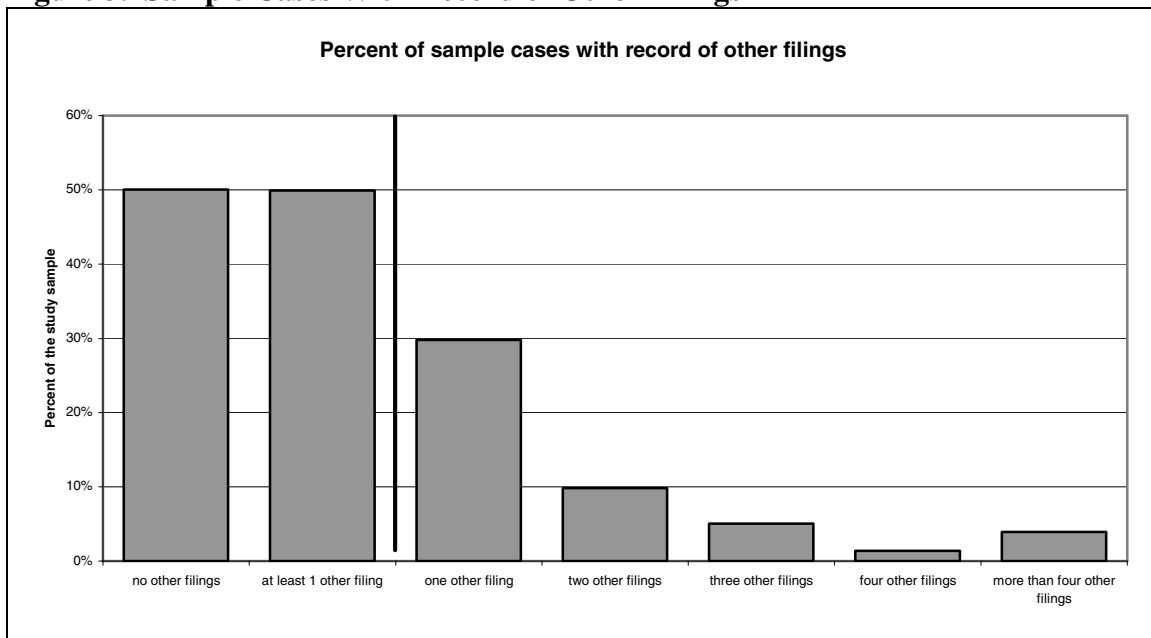


Table 11 below provides additional detail regarding the number of previous and subsequent filings by the debtors in the sample cases. Nearly 32% of the debtors had one or more previous filings;⁶⁴ approximately 22% had filed one previous case, and approximately 7% had filed two or more previous cases. Approximately 33% of the debtors have filed one or more times subsequent to the sample case; the available data are that nearly 22% of all debtors have filed one later case, and more than 11% have filed two or more subsequent cases by 2002.

⁶⁴ Compare Norberg, *supra* note 49, at 458 and n. 128 (approximately 39% of debtors in sample of Chapter 13 cases filed between 1994 and 1998 in Southern District of Mississippi filed one or more previous cases); Susan L DeJarnatt, *Once is Not Enough: Preserving Consumers' Rights to Bankruptcy Protection*, 74 Ind. L. J. 445, 480 (1999) (reporting that repeat filers ranged from less than 5% up to 40% of all Chapter 13 filers, based on survey completed by 62 of 179 standing Chapter 13 trustees in 1996 or 1997). It appears that some of the Chapter 13 trustees surveyed by Professor DeJarnatt may have substantially underestimated the numbers of repeat filers in their districts. Professor DeJarnatt identifies the responding trustees by state, not district within a state. According to her survey, two trustees in Tennessee estimated that less than 10% of their total caseload was repeat filings, and two others reported that repeat filings were between 31% and 40% of total caseload, *id.* at 480, compared to the 26% and 51% rates of previous filings reported in Figure 5 below for the Middle and Western Districts of Tennessee, respectively, in the Chapter 13 Project. Likewise, she reported a 6-10% repeat filing rate estimated by a trustee in Pennsylvania, compared to 24% found in the Chapter 13 Project for the Western District of Pennsylvania; and fewer than 5% estimated by a trustee in North Carolina, compared to 20% in MDNC in the Project. See also Harry H. Haden, *Chapter XIII Wage Earner Plans – Forgotten Man Bankruptcy*, 55 Ky. L. J. 564, 594-95 (1966) (reporting that 66% of wage earner petitions filed in Birmingham, Ala., in one year were by repeat filers).

Table 11. Previous and Subsequent Filings

All Districts		number of subsequent filings									Total
		0	1	2	3	4	5	6	7	8	
number of previous filings	0	398 (50.1%)	126 (15.8%)	26 (3.3%)	7 (0.9%)	2 (0.2%)				1 (0.1%)	560 (70.4%)
	1	111 (14.0%)	34 (4.3%)	21 (2.6%)	4 (0.5%)	3 (0.4%)	4 (0.5%)	1 (0.1%)			178 (22.4%)
	2	18 (2.3%)	9 (1.1%)	5 (0.6%)	5 (0.6%)	2 (0.3%)					39 (4.9%)
	3	5 (0.6%)		2 (0.2%)	3 (0.4%)						10 (1.3%)
	4		3 (0.3%)		2 (0.2%)				1 (0.1%)		6 (0.8%)
	5	1 (0.1%)									1 (0.1%)
	7	1 (0.1%)									1 (0.1%)
Total		534 (67.2%)	172 (21.6%)	54 (6.8%)	21 (2.6%)	7 (0.9%)	4 (0.5%)	1 (0.1%)	1 (0.1%)	1 (0.1%)	795

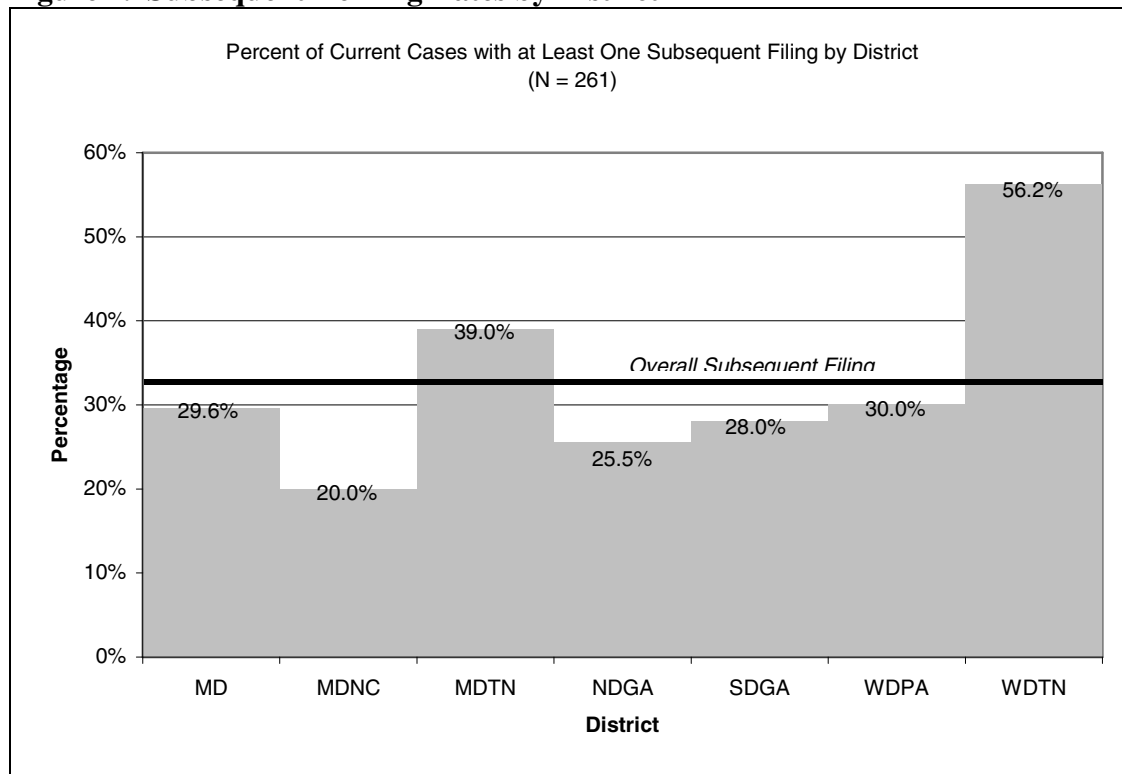
2. Other Filings – District Comparisons

The data indicate a statistically significant relation between judicial district and incidence of other filings. As reflected in Figure 4 below, 20% of the debtors in the Middle District of North Carolina had filed one or more subsequent cases, compared to 39% and 56% of the debtors in the Middle District of Tennessee and the Western District of Tennessee, respectively, and the overall subsequent filing rate of 33% for all debtors in all seven districts.⁶⁵

The data sets on previous filings vary by district, therefore any conclusion regarding the relation between judicial district and incidence of previous filings is not possible. The PACER database for the Middle District of North Carolina reaches back only one year before the sample cases, compared to two or more years in the other six districts.

⁶⁵ $\chi^2(6, N = 793) = 47.16, p \leq .001$.

Figure 4. Subsequent Refiling Rates by District



3. Abuse by Repeat Filers?

The data reported above in Figures 3-4 and Table 11 clearly suggest that there is a cadre of debtors who have misused the bankruptcy system with repeat filings. More than 10% of the debtors in the sample have filed four or more cases, including the sample case, and over 5% have filed five or more cases. At the extreme, one debtor has filed no fewer than 12 cases, four preceding the sample case and seven thereafter; another debtor has filed eight other cases, two previous and six subsequent to the sample case; another has seven previous filings; and another has filed one previous and six subsequent cases. Abuse in these cases appears manifest. In the more common cases, however, in which the debtor has filed one or two other petitions, abuse is much more difficult to infer. As discussed in the following section, the Project data base includes information on the chapter of the debtors' other filing(s), the disposition of such case(s), and the length of time between filings. While this data adds some detail to the portrait of the sample debtors' use of the consumer bankruptcy system, it sheds little light on whether the debtors with one or two other filings have abused the system. Perhaps the best available insight into the propriety of other filings comes from the analyses in Part V.B below of the relation between other filings and case outcome.⁶⁶

⁶⁶ See also Susan L DeJarnatt, Once is Not Enough: Preserving Consumers' Rights to Bankruptcy Protection, 74 Ind. L. J. 445, 480 (1999) (reporting results of survey of 62 of 179 standing Chapter 13 trustees; 26 of 62 trustees reported that there was abuse in fewer than 10% of repeat filings, while 24 reported abuse in more than 20% of all repeat filings); Jean M. Lown, "Serial Bankruptcy: A 20-Year Study of Utah Filers," Am. Bankr. Inst. J. (Feb. 2006), at 24-25, 68-69 (finding that 10.7% of debtors who

4. Chapter, Timing and Outcome of Other Filings

a. Chapter of Other Filings

The large majority of the debtors' other bankruptcy filings were also under Chapter 13. As reported in Table 12, the available data indicate that, of the debtors who had filed a single previous petition, over 80% of those for whom the chapter of the previous filing is known filed the previous case under Chapter 13. Likewise, as reported in Table 13, of the debtors who have filed a single subsequent petition, over 75% filed the later case under Chapter 13.

Table 12. Chapter of Previous Bankruptcy Filing

	N	% of 2d time filers ⁶⁷	% of all debtors
No Previous Filings	560	-----	70.4%
One Previous Filing	178	-----	22.4
Under Chapter 7	26	19.0%	3.3%
Under Chapter 13	110	80.3%	13.8%
Under Chapter 11	1	0.7%	0.1%
Missing	41	-----	-----
More than One Previous Filing	57	-----	7.2%
Total	795		

filed for bankruptcy relief in Utah in 1997 were serial filers and possible abusers, having filed three times within two years or four or more times within 20 years).

⁶⁷ Excluding missing cases.

Table 13. Chapter of Subsequent Bankruptcy Filing

	N	% of 2d-time filers ⁶⁸	% of all debtors
No Subsequent Filings	534	-----	67.2%
One Subsequent Filing	172	-----	21.6%
Under Chapter 7	29	24.8%	3.6%
Under Chapter 13	88	75.2%	11.0%
missing	55	-----	-----
More than One Subsequent Filing	89	-----	11.2%
Total	795		

b. Timing of Other Filings

The bulk of the sample debtors' other filings occurred within a year before the filing of the sample case, or a year after the final disposition of the sample case. As reported in Table 14, of the debtors who had filed a single previous petition, the great majority – over 75% -- filed the sample case within a year of the dismissal of the previous case. As reported in Table 15, of the debtors who had filed a single subsequent petition, a large majority – 65% -- filed the later case within a year of the disposition of the sample case.

Table 14. Interval Between Disposition of Previous Case and Filing of Sample Case

Interval	Percent of Cases with Single Previous Filing
<0-1 years	75.3%
1-2 years	9.8%
2-3 years	5.7%
3-4 years	4.0%
4-5 years	2.3%
5-6 years	0.0%
6-7 years	2.3%
7+ years	0.6%

⁶⁸ Excluding missing cases.

Table 15. Interval Between Disposition of Sample Case and Filing of Subsequent Case

Interval	Percent of Cases with Single Subsequent Filing
0-1 years	64.9
1-2 years	10.5
2-3 years	6.3
3-4 years	7.3
4-5 years	4.7
5-6 years	1.1
6-7 years	1.5
7+ years	3.7

c. Outcome of Other Filings

Table 16 below reports that, nearly 75% of the previous cases filed by the debtors with one previous bankruptcy filing were either dismissed or converted; and that 25% of these debtors had obtained a discharge in the previous case. Table 17 reports that, 40.6% of the later cases filed by the debtors with one subsequent filing had been dismissed or converted by the time of our review of the PACER data bases; 31% went to discharge, and 27.6% were still pending as of the time of the PACER search.

Table 16. Outcome in Previous Case (regardless of chapter)

	Number	% of 2nd time filers	% of all debtors
discharged	35	25.5%	4.4%
dismissed	96	70.1%	12.1%
converted	6	4.4%	0.1%
total	178 (41 missing cases)	100.00%	

Table 17. Outcome in Subsequent Case (regardless of chapter)

	Number	% of one-time subsequent filers	% of all debtors
Discharged	36	31.0%	4.5%
Dismissed	47	40.5%	5.9%
Converted	1	0.1%	0.1%
Open	32	27.6%	4.0%
total	172 (56 missing cases)	100.00%	

5. Filings After Discharge in the Sample Case

Of the 262 debtors who obtained a discharge in the sample cases, 14.9% (or 4.9% of all debtors, N = 39) went on to file a subsequent case by 2002.⁶⁹ Three percent (3%) of the debtors who obtained a discharge (8 of 262) (or 1%, 8 of 793) filed two or more times after having successfully completed a plan. These data confirm anecdotal comments by Chapter 13 trustees that there is a small but identifiable group of debtors who seem to need a Chapter 13 trustee to manage their payments to creditors.

6. The “True” Rate of Chapter 13 Filings

It is commonly understood that the number of households seeking bankruptcy relief in a given period is the same as the number of petitions filed in that period. The data reported in this Part IV show that there is in fact a large disparity between these two figures, and that the number of households seeking bankruptcy relief in a given year is substantially fewer than the number of petitions filed in that year. As discussed, 50% of the debtors in the Chapter 13 Project had at least one other filing, and at least approximately 70% of the other filings were made within a year of the disposition of the immediately preceding case. If the Project sample is representative of all Chapter 13 debtors, the number of petitions overstates the number of households seeking Chapter 13 relief by at least 35%. In 1994, then, while debtors filed 240,639 petitions under Chapter 13, they probably represented no more than 156,415 different households. Likewise, if the refiling rates and intervals have remained relatively constant over the past ten years, the 467,000 Chapter 13 petitions filed in 2003 represented substantially fewer households – about 303,500.

Concomitantly, the actual ratio of Chapter 13 filers to total consumer bankruptcy petitioners also is much lower than commonly reported. Again subject to the large caveats regarding representativeness of the Project sample and the stability of repeat filing rates over the following ten years, Chapter 13 filers comprise only about 20%, not 30%, of all consumer filers in a given year. Of course, as reported above, repeat filing rates vary significantly among districts, so that the “effective Chapter 13 filing rate” will vary by district.

V. DEBTORFRESH START IN CHAPTER 13

A. Measuring Debtor Success in Chapter 13

Together with repayment of creditor claims, debtor fresh start is a primary policy objective underlying Chapter 13 of the Bankruptcy Code. This Part first considers the extent to which the sample debtors achieved a fresh start or financial rehabilitation in Chapter 13. It then examines the relationship between case outcome and an array of debtor characteristics and Chapter 13 plan features. Part VI then considers creditor

⁶⁹ The 4.9% rate of refiling after discharge very nearly matches the finding by Sullivan, Warren and Westbrook in their 1981 study that as many as 4% of Chapter 13 debtors filed again after receiving a discharge. AWFOD, *supra* note 58, at 194.

collections in Chapter 13 cases. Creditors naturally collect significantly more debt in cases where the debtor completes her plan (and receives a discharge) than in cases that are dismissed or converted either before or after confirmation of a plan.

The best, and perhaps only reliable, measure of debtor fresh start in Chapter 13 is the rate of debtor plan completion and discharge. However, debtor discharge is not necessarily tantamount to an entirely fresh start. Not all claims are dischargeable upon completion of a plan,⁷⁰ and as noted above, about 15% of all debtors who attain a discharge file again for bankruptcy protection. Conversely, some Chapter 13 trustees are quick to point out that some debtors achieve a fresh start without completing performance of a plan. Some Chapter 13 debtors are able to regain their financial footing simply as a result of the breathing spell afforded by the automatic stay. This breathing spell – perhaps no longer than a few months or a year between filing and dismissal of a case – is enough to allow the debtor to cure defaults or pay off debts without further court supervision or debt relief. However, it is not possible to determine from court and trustee records whether a debtor “succeeded” in Chapter 13 short of obtaining a discharge.⁷¹ Thus, we are confined to measuring debtor fresh start in Chapter 13 based on discharge and refiling rates.

B. Debtor and District Discharge Rates in Chapter 13 – All Cases

The overall discharge rate for the debtors in the seven districts covered by the Project was exactly the oft-repeated statistic of one-third.⁷² Sixty-seven percent (67%) of

⁷⁰ See 11 U.S.C. § 1328 (defining scope of the Chapter 13 discharge).

⁷¹ See generally, Gordon Bermant, *Bankruptcy by the Numbers, What is “Success” in Chapter 13? Why Should we Care?*, ABI J. (Sept. 2004), pp. 20, 65, 67 (considering various measures of success in Chapter 13).

⁷² The debtor discharge rates found in other studies have ranged from 20.35% to 36%. See Jean Braucher, *An Empirical Study of Debtor Education in Bankruptcy: Impact on Chapter 13 Completion Not Shown*, 9 A.B.I. L. Rev. 557, 557 & n. 5 (2001) (majority of Chapter debtors in empirical study of filings in five judicial districts did not achieve discharge); *Personal Bankruptcy: A Literature Review*, CBO Paper, Congressional Budget Office (Sept. 2000), pp. 30-31 (reporting that an average of 36% of consumers filing Chapter 13 successfully completed their plans, but that this rate is probably understated because some of the dismissed cases may represent multiple filings by the same debtor or “face filings” that may have been dismissed before their plans were confirmed); Gordon Bermant and Ed Flynn, *Bankruptcy by the Numbers, Measuring Projected Performance in Chapter 13: Comparisons Across the States*, ABI J. (July/Aug. 2000), p. 22 (“[c]ompletion rates hover nationally at about one-third of confirmed plans, but this national average is a composite made up of extremely variable figures arising from different courtrooms, divisions and districts,” citing <http://www.usdoj.gov/ust/statistics/stats-new/05/statistics5.htm>); Scott F. Norberg, *Consumer Bankruptcy’s New Clothes: An Empirical Study of Discharge and Debt Collection in Chapter 13*, 7 A.B.I. L. Rev. 415, 440 (1999); Michael Bork & Susan D. Tuck, *Bankruptcy Statistical Trends, Chapter 13 Dispositions* (Working Paper 2), Administrative Office of the Courts (reporting survey of chapter 13 cases filed between 1980 and 1988); T. Sullivan et al., *As We Forgive Our Debtors* 215-17 (reporting on study of chapter 7 and 13 cases filed in 1981 in ten judicial districts in Pennsylvania, Texas and Illinois); Jim Wannamaker, *The Washington Beat*, 6 National Ass’n of Chap. Thirteen Trustees Newsletter, No. 1 at 7 (Oct. 1993); Michael Catrett, *Bankruptcy by the Numbers, A Month of Debtors, “Foreclosure Tuesday” and the Rush to Chapter 13 in the Houston Division of the Southern District of Texas*, ABI J. (May 2005), p. 24 (finding discharge rate of 23% for Chapter 13 cases filed in the Houston Division of the Southern District of Texas in 1999). See also William C. Whitford, *The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer Protection*, and *Consumer Protection in*

the cases were dismissed or converted, either before or after confirmation. As reported in Table 18, over 57% of the sample cases were dismissed, and nearly 10% were converted to Chapter 7. Of the dismissed cases, one-third was dismissed before confirmation of a plan and two-thirds after confirmation; that is, about 19% of all filings were dismissed before confirmation, and 38% after confirmation of a plan. The courts confirmed a plan in nearly 78% of all cases.

Table 18. Discharge, Dismissal and Conversion Rates – All Cases

(*N* = 794 cases)

Dismissal		Conversion		Discharge
455 cases (57.3%)		77 cases (9.7%)		262 cases (33%)
Before Confirmation	After Confirmation	Before Confirmation	After Confirmation	
154 cases (19.4 %)	301 cases (37.9 %)	27 cases (3.4 %)	50 cases (6.3 %)	

Table 19 below reports the discharge, dismissal and conversion rates by district, in order from left to right of lowest to highest rate of debtor discharge. As a percentage of all filings, the discharge rates in the seven districts ranged from a low of 20% of Chapter 13 filings in the Western District of Tennessee to a high of 47% in the Middle District of North Carolina. The average discharge rate among districts was 33.8%, almost identical to the overall rate of 33% for all debtors in the sample. Excluding converted cases,⁷³ statistical analysis reveals significant differences in disposition rates between districts.⁷⁴

Consumer Bankruptcy, 68 Am. Bankr. L. J. 397, 410 (1994) (reporting results of unpublished survey conducted by the National Association of chapter 13 trustees that cumulated data from chapter 13 trustees by U.S. Trustee region; the unweighted average of the trustees' reports of the percentage of chapter 13 cases that were closed in 1993 as completed ranged from 3% to 49% across 22 regions, with average reported rate of 31%); cf. Marjorie L. Girth, The Role of Empirical Data in Developing Bankruptcy Legislation for Individuals, 65 Ind. L. Rev. 17, 42 (1989) (reporting study of chapter 13 cases filed in Buffalo Division of Western District of New York between 1979 and 1982, finding discharge rate over 60% in cases in which a plan was confirmed).

⁷³ *N* = 77.

⁷⁴ $\chi^2(4, N = 717) = 49.71, p < .001$.

Table 19. Discharge, Dismissal and Conversion Rates – All Cases, by District

Disposition	WDTN	MDTN	NDGA	SDGA	MD	WDPA	MDNC	TOTAL
Debtor discharged/case completed	26 20.0%	29 29.0%	51 30.9%	36 36.0%	36 36.4%	37 37.0%	47 47.0%	262 33.0%
Case dismissed after confirmation	67 51.5%	44 44.0%	61 37.0%	40 40.0%	27 7.3%	21 21.0%	41 41.0%	301 37.9%
Case dismissed before confirmation	30 23.1%	9 9.0%	45 27.3%	17 17.0%	21 21.2%	24 24.0%	8 8.0%	154 19.4%
Case converted after confirmation	5 3.8%	13 13.0%	6 3.6%	5 5.0%	11 11.1%	10 10.0%	0 0.0%	50 6.3%
Case converted before confirmation	2 1.5%	5 5.0%	2 1.2%	2 2.0%	4 4.0%	8 8.0%	4 4.0%	27 3.4%
sub-total of cases	130	100	165	100	99	100	100	794
Missing cases	0	0	0	0	1	0	0	1
Total cases	130	100	165	100	100	100	100	795

C. Debtor and District Discharge Rates – Cases with a Confirmed Plan

Although Chapter 13 discharge rates normally are reported as a percentage of all Chapter 13 filings, it may be more instructive to report discharge rates based only on cases in which the court confirmed a plan, excluding cases in which the debtor did not obtain confirmation. (As reported in Table 18 above, nearly 23% of the sample cases were dismissed or converted before confirmation of a plan.) Cases dismissed or converted before confirmation normally are dismissed or converted within several months after filing.⁷⁵ Some or many of these cases were filed by debtors who did not propose a plan with any serious intent to confirm it, or did not file a plan at all. Neither the court nor the trustee has any immediate control over these filings (although their practices in regard to repeat filings may have an ex ante impact on such filings).

Tables 20 and 21 show the overall, and district by district, discharge, dismissal and conversion rates, excluding the cases that were dismissed or converted before confirmation. In Table 21, the districts again are ordered from left to right from lowest to highest rate of debtor discharge. The discharge rates naturally are considerably higher when computed without cases dismissed or converted before confirmation. Discharge rates ranged from a low of 26.5% in the Western District of Tennessee to a high of 54.4% in the Western District of Pennsylvania, with an overall rate of 42.7% for all debtors in the sample. The average district rate was 43.5%. The order of districts in Table 21 is almost the same as to the order of districts in Table 19, which includes cases dismissed before confirmation; the Western District of Pennsylvania supplants the Middle District of North Carolina by one percentage point as having had the highest rate of discharge among the seven districts.

⁷⁵ See infra notes 149-152 and accompanying text (discussing time spent by debtors in chapter 13 cases) and Table 39.

Table 20. Discharge, Dismissal and Conversion Rates, Excluding Cases Dismissed or Converted Before Confirmation (*N* = 794 cases)

Dismissal and Conversion After Confirmation 351 cases (57.3%)		Discharge 262 cases (42.7 %)
Dismissal After Confirmation 301 cases (49.1%)	Conversion After Confirmation 50 cases (8.2%)	

Table 21. Discharge, Dismissal and Conversion Rates, Excluding Cases Dismissed or Converted Before Confirmation – by District

Disposition	WDTN	MDTN	NDGA	SDGA	MD	MDNC	WDPA	TOTAL
Debtor discharged/case completed	26 26.5%	29 33.7%	51 43.2%	36 44.4%	36 48.6%	47 53.4%	37 54.4%	262 42.7%
Case dismissed after confirmation	67 68.4%	44 51.2%	61 51.7%	40 49.4%	27 36.5%	41 46.6%	21 30.9%	301 49.1%
Case converted after confirmation	5 5.1%	13 15.1%	6 5.1%	5 6.2%	11 14.9%	0 0.0%	10 14.7%	50 8.2%
sub-total	98	86	118	81	74	88	68	613
Missing	0	0	0	0	1	0	0	1
Total	98	86	118	81	75	88	68	614

D. Relationship Between Pre-Confirmation Dismissal and Discharge Rates

We expected but did not find an inverse relation between the rate of pre-confirmation dismissals and the rate of debtor discharge. The cases that the debtor or the court dismisses without confirmation of a plan are the cases that are least likely to succeed, so that more dismissals would correlate with higher discharge rates as a percentage of cases with a confirmed plan. Yet, as shown in Table 22 below, the district with the highest rate of discharge – the Middle District of North Carolina – had the lowest rate of pre-confirmation dismissals and conversions, while the district with the second highest rate of discharge – the Western District of Pennsylvania – had the highest rate of pre-confirmation dismissals and conversions. Conversely, the district with the lowest rate of discharge – the Western District of Tennessee – had among the higher rates of pre-confirmation dismissals and conversions, while the district with the second lowest rate of discharge – the Middle District of Tennessee – also had the second lowest rate of pre-confirmation dismissals and conversions.

The absence of any correlation between the rate of pre-confirmation dismissals and conversions and the rate of debtor discharge suggests that some courts generally do not carefully screen cases for feasibility. In fact, courts and trustees may see little downside in allowing debtors to proceed with even the most unrealistic plans. Absent any creditor objection based on the treatment of its claim, the alternative is dismissal or conversion to Chapter 7, where unsecured creditors are not likely to collect anything. As the chief judge in one of the sample districts remarked, the test for feasibility is a

“heartbeat” test; if the debtor has a heartbeat, the plan is feasible.⁷⁶ One exception may be the Western District of Pennsylvania, which had fewer than expected dismissals after confirmation and more than expected dismissals before confirmation.⁷⁷

Table 22. Comparison of Discharge, and Dismissal/Conversion Before Confirmation Rates, by District

	WDTN	MDTN	NDGA	SDGA	MD	WDPA	MDNC	ALL
Dismissals and Conversions Before Confirmation (as % of all cases)	24.6%	14.0%	28.5%	19.0%	25.2%	32.0%	12.0%	22.8%
Discharges (as % of all cases)	20.0%	29.0%	30.9%	36.0%	36.4%	37.0%	47.0%	33.0%
Discharges (as % of cases with confirmed plan)	26.5%	33.7%	43.2%	44.4%	48.6%	54.4%	53.4%	42.7%

VI. PREDICTING OUTCOME IN CHAPTER 13 CASES

The modest rates of debtor discharge in Chapter 13 found in this and other studies, together with the data in Part VII below demonstrating a close, positive association between debtor discharge and creditor collections, invites an examination of factors that may be related to case outcome. This Part now considers a number of variables that can be gleaned from court and trustee records that may bear on case outcome: (a) certain debtor characteristics, including gender, joint filing status, income, amount and type of debt, and debt-income ratio; (b) other bankruptcy filings; and (c) Chapter 13 plan features, including household budget, proposed plan payments, amount of income reserved for living expenses, proposed distribution to unsecured creditors, and proposed plan length.

A. Debtor Characteristics and Case Outcome

1. Gender, Joint Filing Status and Case Outcome

Among cases in which the gender of the individual petitioner could be reasonably surmised ($N = 567$), there was no significant relation between discharge, dismissal, or conversion rates and the gender of the petitioner.⁷⁸ As reported in Table 23 below, almost 30% of men filing individually obtained a discharge, compared to 26% of the women; 36.4% of filings by individual men were dismissed after confirmation, compared

⁷⁶ See also Lynn M. LoPucki, Common Sense Consumer Bankruptcy, 71 Am. Bankr. L. J. 461, 474-475 (1997) (commenting that many judges . . .). But see Gary Neustadter, When Lawyer and Client Meet” Observations of Interviewing and Counseling Behavior in the Consumer Bankruptcy Law Office, 35 Buff. L. Rev. 177, 204 (1986) (stating the local bankruptcy judge carefully assessed feasibility of proposed Chapter 13 plans).

⁷⁷ The combination of lower discharge rate and higher pre-confirmation dismissal rate reported in Table 21 for the Western District of Tennessee may have been a function of the very high numbers of serial filers there. See supra note 63 and accompanying text and Figure 4.

⁷⁸ $\chi^2(4, N = 567) = 4.49, p = .344$.

to 44.5% of filing by women; and 25.2% of filings by individual men were dismissed before confirmation, compared to 20.4% of filings by women.

Table 23. Case Disposition by Gender

Gender of Individual filer	Case Disposition					Total
	Discharged	Dismissed after Confirmation	Dismissed before Confirmation	Converted after Confirmation	Converted before Confirmation	
Men	84 (29.4%)	104 (36.4%)	72 (25.2%)	18 (6.3%)	8 (2.8%)	286
Women	73 (26%)	125 (44.5%)	57 (20.3%)	19 (6.8%)	7 (2.5%)	281
Total	157 (27.2%)	229 (40.4%)	129 (22.8%)	37 (6.5%)	15 (2.6%)	567

On the other hand, as reported in Table 24 below, joint petitioners were significantly more likely to achieve a discharge than debtors who filed individually. The discharge rate (47.3%) in jointly filed cases was substantially higher than the discharge rate for individual petitioners (28.0%). Correspondingly, the dismissal rate in jointly filed cases was substantially lower (41.5%) than the dismissal rate in cases filed by individual petitioners (62.5%).⁷⁹ There were no differences in conversion rates between joint and individual petitioners.

The significant, positive correlation between joint filing status and discharge does not appear to be related to the presence of a second income, however. The discharge rate for the 102 (of 585) individual filers who reported spousal income was not significantly different than that for individual filers not reporting spousal income.⁸⁰

Table 24. Filing Status by Case Disposition

Filing Status	Case Disposition					Total
	Discharged	Dismissed after Confirmation	Dismissed before Confirmation	Converted after Confirmation	Converted before Confirmation	
Individual	164 (28.0%)	236 (40.3%)	132 (22.5%)	38 (6.5%)	16 (2.7%)	586
Joint	98 (47.3%)	64 (30.9%)	22 (10.6%)	16 (7.7%)	7 (3.4%)	207
Total	262	300	154	54	23	793 (2 missing)

⁷⁹ $\chi^2(4, N = 793) = 32.61, p \leq .001$.

⁸⁰ $\chi^2(4, N = 586) = 5.04, p = .283$. Moreover, both spouses did not necessarily have income in the jointly filed cases. Data on spousal income are missing in 56, or 28%, of the 202 jointly filed cases.

Relatedly, in cases where spousal income was more than \$0, there was no difference in amount of spousal gross income between jointly filed cases ($M = \$1261.75, SEM = 78.5$) and individually filed cases with spousal income ($M = \$1253, SEM = 69.1, t(246) = .079, p = .937$). There also was no difference in spousal net income between jointly filed cases ($M = \$1007.56, SEM = 55.6$) and individually filed cases with spousal income ($M = \$996.57, SEM = 53.1, t(246) = .140, p = .889$).

2. Debtor and Household Income

Table 5 in Part IV.B above reports on debtor and debtor household, annual gross and net income. Here, we investigate the association, if any, between income and case outcome. Table 25 below details annual gross and net incomes for debtors and their households in cases in which the debtor obtained a discharge, and in cases that were dismissed or converted.⁸¹ Debtors who achieved a discharge had significantly higher household (but not individual⁸²) net incomes than debtors whose cases were dismissed.⁸³ The median net income of the debtor households in the cases in which the debtor achieved a discharge was \$20,520, compared to \$17,376 for the debtor households in dismissed cases.

Debtors who completed their plans also had significantly higher gross incomes⁸⁴ and their households had significantly higher gross incomes⁸⁵ than the debtors in cases that were dismissed.⁸⁶ The median gross income of the individual debtors in the cases in which the debtor achieved a discharge was \$20,796, compared to \$17,298 for the individual debtors in dismissed cases. The median gross income of the debtor households in the cases in which the debtor achieved a discharge was \$25,392, compared to \$20,400 for the debtor households in dismissed cases.

⁸¹ “Gross income” refers to all income of the debtor or household. “Net income” refers to income minus payroll deductions. “Household income” refers to the combined incomes of the debtor and any spouse. See Schedules, Schedule I, Form 6, Official Bankruptcy Forms. Schedule I, Current Income of Individual Debtor(s), requires the debtor itemize the debtor’s monthly gross income and payroll deductions; and the debtor’s spouse’s monthly gross income and payroll deductions, if the debtor is married, regardless of whether the petition was a joint petition with the spouse. Schedule J, Current Expenditures of Individual Debtor(s), requires the debtor to provide a monthly budget for the household. Thus, debtor net income (before plan payments) and household net income can be readily computed by subtracting total monthly expenses in Schedule J from monthly income in Schedule I.

⁸² While the ANOVA on debtor net income approached significance, $F(2,687) = 2.53$, $p = .08$, $\eta^2 = .007$, the assumption of a significant F to justify the use of post hoc Scheffe’ tests is not met. Regardless, the post hoc analyses did not indicate any trend toward significance in these between-group differences, all p ’s $\geq .117$.

⁸³ Scheffe’ tests at an alpha level of .05

⁸⁴ $F(2,684) = 4.75$, $p = .009$, $\eta^2 = .014$

⁸⁵ $F(2,680) = 9.87$, $p \leq .001$, $\eta^2 = .028$

⁸⁶ Scheffe’ tests at an alpha level of .05

Table 25. Debtor Income and Discharge in Chapter 13

			N	Range	Mean	SD	SEM	25%	Median	75%
Debtor obtained discharge	Petitioner	Gross Income	257 (4 missing)	\$0 - \$74,388	\$22,285	\$11,884	\$741	\$14,400	\$20,796	\$27,972
		Net Income	258 (3 missing)	\$0 - \$49,800	\$17,449	\$8,733	\$544	\$11,817	\$16,164	\$21,864
	Household	Gross Income	253 (8 missing)	\$0 - \$74,388	\$28,014	\$13,779	\$866	\$18,138	\$25,392	\$36,084
		Net Income	254 (7 missing)	\$0 - \$56,508	\$21,910	\$20,520	\$631	\$14,361	\$20,520	\$27,564
Case dismissed or converted	Petitioner	Gross Income	434 (21 missing)	\$0 - \$227,880 ⁸⁷	\$20,835	\$16,443	\$789	\$12,714	\$17,298	\$25,305
		Net Income	435 (20 missing)	\$0 - \$480,000 ⁸⁸	\$18,596	\$26,607	\$1,276	\$7,210	\$14,928	\$21,168
	Household	Gross Income	433 (22 missing)	\$0 - \$236,316 ⁸⁹	\$24,758	\$18,650	\$896	\$9,758	\$20,400	\$30,756
		Net Income	434 (21 missing)	\$0 - \$480,000 ⁹⁰	\$21,782	\$27,374	\$1,314	\$8,460	\$17,376	\$25,524

3. Creditor Claims and Case Outcome

The Chapter 13 Project also investigated any relation between case outcome and amount and type of pre-bankruptcy debt. Table 26 below reports the amounts of secured, priority, general unsecured and total debt in (1) cases in which the debtor obtained a discharge, (2) cases dismissed or converted after confirmation of a plan, and (3) cases dismissed or converted before confirmation. We found a significant relation between case outcome and a debtor's (a) allowed unsecured debts,⁹¹ and (b) total combined allowed secured, priority and general unsecured debts.⁹² Debtors with greater unsecured debt and greater total combined debts tended to complete their plans and obtain a discharge at higher rates than debtors with lesser unsecured and total combined debts whose cases were dismissed after confirmation. However, the debtors who completed their plans did not have significantly greater secured⁹³ or priority debt than debtors who did not obtain a discharge.

As further reported in Table 26, the median amounts of total debt for debtors who completed their plans was \$19,375, compared to \$14,373 for debtors whose cases were dismissed after confirmation, and \$9,386 for debtors whose cases were dismissed before confirmation. Perhaps debtors who completed their plans were more likely to have delayed filing bankruptcy, while continuing to take on debt, and thus the correlation

⁸⁷ All amounts > \$ 70,164 ($M + 3 SD$) were excluded from subsequent descriptive and inferential procedures.

⁸⁸ All amounts > \$ 98,412 ($M + 3 SD$) were excluded from subsequent descriptive and inferential procedures.

⁸⁹ All amounts > \$ 80,700 ($M + 3 SD$) were excluded from subsequent descriptive and inferential procedures.

⁹⁰ All amounts > \$ 103,896 ($M + 3 SD$) were excluded from subsequent descriptive and inferential procedures.

⁹¹ Mann-Whitney U = 29488, $z = -4.796$, $p \leq .001$.

⁹² Mann-Whitney U = 33134, $z = -2.303$, $p = .021$.

⁹³ As discussed above, we excluded long-term mortgage debts from this analysis. As a result, secured debt is substantially understated here. See *supra* notes 13-18 and accompanying text.

between amount of debt and case outcome indicates that debtors who delay filing are more likely to complete their plans. Arguably, debtors who struggled longer with paying their debts before filing bankruptcy were more likely to make the effort necessary to complete their plans after filing.

Table 26. Creditor Claims in Completed and Dismissed Cases

		N	# cases with value = \$0	Range ⁹⁴	Mean	SD	SEM	10%	25%	Median	75%	90%
Debtor Obtained Discharge	Secured	258 (4 missing)	36 (14%)	\$0 - \$210,691	\$11,941	\$18,231	1135	\$0	\$1,688	\$7,094	\$15,458	\$27,910
	Priority	256 (6 missing)	136 (52%)	\$0 - \$46,500	\$1,506	\$4,779	298	\$0	\$0	\$0	\$928	\$3,273
	General	258 (4 missing)	13 (5%)	\$0 - \$257,377	\$13,891	\$26,512	1,650	\$609	\$3,222	\$7,616	\$14,477	\$25,223
	Total	251 (11 missing)	2 (<1%)	\$0 - \$306,087	\$27,683	\$35,216	2,222	\$4,101	\$8,979	\$19,375	\$31,384	\$55,182
Case Dismissed After Confirmation	Secured	300 (1 missing)	27 (9%)	\$0 - \$84,619	\$10,387	\$11,575	688	\$403	\$2,956	\$7,644	\$13,515	\$22,028
	Priority	300 (1 missing)	177 (59%)	\$0 - \$83,522	\$1,513	\$5,789	334	\$0	\$0	\$0	\$1,077	\$3,846
	General	299 (2 missing)	23 (8%)	\$0 - \$14,461	\$7,645	\$13,182	762	\$137	\$1,605	\$5,072	\$8,550	\$16,202
	Total	298 (3 missing)	1 (<1%)	\$0 - \$154,328	\$21,338	\$21,946	1,271	\$5,643	\$8,977	\$14,373	\$25,780	\$43,644
Case Dismissed Before Confirmation	Secured	151 (3 missing)	50 (33%)	\$0 - \$376,577	\$13,228	\$35,596	2,896	\$0	\$0	\$3,673	\$13,812	\$26,584
	Priority	149 (5 missing)	113 (74%)	\$0 - \$115,406	\$2,880	\$11,725	960	\$0	\$0	\$0	\$0	\$5,860
	General	148 (6 missing)	46 (30%)	\$0 - \$131,676	\$7,590	\$19,069	1,567	\$0	\$0	\$1,180	\$6,138	\$16,000
	Total	146 (8 missing)	27 (18%)	\$0 - \$432,084	\$24,451	\$47,879	3,962	\$0	\$1,250	\$9,386	\$24,712	\$56,667
Case Converted After Confirmation	Secured	54 (0 missing)	3 (6%)	\$0 - \$45,296	\$12,821	\$12,361	1,682	\$687	\$4,053	\$8,598	\$19,177	\$34,483
	Priority	54 (0 missing)	24 (44%)	\$0 - \$14,635	\$1,555	\$2,997	407	\$0	\$0	\$127	\$1,924	\$5,221
	General	54 (0 missing)	0 (0%)	\$0 - \$12,286	\$11,431	\$17,954	2,443	\$1,452	\$4,600	\$7,170	\$11,457	\$18,795
	Total	54 (0 missing)	0 (0%)	\$0 - \$13,756	\$25,824	\$22,961	3,124	\$6,643	\$10,826	\$21,230	\$30,923	\$50,090
Case Converted Before Confirmation	Secured	23 (0 missing)	4 (17.4%)	\$0 - \$35,412	\$10,298	\$9,939	2,073	\$0	\$893	\$8,117	\$14,776	\$27,980
	Priority	23 (0 missing)	11 (48%)	\$0 - \$43,953	\$4,409	\$10,946	2,282	\$0	\$0	\$25	\$2,360	\$24,056
	General	23 (0 missing)	3 (13%)	\$0 - \$31,231	\$7,514	\$9,695	2,067	\$0	\$271	\$3,269	\$12,696	\$27,107
	Total	23 (0 missing)	2 (8%)	\$0 - \$69,817	\$21,959	\$18,779	4,003	\$371	\$8,252	\$18,204	\$31,274	\$56,461

Finally, we found no significant relation between home ownership – mortgage debt – and case outcome. The absence of significance exists not only as between cases dismissed or converted before confirmation, cases dismissed or converted after confirmation and completed cases,⁹⁵ but also as between all dismissed or converted cases and completed cases.⁹⁶

⁹⁴ Due to the non-normality of these distributions, assumption-free analyses are used (Kruskal-Wallis and median test).

⁹⁵ Chi-sq (4, N=794) = .664, p = .956.

⁹⁶ Chi-sq (1, N=794) = .004, p = .951.

4. Debtor and Household Debt-Income Ratios⁹⁷

Debtors who confirmed a plan (and who either obtained a discharge⁹⁸ or had their cases dismissed after confirmation⁹⁹) had significantly higher personal debt-income ratios than debtors whose cases were dismissed before confirmation.¹⁰⁰ Likewise, debtors who confirmed a plan (and either obtained a discharge¹⁰¹ or had their cases dismissed after confirmation¹⁰²) had significantly higher household debt-income ratios than debtors whose cases were dismissed before confirmation.¹⁰³ The difference between the median debtor debt-income ratio in completed cases and dismissed or converted cases was modest but significant. As shown in Table 27 below, the median debtor debt-income ratio in completed cases was 0.979, while in dismissed cases it was 0.907; and the median household debt-income ratio was 0.918 in completed cases, compared to 0.807 in dismissed cases. Post hoc statistical analyses did not indicate any significant differences in the debt-income ratios of debtors who completed their plans and of debtors whose cases were dismissed after confirmation.¹⁰⁴ In sum, the debtors in greatest need of debt relief were more likely to attain confirmation of a plan, while debtors with less need were less likely to do so. These data further support the inference that debtors who are most reluctant to file, and so have higher debt-income ratios by the time they file, are more likely to have the determination to complete a plan. As discussed above, most cases dismissed before confirmation are dismissed at the debtor's instance or because the debtor did not file a plan. Further, as discussed below,¹⁰⁵ debtors whose cases were dismissed before confirmation were more likely to file again. Together with these facts, the lower debt-income ratios of debtors whose cases were dismissed before confirmation suggests that some of these debtors may have used the system for reasons other than obtaining relief from their debts, perhaps simply to obtain temporary protection of the automatic stay.

⁹⁷ Debt was computed by totaling allowed claims in the case, excluding long-term mortgages that would remain to be paid after completion of the plan. (It may not always have been possible to identify long-term mortgage debts from the name of the creditor, so some may be included in the calculations.) Annual net income was computed by multiplying by 12 the net monthly incomes listed in the debtors' Schedules.

⁹⁸ Scheffe' test, $M = 1.35$ ($SEM = .073$).

⁹⁹ Scheffe' test, $M = 1.31$ ($SEM = .066$).

¹⁰⁰ Scheffe' test, $M = 1.04$ ($SEM = .097$).

¹⁰¹ Scheffe' test, $M = 1.11$ ($SEM = .059$).

¹⁰² Scheffe' test, $M = 1.12$ ($SEM = .053$).

¹⁰³ Scheffe' test, $M = 0.857$ ($SEM = .080$).

¹⁰⁴ Scheffe' tests at an alpha level of .05. Sullivan, Warren and Westbrook found that the non-mortgage debt-income ratios of Chapter 7 debtors were statistically indistinguishable from those of Chapter 13 debtors. AWFOD, *supra* note 55, at 238-39 & tables 13.2, 13.3; Teresa A. Sullivan, Elizabeth Warren & Jay L. Westbrook, *Laws, Models, and Real People: Choice of Chapter in Personal Bankruptcy*, 13 *Law and Soc. Inq.* 661 (1988). Thus, ability to repay does not distinguish debtors who choose to file under Chapter 13 from those who file under Chapter 7. The Chapter 13 Project findings here that debt-income ratios of Chapter 13 debtors who completed their plans were significantly higher than debtors who did not attain a discharge suggests an inverse relation between ability to repay and discharge in Chapter 13.

¹⁰⁵ *Infra* notes 110-111 and accompanying text and Table 29.

Table 27. Debtor and Household Debt-Annual Net Income Ratios and Case Outcome

			<i>N</i>	Range	Mean	<i>SD</i>	<i>SEM</i>	25%	Median	75%
Cases in which debtor obtained discharge	Petitioner	Annual Net Income - Debt Ratio	242 (20 missing)	0 - 12.73 ¹⁰⁶	1.345	1.076	0.07	0.576	0.979	1.786
	Household	Annual Net Income - Debt Ratio	243 (19 missing)	0 - 12.73 ¹⁰⁷	1.105	0.817	0.053	0.494	0.918	1.549
Dismissed Cases	Petitioner	Annual Net Income - Debt Ratio	427 (28 missing)	0 - 25.17 ¹⁰⁸	1.22	1.14	0.056	0.507	0.907	1.56
	Household	Annual Net Income - Debt Ratio	427 (28 missing)	0 - 25.17 ¹⁰⁹	1.04	0.972	0.047	0.438	0.807	1.29

B. Other Bankruptcy Filings and Case Outcome

In this section, we discuss the relation between other bankruptcy filings and case outcome. As discussed in Part IV.C. above, among the most remarkable findings of the Project is the very high numbers of repeat filers. At least one-half of the sample debtors had filed at least one other case: the available data show that 30% had filed one other case, 10% had filed two other cases; and 10% had filed three or more cases in addition to the sample case.¹¹⁰

Debtors who filed bankruptcy for the first time in the sample case were significantly more likely to complete their plans than debtors who had filed one or more previous cases. Conversely, sample debtors whose cases were dismissed were more likely to have filed previously.¹¹¹ As shown in Table 28 below, of the debtors who had not filed a previous case, 38% successfully completed their plans, compared to a completion rate of 22.5% for debtors who had filed one previous case. The completion

¹⁰⁶ All ratios > 6.8 ($M + 3 SD$) were excluded from subsequent descriptive and inferential procedures.

¹⁰⁷ All ratios > 5.1 ($M + 3 SD$) were excluded from subsequent descriptive and inferential procedures.

¹⁰⁸ All ratios > 6.98 ($M + 3 SD$) were excluded from subsequent descriptive and inferential procedures.

¹⁰⁹ All ratios > 6.15 ($M + 3 SD$) were excluded from subsequent descriptive and inferential procedures.

¹¹⁰ See supra notes 59-60 and accompanying text and Figure 3 and Table 11.

¹¹¹ **Previous Filings and Plan Completion/Chi-square Analysis**

Record of Previous Filing and Current Case Outcome				
		Outcome of Current Case		Total
		Discharge	No discharge	
Any Previous Filings?	No	213	347	560
	Yes	49	186	235
Total		262	533	795

$$\chi^2 (1, N = 795) = 22.12, p < .001$$

rate plummeted to 14% for debtors who had filed two or more cases before the sample case.¹¹²

Table 28. Previous Filings and Case Outcome, by Number of Previous Filings

# of Previous Filings	# of Debtors	% of All Debtors	Debtor Obtained Discharge	% of All Debtors
0	560	70.4%	213	38.0%
1	178	22.4%	40	22.5%
2 - 5	57	7.2%	8	14.0%
All cases	795	100.0%	262	33.0%

A chi-square analysis confirms the significant relation between outcome in the sample case and whether the debtor had any previous filings.¹¹³ As reflected in Table 29, only 19% of debtors who obtained a discharge in the sample case had a record of any previous filings. In other words, the sample case was the first case¹¹⁴ filed for 81% of the debtors who obtained a discharge in the sample case. By contrast, 30% of sample debtors whose current case was dismissed or converted after confirmation, and 44% of debtors whose current case was dismissed or converted before confirmation, had a record of at least one previous filing.

Table 29. Previous Filings and Case Outcome, by Case Outcome

	Any Previous Filings?		Total
Close Code for the Current Case	No	Yes	
discharged	213 (81%)	49 (19%)	262
dismissed or converted after confirmation	248 (70%)	107 (30%)	355
dismissed or converted before confirmation	99 (56%)	78 (44%)	177
Total	560	234	794

¹¹² Consistent with these findings, Professor Lown found a discharge rate of only 2.9% for Chapter 13 debtors filing for relief in Utah in 1997 when they had filed three other cases within two years or four or more cases within 20 years (defining such debtors as “serial filers” and “possible abusers”). She further found that males and females filing individually were nearly 50% less likely to be abusers than joint filers; that serial filers had higher secured debt but lower unsecured debt than other repeat filers; and that serial filers reported higher monthly income than the other debtors. Jean M. Lown, *Serial Bankruptcy: A 20-Year Study of Utah Filers*, Am. Bankr. Inst. J. (Feb. 2006), at 24-25, 68-69. Cf. Norberg, *supra* note 49, at 450 (study of 71 chapter 13 cases filed in the Southern District of Mississippi between 1992 and 1998; finding that debtors who had filed single prior case obtained a discharge at a greater rate than first-time filers).

¹¹³ $\chi^2(4, N = 794) = 45.99, p \leq .01$

¹¹⁴ This statement must be qualified by the likelihood that some of the sample debtors had filed a case earlier than recorded in the PACER system, or in another jurisdiction.

Finally, the data regarding filings after discharge in the sample case confirm the relation between multiple filings and case outcome. Chi-square analysis again reveals a significant relation between outcome in the sample case and whether the debtor had any subsequent filings.¹¹⁵ As shown in Table 30 below, 15% of debtors who obtained a discharge in the sample case had a record of any subsequent filings. In other words, 85% of the debtors who obtained a discharge in the sample case did not return to bankruptcy.¹¹⁶ In contrast, 41% of sample debtors whose current case was dismissed after confirmation, and 49% of debtors whose current case was dismissed before confirmation, filed at least one more case.

Table 30. Case Outcome and Subsequent Filings, by Case Outcome

Close Code for the Current Case	Any Subsequent Filings?		Total
	No	Yes	
discharged	223 (85%)	39 (15%)	262
dismissed after confirmation	177 (59%)	123 (41%)	300
dismissed before confirmation	78 (51%)	76 (49%)	154
converted after confirmation	41 (75%)	13 (25%)	54
converted before confirmation	12 (55%)	10 (45%)	22
	531	261	792

In sum, the statistical analyses reported in this section indicate that with each successive filing, the debtor is less likely to complete a plan, and more likely to have sought relief without the intent or ability to consummate a plan.

C. Chapter 13 Plan Provisions and Case Outcome

1. Plan Payments, and Debtor and Household Retained Income

Table 31 below reports on: (1) the debtors' monthly plan payments – the dollar amounts that the debtors proposed to devote to payment of creditor claims under their plans (excluding any payments to be made to creditors outside the plan); and (2) the debtors' "retained income" – the monthly income that the debtors, and their households, would retain after making their plan payments, to cover (a) current living expenses and (b) any payments to creditors outside the plan.¹¹⁷

¹¹⁵ $\chi^2(4, N = 792) = 69.73, p \leq .01$

¹¹⁶ Again, this statement must be qualified by the likelihood that some of these current debtors had filed a case after completion of the search of records in the PACER system, or in another jurisdiction.

¹¹⁷ In addition to reporting gross and net debtor and household income, see Schedule I, Chapter 13 debtors must submit a budget of current expenses, which includes all expenses, from rent or mortgage to utilities and insurance; and excludes plan payments, see Schedule J. See supra n. 81. "Retained income" was calculated by subtracting the proposed plan payments from net income as reported in Schedule I.

Debtors' proposed monthly payments to creditors under their plans ranged from minimal -- \$24 per month -- to very large -- \$3,060 per month --, with a mean and median of \$400 and \$310, respectively.

The mean and median amounts of income retained by individual debtors for payment of current expenses and any payments outside the plan were very modest, \$988 and \$875, respectively. For debtor households, the mean and median amounts were only \$1315 and \$1134. Even at the 75th percentile, the income retained for current living expenses was limited -- \$1295 for individual debtors and \$1709 for debtor households.

The data indicate that a number of debtors proposed plans that were patently not feasible, that is, current living expenses and proposed payments to creditors exceeded household net income. There were 294 cases in which debtor or household net income minus current expenses and proposed payments to creditors was less than \$0. Indeed, in 61 of these cases, net income minus current expenses was less than \$0, meaning that, according to the debtor's proposed budget, there was no income available to make payments to creditors. In a few cases (N=8), the debtors proposed to make payments to creditors that exceeded their net incomes. In other words, these debtors did not budget any income to cover current expenses after making their plan payments. Debtor retained income ranged as low as -\$1,818, and household retained income as low as -\$508.

Table 31. Proposed Plan Payments and Retained Income

	<i>N</i>	Range	Mean	<i>SD</i>	<i>SEM</i>	25%	Median	75%
Proposed monthly payments	732 (63 cases missing)	\$24 - \$3060 ¹¹⁸	\$400	\$294	11.0	\$182	\$310	\$535
Debtor retained income	729 (66 cases missing)	<-\$1818> - \$39600 ¹¹⁹	\$988	\$706	26.2	\$573	\$875	\$1,295
Household retained income	726 (69 cases missing)	<-\$508> - \$39600 ¹²⁰	\$1,315	\$808	30.1	\$759	\$1,134	\$1,709

As to be expected, there was no significant difference in case outcome based on the amounts that the debtors dedicated to repayment of creditor claims; standing alone, and without regard to net income, current expenses or retained income, the amount that debtors proposed to pay to pre-bankruptcy creditors was not significantly related to whether the debtor obtained a discharge.¹²¹

¹¹⁸ All payment amounts > \$1596 ($M + 3 SD$) were excluded from subsequent descriptives and inferential procedures.

¹¹⁹ All income amounts > \$6346 ($M + 3 SD$) were excluded from subsequent descriptives and inferential procedures.

¹²⁰ All income amounts > \$6822 ($M + 3 SD$) were excluded from subsequent descriptives and inferential procedures.

¹²¹ Completed cases ($n = 246$), $M = \$382$ ($SEM = 18.9$) versus dismissed cases ($n = 471$), $M = \$408$ ($SEM = 13.5$); $t(714) = 1.13$, $p = .258$ (*ns*).

Unexpectedly, the data also indicate no significant relationship between debtor retained income and case outcome. Individual debtors who retained more income to pay current living expenses¹²² were not more likely to complete their plans.¹²³ Indeed, 30% (91 of 294) of the debtors whose budgets indicated less income than living expenses plus payments to creditors actually completed their plans.¹²⁴ This is only slightly lower than the overall discharge rate of 33%. Only 15% (45 of 294) of these cases were dismissed or converted before confirmation; in 85% of the cases, the court confirmed the debtor's facially infeasible plan. As with the amount of proposed plan payments, then, the amount of debtor retained income, standing alone and without regard to the debtor's standard of living, did not bear significantly on a debtor's completion of a plan.

The data regarding debtors' infeasible budgets support a number of inferences. They confirm that some courts and Chapter 13 trustees do not always carefully screen plans for confirmation based on feasibility, at least where there is no creditor objection to confirmation. And given the plan completion rate for debtors whose plans were apparently not feasible, the lack of screening for feasibility appears warranted. The data also may mean that many debtors (and not just those whose plans are not feasible) understate income and overstate expenses. Alternatively, the data are reason to conclude that some debtors are in bankruptcy because they lack basic money management skills, such as constructing a budget, although the debtor's attorney might be expected to address the problem. Alternatively, or in addition, perhaps the data are not reliable as we have used them here; combining numbers from different sources – Schedules I and J, on the one hand, and the debtor's plan, on the other – may have produced inaccuracies.

Finally, while individual debtor retained income was not significantly related to case outcome, as reported in Table 32 below, household retained income *was* significantly related to case outcome.¹²⁵ These findings parallel the findings above regarding the relation between case outcome and debtor and household annual income.¹²⁶

¹²² By the same token, the debtor may not reserve more than a reasonable amount of income for payment of living expenses unless the plan will pay unsecured creditors in full, 11 U.S.C. § 1326(b)(1) (stating that all of a debtor's disposable income must be used to make payments under plan).

¹²³ Completed cases ($n = 252$), $M = \$1022$ ($SEM = 45.8$) versus dismissed cases ($n = 473$), $M = \$969$ ($SEM = 31.9$); $t(723) = 0.96$, $p = .339$ (*ns*).

¹²⁴ Even more surprising, two of the eight debtors whose budgets showed net income that was less than their plan payments alone completed their plan and obtained a discharge.

¹²⁵ Completed cases ($n = 249$), $M = \$1407$ ($SEM = 47.6$) versus dismissed cases ($n = 473$), $M = \$1266$ ($SEM = 38.3$); $t(720) = 2.30$, $p = .026$.

¹²⁶ See *supra* notes 82-86 and accompanying text and Table 25.

Table 32. Household Retained Income in Completed and Dismissed Cases

	N	Range	Mean	SD	SEM	25%	Median	75%
Discharged	249	-\$508 - \$3869	\$1,407	\$751	47.6	\$842	\$1,314	\$1,800
Dismissed After Confirmation	282	-\$250 - \$5037	\$1,149	\$718.93	42.8	\$687	\$977	\$1,505
Dismissed Before Confirmation	120	-\$157 - \$4377	\$1,452	\$919.34	83.9	\$767	\$1,243	\$2,001
Converted After Confirmation	53	\$150 - \$ 5804	\$1,497	\$1,090	149.7	\$747	\$1,184	\$1,936
Converted Before Confirmation	18	\$50 - \$2956	\$1,189	\$733.72	172.9	\$664	\$994	\$1,602
ALL CASES	726 (69 missing)	-\$508 - \$39600 ¹²⁷	\$1,315	\$808.03	30.1	\$758	\$1,134	\$1,709

2. Proposed Distributions to Unsecured Creditors

The Bankruptcy Code does not mandate a minimum amount or percentage distribution that a Chapter 13 plan must provide to unsecured creditors. Generally, as long as the plan meets the best interests requirement¹²⁸ and the debtor devotes all “disposable income” to the payment of unsecured claims,¹²⁹ the percentage distribution is irrelevant. In practice, however, there reportedly has been considerable variation among districts regarding the level of repayment that Chapter 13 debtors propose. An earlier survey suggested that many debtors proposed plans that pay more than required by the best interests and disposable income tests because their attorneys advised them to do so in order to comply with judges’ and trustees’ expectations and thereby maintain economical, routinized practices.¹³⁰

As reported in Table 33 below, the debtors in the sample cases proposed to pay from 0% to 100% of general unsecured claims. There were a large number of “missing cases” – 230 – in which there was no proposed distribution to unsecured creditors, including at least 94 cases in which the debtors proposed to make an unspecified, pro rata distribution to be determined at confirmation based on filed, allowed claims. As a result, the data reported here are not definitive. Excluding the “missing cases,” the large majority of debtors proposed to pay either 100% or less than 26% of their unsecured debts. The modal proposed distribution was 100%; 206 (31.2%) of the debtors who

¹²⁷ All income amounts > \$6822 ($M + 3 SD$) were excluded from subsequent descriptives and inferential procedures.

¹²⁸ 11 U.S.C. § 1325(a)(4).

¹²⁹ 11 U.S.C. § 1322(b)(2).

¹³⁰ See William C. Whitford, *The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer Protection, and Consumer Protection in Consumer Bankruptcy*, 68 Am. Bankr. L. J. 397, 405-06 (1994); Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 Am. Bankr. L. J. 501, 532 (1993).

proposed to pay a specified distribution to unsecured creditors proposed to pay 100 cents on the dollar. The large standard deviation – nearly 42% – reflects this wide variation in the proposed levels of repayment to general creditors.

Table 33. Proposed Distributions to Unsecured Creditors

N	Range	Mean	SD	SEM	25%	Median	75%
565	0% - 100%	48.76%	41.71%	1.75	10%	25%	100%

230 cases missing (including 94 cases in which plans provided for pro rata distribution to unsecured creditors); mode = 100% (206 cases / 36.5%)

As reported in Table 34 below, debtors in nearly 45% of the cases in which a distribution was reported proposed to pay no more than 25% of unsecured claims, while nearly 15% of the debtors, all in the District of Maryland and the Southern District of Georgia, proposed to pay an unspecified, pro rata distribution to general creditors.¹³¹ Relatively few debtors – less than 10% -- proposed to pay between 26% and 99%. Again, because of the large number of excluded cases, the figures reported here are necessarily tentative; the distributions in the excluded cases might have been anywhere between 0% and 100%.

Table 34. Proposed Levels of Repayment on Unsecured Claims

proposed %	N	% of cases
pro-rata	94	14.2%
0% - 9%	121	18.3%
10% - 15%	40	6.1%
16% - 25%	135	20.4%
26% - 50%	35	5.3%
51% - 99%	28	4.2%
100%	206	31.2%
TOTAL	659	100%

¹³¹ There were 136 “missing cases” in which a proposed distribution to unsecured creditors could not be ascertained. However, in many of these cases, the proposed distribution was not in fact “missing;” rather, the debtor proposed a pro-rata distribution, with the distribution to be designated after the bar date for filing of claims. The following table breaks out the number of missing and pro rata cases by district.

District (number of cases)	Number of pro rata distributions	Number of cases missing a proposed distribution
MD (100)	41	22
MDNC (100)	0	8
MDTN (100)	0	7
NDGA (165)	0	22
SDGA (100)	53	4
WDPA (100)	0	22
WDTN (130)	0	51

Analysis of the proposed distributions to unsecured creditors (excluding pro rata distribution cases) between the districts in the study indicates a significant relation between district and the percentage distribution proposed in debtors' plans.¹³² Debtors in the Middle District of North Carolina proposed to pay a significantly lower percentage of unsecured claims¹³³ than debtors in the other districts.¹³⁴

There was no statistically significant difference in the proposed percentage to be paid on unsecured debt by debtors in completed cases than by debtors in cases dismissed or converted either before or after confirmation. That is, the debtors who completed their plans and obtained a discharge did not propose to repay a significantly different percentage of general unsecured claims than debtors whose cases were dismissed or converted.¹³⁵ These findings are counterintuitive, and appear to contradict data collected in another survey.¹³⁶ Perhaps the absence of a significant relationship between the percentage of unsecured claims to be paid under a plan and plan completion is explained by the fact that the bankruptcy courts in the study, unlike some other courts, generally did not expect or impose a fixed or minimum percentage of general claims that must be paid. As a result, most of the debtors in the sample cases were not faced with having to devote income to paying unsecured claims without regard to how much income was available after a reasonable forecast of a household budget. Table 35 reports on the percentages of unsecured debt that debtors proposed to pay in completed, dismissed and converted cases

¹³² $F(6,558) = 3.91, p = .001, \eta^2 = .040$. Professor Whitford likewise found large variations among districts as to proposed distributions to unsecured creditors in data he obtained from the National Association of Chapter 13 Trustees in 1993. See Whitford, *supra* note 126, at 409-411 and Table 2 (in survey of Chapter 13 trustees, 71% of whom responded, the percentage of confirmed plans proposing to pay 100% of unsecured claims ranged from 6% to 52%; while the average proposed payout in less-than-100% plans ranged from 13% to 56%). Accord, Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 Am. Bankr. L. J. 501, 532 (study of practices in four districts, finding "floor" percentage of 100% in two, and 25-33% in one, and 70% in another).

¹³³ ($M = 31.7\%, SEM = 4.28$).

¹³⁴ Also, debtors in the District of Maryland proposed to pay a significantly higher percentage on unsecured claims ($M = 61.3\%, SEM = 6.75$), however, this observation is based on only 37 of 100 cases.

¹³⁵ Mann-Whitney $U = 34135, z = -1.128, p = .259$; Kruskal-Wallis $X^2(4, N=565)=6.872, p=.143$).

¹³⁶ See William C. Whitford, *The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer Protection*, and *Consumer Protection in Consumer Bankruptcy* 68 Am. Bankr. L. J. 397, 410-12 (1994). See also Jean Braucher, *An Empirical Study of Debtor Education in Bankruptcy: Impact on Chapter 13 Completion Not Shown*, 9 A.B.I. L. J. 557, 577-579 (2001).

Table 35. Case Outcome and Proposed Distributions to Unsecured Creditors

Completed Cases

N	Range	Mean	SD	SEM	25%	Median	75%
196	0% - 100%	44.31%	40.11%	2.85	10%	25%	100%

mode = 100% (60 cases/30.6%)

Dismissed Cases

N	Range	Mean	SD	SEM	25%	Median	75%
369	0% - 100%	51.13%	42.50%	2.21	10%	30%	100%

mode = 100% (146 cases/39.6%)

Converted Cases

N	Range	Mean	SD	SEM	25%	Median	75%
54	0% - 100%	45.14%	39.45%	5.39	14.5%	25%	100%

3. Proposed Plan Length

As shown in Table 36 below, the debtors proposed plans with lengths ranging between 0 and 60 months, with a mean and median length of 52.43 and 60 months, respectively.¹³⁷ At both the median and 75th percentile, the proposed length of debtor plans was 60 months. As further reported in Table 35, debtors in 60% of all cases in which a proposed plan length was reported proposed a 60-month plan, with nearly 70% proposing a plan of more than 48 months, and almost 80% proposing a plan of more than the statutory minimum of 36 months.

By law, a Chapter 13 plan may not exceed 36 months except for “cause.”¹³⁸ The maximum plan length is 60 months,¹³⁹ while the minimum is 36 months unless the debtor proposes to pay 100% of unsecured claims under a shorter plan.¹⁴⁰ Thus, as reported in Tables 36 and 37, it is notable that so many of the debtors proposed plans longer than 36 months, and that the median and modal length of the sample debtors’ plans were 60 months, or 24 months longer than the standard set out in the Bankruptcy Code. Indeed,

¹³⁷ The sample cases in which the debtor proposed a plan of less than 12 months would appear to be mistakes. There are only eight of these cases, however, and they do not materially alter the analyses of these data.

¹³⁸ 11 U.S.C. § 1322(d).

¹³⁹ 11 U.S.C. § 1322(b)(1).

¹⁴⁰ 11 U.S.C. § 1322(d).

the length of plans at the 25th percentile was 47 months, or nearly a year longer than the standard envisioned by the Bankruptcy Code.¹⁴¹

Table 36. Proposed Length of Debtor Plans

N	Range	Mean	SD	SEM	25%	Median	75%
587 (208 cases missing)	0-60 months	52.43	11.76 months	0.486	47 months	60 months	60 months

Plan length	N	%
0-12 months	8	1.4%
13-24 months	6	1.0%
25-36 months	108	18.4%
37-48 months	55	9.4%
49-60 months	410	69.8%
60 months	352	60.0%
Missing ¹⁴²	208	-----

We hypothesized that debtors who proposed to make plan payments over a longer period of time would be more likely to complete their plans. By stretching payments to creditors over a longer term, in particular payments to secured creditors enabling the debtor to keep collateral, a debtor would be better able to afford them.¹⁴³ The data do not, however, support this thesis. To the contrary, as reported in Table 37, debtors who completed their plans proposed significantly shorter plans¹⁴⁴ than debtors who did not.¹⁴⁵ Perhaps shorter plans reduce the risks of income and expense disruptions, or require correspondingly less discipline on the part of the debtor, and so are more likely to be completed.

¹⁴¹ There were eight cases in which the debtor proposed a plan between 0 and 12 months. The cases proposing a plan of no length, and others of very short duration, may be errors, but because there are so few of these cases, any such errors do not affect the overall analyses.

¹⁴² Most of the missing cases are from NDGA because indefinite plan lengths (e.g., 36-60 months) were specified.

¹⁴³ See Jean Braucher, An Empirical Study of Debtor Education in Bankruptcy: Impact on Chapter 13 Completion Not Shown, 9 A.B.I. L. J. 557, 574-75 (2001) (because the judges in all five districts covered by the study routinely confirmed five-year plans, it was not possible to determine the impact of the practice on plan completion).

¹⁴⁴ M = 51.31 months, SD = 11.25, SEM = .789.

¹⁴⁵ M = 53.45 months, SD = 11.07, SEM = .568, $t(409.6^*) = 2.196$, $p = .029$. (The degrees of freedom in this test are reduced due to the significant inequality of variance revealed by Levene's Test, $F = 6.234$, $p = .013$.) However, disposition was not significantly related to plan length, $F(2,515) = 2.39$, $p = .093$, $\eta^2 = .009$, when cases in which the debtor obtained a discharge were separately compared to cases that were dismissed after confirmation and to cases that were dismissed before confirmation.

Table 37. Proposed Length of Plan in Completed and Dismissed Cases

	N	Range	Mean	SD	SEM	25%	Median	75%	
Case Dismissed Before Confirmation	86	0 - 60	50.24	17.09	1.84	36	60	60	68 cases missing
Case Dismissed After Confirmation	231	12 - 60	53.67	10.24	0.673	48	60	60	70 cases missing
Case Converted Before Confirmation	18	36 - 60	56.06	8.36	1.97	58	60	60	5 cases missing
Case Converted After Confirmation	47	36 - 60	53.66	9.16	1.33	48	60	60	7 cases missing
Debtor Obtained Discharge	203	10 - 60	51.4	11.23	0.788	36	60	60	58 cases missing

There was no significant difference in the plan length proposed by individual filers¹⁴⁶ compared to the plan length proposed by joint filers.¹⁴⁷ As discussed elsewhere, joint filers completed their plans at a statistically greater rate than individual filers.¹⁴⁸

An analysis of the variance in proposed length of plans revealed statistically significant differences between the proposed length of the debtor plans in the Middle District of North Carolina and the other six districts.¹⁴⁹ As reported in Table 38 below, these post-hoc statistical comparisons revealed significantly shorter plans in the MDNC than in the other districts; 38% of the plans filed in that district had proposed plan lengths of 36 months. The post-hoc statistical comparisons also revealed significantly longer plans in both the MDTN and WDTN than the other districts. Fifty-seven percent (57%) of the plans in the MDTN and 85% of the plans in the WDTN had proposed plan lengths of 60 months.¹⁵⁰ By comparison, 60% of all plans across the seven districts included a proposed plan length of 60 months.

¹⁴⁶ M = 52.48 months, SD = 11.47, SEM = .587.

¹⁴⁷ M = 52.49 months, SD = 11.33, SEM = .972, t(516) = -.010, p = .992.

¹⁴⁸ Supra notes 77-78 and accompanying text and Table 23.

¹⁴⁹ Because only seven cases in NDGA included specific plan lengths, the data from this district were excluded from the analysis concerning district-level differences in proposed length of plans.

¹⁵⁰ $F(5,574) = 8.00, p \leq .001, \eta^2 = .065$. Levene's test for heterogeneity of variance was significant, $F(5,574) = 11.14, p \leq .001$; equality of the variance in proposed plan length should not be assumed across the districts. As a result, the post-hoc comparisons were completed using Dunnett's T3 test that does not assume equality of variances.

Table 38. Inter-District Comparisons of Proposed Length of Debtor Plans (in Months)

District	N	Mean	SD	SEM	Mode	10%	25%	Median	75%	90%
MD	92 (8 missing)	51.82	15.32	1.60	60	36	48	60	60	60
MDNC	92 (8 missing)	47.30	10.56	1.10	36	36	36	48	60	60
MDTN	98 (2 missing)	54.00	9.47	0.95	60	36	49	60	60	60
SDGA	92 (8 missing)	51.35	10.62	1.11	60	36	36	60	60	60
WDPA	87 (13 missing)	52.75	14.07	1.51	60	36	48	60	60	60
WDTN	119 (11 missing)	56.91	7.64	0.70	60	36	60	60	60	60
total	587 (208 missing ¹⁵¹)									

4. Time Spent in Chapter 13

Predictably, debtors who completed their plans spent significantly more time in Chapter 13 than debtors whose cases were dismissed or converted, either before or after confirmation; and debtors who achieved confirmation of a plan spent significantly more time in Chapter 13 than debtors whose cases were dismissed or converted before confirmation.¹⁵² Thus, as shown in Table 39 below, debtors who obtained a discharge spent on average more than twice as much time in Chapter 13 – 48.7 months – as debtors whose cases were dismissed or converted after confirmation – 20.4 and 21.5 months, respectively. Debtors whose cases were dismissed or converted before confirmation of a plan spent an average of only 6.2 and 3.1 months, respectively, in Chapter 13.

The very short time spent in Chapter 13 by debtors whose cases were converted before confirmation may reflect that most conversions were sought by the debtor and did not require a court hearing.¹⁵³ Likewise, the relatively short 25th percentile, median, and 75th percentiles (2.5, 3.4, 4.7 months), and longer mean (6.22 months) and high standard deviation (9.74), for cases dismissed before confirmation also suggest that most of these cases are voluntarily dismissed, without a hearing;¹⁵⁴ or dismissed for failure to timely file a plan, or schedules or other required papers; or dismissed for failure to commence

¹⁵¹ Most of the missing cases were from NDGA, because the case records indicate plans of indefinite length (e.g., “36-60 months”).

¹⁵² The effect of disposition on time in Chapter 13 is confirmed by ANOVA. Disposition was significantly related to time spent in Chapter 13, $F(4,765) = 273.02$, $p < .001$, $\eta^2 = .588$. Scheffe’ tests at an alpha level of .05 revealed three subsets---Discharged cases spent the greatest amount of time in Chapter 13, cases either converted or dismissed after confirmation spent a moderate amount of time in Chapter 13, and cases either converted or dismissed before confirmation spent the least amount of time in Chapter 13.

¹⁵³ See 11 U.S.C. § 1307(a) (permitting conversion by the debtor to Chapter 7 as a matter of right).

¹⁵⁴ See 11 U.S.C. § 1307(b) (permitting the debtor to dismiss as a matter of right, unless the case has previously been converted from another chapter).

making timely payments under the plan.¹⁵⁵ Such dismissals normally would occur more quickly than contested dismissals.

Table 39. Case Disposition and Time in Chapter 13 (in months)

	<i>N</i>	Range	Mean	<i>SD</i>	<i>SEM</i>	25%	Median	75%
Discharged	259 (3 missing)	3.30 - 78.83	48.66	15.65	0.972	39	50.7	61.5
Dismissed After Confirmation	290 (11 missing)	2.37 - 69.6	20.41	14.54	0.854	10.5	16.4	25.7
Dismissed Before Confirmation	154 (0 missing)	0.4 - 59.6	6.22	9.74	0.785	2.5	3.4	4.7
Converted After Confirmation	47 (7 missing)	4.0 - 61.7	21.5	15.48	2.21	8.6	18	30.7
Converted Before Confirmation	20 (3 missing)	0.7 - 10.00	3.12	1.95	0.435	2	2.75	3.4
ALL CASES	770 (25 missing)	0.4 - 78.8	26.7	21.72	0.783	6.7	20.3	44.2

Finally, according to Table 39 above, almost a quarter of debtors who achieved a Chapter 13 discharge completed their plans within 39 months, and 50% completed their plans within about 51 months. Fifty percent (50%) of debtors who attained a discharge spent more than 51 months in Chapter 13. As further reported in Table 40 below, an analysis of the difference between actual time spent in Chapter 13 and proposed plan length by debtors who completed their plans indicates that 25% of these debtors spent at least five month less time in Chapter 13 than originally proposed, while 25% spent more than six months more than anticipated. On average, debtors who attained a discharge spent almost two months more in Chapter 13 than their plans proposed. These data suggest that policies permitting plan extensions would tend to promote plan completion. Finally, and predictably, there was a very large disparity between proposed plan length and actual time spent in Chapter 13 by debtors who did not complete their plans.

Table 40. Case Disposition and Disparity Between Proposed Plan Length and Actual Time in Chapter 13 (in months)

	<i>N</i>	Range	Mean	<i>SD</i>	<i>SEM</i>	25%	Median	75%
Discharged	201 (61 missing)	-54.6* – 30.5	-1.04	14.74	1.04	-5.02	1.97	6.48
All Cases	559 (236 missing)	-59.6– 30.5	-23.8	23.94	1.01	-46.03	-25.33	-0.17

D. Other Variables

Countless variables bear on case outcomes in Chapter 13 that we do not consider in this paper. Other, more targeted studies, have examined several other factors. In her study of the impact of debtor education on case outcomes in Chapter 13, Professor Jean Braucher found that debtor education did not have a positive effect on case outcome, while routine use of wage orders and amount of attorney fees had a positive impact on

¹⁵⁵ See 11 U.S.C. § 1307(c), (3), (9), (10).

case completion.¹⁵⁶ Another study, by Michael Catrett, found that Chapter 13 cases filed on or the day before “foreclosure day” in the Houston Division of the Southern District of Texas, were less likely to result in discharge than cases filed at other times of the month.¹⁵⁷ Gordon Bermant has examined the effect of making ongoing mortgage payments through the plan on plan completion, hypothesizing that the practice promotes plan completion but finding the data inconclusive.¹⁵⁸

VII. DEBT COLLECTION IN CHAPTER 13

This Part considers the amounts and types of claims paid by debtors in the Chapter 13 system. First, we report and assess data collected by the Executive Office for United States Trustees (EOUST) and the Administrative Office of the Courts (AO) (for trustees in North Carolina and Alabama, which are not part of the United States Trustee system) regarding disbursements by standing Chapter 13 trustees across the country during 1994-2003. Next, we review and compare the national data with EOUST, AO and Project data on disbursements by the Chapter 13 trustees in the seven districts covered by the Project. This comparison confirms that distributions to creditors in the sample districts are very similar to the national averages. Finally, this Part reports on the repayment of claims by the debtors in the sample cases.

In summary, both the EOUST and AO data on trustee disbursements nationally and the Project data on the sample cases reveal that secured creditors are by far the principal beneficiaries of the Chapter 13 system, and that disbursements to priority and general unsecured creditors are modest. Naturally, creditor repayment is significantly related to whether the debtor obtained confirmation of a plan, whether the debtor completed the plan, and the length of time the debtor spent in Chapter 13. Even so, debtors who completed their plans repaid a median amount of just \$630 per year in general unsecured claims. In all cases, the median disbursement to unsecured creditors was \$0, and in cases with a confirmed plan, the median was \$14. Chapter 13 costs deducted from debtors’ plan payments comprise 15-18% of total disbursements.

¹⁵⁶ Jean Braucher, *An Empirical Study of Debtor Education in Bankruptcy: Impact on Chapter 13 Completion Not Shown*, 9 A.B.I. L. J. 557, 577-579 (2001).

¹⁵⁷ Michael Catrett, *Bankruptcy by the Numbers, A Month of Debtors, “Foreclosure Tuesday” and the Rush to Chapter 13 in the Houston Division of the Southern District of Texas*, ABI J. (May 2005), p. 24.

¹⁵⁸ See Gordon Bermant, *Making Post-Petition Mortgage Payments Through the Plan: A Survey of Standing Chapter 13 Trustees, A First Draft Report of Survey Results to the Endowment Committee of the National Conference of Bankruptcy Judges* (July 2004) (manuscript on file with the author) (reporting on survey of standing Chapter 13 trustees regarding practices respecting payment of mortgages under the plan); see also Gordon Bermant and Ed Flynn, *Bankruptcy by the Numbers, Chapter 13 Disbursements in Fiscal Year 2001: Continued Growth and a New Finding*, ABI J. (Feb. 2003), pp. 24, 52 (questioning whether the practice enhances plan completion); Gordon Bermant and Ed Flynn, *Bankruptcy by the Numbers, Chapter 13: Who Pays the Mortgage?*, ABI J. (June 2001), p. 20 (reporting that “in 1999, one-third (58/175) of the standing trustees were making ongoing mortgage payments for at least some of their cases”).

A. Chapter 13 Trustee Disbursements -- the National Data

1. Disbursements to Creditors, and Chapter 13 Costs

Table 41 below details disbursements to creditors by the standing Chapter 13 trustees in the United States Trustee Program (USTP) for each of the past ten fiscal years, 1994-2003.¹⁵⁹ Total disbursements to creditors have increased substantially and steadily over these ten years, from \$1,654,139,757 in 1994 to \$3,578,582,446 in 2003. Adjusted for inflation,¹⁶⁰ this is a 74% increase in disbursements, which primarily reflects the 96.1% increase in the numbers of Chapter 13 filings over the same period.¹⁶¹ Adjusted for inflation, trustee disbursements to secured and unsecured creditors increased by nearly 95% and 69%, respectively, between 1994 and 2003; and trustee disbursements to priority claimants decreased over the ten years, by almost 10%.

Chapter 13 costs (debtor attorney fees, §503 and noticing expenses, and, most significantly, trustee expenses and compensation¹⁶²) in the USTP have increased at a

¹⁵⁹ The U.S. Trustee Program covers all Chapter 13 trusteeships in the United States except those in North Carolina and Alabama. Over the past six years, Ed Flynn, in the Executive Office for U.S. Trustees, and Gordon Bermant, formerly of the EOUST and now a private consultant, have written a regular column ("Bankruptcy by the Numbers") in the American Bankruptcy Institute Journal on data collected by the EOUST from Chapter 7 and Chapter 13 cases. In regard to Chapter 13, their columns include: Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Chapter 13 Disbursements in Fiscal Year 2001: Continued Growth and a New Finding, ABI J. (Feb. 2003), p. 24; Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, A Tale of Two Chapters, Part I (July/Aug. 2002), p. 20 (reporting on Chapter 13 filings relative to population in 2001 and total paid out in Chapter 13 cases compared to Chapter 7 cases in 2001); Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Chapter 13 Disbursements in Fiscal Year 2000: Steady Growth, ABI J. (Nov. 2001), p. 20; Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Chapter 13: Who Pays the Mortgage?, ABI J. (June 2001), p. 20; Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Sources of Variability in Chapter 13 Performance, ABI J. (Apr. 2001), p. 20; Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Stability and Change in Chapter 13 Activity, 1990-1999, ABI J. (Nov. 2000), p. 20; Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Measuring Projected Performance in Chapter 13: Comparisons Across the States, ABI J. (July/Aug. 2000), p. 22 (reporting on Chapter 13 filings, trustee distributions to creditors, and per case distributions to creditors, broken down by high five, middle six and low five states in FY 1998); Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Distributions and Expenses in Chapter 13, ABI J. (May 2000), p. 22 (reporting on trustee distributions to creditors and trustee expenses in FY 1998); Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, A Small New Window on Outcomes in Chapter 13, ABI J. (Mar. 2000), p. 22 (commenting on Norberg study of Chapter 13 cases in the Southern District of Mississippi); Gordon Bermant, Bankruptcy by the Numbers, Exploring the Demographics of Consumer Chapter Choice, ABI J. (May 1999), p. 20 (considering chapter choice by debtors in different jurisdictions based on bankruptcy filings per 1000 households in the jurisdiction).

¹⁶⁰ Adjustments for inflation in this section and elsewhere in the article were made using the Consumer Price Index inflation calculator located at <http://www.bls.gov/>.

¹⁶¹ See *infra* note 166. As suggested by the fact that the percentage increase in disbursements is less than the percentage increase in filings indicates, average per case disbursements are somewhat lower in 2003 than in 1994. Average per case disbursements are discussed more fully *infra*, notes 166-169 and accompanying text and Table 42. It should also be noted that the amounts of mortgage debt paid by debtors outside instead of inside their plans have increased over this period, perhaps explaining the balance of the increases in disbursements to creditors over the period. See *infra* note 160.

¹⁶² These are the only costs reported in the EOUST Audited Annual Reports. They are costs deducted from debtor plan payments, therefore, they do not include attorneys' fees paid in advance of the petition.

somewhat greater rate than disbursements to creditors, from \$285,531,896 in 1996 to \$594,675,723 in 2003. Adjusted for inflation, this represents a nearly 78% increase over the eight-year period, compared to a 68% increase in total disbursements to creditors (again adjusted for inflation) for the same eight year period. (The eight-year period 1996-2003 is used here for Chapter 13 costs, instead of the 10-year period 1994-2003, because the EOUST Audited Annual Reports for 1994-1995 do not include figures for debtor attorney fees, §503(b) awards and noticing fees, as do the reports for 1996-2003.¹⁶³)

Secured creditors are by far the primary creditor beneficiaries of the Chapter 13 system. The percentage of total creditor disbursements by trustees to secured creditors ranged between 60% and 69% from 1994 and 2003,¹⁶⁴ with an average percentage of nearly 65%. As large as these percentages appear, they substantially understate the proportion of all payments by Chapter 13 debtors to secured creditors. The figures do not include debtors' payments made directly to secured creditors, in particular mortgage creditors; in many districts, some or most debtors pay ongoing mortgage and other secured claims outside the plan. Thus, the percentage of all debtor payments to secured creditors is significantly greater, and the percentage of debtor payments to priority and

Nor do they include case filing fees, creditor attorney fees, or judicial bankruptcy court and clerk operations, which are hereafter referred to as "other Chapter 13 costs." Figures for debtor attorney fees, § 503(b) awards and noticing costs are not available for 1994 and 1995. The following table shows the breakdown of Chapter 13 costs for FY 1994-2003.

Chapter 13 Costs/National, FY 1994-2003

Source: U.S. Trustee Program Chapter 13 Reference Materials, Chapter 13 Statistics, FY-1994-2003 Chapter 13 Standing Trustee Audited Annual Reports,
<http://www.usdoj.gov/ust/library/chapter13/ch13lib.htm> (visited Dec. 14, 2004)

FY	Debtor Attorney Fees, 503(b) awards, Noticing	Trustee Expenses and Compensation	Total Chapter 13 Costs
1994	Not available	114,868,685	
1995	Not available	117,757,752	
1996	160,266,397	125,265,499	285,531,896
1997	211,524,484	137,929,713	349,454,197
1998	248,734,366	153,947,829	402,682,195
1999	254,506,127	171,789,891	426,296,018
2000	255,673,005	188,017,901	443,690,906
2001	276,242,675	203,732,646	479,975,321
2002	311,008,507	220,778,288	531,786,795
2003	352,838,946	241,836,777	594,675,723

¹⁶³ See supra note 161 and accompanying text.

¹⁶⁴ Accord, Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Chapter 13 Disbursements in Fiscal Year 2001: Continued Growth and a New Finding, ABI J. (Feb. 2003), p. 24 (observing that percentages of disbursements paid to secured, priority and general unsecured creditors was relatively constant over time); Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Chapter 13 Disbursements in Fiscal Year 2000: Steady Growth, ABI J. (Nov. 2001), p. 20 (same, regarding 2000); Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Stability and Change in Chapter 13 Activity, 1990-1999 ABI J. (Nov. 2000), pp. 20-21 (same, regarding period 1990-1999). See also Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Distributions and Expenses in Chapter 13, ABI J. (May 2000), p. 22 (observing large geographical differences in the percentages of distributions to various creditor categories).

general unsecured creditors is correspondingly lesser, than shown in Table 41, which includes only disbursements made by the Chapter 13 trustees.

No more than 30% of trustee disbursements are to general unsecured creditors. Between 1994 and 2003, the ratio of general unsecured creditor disbursements to total trustee disbursements ranged from 21% to 30%. (Again, these figures overstate the proportion of payments to priority and general unsecured creditors; as discussed above, substantial amounts of secured debt were paid directly by debtors.) The ratio of priority unsecured creditor disbursements to total trustee disbursements ranged from 7% to 14%.

Chapter 13 costs¹⁶⁵ are a sizable portion of total trustee distributions to creditors, and equal a large percentage of disbursements to general unsecured creditors. The ratio of Chapter 13 costs to total trustee disbursements was quite stable over the years 1994 to 2003, ranging from 15% to 18%. The ratio of Chapter 13 costs to total trustee disbursements to general unsecured creditors ranged between 59% and 78%, with an average percentage of more than 66%.

¹⁶⁵ See supra note 160 and accompanying text regarding costs that are, and are not, included in “Chapter 13 costs.”

Table 41. Chapter 13 Trustee Disbursements/National, FY 1994-2003¹⁶⁶

FY	Disbursements to Secured Creditors	Disbursements to Priority Creditors	Disbursements to Unsecured Creditors	Total Trustee Disbursements to Creditors	Chapter 13 Costs
1994	1,019,284,401	223,656,042	411,199,314	1,654,139,757	n/a
% Total Trustee Disbursements	62%	14%	25%		n/a
% Disbursements to Uns.Creds.					n/a
1995	1,046,389,221	195,323,850	428,119,256	1,669,832,327	n/a
% Total Trustee Disbursements	63%	12%	26%		n/a
% Disbursements to Uns.Creds.					n/a
1996	1,156,100,247	219,725,022	439,756,339	1,815,581,608	285,531,896
% Total Trustee Disbursements	64%	12%	24%		16%
% Disbursements to Uns.Creds.					65%
1997	1,382,780,488	244,042,513	465,842,310	2,092,665,311	349,454,197
% Total Trustee Disbursements	66%	12%	22%		17%
% Disbursements to Uns.Creds.					75%
1998	1,700,257,785	275,462,767	536,423,390	2,512,143,942	402,682,195
% Total Trustee Disbursements	68%	11%	21%		16%
% Disbursements to Uns.Creds.					75%
1999	1,631,712,848	297,617,217	647,918,439	2,577,248,501	426,296,018
% Total Trustee Disbursements	63%	12%	25%		17%
% Disbursements to Uns.Creds.					66%
2000	1,955,834,912	290,092,433	753,959,479	2,999,886,824	443,690,906
% Total Trustee Disbursements	65%	10%	25%		15%
% Disbursements to Uns.Creds.					59%
2001	1,651,694,504	272,376,337	815,847,426	2,739,918,267	479,975,321
% Total Trustee Disbursements	60%	10%	30%		18%
% Disbursements to Uns.Creds.					59%
2002	2,212,112,114	256,280,549	841,370,358	3,309,763,021	531,786,795
% Total Trustee Disbursements	67%	8%	25%		16%
% Disbursements to Uns.Creds.					63%
2003	2,465,442,929	251,213,403	861,926,114	3,578,582,446	594,675,723
% Total Trustee Disbursements	69%	7%	24%		17%
% Disbursements to Uns.Creds.					69%
% increase (adjusted for inflation), 1994-2003	95%	-10%	69%	74%	78% ¹⁶⁷

2. Disbursements per Case

No one maintains statistics on average per case disbursements in Chapter 13 cases, but a reasonably accurate estimate can be computed by dividing the disbursements in a given year by the average of all Chapter 13 filings for that and the previous four years.¹⁶⁸ As shown in Table 42 below, in absolute dollars, average Chapter 13 trustee

¹⁶⁶ U.S. Trustee Program Chapter 13 Reference Materials, Chapter 13 Statistics, FY-1994-2003 Chapter 13 Standing Trustee Audited Annual Reports, <http://www.usdoj.gov/ust/library/chapter13/ch13lib.htm> (last visited Dec. 14, 2004).

¹⁶⁷ This is the percent increase for 1996-2003. Figures for “Chapter 13 costs” in 1994 and 1995 are not available, see *supra* note 135.

¹⁶⁸ See Gordon Berman and Ed Flynn, Estimating the Yield to Creditors in Chapter 13 Cases, <http://www.usdoj.gov/ust/press/articles/abi102000a.htm>. (discussing methodology for computing per case yields in Chapter 13 cases, and deriving formula: mean yield per case = yield FY00/Mean filings CY00-CY-04).

Chapter 13 filings in all districts for the years 1990-2003 are as follows:

disbursements to creditors per case in the USTP have increased, albeit somewhat erratically, over the ten years 1994-2003.¹⁶⁹ When adjusted for inflation, however, average total trustee per case distributions to all creditors declined slightly, by 1.4%, between 1994 and 2003. Per case payments to priority and unsecured creditors fell by 48.8% and 0.4%, respectively. On the other hand trustee distributions to secured creditors were 10.2% higher in 2003 than in 1994.¹⁷⁰

As reported in Table 42, the average amount disbursed by standing Chapter 13 trustees in the USTP to secured creditors in 2003 was \$6457 per case, nearly three times the average amount disbursed to unsecured creditors, which was \$2257 per case.

Chapter 13 Filings, 1994-2003

Year	Chapter 13 Filings – All Districts	Chapter 13 Filings – USTP Districts
1990	208,666	-14,045 [AL], -7,160 [NC] 187,461
1991	251,883	-15,995 [AL], -9,771 [NC] 226,117
1992	254,138	-15,411 [AL], -8,320 [NC] 230,407
1993	241,464	-14,816 [AL], -7,535 [NC] 219,113
1994	240,639	217,603
1995	276,225	248,720
1996	343,987	310,108
1997	391,832	355,903
1998	389,363	354,497
1999	377,640	344,660
2000	378,366	343,238
2001	419,660	380,568
2002	454,293	413,910
2003	467,908	426,738

¹⁶⁹ Gordon Bermant and Ed Flynn have reported calculations on average disbursements per case for some of these years. Their calculations are almost identical to those reported in Table 32. See Gordon Bermant and Ed Flynn, *Bankruptcy by the Numbers, Chapter 13 Disbursements in Fiscal Year 2000: Steady Growth*, ABI J. (Nov. 2001), p. 20, Table 5 (reporting on total disbursements per case, disbursements to creditors and disbursements to unsecured creditors in 1998, 1999 and 2000); Gordon Bermant and Ed Flynn, *Bankruptcy by the Numbers, Estimating Means-tested Chapter 13 Case Yields from Current Chapter 13 Performance* (June 2000), p. 20 (reporting average disbursements per case to unsecured creditors in 1998).

¹⁷⁰ Adjusted for inflation, using the Consumer Price Index, average disbursements to creditors in 1994, expressed in 2003 dollars, were: \$5855 to secured creditors, \$1285 to priority creditors, \$2361 to general unsecured creditors, and \$9501 to all creditors combined. By comparison, average disbursements to creditors in 2003 (expressed in 2003 dollars) were: \$6457 to secured creditors, \$658 to priority creditors, \$2257 to general unsecured creditors, and \$9372 to all creditors combined. Adjusted for inflation, again using the Consumer Price Index, average Chapter 13 costs in 1996, expressed in 2003 dollars, were \$1366. By comparison, average per cases costs in 2003 were \$1557. Adjustments for inflation were made using the Inflation Calculator located at <http://www.bls.gov/>.

Table 42. Average Chapter 13 Disbursements per Case (USTP), 1994-2003¹⁷¹

FY	Disbursements to Secured Creditors	Disbursements to Priority Creditors	Disbursements to Unsecured Creditors	Total Trustee Disbursements to Creditors	Costs ¹⁷²	Mean Filings, CY0-CY-4
1994	1,019,284,401	223,656,042	411,199,314	1,654,139,757	n/a	216,140
Avg. per case	4716	1035	1902	7653		
1995	1,046,389,221	195,323,850	428,119,256	1,669,832,327	n/a	228,392
Avg. per case.	4582	855	1874	7311		
1996	1,156,100,247	219,725,022	439,756,339	1,815,581,608	285,531,896	245,190
Avg. per case.	4715	896	1794	7405	1165	
1997	1,382,780,488	244,042,513	465,842,310	2,092,665,311	349,454,197	270,289
Avg. per case	5116	903	1723	7742	1293	
1998	1,700,257,785	275,462,767	536,423,390	2,512,143,942	402,682,195	297,366
Avg. per case	5718	926	1803	8448	1354	
1999	1,631,712,848	297,617,217	647,918,439	2,577,248,501	426,296,018	322,778
Avg. per case.	5055	922	2007	7985	1320	
2000	1,955,834,912	290,092,433	753,959,479	2,999,886,824	443,690,906	341,681
Avg. per case.	5724	849	2207	8780	1299	
2001	1,651,694,504	272,376,337	815,847,426	2,739,918,267	479,975,321	355,773
Avg. per case	4643	766	2293	7701	1349	
2002	2,212,112,114	256,280,549	841,370,358	3,309,763,021	531,786,795	367,375
Avg. per case	6021	698	2290	9009	1448	
2003	2,465,442,929	251,213,403	861,926,114	3,578,582,446	594,675,723	381,823
Avg. per case.	6457	658	2257	9372	1557	

Several factors likely have contributed to the increase in the average trustee distributions to secured creditors, and to the decreases in the average trustee distributions to general unsecured creditors. Perhaps most importantly, it appears that over the past 12 years, more Chapter 13 trustees are administering mortgage payments, and fewer debtors are making these payments directly to the mortgagee. In addition, the Supreme Court's decision in Associates Commercial Corporation v. Rash¹⁷³ may have had the effect of shifting some of debtors' disposable income from payment of unsecured claims to payment of secured claims. The Court in Rash held that the proper valuation standard for collateral that the debtor proposes to retain in Chapter 13 is replacement value, not liquidation value. As a result of the decision, in courts that had previously valued collateral at something less than "replacement value," the amount of secured claims, which must be paid in full, has increased.¹⁷⁴ The 1998 amendments permitting Chapter

¹⁷¹ Creditor disbursement figures are derived from U.S. Trustee Program Chapter 13 Reference Materials, Chapter 13 Statistics, FY-1994-2003 Chapter 13 Standing Trustee Audited Annual Reports, <http://www.usdoj.gov/ust/library/chapter13/ch13lib.htm> (last visited Dec. 14, 2004). Chapter 13 filing statistics are published at . . . Filings in North Carolina and Alabama are excluded because the EOUST Audited Annual Reports cover only the USTP trusteeships.

¹⁷² See supra note 164 regarding costs that are, and are not, included in "Chapter 13 costs."

¹⁷³ 520 U.S. 953 (1997).

¹⁷⁴ See Norberg, supra note 46, at 439-440 (commenting on future trends in repaying of unsecured debt in Chapter 13 cases). Also, in 1998, Congress passed the Religious Freedom and Charitable Donation Protection Act, P.L. 105-183, 112 Stat. 517 (1998), which permits Chapter 13 debtors to donate up to 15% of their gross incomes to charity. Again, this change might have had the effect of decreasing distributions to unsecured creditors. See Norberg, supra note 46, at 440.

13 debtors to make charitable and religious contributions also may have somewhat decreased distributions to unsecured creditors.¹⁷⁵

B. Chapter 13 Trustee Disbursements in the Seven Sample Districts/EOUST and AO Data

Tables 43 and 44 indicate that the seven sample districts closely resemble the nation with respect to (a) the ratio of trustee disbursements to secured, priority and unsecured creditors to total trustee disbursements, (b) the increases in disbursements over the period 1994-2003, and (c) the ratio of Chapter 13 costs to total creditor and to unsecured creditor disbursements. As with disbursements to creditors in all districts,¹⁷⁶ disbursements to creditors in the seven sample districts primarily benefited secured creditors. In 1994, just over 60% of Chapter 13 trustee disbursements went to secured creditors in the seven sample districts, compared to 62% in all USTP districts. In 2003, 74.4% of trustee disbursements went to secured creditors in the sample districts, compared to 69% in all USTP districts. As is the case for all USTP districts,¹⁷⁷ these data for the seven sample districts substantially understate payments to secured creditors because they do not include debtor payments outside the plan. In 1994, debtors in three of the seven districts in the Project – the Northern District of Georgia, Southern District of Georgia, and District of Maryland – typically paid ongoing mortgage payments (but not mortgage arrearages) outside the plan, and currently debtors in Maryland generally do not make ongoing mortgage payments through their plans.¹⁷⁸

Total trustee disbursements to creditors in the seven sample districts increased from \$319,984,097 in 1994 to \$727,390,828 in 2003. Adjusted for inflation, this is an 83% increase, compared to 74% nationally. Disbursements to unsecured creditors rose from \$66,798,014 to 133,855,268. Adjusted for inflation, this is a 76% increase, compared to 69% nationally.

In FY2003, in six of the seven sample districts,¹⁷⁹ Chapter 13 costs in the USTP were \$83,483,018, equal to 13.8% of total payments to creditors and 71.8% of payments to general unsecured creditors. As discussed above, nationally, in 2003, total Chapter 13 costs comprised 16.6% of all disbursements and equaled 70% of payments to general unsecured creditors.

¹⁷⁵ 11 U.S.C. § 1325(b)(2)(A)(ii) provides that “disposable income” that must be committed to a plan does not include “amounts reasonably necessary to be expended for charitable contributions . . . in an amount not to exceed 15 percent of gross income of the debtor”

¹⁷⁶ See supra note 166 and accompanying text and Table 41.

¹⁷⁷ See id.

¹⁷⁸ It also appears that in 1994 in the Western District of Tennessee, disbursements to some secured creditors were reported as disbursements to priority claimants.

¹⁷⁹ The Middle District of North Carolina is excluded from the calculations here because Chapter 13 costs were not available for two of the three trustees in that district.

Table 43. Chapter 13 Trustee Disbursements/Sample Districts, FY 1994¹⁸⁰

District	Secured	Priority	Unsecured	Total Trustee Disbursements to Creditors
WDPA [1 trustee]	\$10,403,822	\$1,440,902	\$1,938,179	\$13,782,903
%	75.5	10.4	14.1	100.0
DMD [2 trustees]	\$10,489,863	\$3,365,856	\$7,973,861	\$21,829,580
%	48.1	15.4	36.5	100.0
WDTN [3 trustees]	\$35,548,973	\$44,387,550	\$12,636,438	\$92,572,961
%	38.4	47.9	13.7	100.00
MDTN [2 trustees]	\$48,270,109	\$4,497,699	\$16,839,363	\$69,607,171
%	69.3	6.5	24.2	100.0
SDGA [2 trustees]	\$22,199,605	\$1,428,262	\$7,978,796	\$31,606,663
%	70.2	4.5	25.2	100.0
NDGA [2 trustees]	\$66,064,393	\$5,089,049	\$19,431,377	\$90,524,819
%	73.0	5.6	21.5	100.0
MDNC [3 trustees]	\$38,003,785	\$2,243,266	\$10,119,396	\$50,366,447
%	75.5	4.5	20.1	100.0
Total [7 districts/15 trustees]	\$192,976,765	\$60,209,318	\$66,798,014	\$319,984,097
%	60.3	18.8	20.9	100.0

¹⁸⁰ U.S. Trustee Program Chapter 13 Reference Materials, Chapter 13 Statistics, FY1994 Chapter 13 Standing Trustee Audited Annual Report, <http://www.usdoj.gov/ust/library/chapter13/ch13lib.htm> (visited Dec. 14, 2004). The Audited Annual Report for FY 1994 itemizes trustee expenses and compensation, but not debtor attorney fees, § 503(b) awards, and noticing costs. Thus, “Chapter 13 costs” are not included in this Table because they are not comparable to these costs as reported in the other tables in this Part.

Table 44. Chapter 13 Trustee Disbursements/Sample Districts, FY 2003¹⁸¹

District	Disbursements to Secured Creditors	Disbursements to Priority Creditors	Disbursements to Unsecured Creditors	Total Trustee Disbursements to Creditors	Chapter 13 Costs ¹⁸²
WDPA [1 trustee]	\$33,531,809	\$2,524,020	\$3,319,329	\$39,375,158	3,405,299
% Total Trustee Disbursements	85.2	6.4	8.4	100.0	8.6
% Disbursements to Uns.Creds.					102.5
DMD [4 trustees]	\$35,757,547	\$8,395,187	\$27,061,911	\$71,214,645	9,791,328
% Total Trustee Disbursements	50.2	11.8	38.0	100.0	13.7
% Disbursements to Uns.Creds.					36.2
WDTN [3 trustees]	\$149,504,123	\$8,435,127	\$25,305,756	\$183,245,012	18,676,913
% Total Trustee Disbursements	81.6	4.6	13.8	100.0	10.2
% Disbursements to Uns.Creds.					73.8
MDTN [1 trustee]	\$77,258,620	\$5,594,587	\$17,798,404	\$100,651,611	8,264,390
% Total Trustee Disbursements	76.8	5.5	17.7	100.0	8.2
% Disbursements to Uns.Creds.					46.4
SDGA [2 trustees]	\$53,357,982	\$2,919,875	\$15,283,964	\$71,561,821	14,292,572
% Total Trustee Disbursements	74.6	4.1	21.4	100.0	20.0
% Disbursements to Uns.Creds.					93.5
NDGA [2 trustees]	\$99,603,676	\$10,009,867	\$27,569,736	\$137,183,279	29,052,516
% Total Trustee Disbursements	72.6	7.3	20.1	100.0	21.2
% Disbursements to Uns.Creds.					105.4
Total [6 Districts/13 trustees – excl. MDNC*]			116,339,100	603,231,526	83,483,018
% Total Trustee Disbursements					13.8
% Disbursements to Uns.Creds.					71.8
MDNC [3 trustees]	\$103,825,645	\$2,817,500	\$17,516,156	\$124,159,302	n/a
% Total Trustee Disbursements	83.6	2.3	14.1	100.0	n/a
% Disbursements to Uns.Creds.					n/a
Total [7 Districts/16 trustees]	\$552,893,402	\$40,696,169	\$133,855,268	\$727,390,828	
% Total Trustee Disbursements	76.0	5.6	18.4	100.0	
National/All Districts/Trustees	\$2,465,442,929	\$251,213,403	\$861,926,114	\$3,576,273,283	594,675,723
% Total Trustee Disbursements	68.9	7.0	24.1	100.0	16.6
% Disbursements to Uns.Creds.					70.0

C. Trustee Disbursements in the Seven Sample Districts/Project Data

1. Allowed Claims

Table 45 below sets out the amounts of allowed secured, priority, general, other and total claims in the sample cases. Secured claims made up nearly 49% of all allowed claims (but, again, the Table understates these claims because the data do not include some claims to be paid outside a plan; in districts where claims may be paid outside the

¹⁸¹ U.S. Trustee Program Chapter 13 Reference Materials, Chapter 13 Statistics, FY-2003 Chapter 13 Standing Trustee Audited Annual Report, <http://www.usdoj.gov/ust/library/chapter13/ch13lib.htm> (visited Dec. 14, 2004).

¹⁸² MDNC is excluded from the calculations in this column because Chapter 13 costs are not available for two of the three trustees in that district.

plan, such claims usually are (relatively quite) large mortgage claims. Nearly 42% of the total allowed claims were general unsecured claims. According to the trustee data, priority and other claims comprised 7.8% and 4.5%, respectively, of total allowed claims. (In some trusteeships, however, the “priority” and “other” claims categories include at least some post petition, administrative expense claims, most importantly attorneys’ fees. As a result, meaningful analysis of the extent of payment of prepetition priority and other claims was not possible.¹⁸³)

Table 45. Allowed Claims in All Sample Cases

Claims	Total	% of Total
Secured	\$9,123,669	48.6%
Priority	\$1,453,874	7.8%
General	\$7,787,414	41.5%
Other	\$844,746	4.5%
Total	\$18,754,741	100%

2. Disbursements per Case and Overall in Chapter 13 Project Cases

a. All Sample Cases

As reported in Table 46 below, debtors in the sample Chapter 13 cases paid an average of \$9,406 per case under their Chapter 13 plans.¹⁸⁴ The median was much lower, \$2,718, and the standard deviation was large, \$16,207, indicating that a relatively few debtors repaid substantially greater amounts of debt. The positively skewed distribution around the mean is further reflected in the minimal 10th and 25th percentile amounts of \$0 and \$22, respectively; and the relatively large 75th and 90th percentile amounts of \$11,326 and \$28,490. The standard error of the mean is relatively low, so the confidence level is high; the mean is accurate to within plus or minus \$581, or approximately 6%, of the mean.¹⁸⁵

Secured Claims. Not counting any debtor payments directly to secured creditors (outside the plan), secured creditors collected an average of \$6,593 per case. Again, the lower median amount of \$1,141 collected by secured creditors, and the high standard deviation, \$12,835, nearly two times the mean, indicate that a relatively fewer number of debtors paid higher amounts of secured debt. Thus, at the 75th percentile, creditors

¹⁸³ See also Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Sources of Variability in Chapter 13 Performance, ABI J. (Apr. 2001) (stating that “there are good reasons to believe . . . that this category [priority claims] is treated differently in different districts, so the exact extent of priority debt and repayment is not completely clear at the national level”).

¹⁸⁴ This compares to \$24,294 in average allowed claims per case. See supra notes 38-40 and accompanying text and Table 8.

¹⁸⁵ Again, the figures in Table 46 somewhat understates the debt repaid by Chapter 13 debtors because the trustee and court file data do not track payments made outside the plan directly to creditors. In some districts, debtors sometimes or routinely paid certain claims – usually mortgage claims and occasionally other secured claims – outside the plan.

collected \$6,877, barely more than the mean of \$6,593; and at the 90th percentile, creditors collected \$20,241, approximately three times the mean.

Priority Claims. In a large majority of cases (515 of 784, or 66%), the debtors paid no priority debt, thus there is a non-normal distribution in these Table 46 figures. While debtors paid an average of \$1,110 per case, the median was \$0 and the 75th percentile was only \$117. As the standard deviation (\$4,560, or four times the mean) and 90th percentile (\$2,389) figures indicate, a very few debtors paid the vast bulk of the priority debt that was repaid by the debtors in the sample. As noted above, however, this data must be viewed with caution because different districts report the extent and repayment of priority debt somewhat differently.

General Unsecured Claims. The debtors repaid an average of \$1,683 of unsecured debt per case. The data reveal that a relatively fewer number of debtors repaid a relatively larger amount of unsecured debt. The median amount of unsecured debt repaid by debtors was \$0 – in other words, half of all of the Chapter 13 debtors in the sample paid nothing to unsecured creditors. The standard deviation was \$4,261, or nearly two and one-half times the mean. The 75th percentile amount, \$1,401, was similar to the mean of \$1,683.

Table 46. Creditor Collection per Case: All Cases¹⁸⁶

Claims	N	# cases with value = \$0	Range	Mean	SD	SEM	10%	25%	Median	75%	90%
Secured	785 (10 missing)	270 (34%)	\$0 - \$108096	\$6,593	\$12,835	458	\$0	\$0	\$1,141	\$6,877	\$20,241
Priority	784 (11 missing)	515 (65%)	\$0 - \$54598*	\$1,110	\$4,560	162.84	\$0	\$0	\$0	\$117	\$2,389
General	784 (11 missing)	473 (59%)	\$0 - \$57714	\$1,683	\$4,261	152	\$0	\$0	\$0	\$1,401	\$5,662
Total	776 (19 missing)	188 (24%)	\$0 - \$131886	\$9,406	\$16,207	581.8	\$0	\$22	\$2,718	\$11,326	\$28,490

As shown in Table 47 below, overall, more than 70% of the payments by Chapter 13 debtors under their plans went to secured creditors.¹⁸⁷ Payments to priority creditors were nearly 12%, and payments to general unsecured creditors comprised 19.5%, of total payments to creditors inside the plan.

Table 47 also shows the percent of each type of claim paid by the debtors in the study sample. They paid a modest 30% of allowed secured claims, and a somewhat lesser 19.5% of unsecured claims. We have omitted repayment of priority claims from the Table because of the variability among districts in what is included in this category and the fact that some of the districts included post petition administrative expense claims, in particular attorneys' fees, in this category.

¹⁸⁶ Due to the non-normality of these distributions, assumption-freer analyses are used (Kruskal-Wallis and median test; see infra note 137).

¹⁸⁷ As noted elsewhere, the available data do not reflect direct payments to creditors outside the plan, so the 70% figure understates the percentage of payments by Chapter 13 debtors to secured creditors.

Table 47. Overall Creditor Collections: All Cases

	Secured	Priority	General	All Claims
Total Allowed Amount	\$16,928,389	\$1,014,124	\$6,780,540	\$24,262,802
Total Payments	\$5,175,346	\$870,931	\$1,320,110	\$7,299,525
% of Allowed Claims Paid	30.6%		19.5%	30.1%
% of Total Payments	70.9%	11.9%	18.1%	100.0

b. Cases With a Confirmed Plan

Perhaps the better measure of creditor repayment in Chapter 13 is debtor payments in cases in which the court confirmed a plan. Some debtors may have filed for Chapter 13 relief only to obtain short-term protection of the automatic stay and without the intention to confirm a Chapter 13 plan, or for more benign reasons were unable to propose a confirmable plan. Excluding cases dismissed without confirmation of a plan, the average trustee disbursements to creditors naturally were greater than the average in all cases. Thus, as shown in Table 48, the trustees disbursed an average of \$11,858 to all creditors in cases with a confirmed plan. They disbursed an average of \$8,356 to secured creditors, \$1,419 to priority creditors, and \$2,155 to general unsecured creditors. The median amounts paid to all, secured, priority and general unsecured creditors were \$5,308, \$2,667, \$0 and \$14, respectively. (Table 52 below compares disbursements to the various classes of creditors in all cases with disbursements in cases with a confirmed plan and completed cases.) The larger average amounts indicate that relatively few debtors paid greater amounts of each category of debt. Even so, the fact remains that one half of all debtors who confirmed a plan paid essentially nothing to unsecured creditors.

Table 48. Creditor Collections Per Case: Cases with a Confirmed Plan¹⁸⁸

	Claims	N	# cases with value = \$0	Range	Mean	SD	SEM	10%	25%	Median	75%
	Secured	610 (7 missing)	120 (19%)	\$0 - \$108,096	\$8,356	\$14,049	568.83	\$0	\$229	\$2,667	\$9,685
	Priority	610 (7 missing)	351 (57%)	\$0 - \$54,598	\$1,419	\$5,126	207.57	\$0	\$0	\$0	\$589
	General	610 (7 missing)	302 (49%)	\$0 - \$57,714	\$2,155	\$4,725	191.31	\$0	\$0	\$14	\$2,650
	Total	602 (15 missing)	45 (7%)	\$92 - \$131,886	\$11,858	\$17,334	706.47	\$92	\$1,333	\$5,308	\$15,155

As discussed in greater detail above, the courts confirmed plans in 77.2% of the sample cases. Thirty three percent (33%) of all debtors, comprising 42.7% of those with confirmed plans, completed their plans and received a discharge. Notably, as shown in Table 48, the percentage of secured claims paid in cases with a confirmed plan was substantially higher than the percentage of secured claims paid in all cases. Whereas the

¹⁸⁸ Due to the non-normality of these distributions, assumption-free analyses are used (Kruskal-Wallis and median test).

figure for all cases was 30.6% (see Table 47 above), it was 74% in cases with a confirmed plan (see Table 49). This differential reflects the facts that secured claims must be paid 100 cents on the dollar (plus interest), whereas unsecured claims may be paid at a lower rate; and that the trustee normally distributes debtor payments first to secured creditors and then, after secured claims have been paid, to general unsecured creditors, so that in many cases that were dismissed before discharge, the debtors paid at least some secured debt but little or no unsecured debt.

More striking, as further reported in Table 49 below, unsecured creditors collected very little more in cases with a confirmed plan than in all cases. In cases with a confirmed plan, general unsecured creditors collected 20.2% of their claims, compared to 19.5% in all cases. The proportion of trustee distributions to general unsecured creditors was almost identical in the two groups – 18.1% of trustee distributions were to unsecured creditors in all cases, compared to 18.0% in cases with a confirmed plan.

Table 49. Overall Creditor Collections: Cases with a Confirmed Plan

	Secured	Priority	General	All Claims
Total Allowed Amount	\$6,889,310	\$923,359	\$6,498,841	\$14,701,826
Total Payments	\$5,097,420	\$865,732	\$1,314,433	\$7,138,380
% of Allowed Claims Paid	74.0%	93.8%	20.2%	48.6%
% of Total Payments	69.8%	11.9%	18.0%	97.8%

c. Completed Cases

Naturally, the debtors who completed their plans paid greater amounts and percentages of their pre-bankruptcy debt than those whose cases were dismissed short of discharge.¹⁸⁹ Tables 50 and 51 detail creditor collections per case, and overall, in cases in which the debtor obtained a discharge. As shown in Table 50, the Chapter 13 trustees in the Project districts disbursed an average of \$18,413 to all claimants in completed cases. They disbursed an average of \$13,068 to secured creditors, \$1,732 to priority creditors, and 4,696 to general creditors. The median trustee disbursements to all, secured, priority and general unsecured creditors were \$11,697, \$6,806, \$0 and \$3,151, respectively.

¹⁸⁹ Accord, Gordon Bermant and Ed Flynn, Bankruptcy by the Numbers, Measuring Projected Performance in Chapter 13: Comparisons Across the States, ABI J. (July/Aug. 2000), p. 22 (analyzing 1998 data on trustee disbursements, concluding that “returns to unsecured creditors are higher when plans are completed”).

Table 50. Creditor Collections Per Case: Completed Cases

claims	<i>N</i>	# cases with value = \$0	Range	Mean	<i>SD</i>	<i>SEM</i>	10%	25%	Median	75%	90%
Secured	258 (4 missing)	47 (18%)	\$0 - \$108096	\$13,068	\$17,434	1085.4	\$0	\$904	\$6,806	\$17,777	\$39,012
Priority	256 (6 missing)	136 (52%)	\$0 - \$46500	\$1,732	\$5,486	342.9	\$0	\$0	\$0	\$963	\$3,326
General	260 (2 missing)	25 (10%)	\$0 - \$57714	\$4,696	\$6,315	391.7	\$10	\$687	\$3,151	\$5,962	\$10,701
Total	253 (9 missing)	12 (5%)	\$0 - \$129541	\$18,413	\$19,999	1257.32	\$1,539	\$5,633	\$11,697	\$25,579	\$42,384

* due to the non-normality of these distributions, assumption-free analyses are used (kruskal-wallis & median test; see table 6)

As shown in Table 51, with completion of a plan, the debtors paid over 100% of their secured and priority debts, reflecting the Code mandates for full payment, with interest, of such claims. Unsecured creditors collected 34.1% of their claims. Overall, creditors collected nearly 64% of their claims.

Table 51. Creditor Collections: Completed Cases

	Secured	Priority	General	All Claims
Total Allowed Amount	\$3,080,838	\$385,498	\$3,583,771	\$6,948,585
Total Payments	\$3,371,682	\$443,488	\$1,221,003	\$4,658,559
% of Allowed Claims Paid	109.4%	115.0%	34.1%	67.0%
% of Total Payments				63.8%

Finally, Table 52 below compares disbursements to the various classes of creditors in all cases with disbursements in cases with a confirmed plan and completed cases.

Table 52. Creditor Collections: Comparison of Average and Median Amounts Disbursed in All Cases, Cases with Confirmed Plan and Completed Plans

	All Cases	Confirmed Plan	Completed Plan
Mean Secured	\$6,593	\$8,356	\$13,068
Median Secured	\$1,141	\$2,667	\$6,806
Mean Priority	\$1,110	\$1,419	\$1,732
Median Priority	\$0	\$0	\$0
Mean General	\$1,683	\$2,155	\$4,696
Median General	\$0	\$14	\$3,151
Mean Total	\$9,406	\$11,858	\$18,413
Median Total	\$2,718	\$5,308	\$11,697

3. Relationship Between Case Disposition and Creditor Repayment

Predictably, case disposition was significantly related to the amount and type of debt repaid by the debtors in the sample cases. The more time a debtor spent in Chapter 13, the more debt she was likely to repay. As reported in Table 53 below, using a

Spearman's rho statistical analysis, due to the abnormal distribution in the amounts of debt repaid by the debtors, time in Chapter 13 accounted for nearly 75% of the variance in the total amount of debt (both principal and interest) that the debtors repaid. The relationship between time in Chapter 13 and the repayment of secured and unsecured debt separately was not so strong; time in Chapter 13 accounted for just over 50% of the variance in each of the amounts of these debts repaid by the debtors.

Table 52. Creditor Collections and Time in Chapter 13

	Spearman's rho	<i>p</i>	variance accounted for (ρ^2)	valid <i>N</i>
r : time in ch 13 and total debt (P&I) repaid	0.864	<.001	74.6%	753
r : time in ch 13 and total principal repaid	0.861	<.001	74.1%	753
r : time in ch 13 and secured debt (P&I) repaid	0.722	<.001	52.1%	761
r : time in ch 13 and gen. Unsecured debt (P&I) repaid	0.715	<.001	51.1%	761
r : time in ch 13 and priority debt (P&I) repaid	0.427	<.001	18.2%	760
r : time in ch 13 and other debt (P&I) repaid	0.089	<=.013	0.8%	770

Spearman's rho is used b/c debt repaid is not normally distributed

APPENDIX A
THE CHAPTER 13 PROJECT
DESIGN AND METHODOLOGY OF THE STUDY

A. The Study Sample and Choice of Districts

The Chapter 13 Project is an empirical study of 795 Chapter 13 cases filed in 1994 in seven federal judicial districts comprising 14 Chapter 13 trusteeships. While we did not select the districts randomly, neither did we choose them based on any sense of how debtors and creditors in these districts fare in Chapter 13 cases. We chose the districts for several, mostly practical, reasons. (1) Collectively, these seven districts accounted for a very large portion – nearly 20% -- of Chapter 13 filings nationally in 1994. (2) Almost all of the Chapter 13 trustees in these districts use the same case management database system. The original plan for the study was to use specially-designed software to import into a common database information for all cases and all trustees in 14 federal judicial districts. Unfortunately, the extraction program proved unworkable, and the Project therefore fell back to manually collecting all of the data and coding them into the Project database. We therefore reduced the number of districts in the study from 14 to seven, and selected a sample of cases from each of the seven districts. (3) Cases in two of the seven districts have been the subject of previous studies,¹⁹⁰ providing some additional external checks of the validity of the Project's findings. (4) Case file information for these seven districts could be collected primarily from two Federal Records Centers (in East Point, Georgia, and Philadelphia, Pennsylvania), thereby limiting the costs of data collection.

The proportion of Chapter 13 filings in the districts covered by the Project was considerably higher than the proportion nationally. As reported in the following Table, in the seven judicial districts covered by the Chapter 13 Project, there were 79,688 consumer bankruptcy filings in 1994, with 47,393, or 59.5%, under Chapter 13. Nationally, there were 778,190 consumer bankruptcy filings in 1994. Of these, 240,639, or nearly 31%, were Chapter 13 filings.¹⁹¹ The ratio of Chapter 13 filings to total

¹⁹⁰ See Jean Braucher, *An Empirical Study of Debtor Education in Bankruptcy: Impact on Chapter 13 Completion Not Shown*, 9 A.B.I. L. J. 557, 577-579 (2001) (study of Chapter 13 cases filed in five judicial districts in 1994 and 1997, including the Middle District of North Carolina); Teresa A. Sullivan, et al., *Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981-1991*, 68 Am. Bankr. L. J. 121 (1994) (reporting on study of chapter 7 and 13 cases filed in 1991 in ten judicial districts, including the Western District of Pennsylvania); Teresa A. Sullivan et al., *As We Forgive Our Debtors* (1989) (reporting on study of chapter 7 and 13 cases filed in 1981 in the same judicial districts, including the Western District of Pennsylvania); Teresa A. Sullivan et al., *Folklore and Facts: A Preliminary Report from the Consumer Bankruptcy Project*, 60 Am. Bankr. L. J. 293, 324 (1986) (same).

¹⁹¹ See *infra* note 3. See generally Gordon Bermant and Ed Flynn, *Bankruptcy by the Numbers, Thoughts on the "Local Legal Culture," The Case of Consumer Chapter Choice*, ABI J. (Feb. 2002) (reviewing data on the variation among districts and states in percentages of consumer debtors who choose Chapter 13 or Chapter 7); Teresa A. Sullivan, Elizabeth Warren & Jay L. Westbrook, *Who Uses Chapter 13?* (2001) (paper presented at annual meeting of the Law and Society Association, Budapest, on file with the author) (analyzing various factors influencing choice of chapter, based on data in 1981, 1991 and 1999 studies); Gordon Bermant and Ed Flynn, *Bankruptcy by the Numbers, A Tale of Two Chapters, Part I* (July/Aug. 2002), p. 20 (same); Gordon Bermant, *Bankruptcy by the Numbers, Exploring the Demographics of*

consumer filings was above the national average in five districts of the sample districts, and below the national average in two – the District of Maryland and the Western District of Pennsylvania.¹⁹²

Consumer Bankruptcy Filings, 1994

District	Total Consumer Filings	Chapter 13 Filings	Percent Chapter 13 Filings
NDGA	24,686	16,466	66.6%
SDGA	6,822	5,173	75.8%
MDTN	8,648	4,794	55.4%
WDTN	16,083	12,972	80.7%
MDNC	4,201	3,161	75.2%
WDPA	4,976	840	16.9%
DMD	14,272	3,987	27.9%
Seven Districts	79,688	47,393	59.5%
United States	778,190	240,639	30.9%

B. Data Collection and Coding

The Project relied on data from Chapter 13 trustee records; selected portions of the bankruptcy court case files; and PACER (Public Access to Court Electronic Records)¹⁹³, an on-line, electronic public-access service maintained by the bankruptcy court clerk's office in each district that allows users to obtain case and docket information, including information on other bankruptcy filings by a bankruptcy debtor. In addition, we surveyed the Chapter 13 trustees in the seven districts covered by the study regarding relevant district and trustee practices in effect in 1994. The Project did not collect data from any other sources, for example, debtor questionnaires or interviews. While almost all of the Chapter 13 trustees in the districts covered by the study were cooperative and provided all requested information on their cases, several did not and in their cases we were restricted to data that could be obtained from the bankruptcy case files and PACER.

The Project collected extensive data on most of the sample cases, including: case number; district; trustee; judge; debtor's attorney; whether the petition was individual or joint; the gender of the petitioner; whether the petitioner was doing business under another name; zip code; county; dates of filing, first meeting of creditors and case closing; case disposition – dismissal before confirmation, dismissal after confirmation, conversion before confirmation, conversion after confirmation, or discharge; the number and amounts of secured, priority, general and other claims; amounts paid to creditors, debtor's attorney, and the trustee; whether payments were made by payroll deduction; dates of last payment to attorney and trustee; proposed and actual plan length; proposed

Consumer Chapter Choice, ABI J. (May 1999), p. 20 (finding that the "percentage of chapter 13 filings in a state tend to vary directly with the numbers of filings per 1000 households in the state").

¹⁹² As discussed *infra*, notes 11-14 and accompanying text, the fact that most of the sample districts have a higher proportion of Chapter 13 filings than the national average did not detract from the representativeness of the sample. Rather, the representativeness of the sample is likely a result of the fact that the districts included in the sample contain a large proportion, nearly 20%, of all Chapter 13 filings in 1994.

¹⁹³ For a description of the PACER system, see <http://pacer.psc.uscourts.gov/pacerdesc.html>.

percentage payment to unsecured creditors; whether any creditor payments were to be made outside the plan, and the amounts thereof; number persons and dependants in debtor's household; debtor and household gross income, net income and living expenses; attorneys' fees; and previous and subsequent bankruptcy filings. A copy of the Project Coding Sheet is included as Appendix B.

Data were coded and entered into a spreadsheet twice, by two different research assistants, with conflicts resolved either by double-checking the source or by decision of the authors.

C. Methodology

The Project seeks to measure the fresh start and rehabilitation features of Chapter 13 by determining the rates of discharge, dismissal and conversion in the sample judicial districts, and by ascertaining the proportion of debtors who have filed previous and subsequent bankruptcies. Regarding creditor repayment, we gathered data on the types and amounts of debt repaid by the debtors in the Chapter 13 Project, as well as by debtors in all districts covered by the United States Trustee Program over the past ten years. By comparing completed cases with dismissed and converted cases, the Project investigates the relation between case outcome and factors such as debtor income, plan length, distribution to unsecured creditors, income retained for payment of household expenses, and previous bankruptcy filings.

DEBTOR # 1 DIRECT PAYMENT (amount) _____

DIRECT PAYMENT SCHEDULE	1	Monthly	2	Bi-monthly
	3	Bi-weekly	4	Weekly
	5	Quarterly	6	Yearly

DEBTOR # 2 PAYROLL DEDUCTION (amount) _____

PAYROLL DEDUCTION SCHEDULE	1	Monthly	2	Bi-monthly
	3	Bi-weekly	4	Weekly
	5	Quarterly	6	Yearly

DEBTOR # 2 DIRECT PAYMENT (amount) _____

DIRECT PAYMENT SCHEDULE	1	Monthly	2	Bi-monthly
	3	Bi-weekly	4	Weekly
	5	Quarterly	6	Yearly

DEBTOR # 1 SSN _____ DEBTOR # 2 SSN _____

CONT. DEBT ARREARS _____ CONT. PMTS. _____ REG PMTS. _____

B -- DISBURSEMENT INFORMATION

DEBTOR REFUND _____ DATE OF LAST PMNT TO ATTY (mm/dd/yy) _____

DATE OF LAST PAYMENT TO TRUSTEE (mm/dd/yy) _____

C -- CLAIM RECORDS INFORMATION

TOTAL # OF PRIORITY CLAIMS _____ TOTAL # OF SECURED CLAIMS _____

TOTAL # OF OTHER CLAIMS _____ TOTAL # OF UNSECURED CLAIMS _____

(Description, e.g., co-signed, nondischargeable, etc.) _____

***PRIORITY CLAIM # 1**

SCHED _____ VALUE _____ CLAIM _____ TOTPD _____

INT % _____ INTPD _____ CRED % _____

TYPE 1 Tax 2 Support 3 Other (specify) _____

PAID OUTSIDE OF PLAN? 1 Yes 2 No

***PRIORITY CLAIM # 2**

SCHED _____ VALUE _____ CLAIM _____ TOTPD _____
INT % ____ INTPD _____ CRED % ____
TYPE 1 Tax 2 Support 3 Other (specify) ____
PAID OUTSIDE OF PLAN? 1 Yes 2 No

***PRIORITY CLAIM # 3**

SCHED _____ VALUE _____ CLAIM _____ TOTPD _____
INT % ____ INTPD _____ CRED % ____
TYPE 1 Tax 2 Support 3 Other (specify) ____
PAID OUTSIDE OF PLAN? 1 Yes 2 No

***SECURED CLAIM # 1**

SCHED _____ VALUE _____ CLAIM _____ TOTPD _____
INT % ____ INTPD _____ CRED % ____ PER MO. _____
TYPE 1 Mortgage 2 Mortgage Arrearage
 3 Second Mortgage 4 2d Mortgage Arrearage
 5 Third Mortgage 6 3d Mortgage Arrearage
 7 Car (Year and Make) _____
 8 Household Goods (HHG) 9 Other (specify) ____
PAID OUTSIDE THE PLAN? 1 Yes 2 No

***SECURED CLAIM # 2**

SCHED _____ VALUE _____ CLAIM _____ TOTPD _____
INT % ____ INTPD _____ CRED % ____ PER MO. _____
TYPE 1 Mortgage 2 Mortgage Arrearage
 3 Second Mortgage 4 2d Mortgage Arrearage
 5 Third Mortgage 6 3d Mortgage Arrearage
 7 Car (Year and Make) _____
 8 Household Goods (HHG) 9 Other (specify) ____
PAID OUTSIDE THE PLAN? 1 Yes 2 No

***SECURED CLAIM # 3**

SCHED _____ VALUE _____ CLAIM _____ TOTPD _____

INT % _____ INTPD _____ CRED % _____ PER MO. _____

TYPE 1 Mortgage 2 Mortgage Arrearage
 3 Second Mortgage 4 2d Mortgage Arrearage
 5 Third Mortgage 6 3d Mortgage Arrearage
 7 Car (Year and Make) _____
 8 Household Goods (HHG) 9 Other (specify) _____

PAID OUTSIDE THE PLAN? 1 Yes 2 No

***SECURED CLAIM # 4**

SCHED _____ VALUE _____ CLAIM _____ TOTPD _____

INT % _____ INTPD _____ CRED % _____ PER MO. _____

TYPE 1 Mortgage 2 Mortgage Arrearage
 3 Second Mortgage 4 2d Mortgage Arrearage
 5 Third Mortgage 6 3d Mortgage Arrearage
 7 Car (Year and Make) _____
 8 Household Goods (HHG) 9 Other (specify) _____

PAID OUTSIDE THE PLAN? 1 Yes 2 No

***SECURED CLAIM # 5**

SCHED _____ VALUE _____ CLAIM _____ TOTPD _____

INT % _____ INTPD _____ CRED % _____ PER MO. _____

TYPE 1 Mortgage 2 Mortgage Arrearage
 3 Second Mortgage 4 2d Mortgage Arrearage
 5 Third Mortgage 6 3d Mortgage Arrearage
 7 Car (Year and Make) _____
 8 Household Goods (HHG) 9 Other (specify) _____

PAID OUTSIDE THE PLAN? 1 Yes 2 No

***SECURED CLAIM # 6**

SCHED _____ VALUE _____ CLAIM _____ TOTPD _____

INT % _____ INTPD _____ CRED % _____ PER MO. _____

TYPE 1 Mortgage 2 Mortgage Arrearage
 3 Second Mortgage 4 2d Mortgage Arrearage
 5 Third Mortgage 6 3d Mortgage Arrearage
 7 Car (Year and Make) _____
 8 Household Goods (HHG) 9 Other (specify) _____

PAID OUTSIDE THE PLAN? 1 Yes 2 No

***SECURED CLAIM # 7**

SCHED _____ VALUE _____ CLAIM _____ TOTPD _____

INT % _____ INTPD _____ CRED % _____ PER MO. _____

TYPE 1 Mortgage 2 Mortgage Arrearage
 3 Second Mortgage 4 2d Mortgage Arrearage
 5 Third Mortgage 6 3d Mortgage Arrearage
 7 Car (Year and Make) _____
 8 Household Goods (HHG) 9 Other (specify) _____

PAID OUTSIDE THE PLAN? 1 Yes 2 No

D – INFORMATION FROM LAST PAGE

***TOTAL PRIORITY**

SCHEDULED _____ VALUE _____ CLAIM AMT _____

PRINCIPAL PAID _____ INTEREST PD _____

***TOTAL SECURED**

SCHEDULED _____ VALUE _____ CLAIM AMT _____

PRINCIPAL PAID _____ INTEREST PD _____

***TOTAL UNSECURED**

SCHEDULED _____ VALUE _____ CLAIM AMT _____

PRINCIPAL PAID _____ INTEREST PD _____

***TOTAL OTHER**

SCHEDULED _____ VALUE _____ CLAIM AMT _____

PRINCIPAL PAID _____ INTEREST PD _____

Part II – Court Files

A – FROM THE PETITION

COUNTY OF RESIDENCE _____

B – FROM THE PLAN

PLAN LENGTH (months) _____ PERCENT TO UNSECURED _____%

PROPOSED PAYMENTS TO TRUSTEE (amount) _____

PAYMENT SCHEDULE	1	Monthly	2	Bi-monthly
	4	Bi-weekly	4	Weekly
	5	Quarterly	6	Yearly

OF SECURED CLAIMS TO BE PAID DIRECT/OUTSIDE OF PLAN _____

AMT OF DIRECT SECURED CLAIM # 1 _____ AMT OF MO. PMT. _____

AMT OF DIRECT SECURED CLAIM # 2 _____ AMT OF MO. PMT. _____

AMT OF DIRECT SECURED CLAIM # 3 _____ AMT OF MO. PMT. _____

OF PRIORITY CLAIMS TO BE PAID DIRECT/OUTSIDE OF PLAN _____

AMT OF DIRECT PRIORITY CLAIM # 1 _____ AMT OF MO. PMT. _____

AMT OF DIRECT PRIORITY CLAIM # 2 _____ AMT OF MO. PMT. _____

OF UNSECURED CLAIMS TO BE PAID DIRECT/OUTSIDE OF PLAN _____

AMT OF DIRECT UNSECURED CLAIM # 1 _____ AMT OF MO. PMT. _____

AMT OF DIRECT UNSECURED CLAIM # 2 _____ AMT OF MO. PMT. _____

C – FROM SCHEDULES I AND J

NUMBER IN HH (including DR) _____ NUMBER OF DEPENDANTS _____

DEBTOR GROSS MONTHLY INCOME _____ DEBTOR NET _____

SPOUSE GROSS MONTHLY INCOME _____ SPOUSE NET _____

MONTHLY EXPENSES _____

D – FROM STATEMENT OF FINANCIAL AFFAIRS

PREPETITION ATTY FEE PAYMENT FOR BANKRUPTCY REPRESENTATION _____

Part III – Previous and Subsequent Filings

PREVIOUS FILING? 0 No 1 Yes # OF PREV FILINGS ____

SUBSEQUENT FILING? 0 No 1 Yes # OF SUBSEQ. FILINGS ____

CH. OF PREVIOUS FILING # 1 1 Ch. 7 2 Ch. 13 3 Ch. 11

CASE NUMBER _____

DATE (dd/mm/yyyy) _____

DISPOSITION 1 Dismissed 2 Discharge 3 Converted

DATE OF DISPOSITION (dd/mm/yyyy) _____

CH. OF PREVIOUS FILING # 2 1 Ch. 7 2 Ch. 13 3 Ch. 11

CASE NUMBER _____

DATE (dd/mm/yyyy) _____

DISPOSITION 1 Dismissed 2 Discharge 3 Converted

DATE OF DISPOSITION (dd/mm/yyyy) _____

CH. OF PREVIOUS FILING # 3 1 Ch. 7 2 Ch. 13 3 Ch. 11

CASE NUMBER _____

DATE (dd/mm/yyyy) _____

DISPOSITION 1 Dismissed 2 Discharge 3 Converted

DATE OF DISPOSITION (dd/mm/yyyy) _____

CH. OF PREVIOUS FILING # 4 1 Ch. 7 2 Ch. 13 3 Ch. 11

CASE NUMBER _____

DATE (dd/mm/yyyy) _____

DISPOSITION 1 Dismissed 2 Discharge 3 Converted

DATE OF DISPOSITION (dd/mm/yyyy) _____

CH. OF PREVIOUS FILING # 5 1 Ch. 7 2 Ch. 13 3 Ch. 11

CASE NUMBER _____

DATE (dd/mm/yyyy) _____

DISPOSITION 1 Dismissed 2 Discharge 3 Converted

DATE OF DISPOSITION (dd/mm/yyyy) _____

CH. OF SUBSQ. FILING # 1 1 Ch. 7 2 Ch. 13 3 Ch. 11

CASE NUMBER _____

DATE (dd/mm/yyyy) _____

DISPOSITION 1 Dismissed 2 Discharge 3 Converted 4 Open

DATE OF DISPOSITION (dd/mm/yyyy) _____

CH. OF SUBSQ. FILING # 2 1 Ch. 7 2 Ch. 13 3 Ch. 11

CASE NUMBER _____

DATE (dd/mm/yyyy) _____

DISPOSITION 1 Dismissed 2 Discharge 3 Converted 4 Open

DATE OF DISPOSITION (dd/mm/yyyy) _____

CH. OF SUBSQ. FILING # 3 1 Ch. 7 2 Ch. 13 3 Ch. 11

CASE NUMBER _____

DATE (dd/mm/yyyy) _____

DISPOSITION 1 Dismissed 2 Discharge 3 Converted 4 Open

DATE OF DISPOSITION (dd/mm/yyyy) _____

CH. OF SUBSQ. FILING # 4 1 Ch. 7 2 Ch. 13 3 Ch. 11

CASE NUMBER _____

DATE (dd/mm/yyyy) _____

DISPOSITION 1 Dismissed 2 Discharge 3 Converted 4 Open

DATE OF DISPOSITION (dd/mm/yyyy) _____

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