CHAPTER 7 BANKRUPTCY TRUSTEES' RESPONSIBILITIES AND REMUNERATION

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JULY 27, 2011

Serial No. 112–68

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE
67–576 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

LAMAR SMITH, Texas, *Chairman*

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona
[Vacant]

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SÁNCHEZ, California
DEBBIE WASSERMAN SCHULTZ, Florida

SEAN MCLAUGHLIN, *Majority Chief of Staff and General Counsel*
PERRY APELBAUM, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW

HOWARD COBLE, North Carolina, *Chairman*
TREY GOWDY, South Carolina, *Vice-Chairman*

ELTON GALLEGLY, California
TRENT FRANKS, Arizona
DENNIS ROSS, Florida
[Vacant]

STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
MELVIN L. WATT, North Carolina
[Vacant]

DANIEL FLORES, *Chief Counsel*
JAMES PARK, *Minority Counsel*

CONTENTS

JULY 27, 2011

CHAPTER 7 BANKRUPTCY TRUSTEES' RESPONSIBILITIES AND REMUNERATION

WEDNESDAY, JULY 27, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS,
COMMERCIAL AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 9:34 a.m., in room 2141, Rayburn Office Building, the Honorable Howard Coble (Chairman of the Subcommittee) presiding.

Present: Representatives Coble, Cohen, and Conyers.

Staff present: (Majority) Daniel Flores, Subcommittee Chief Counsel; Travis Norton, Counsel; Johnny Mautz, Counsel; Ashley Lewis, Clerk; (Minority) James Park, Counsel; Carol Chodroff, Counsel; and Rosalind Jackson, Clerk.

Mr. COBLE. We have others who are enroute, I am told. If the witnesses would take their seats, we will start momentarily, hopefully.

Good morning, ladies and gentlemen. The Subcommittee will come to order. Mr. Cohen is on his way I am told. But in recognition of your time, I am going to go ahead and give my opening statement, and he will be here hopefully ultimately.

Chapter 7 trustees play an essential role in the administration of a liquidation bankruptcy. A Chapter 7 trustee investigates the financial affairs of the debtor, preference and fraudulent conveyance claims on behalf of the bankruptcy, and objects to creditors' proofs of claims. Section 704 of the Bankruptcy Code also requires a trustee to serve as the administrator of the debtor's ERISA plans.

Notwithstanding their performance of numerous bankruptcy duties, in most cases Chapter 7 trustees are paid only a flat fee of $60 for their service; that is it. This dollar amount was fixed by statute in 1994, was not indexed to inflation like other dollar amounts of the Code, and has not been increased in 17 years.

In rare liquidation cases where assets are distributed to creditors, a trustee earns a commission based on the value of the administered's assets. The average trustee commission in an asset case in 2010 was approximately $2,200, but out of 1.4 million Chapter 7 cases filed in 2010, only about 60,000 were asset cases in which the trustee had the potential to earn more than the $60 fee.

It appears to me that Chapter 7 trustees may be under compensated for the value of the important work they perform in a liq-

uidation bankruptcy. This is especially true in cases where the bankruptcy code requires the trustee to administer and close out the debtor's 401(k) and other ERISA qualifying benefits plans. Sometimes this process takes years, but even in those cases, the trustee only receives the $60 in base pay.

Congress should consider whether and how to raise Chapter 7 trustee compensation levels. One option is to raise bankruptcy filing fees. Another is to charge the commission bankruptcy formula in Section 326. But any method to increase trustee compensation should be sensitive to the concerns of all stockholders, including creditors, debtors, and the judiciary which currently pays a portion of the flat fee.

We look forward to hearing from our witnesses today. And, again, if you all will bear with me and rest easy, we should be able to get under way momentarily. And, again, we thank you all for your taking time to be here and contributing to this worthwhile hearing. So, we will rest easy for the moment.

We will bend the rules of procedure. I am going to go ahead and introduce the witnesses now to save a little time in the end.

Mr. Robert Furr is the founding partner of Furr & Cohen, a law firm in Boca Raton, Florida that specializes in bankruptcy law. He is a Chapter 7 panel trustee for the U.S. Trustee Program in the Southern District of Florida. Mr. Furr is a past president of the National Association of Bankruptcy Trustees, on whose behalf he is testifying today. Mr. Furr testified before this Committee at a similar hearing almost 3 years ago, 2008. Good to have you back, Mr. Furr.

Mr. Jason Gold is a partner of Wiley Rein in Mclean, Virginia, where he serves as chair of preferred bankruptcy and financial restructuring practice. Mr. Gold is also a Chapter 7 panel trustee for the Eastern District of Virginia and has been for 24 years. Super Lawyers magazine recently named Mr. Gold one of D.C.'s top 100 lawyers and one of Virginia's top 50 lawyer in recognition of his illustrious career as a bankruptcy attorney. Today he is testifying on behalf of the American Bankruptcy Institute, the Nation's largest multidisciplinary association of insolvency professionals, with over 13,000 members. I look forward to his testimony as well.

Mr. William Brewer is the founder of The Brewer Law Firm in Raleigh, North Carolina, and a fellow of the American College of Bankruptcy. Today he is testifying on behalf of the National Association of Consumer Bankruptcy Attorneys, of which he is currently the president. The NCBA represents the interests of consumer debtors and their attorneys in legislative and judicial forums across the United States. Mr. Brewer holds a bachelor's degree in English and a law degree from the University of North Carolina. And I may treat him a little better than the rest of you because he is a fellow North Carolinian. But good to have all of you here nonetheless.

Finally, Mr. Blake Hogan is the president and founder of American InfoSource, a provider of bankruptcy accounting management services based in Houston, Texas. American InfoSource regularly performs data analyses on trends in Chapter 7 cases, including analyses on asset versus no-asset cases and Chapter 7 trustee commissions. According to the Administrative Office of the U.S. Courts, Mr. Hogan's firm is the largest commercial purchaser of bank-

ruptcy data. Mr. Hogan has over 18 year of experience in the bankruptcy services industry.

And we welcome each of you with us today. And I, again, apologize for the irregular procedural abuse that I have given to the rules of the Subcommittee, but hopefully I will be forgiven for that.

We have now been joined by the distinguished gentleman from Maryland—from Michigan—I will stand corrected. Not Maryland, Michigan—former Chairman of the full Committee and presently Ranking Member of the full Committee. And I will be glad to recognize Mr. Conyers for an opening statement.

And, John, before you start, if I may, I would like to ask unanimous consent to submit for the record a statement on behalf of the American Bankers Association and a letter from the Judicial Conference addressed to Chairman Lamar Smith of some days ago. Without objection?

[The information referred to follows:]

Statement for the Record

On Behalf of the

AMERICAN **BANKERS** ASSOCIATION

Before the

Subcommittee on Commercial and Administrative Law

Committee on the Judiciary

United States House of Representatives

For the Hearing

"Chapter 7 Bankruptcy Trustee Responsibilities and Remuneration"

July 27, 2011

The American Bankers Association (ABA) hereby submits this letter for the above-entitled hearing before the Subcommittee on Commercial and Administrative Law. ABA brings together banks of all sizes and charters into one association, and works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.3 trillion in assets and employ more than 2 million men and women.

The ABA and its member banks support an increase in the so-called no-asset fee in Chapter 7 cases. The current statutory fee of $65 has not been adjusted since the 1994 and, thus, does not accurately reflect the true value to the bankruptcy system of the work of Chapter 7 trustees in no asset cases.

The work of a Chapter 7 trustee can be complex and time consuming in no-asset cases, and there is no question among ABA members that Chapter 7 trustees police fraud and abuse, promote integrity in the bankruptcy system, and ensure that debtors receive debt discharge where appropriate under the Bankruptcy Code. Adequate compensation for Chapter 7 trustees is necessary to assure that there are sufficient numbers of qualified professionals to perform functions that are integral to the efficient and equitable functioning of the bankruptcy court system.

The ABA strongly believes that the appropriate mechanism for increasing compensation in no-asset Chapter 7 cases should be to increase the statutory fee contained in Section 330 of the Bankruptcy Code, which would necessitate in an increase in filing fees. In contrast, proposals to increase overall trustee compensation by increasing commissions in the small percentage of Chapter 7 asset cases under Section 326 of the Bankruptcy Code would not help most trustees and would impose unnecessary costs on creditors without compensatory benefits. We are not aware of any data that suggests that increasing Section 326 commissions will do anything other than reduce collections for creditors as trustees retain a greater percentage of amounts distributed.

The issue that is the subject of this hearing, and that is faced by trustees in the field, is the lack of appropriate compensation for processing no-asset cases. Therefore, the solution to the problem should focus on increasing remuneration for no-asset cases, and not on raising compensation for other categories of Chapter 7 cases.

We respectfully submit that the Committee should address the lack of compensation for no-asset cases by increasing the amount in Section 330 because this will benefit trustees in all parts of the country equally and is the most equitable solution for all stakeholders.

Thank you for considering our views on this important matter.

Mr. CONYERS. Thank you, Chairman Coble. Top of the morning to all of our witnesses. I beg your indulgence for not being on time.

We began a discussion of this in 2008, and I am a little bit taken aback by the fact that we are studying this like it is a rocket science matter. We are not paying the Chapter 7 trustees adequately. Everybody agrees on that.

There is only one question: are we going to put it on the backs of the poor devils that come in that are bankruptcy that already are pleading with the court to have their whatever is left of their remains and property equitably distributed among their creditors, or are we going to find another way to compensate for this? And we have already suggested the other way. H.R. 4950, we have been through this, Chairman Coble.

And, you know, this Congress does not have a very good reputation at this moment. It does not seem like we can solve anything. And here is a simple matter. We are telling lawyers and accountants that they can only get $60 for a no-asset case. And that has been since, what, 1984, 1994? That is disgraceful. They are on the verge of sitting on the other side of the table. They have to leave their profession, and they are willing to do this, but we are not even willing to compensate them adequately.

I do not what this breaks down to an hour, but these are not professional wages. We are not compensating members of the Bar and accountants, frequently certified public accountants, adequately. And we have been 3 years studying this.

And so, somebody proposed that we study it some more. Well, witnesses, I am tired of studying it, and I assume or hope that you are as well. And this Committee has got to do something about it. We cannot even get anybody to come to this hearing. And so, I will put my statement in the record and await your testimony.

[The prepared statement of Mr. Conyers follows:]

Statement of the Honorable John Conyers, Jr.
for the Hearing on Chapter 7 Trustee Responsibilities and Remuneration Before the Subcommittee on Commercial and Administrative Law

Wednesday, July 27, 2011, at 9:30 a.m.
2141 Rayburn House Office Building

Let me just make three brief introductory points before we hear from today's witnesses.

To begin with, chapter 7 trustees perform a critical – and, I would add, often underappreciated – role in administering bankruptcy cases.

They are fiduciaries who must ensure that all assets are properly administered and that the debtor warrants a discharge.

And, as a result of the 2005 amendments to the Bankruptcy Code, their responsibilities have expanded considerably.

Another concern is that our bankruptcy system should ensure that it continues to attract and retain competent, experienced, and qualified chapter 7 trustees in light of the critical role they play in the system.

To that end, trustees should be properly compensated like other professionals in bankruptcy cases.

But, in light of the fact that trustees currently receive only $60 per case in so-called "no asset cases" and receive no compensation in those cases where the filing fee has been waived, it is not clear whether the bankruptcy system can continue to attract competent and experienced trustees .

Lastly, I believe that it is equally important that consumer debtors not be forced to shoulder this additional expense.

As many of you know, the bankruptcy case filing fee has substantially increased in the last few years.

In addition, debtors must pay for mandatory pre-bankruptcy counseling *and* for post-bankruptcy financial management training as a result of the 2005 Amendments.

And, because of the additional onerous requirements imposed on debtors and their counsel by these 2005 Amendments, debtors' attorney's fees have skyrocketed.

Bankruptcy debtors are among the poorest of the poor. So it just seems blatantly unfair that they should have to pay so much to obtain bankruptcy relief.

Accordingly, I look very much forward to hearing our witnesses' views on the issue of trustee compensation and their suggestions as to how Congress should proceed.

This is a very important challenge and I commend Chairman Coble for holding this hearing.

Mr. COBLE. I thank the gentleman.

The gentleman from Tennessee, the Ranking Member of the Subcommittee, is now recognized for his opening statement. Mr. Cohen?

Mr. COHEN. Thank you, Mr. Chairman. I am sorry about being late, but I was hearing where we are. It is a scary place.

As far as I can tell, no one seems to disagree that Chapter 7 trustees deserve some sort of compensation increase. There has been no effort over 17 years and there is has been no increase in per case compensation in these non-asset cases. And that is the bulk of Chapter 7 cases. The real debate is over how best to do this in a manner that is fair to all parties in the bankruptcy process, the debtors, the creditors, the judiciary.

Last Congress, I introduced H.R. 4950, The Chapter 7 Bankruptcy Adjustment Improvement Act of 2010, which I think maybe possibly the Chairman—not the Chairman—the former Chairman, the Ranking Member, my dear and beloved friend, the esteemed and honorable John Conyers, might have talked about. That legislation offered an equitable solution to the problems of how to fairly increase trustee compensation. H.R. 4950 would have increased the potential compensation that the trustees could earn by increasing the maximum percentage of assets that could be used to compensate trustees in Section 326 percentage caps, which have not been raised since 1994. At the same, the bill maintained some judicial discretion to determine the reasonableness of trustee compensation, clarified that that compensation in asset cases should be treated as a commission, and avoided increasing the cost burden on debtors of an increased filing fee.

In this way, the bill increased potential compensation for trustees, while at the same time recognizing the judiciary's prerogatives in protecting already financially strapped and overburdened debtors.

When I introduced the bill, it is my understanding all parties would be impacted, but were on board. Ultimately, those certain creditor interests raised concerns that the bill would reduce the potential recoveries in the future of Chapter 7 asset cases, greed, one. It is only fair that creditors be asked to shoulder a marginally greater burden than they currently do in ensuring just increased compensation for Chapter 7 trustees.

One of the principle purpose of Chapter 7 trustees is to protect and maximize the size of the bankruptcy estate so the assets can be liquidated and the proceeds distributed to creditors to the greatest extent possible. Chapter 7 trustees' work primarily benefits creditors; therefore, creditors should be prepared to give up just a little to increase compensation for those trustees. It seems that we have a parallel universe here in the Congress this year on the debt ceiling.

While I believe that my bill offers the best solution to increasing Chapter 7 trustee compensation in an equitable manner, I am open to considering other suggestions that all interested parties can get behind. I would be deeply concerned, however, with any measure that forces the burden of increasing trustee compensation on consumer debtors, as I am concerned about revenue being used to deal with the debt ceiling.

Consumer debtors already pay a disproportionate share of the costs of the bankruptcy system. Otherwise I noted it is creditors, not debtors, who mostly benefit from the worker Chapter 7 trustees. Equity demands that consumer debtors not be forced to bear the burden of a trustee compensation increase.

With the economy continuing to struggle, the last thing Congress should do is increase the financial burdens of people who are already on the brink of financial ruin, although it seems we are about to do that in a bigger picture. This is a microcosm, this hearing, of what is going on on the floor.

My charge for our witnesses is to develop a solution that increases compensation for Chapter 7 trustees, does not burden consumer debtors, and addresses the concern of creditors.

I thank Chairman Coble, a wonderful gentleman, a great Chairman, and a distinguished Member, for holding this hearing. I look forward to a fruitful discussion that will be just and fair.

Mr. COBLE. I thank you, Mr. Cohen.

Steve, I introduced the panelists earlier. Would you like for me to introduce them again?

Mr. COHEN. No, sir.

Mr. COBLE. All right.

Gentleman, we will start. And we try to comply, gentleman, with the 5-minute rule. You have a panel on your desk. When the light is green, that tells you you're skating on thick ice. It will then turn amber, and then when it is red, that is your 5 minutes have expired. So, if you all could confine your statements on or about 5 minutes, we would be appreciative.

And, Mr. Furr, we will start with you?

TESTIMONY OF ROBERT C. FURR, FOUNDING PARTNER, FURR & COHEN, P.A. (BOCA RATON, FL), ON BEHALF OF THE NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES

Mr. FURR. Chairman Coble, Ranking Member Cohen, and other distinguished Members of the Subcommittee, let me thank you for the opportunity to provide the views of the National Association of Bankruptcy Trustees to your Subcommittee on this subject. My name is Robert Furr. I am a past president of the National Association of Bankruptcy Trustees. I am on its board of directors and executive committee.

In 2010, there were 1,139,000 Chapter 7 cases filed in the United States. That is an 8 percent increase over 2009. There were 25,000 cases filed in North Carolina and 50,000 cases in Tennessee, so we know it is a big issue around the country.

Trustees conduct the major work that is done in Chapter 7 bankruptcies. We protect both debtors and creditors from abuses of the system. We carry out important public policy priorities as directed by Congress involving issues of child support, patient health care records, dishonesty, criminal activity, fraud, mortgage scams, in addition to administering the cases in the normal way that we have always done.

We have had no raise since 1994, no adjustment to our compensation. The Bankruptcy Abuse and Consumer Protection Act, BAPCPA, which was passed in 2005, gave other duties to Chapter 7 trustees without additional compensation. Chapter 7 trustees that I know, and I know most of the around the country, are shouldering those burdens and moving forward, and doing the work required of us under BAPCPA at a very, very commendable way, but they are not being compensated for it.

Trustees receive $60 for administering a Chapter 7 case and what is called a no-asset case in every case they get, and that is all they are guaranteed to get. It is truly an entrepreneurial kind of business that I am in. In many areas of the country, it is a mom and pop kind of business, and in some larger urban areas it is a more sophisticated kind of business. But it is truly a business where you if you are skilled and you work hard, you can make money. If you work hard and you are smarter than the other person, you may make more money. So, it is a great business to be in.

The last increase in the filing fees occurred in 1994—excuse me in the trustee compensation occurred in 1994 when the filing fee was $130. Today the filing fee is $299, and the trustee's fee is still $60, or 20 percent of the filing fee.

Every case essentially begins as a no-asset case. After all, Chapter 7 is a liquidation bankruptcy. It is hard work for the trustee to determine if there are assets in the estate. Last year, I would like to report to you that Chapter 7 trustees paid $2.3 billion to creditors, including $132 million to taxing authorities, including the Internal Revenue Service. We did this by taking an average of commission of 5.7 percent in those Chapter 7 asset cases, a record which is much less than the average commercial collection lawyer would charge of 25 to 33 percent.

We have enjoyed bipartisan support in the House, and I appreciate all the kind words that everyone has said this morning. Currently, we think the trustees should receive a per case fee increase of $40 so that the no-asset fee goes to $100. Based on inflation figures alone, trustees should be earning $28 more per case since 1994. So, this brings us up to $40 more. That would compensate us for the money we do not make in informa popras cases, or cases where the filing fee is waived and we receive no compensation.

The other day I had two cases on my calendar where attorneys appeared charging $1,200 to their clients, and having the filing fee waived because the client *in forma pauperis* guidelines. And there is nothing I can do about that. I did not get paid, and the attorneys did get paid $1,200.

A couple of other issues I would like to talk about in the time remaining. First is trustee commission issues. In 2005 when BAPCPA was passed, Congress changed and added 330(a)(7) to the Code, which said that trustee fees shall be treated as a commission. Most of the bankruptcy judges around the country have honored that, and honored that even before that time. But there are a few courts in the country who do not treat the fees as a commission, but instead still use Lodestar factors, such as time factors, in awarding fees. And we think that should be changed. The law should be changed to make it clear that the commission is a presumptive commission, and only in extraordinary circumstances should it be changed by the courts.

Finally, I want to talk about pension plan responsibilities, and this was mentioned by the Chairman a few minutes ago. BAPCPA placed on the Chapter 7 trustees the responsibility to handle pension plans in corporations and businesses that we receive into our hands. That creates a huge problem for trustees because we are not

really set up to do that kind of work. It is a separate entity than the debtor itself.

In 2006, after the passage of BAPCPA, the Department of Labor developed a regulatory scheme and created something called a qualified termination administrator, an independent administrator which can do those plans. We would like that section changed in the Code, that Section 704(a)(11), to take that responsibility away from trustees and let it go to these QTAs under the supervision of the Department of Labor. I do not think the Department of Labor would object to that. Again, that is an important issue for us.

I want to thank you again, Chairman Coble, for holding this hearing. Chapter 7 is the most and common form of bankruptcy in the United States with well over a million cases per year. On behalf of all the trustees, thank you for hearing our problem.

[The prepared statement of Mr. Furr follows:]

Statement of Robert Furr
On behalf of
The National Association of Bankruptcy Trustees
July 27, 2011

Introduction

Chairman Coble, Ranking Member Cohen, and other distinguished Members of the Subcommittee, let me thank you for the opportunity to provide the views of the National Association of Bankruptcy Trustees to your Subcommittee on the subject of compensation for Bankruptcy Trustees. It has been 17 years since our last per case pay adjustment, thus, we are very grateful that you are turning your attention to this issue.

My name is Robert Furr and I am a past President of the National Association of Bankruptcy Trustees (NABT), a member of its board of directors and its Executive Committee. NABT is an organization of panel trustees, independent fiduciaries, appointed in every Chapter 7 bankruptcy case. Of the approximate 1,100 such Trustees nationwide, the vast majority are members of our organization.

Chapter 7 Bankruptcy and Trustees

What is Chapter 7 and why is it important? Chapter 7 bankruptcy cases are for the most part typical consumer bankruptcy cases where debtors discharge all of their debts. Chapter 7 cases also include complex individual and business cases. By a wide margin, most bankruptcies in the United States are Chapter 7. In 2010, there were 1,139,601 Chapter 7 cases filed in the U.S. bankruptcy courts. This is an eight percent increase over 2009. With continued economic uncertainty, this number may continue to climb. For your reference, there were approximately 25,000 Chapter 7 cases filed in North Carolina, and 50,000 in Tennessee in 2010.

Trustees conduct the major work involved in Chapter 7 bankruptcy. As a trustee, we protect both debtors and creditors from abuses of the system. We carry out important public policy

priorities as directed by the Congress, such as insuring that parties to child support orders are noticed of the bankruptcy filing, and the safeguarding of patient health care records and needs. As trustees, we have an obligation to secure relief for honest debtors and to investigate filings for abuse, criminal activity, fraud, mortgage fraud, fraudulent scams involving homeowners, and fraudulent foreclosure rescue operations. The Bankruptcy Code says that we are the representative of the estate which means we generally protect the interests of all parties as found in 11 USC section 323(a).

We even help federal, state and local governments by being one of the largest collectors of unpaid taxes in the U.S. Over $132 million was paid to federal, state and local taxing authorities through trustee collections last year.

Trustees are critical because in the vast majority of Chapter 7 cases, debtors never appear before a judge, but are examined by the Trustees. The process begins with a review of the petitions filed, and a hearing conducted by the Trustees to which creditors may appear and participate. In previous testimony to this committee on September 16, 2008, I gave a detailed description of the duties of a Chapter 7 Trustee. Needless to say, a great deal of work goes into each case.

In the intervening 17 years since our last compensation adjustment, the burdens on trustees have increased. The Bankruptcy Abuse and Consumer Protection Act (BAPCPA), passed in 2005, added many new and different duties for trustees. In June 2008, the GAO conducted a study of the bankruptcy system after BAPCPA. In their report, they stated

> "The Bankruptcy Reform Act has affected the responsibilities and caseloads of Chapter 7 and Chapter 13 private trustees. As a result of new provisions in the act, trustees must collect, track, store, and safeguard additional documents such as tax returns; notify appropriate parties of domestic support obligations; check calculations and review the accuracy of information in forms associated with the means test; and, once finalized, will be required to comply with new requirements for uniform final reports. Private trustees told us that these new responsibilities have significantly increased the time and resources required to administer a bankruptcy case."

Compensation of Trustees in Chapter 7

A major concern for trustees has been the lack of any compensation adjustment since 1994. Under the present law, trustees receive $60 for administering Chapter 7 cases in which "no assets" are liquidated. The last increase in this trustee compensation occurred in 1994, when the fee was raised from $45 to $60. Let me emphasize that this is a flat fee per case. A case could take an hour, a few hours, days, weeks, or in some unique circumstances, years, to bring to closure. Trustees essentially work on a "contingent" basis because if their efforts do not result in a dividend to creditors, they receive only the $60 no asset fee. Every trustee can tell about cases in which he or she devoted many hours and much money and did not recover any assets. In other cases, trustees are obligated by their statutory duties to spend the time and money to fulfill their duty without additional compensation. That happens on a daily basis in my practice.

When that last increase took place in 1994, trustees were earning $60 from a $130 filing fee, nearly half of the filing fee, thus, recognizing that trustees are an integral part of the bankruptcy system. Today, trustees earn $60 from a $299 filing fee – only 20% of the filing fee compensates trustees for their work.

Many experienced trustees are considering leaving the system. It takes years for a new trustee to begin a profitable practice because the new trustee must build a pipeline of cases and most asset cases take more than a year to administer. Without an increase in the "no asset" fee as an income base, the new trustee will have to struggle to make his or her practice economically viable. We want new individuals to join the trustee program and stay with it; otherwise, we will eventually have a lack of seasoned trustees administering the bankruptcy system. I would like to put into the record a letter from a fellow trustee, Michael Wagner, in North Dakota who just left the panel over these issues. In an informal survey, we have been told that approximately 20 trustees departed last year, due to the compensation issue. We have learned that in Kentucky, the government is having to look outside the State because no one will take on the new duties. This pattern will continue with no positive movement on our compensation.

Just to clarify, trustees can earn more than $60 per case from Chapter 7 cases *where there are assets*. This, however, is a very small part of the Chapter 7 caseload. In 2010, only 5.2% of

cases had assets. In fact, every case essentially begins as a no asset case; after all, Chapter 7 is liquidation bankruptcy. It is the hard work of the trustee to determine if there are assets in the estate. Of the 60,000 cases with assets, approximately 46,*000 had assets of less than $10,000*. Trustees earn a commission on the assets they find and return to creditors.

This is an important point for creditors in bankruptcy that should not be overlooked. Last year, trustees paid $2.3 billion to creditors. Without seasoned and experienced trustees, creditors cannot expect these kinds of recoveries. We did this by taking, on average, a commission of 5.7%. The fees trustees earn are minimal compared to collection agencies. I would also note that while trustees often return funds to debtors in bankruptcy, we are prohibited by statute from receiving a commission on these funds. Last year alone, we returned over $101 million to debtors by liquidating their exempt property, or by returning funds to them after all creditors were paid; no commissions were paid to trustees on these funds.

Recommendations

Increasing our compensation has always enjoyed bi-partisan support in both the House and Senate. The Congress has looked at increasing our compensation, but for one reason or another, our raise has gotten entangled in other legislative battles or bickering among the parties to bankruptcy about who should bear the cost of an increase. We particularly want to thank Ranking Member John Conyers and Congressman Cohen for introducing a trustee compensation bill last year, H.R. 4950. It was the only free standing bill, in our memory, that has been introduced to address our compensation disparity.

We think to be fair, trustees should receive a per case fee increase of $40. Based on inflation figures alone, trustees would be earning an additional $28 per case. We have also calculated that due to the allowable *informa pauperis* (IFP) waivers, which allows a complete waiver of the filing fee altogether, (thus, no compensation at all for trustees), we are losing an additional average of $7 per case. As a result, we think a $40 per case increase is appropriate to bring trustees to the levels Congress intended in 1994. We are open to other approaches to adjusting

our compensation, such as a very modest adjustment upward on the commissions we receive when we sell assets.

Some have expressed concern about any increase in a bankruptcy filing fee or other court fees in order to adjust trustee per case fees. I would respond that Congress, under BAPCPA, as I just mentioned, has addressed this issue and allows debtors to waive the filing fee altogether if they can demonstrate a lack of funds – a so called *informa pauperis* filing. While we think a waiver policy is appropriate for those truly in need, in these cases, a trustee receives no income. We believe that this type of filing is on the increase.

I would also note that debtors can receive an IFP waiver even while represented by an attorney. We have no quarrels with debtors having adequate legal representation. In two cases before me in the past month, however, the attorney was paid a fee of $1,200 while filing a motion to waive the filing fee—which motion was granted. That means I did not get paid to administer that case while the consumer debtor lawyer made $1,200. There is no cap on debtor attorney fees and they have increased over the years, particularly after BAPCPA and are now 40% to 50% higher than just a few years ago, according to the GAO and an independent study sponsored by the American Bankruptcy Institute. We hope as well that debtor attorneys recognize that competent and experienced trustees are just as important to protecting the interest of the debtor. It is helpful to remember that the filing fee allows debtors to wipe out hundreds of thousands of dollars per case.

There are a few other issues in the Chapter 7 practice that I would like to bring to your attention.

Other Issues in Chapter 7

Trustee Commissions in Asset Cases

As I noted earlier, trustees can earn a commission in the 5% of cases where there are assets, but even this compensation can be uncertain at times. The Congress tried to address this uncertainty. Section 330 (a) (7) was added to Title 11 during BAPCPA. It was the intent of Congress to further instruct Courts that trustee compensation under Section 326 (a) is to be

treated as a *commission*, something most already did. In addition, Section 330 (3) was amended by BAPCA to remove compensation for Chapter 7 trustees from the typical "lodestar" or "Johnson-factor" analysis which centers on time spent on services and rates charged for such services. Shortly after enactment of BAPCPA, the United States Trustee announced a policy of support for the commission fee determination, it no longer required time records and would only object to fees in unusual circumstances. Certainly, bankruptcy courts must review trustee compensation for reasonableness under Section 330 (a) (1), but in making these decisions some courts have reverted to a traditional analysis of how much time was spent by the trustee, and how much should be awarded for those services on an hourly basis.

We believe that Section 330 (a) (7) should be strengthened to provide that the commission should be presumptively awarded without regard to the Section 330 (a) (3) "lodestar" factors. Trustees have to take the good with the bad cases. Commissions are designed to encourage Trustees to devote time to all cases for the better of the system.

Pension Plan Responsibilities

Section 704 (a) (11) of Title 11, as added by BAPCPA put the administration of abandoned pension plans in the hands of the Chapter 7 trustee when a business declares bankruptcy. We believe, based on regulatory developments since BAPCPA, this provision can be removed with no harm, and in fact, with benefit to pension plan participants, and creditors.

In early 2006, after the passage of BAPCPA, the Employee Benefits Security Administration (EBSA), a bureau of the Department of Labor (DOL) developed a regulatory scheme under ERISA for handling "abandoned" plans. In practice, these regulations provide for the orderly termination of orphaned plans where the sponsoring employer has not filed bankruptcy. The plans are essentially turned over to a QTA (qualified termination administrator). These are typically entities that work with ERISA plans on an ongoing basis and generally appreciate the business because of resulting account rollovers, etc.

It our view, had the EBSA regulations been in existence pre-BAPCPA, Section 704 (a) (11) would never have been adopted and likely deemed unnecessary. In view of the changed

regulatory environment due to the promulgation of these regulations, we would hope the Committee would consider the repeal of 704 (a) (11). It would be more efficient and better for pension plan participants for these plans to be managed and liquidated outside of bankruptcy by professionals in this field. Trustees have little expertise in this area, yet it imposes a substantial burden and ongoing liability on the trustee.

In addition, by placing the burden on the trustee to administer the orphan plans, the bankruptcy estate and its creditors suffer reduced funds available to distribute to creditors due to the cost of administering these plans. Further, it takes several years in most instances to complete the termination of the plan. This typically results in a delay of several years before distributions can be made to creditors. There is no party who benefits from the current law and many who are prejudiced by it.

Conclusion

We want to again thank you Chairman Coble for holding this hearing. Chapter 7 is the most common form of bankruptcy in the U.S. – with well over 1 million cases last year. Chapter 7 trustees are performing the bulk of the work in handling these cases. Even though the filing fee has been increased three times in the last 17 years, trustee compensation has not been part of any increase, thus, our compensation has been frozen in time from the early 1990's at $60 per case. We think the time is long overdue to adjust this amount to keep the trustee system a competent, efficient corps protecting both debtors and creditors in bankruptcy, and keeping our bankruptcy courts from being at best sluggish and at worst backlogged. Thank you for allowing us this opportunity to air our views on a subject important to bankruptcy trustees throughout the U.S.

Mr. COBLE. Thank you, Mr. Furr.

Mr. Gold? Mr. Gold, your mic, I do not think, is on?

TESTIMONY OF H. JASON GOLD, PARTNER, WILEY REIN LPP (WASHINGTON, DC) AND CHAPTER 7 TRUSTEE (E.D. VA), ON BEHALF OF THE AMERICAN BANKRUPTCY INSTITUTE

Mr. GOLD. Thank you, Chairman Coble, Mr. Cohen, and Members of the Subcommittee. I am Jason Gold. I am a partner in the Mclean, Virginia and Washington, D.C. law of Wiley Rein. We have over 275 lawyers in our firm, and we practice in nearly two dozen practice areas. I am the chair of our bankruptcy and financial restructuring practice, and I have more than 30 years of experience as a bankruptcy trustee—excuse me, as an attorney. I have had 24 years as a bankruptcy trustee.

Before being appointed as a trustee, I had a great deal of experience representing debtors in Chapter 7 cases before I actually joined the Bankruptcy Trustee Panel. And I have served as trustee in over 21,000 cases.

I appear here today as a representative of the American Bankruptcy Institute. The American Bankruptcy Institute is comprised of over 13,000 insolvency professionals around the country, and indeed many around the world.

The $60 no-asset fee, as we all understand, has not been raised since 1994, yet the duties of the Chapter 7 trustee have continued to expand, and most recently, of course, with the enactment of BAPCPA as was discussed.

Mr. Chairman, the initial duties of the trustee start even before the debtor appears before me at the so-called meeting of creditors, a 341 meeting. I must review the bankruptcy petition, the schedule of assets and liabilities, the sworn statement, all those papers that are filed in these cases. And I am appointed to about 110 cases every month or so, broken up into two dockets, again, each month. Now, over 90 percent of the cases are no-asset cases, as we all now know, and trustees file the no distribution report. But we do all this work for $60 per case, and that includes, of course, those cases where we are not paid at all, the informa popras cases.

Mr. Chairman, there is a report that has been submitted to the Committee, a preliminary report, issued by the American Bankruptcy Institute entitled "The Costs of BAPCPA: Preliminary Report on BAPCPA's Impact on Chapter 7 Trustees Administering Consumer Cases" authored by Lois R. Luprica, dated today, July 27, 2011. I would ask that that be included in the record.

Mr. COBLE. Without objection.

[The information referred to follows:]

THE COSTS OF BAPCPA: REPORT OF THE PILOT STUDY OF CONSUMER BANKRUPTCY CASES

LOIS R. LUPICA*

INTRODUCTION

Substantial changes were made to the consumer bankruptcy system with the enactment of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA").[1] According to the Act's legislative history, the amendments to the Bankruptcy Code were designed "to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system and ensur[ing] that the system is fair for both debtors and creditors."[2] The purported improvements incorporated into the Bankruptcy Code include an "income/expense screening mechanism,"[3] a myriad of new eligibility standards for consumer bankruptcy relief,[4] and new responsibilities on "those charged with administering consumer bankruptcy cases as well as [on] those who counsel debtors with respect to obtaining such relief."[5] However, the sweeping changes to the consumer bankruptcy system were enacted without data support for, or recognition of how

* Lois R. Lupica, Maine Law Foundation Professor of Law, University of Maine School of Law. B.S. Cornell University, 1981, J.D. Boston University School of Law, 1987. This Pilot Study was funded with the generous support of the Anthony H.N. Snelling Endowment Fund, a foundation supported by the membership of the American Bankruptcy Institute. In funding this research, the Anthony H.N. Snelling Endowment Fund and the American Bankruptcy Institute do not endorse, nor express any opinion with respect to any conclusions, opinions, or report of any research funded by this grant. All opinions, observations, and conclusions are those of the Author. I would like to thank Claire DeWitte and Bodie Colwell, University of Maine School of Law, Class of 2011, for their invaluable contribution to the Pilot Study. As Lead Research Assistants, Ms. DeWitte and Ms. Colwell, have been integral to the development of (i) the research protocol, (ii) the Coding Manual, (iii) the data collection process, (iv) the Research Assistant Training Program, and (v) the Report of the Pilot Study. I would also like to thank Research Assistant, Jonathan McPhee, University of Maine School of Law, Class of 2011, for his assistance with quality control procedures. I am also grateful to Peter Pitegoff, Dean of the University of Maine School of Law, for his support of this project. And finally, I would like to thank Statistical Consultant, Elizabeth Newton, Ph.D., for her assistance in the development of the research design and the statistical analysis of the data.

[1] *See* Henry J. Sommer, *Trying to Make Sense Out of Nonsense: Representing Consumers Under the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,"* 79 AM. BANKR. L.J. 191, 230 (2005) ("There is no question that the provisions of the Bankruptcy Code have been changed in many significant respects. There is also no question that many debtors, especially those priced out of bankruptcy relief due to increased costs, will be negatively impacted by those changes.").

[2] BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005, H.R. REP. NO. 109-31, at 2 (1st Sess. 2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 89.

[3] *Id.* (discussing mechanism designed to ensure maximum payment to creditors).

[4] *See* 11 U.S.C. §§ 342, 521, 546, 1308, 1328(a) (2006) (providing examples of statutorily-created eligibility standards).

[5] *See* H.R. REP. NO. 109-31, *supra* note 2, at 2.

such changes would affect the cost of accessing the bankruptcy system.[6]

The costs of BAPCPA were considered by Congress during its deliberative process and addressed in a Congressional Budget Office report ("CBO Report").[7] The focus of the CBO Report, however, was narrow: the costs of BAPCPA to the U.S. Government.[8] The CBO Report predicted that the additional responsibilities mandated by BAPCPA would increase the costs incurred by the U.S. Trustee's office.[9] The CBO Report did briefly review the costs of the legislative mandates imposed on state, local, and tribal governments, as well as on certain members of the private sector, including bankruptcy attorneys, creditors, bankruptcy petition preparers, debt relief agencies, consumer reporting agencies, and credit and charge-card companies.[10] It mentioned in passing, that a number of the increased costs that were predicted to be incurred by bankruptcy attorneys and others *may be* passed on to the consumer.[11]

The "Costs of BAPCPA Pilot Study" undertook a review of the costs of the consumer bankruptcy system following BAPCPA's enactment, to determine whether these costs *were* passed on to the consumer. The issue of "costs" distills to the question of what attorneys are charging consumers to represent them under this new regime. Thus, a study of the costs of the consumer provisions of BAPCPA is, in essence, the study of consumer bankruptcy attorney fees. As has been observed, "[f]ew areas of bankruptcy practice are more publicly controversial or less consistently administered than the determination of reasonable compensation for the . . . professionals who are essential to an efficient and well-managed bankruptcy process."[12]

A consumer bankruptcy fee study is long overdue. The last national study of professional fees in consumer fees was sponsored by the American Bankruptcy Institute in 1991.[13] The 1991 study, however, primarily examined professional fees

---

[6] The Congressional Budget Office ("CBO") prepared a cost estimate of some of the direct costs of BAPCPA and presented it to the House Committee on the Judiciary on April 4, 2005. *Id.* at 33 (presenting BAPCPA's cost estimate).

[7] The CBO report noted that the primary cost increase would be for additional responsibilities of the U.S. Trustees imposed by BAPCPA. Additionally, new bankruptcy judgeships would impose additional costs—$26 million over the next five years and $45 million over the 2006 to 2015 period. The report's summary stated, "[o]n balance and assuming appropriation of the necessary amounts to implement the act, CBO estimates that its enactment would increase budget deficits by about $280 million over the 2006-2010 period." *Id.* at 34.

[8] The CBO Report did not estimate the costs of BAPCPA on consumer debtors. *Id.* (analyzing cost to government).

[9] *Id.* (predicting increased responsibilities of U.S. Trustees). This Pilot Study does not address the issue of costs incurred by U.S. Trustees as a result of additional responsibilities mandated by BAPCPA.

[10] *Id.* at 42–46 (illustrating costs on state, local, and tribal governments, as well as private sector).

[11] The increase in filing fees (paid by debtors) was reflected in the CBO Report as an increase in revenue, not costs. The CBO Report concluded that "[a]s long as the likelihood of repayment by debtors and the pool of funds increases by an amount greater than the cost to creditors of administering the new bankruptcy code, creditors would be made better off under the act." *Id.* at 46.

[12] G. RAY WARNER, AMERICAN BANKRUPTCY INSTITUTE NATIONAL REPORT ON PROFESSIONAL COMPENSATION IN BANKRUPTCY CASES 1 (LRP Publications 1991) (1991) [hereinafter *ABI Fee Study*].

[13] *Id.*

in business bankruptcy cases, devoting a mere eight pages of a 255-page report to discuss attorney fee issues in consumer cases.[14] In these eight pages, however, a wealth of important information about consumer bankruptcy practice was revealed.

For example, in response to a series of survey questions about fees and fee guidelines, judges and consumer bankruptcy lawyers reported the median fees charged in chapter 7 and chapter 13 cases.[15] The study further compared the fees actually charged to local "fee guidelines" (also known as no-look fees).[16] The study found that the assumption of the existence of a "routine" consumer case was reflected in the regular adherence to the no-look fee.[17] Finally, the report questioned both the process by which these no-look fees guidelines were set, as well as the propriety of the assumption that there is such a thing as a "routine" case.[18]

If there was a question about whether there was such a thing as a routine consumer bankruptcy case in 1991, thus, justifying default to a standardized fee, the question is even more compelling in today's post-BAPCPA environment. Simply stated, consumer bankruptcy is a far more complicated process than it was before the 2005 amendments.[19] More substantive and procedural obligations are imposed

---

[14] *Id.* at 169–76 (discussing maximum fees in consumer cases). The report states "[a]lthough most of the compensation issues discussed in this report arise primarily in the business bankruptcy setting, several survey questions addressed the practice of establishing maximum attorneys' fee caps for routine consumer Chapter 7 and Chapter 13 cases." *Id.* at 169.

[15] *Id.* at 171–73. Lawyers reported a median fee maximum of $750 for chapter 13 cases; $600 for chapter 7 cases (with assets to administer); $700 for chapter 7 no-asset cases. *Id.* (explaining fee increase).

[16] *Id.* at 169–71 (comparing actual fees to local "fee guidelines").

[17] *Id.* at 169 (explaining why "many courts have established maximum attorneys' fee guidelines for routine consumer cases").

[18] *Id.* at 169–70 (questioning fees in consumer bankruptcy cases). The study expressed some skepticism that the interests of judicial economy and efficiency has resulted in the conclusion that the "no look fee" is equivalent to a reasonable fee, as mandated by section 330(a)(1). *Id.* at 169 (indicating fees should be evaluated based on reasonableness).

[19] Chapter 13s are longer than they were pre BAPCPA and there is much more opportunity for defaults simply because of the passage of time and the limited resources in a case to begin with. What I have seen is that a typical consumer chapter 13 case ends up being 2 or even 3 cases with the amendments and revisions and cures that go on over the term of the case . . . I can think of a number of other causes for the additional time required and additional costs but in short, the basics of post-BAPCPA cases simply take a lot more time and the extra work just adds to the costs, not to mention the work required where there is a contest or dispute. I can say that I have reduced my fees by thousands of dollars in several consumer chapter 13 cases that might have been routine otherwise just to make the plan work. I think bankruptcy practice is more complicated and time consuming than it used to be and BAPCPA only added to cost and time required. We have tried to be more efficient by employing online date input from clients and credit report downloading to the bankruptcy software. This has helped somewhat but reviewing and performing due diligence remains time consuming.

Comments on consumer debtor's attorney (Jan. 4, 2010) (on file with author); *see* Sommer, *supra* note 1, at 191 (observing, by virtue of 2005 amendments to Bankruptcy Code, "[t]here is no doubt that bankruptcy relief will be more expensive for almost all debtors, less effective for many debtors, and totally inaccessible for some debtors as a result of the new law").

on debtors, attorneys, and trustees.[20] Moreover, a myriad of conditions must be satisfied before a consumer may access (and exit) the bankruptcy system. It has been observed that the "principal target" of these conditions is the debtor.[21] An evaluation of the cost of these conditions can be made by a measure of attorney fees.[22]

Over three million consumers have met the aforementioned conditions and filed for bankruptcy since BAPCPA's effective date.[23] Many of these consumers have received the relief they were seeking, even in the new "unwelcoming" consumer bankruptcy system.[24] But, what did this relief cost them? And, how did it impact the way bankruptcy law is practiced? In essence, this study seeks to answer the question of how the consumer bankruptcy system has changed after the enactment of BAPCPA.

The Pilot Study has taken the first step toward identifying, quantifying, and analyzing the costs of BAPCPA, and offers preliminary insight into how the Bankruptcy Code's new procedural requirements have been monetized. It has also sought to view the changes that BAPCPA brought through a broader lens by developing models to reveal the extent to which distributions to unsecured creditors were affected by the changes made to the Code.

In summary, the costs of bankruptcy have increased following BAPCPA. These costs include an increase in administrative expenses, such as filing fees, debtor counseling, education fees, trustee fees, expenses, and attorney fees. Moreover, data from the Pilot Study reveals that distributions to unsecured creditors have decreased following BAPCPA's enactment in chapter 13 and chapter 7 consumer cases.

There are many questions on the agenda for the Costs of BAPCPA: The National Consumer Bankruptcy Study ("National Study"), which will launch in

---

[20] *See* Comments of consumer debtor's attorney, *supra* note 19 (indicating change in bankruptcy law have made practice more costly and time consuming); *see also* 11 U.S.C. §§ 727(a)(8) (2006) (inhibiting debtors from repeat bankruptcy filings), 1308 (2006) (stating in chapter 13, debtor must file four years of tax returns, hold annual meetings, and comply with disclosures).

[21] *See* James J. White, *Abuse Prevention 2005*, 71 MO. L. REV. 863, 866 (2006) ("The principal target of the Act was the debtor.").

[22] > [T]he work attorneys are forced to do on behalf of the clerks and the UST far exceeds the $299 in filing fees the debtor is already paying. It has the effect of hiding the true costs of case management and lets the court believe that somehow moving to electronic filing has saved them money. It has - but not by making the process more efficient, but by shifting the costs onto attorneys and debtors.
>
> Comments of a bankruptcy professional (Nov. 2, 2009) (on file with author); *see* Ronald J. Mann, *Bankruptcy Reform and the "Sweat Box" of Credit Card Debt*, 2007 U. ILL. L. REV. 375, 392–97 (2007) (explaining BAPCPA has caused increasing costs for debtors).

[23] *See* Bankruptcy Data Project at Harvard, http://bdp.law.harvard.edu/filingsdb.cfm (last visited Mar. 31, 2010) (demonstrating consumer filings post–BAPCPA).

[24] From January 2006 to October 2009, 3,509,409 bankruptcy petitions have been filed by consumers. *See id.* (illustrating number of bankruptcy filings by consumers after BAPCPA); *see also* White, *supra* note 21, at 864 n.9 (remarking on increase in filings by consumers).

early 2010.[25] While the Pilot Study collected data about system costs and creditor distributions exclusively from public bankruptcy records, the National Study will also examine a more robust sample of filed consumer bankruptcy petitions from the pre-BAPCPA period, and compare them to a sample of cases filed following BAPCPA's effective date. In addition, data will be gathered directly from consumer bankruptcy attorneys, trustees, and judges.[26] Survey instruments will be distributed and focus groups will be conducted in an effort to glean answers to questions that cannot be found in bankruptcy petitions and schedules.

Bankruptcy professionals will be asked about the changes in bankruptcy practice following BAPCPA. Specifically, professionals will be asked about the fees charged in consumer bankruptcy cases, the nature and impact of the new administrative requirements, the time it takes to represent a consumer debtor, the impact of the new requirements on consumer behavior and decision-making, and the changes that have proven to be the most and least significant. The National Study will provide more evidence with which to answer the question of whether the 2005 amendments to the Bankruptcy Code improved bankruptcy law and practice or whether the amendments just made the system more cumbersome and costly to use.

I. BAPCPA'S NEW CONSUMER CASE REQUIREMENTS

There are a number of new hurdles (or barricades) to be scaled by consumers seeking the benefits of the bankruptcy system.[27] The most oft-discussed addition to the roster of new requirements is the mandate that all debtors calculate their income and expenses under the "means test," whether or not the debtor is seeking relief under chapter 7.[28] The means test necessitates a myriad of complex calculations and

---

[25] The National Consumer Bankruptcy Costs Study will be funded by the Anthony H.N. Snelling Endowment Fund and the National Conference of Bankruptcy Judges Endowment for Education. In funding this research, the Anthony H.N. Snelling Endowment Fund, the American Bankruptcy Institute, and the National Conference of Bankruptcy Judges Endowment for Education, do not endorse, nor express any opinion with respect to any conclusions, opinions, or report of any research funded by their respective grant.

[26] As was observed, all of the "debtor's duties become the duties of his[/her] lawyer."

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

Robert M. Lawless et al., *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 353 (2008); *see* Keith M. Lundin, *Ten Principles of BAPCPA: Not What Was Advertised*, 24 AM. BANKR. INST. J., 1, 70 (2005) ("BAPCPA requires a lot more work for debtors' attorneys. Debtors will pay for that work, and some debtors will simply be priced out of bankruptcy.").

[28] *See* 11 U.S.C. § 707(b) (2006) (requiring, *inter alia*, debtor income limit for filing chapter 7); *see also* Hamilton v. Lanning (*In re* Lanning), 545 F.3d 1269, 1272 n.2 (10th Cir. 2008) (stating BAPCPA requires chapter 7 and 13 debtors to use means test); Marianne B. Culhane & Michaela M. White, *Catching Can-Pay*

requires the application of various local and IRS expense standards adjusted by location and household size.[29] In addition, debtors must be able to prove their income by producing both "payment advices" and income tax returns.[30] Debtors must also attend a credit counseling course in order to be eligible to file for bankruptcy.[31] To receive a discharge, a debtor must attend a debtor education course.[32]

Most debtors have complied and will continue to comply with these requirements by subcontracting them to their attorney. It is the lawyer who directs a debtor to the credit counseling course, as well as to the pre-discharge debt management course.[33] The lawyer (or the lawyer's staff) prepares and calculates the means test, and reminds (and reminds again) debtors to produce their tax returns and pay advices.[34] Lawyers also commonly provide clients with a section 342(b) notice, describe the forms of bankruptcy, and warn of the consequences of asset concealment or fraud.[35] Lawyers must also certify, after "reasonable investigation,"

Debtors: Is the Means Test the Only Way?, 13 AM. BANKR. INST. L. REV. 665, 667 (2005) (noting means test is used for chapter 7 and chapter 13).

[29] Anecdotal evidence suggests that most consumer bankruptcy attorneys use "means test" software, such as Best Case Solutions, which simplifies the calculations and application of formulas. A license for three people to use the program for chapter 7 and chapter 13 cases costs $1,600. Some jurisdictions may require an additional program for an additional fee. *See* Best Case Solutions Order Form, http://www.bestcase.com/grafix/pdf/orderfrm.pdf (last visited Mar. 31, 2010). No doubt, the use of such software programs saves time once the user becomes familiar with the system. Not being a regular user of the software, except for demonstrating its utility before my bankruptcy class once a year, I can attest that there are considerable start-up costs. I can see, however, a time-saving value in repetitive use of the program.

[30] *See* 11 U.S.C §§ 521(a)(1)(B)(iv) (requiring debtor to disclose payment received from employer within 60 days before petition was filed), 521(e)(2) (2006) (mandating trustee be given Federal income tax return); *see also* Segarra-Miranda v. Acosta-Rivera (*In re* Acosta-Rivera), 557 F.3d 8, 9 (1st Cir. 2009) (requiring debtor to disclose financial information); Edwards v. U.S. Trustee, No. 5:09-CV-163 (HL), 2010 WL 381842, at *2 (M.D. Ga. Jan. 27, 2010) (determining debtor must produce tax returns).

[31] *See* 11 U.S.C § 521(b)(1) (2005) (requiring debtor to file certificate from credit counseling agency); *see also In re* Lilliefors, 379 B.R. 608, 610 (Bankr. E.D. Va. 2007) (noting counseling requirement under BAPCPA); *In re* Rendler, 368 B.R. 1, 2 (Bankr. D. Minn. 2007) (discussing counseling requirement and its exceptions).

[32] *See* 11 U.S.C §§ 727(a)(11) (requiring debtor education under chapter 7), 1328(g)(1) (2006) (requiring debtor education under chapter 13); *see also In re* Ring, 341 B.R. 387, 388 (Bankr. D. Me. 2006) (noting debtor education required for discharge).

[33] *See* William F. Stone, Jr. & Bryan A. Stark, *The Treatment of Attorneys' Fee Retainers in Chapter 7 Bankruptcy and the Problem of Denying Compensation to Debtors' Attorneys for Post-Petition Legal Services They Are Obliged to Render*, 82 AM. BANKR. L.J. 551, 564 (2008) (discussing debtor's post-petition responsibilities under Code). A number of consumer bankruptcy attorneys have told me that they have computer stations, and telephone centers set up in their offices. This is done so that clients can complete these required courses on-line, or by telephone, while they are in the lawyer's office for consultation.

[34] *See* Jean Braucher, *Getting Realistic: In Defense of Formulaic Means Testing*, 83 AM. BANKR. L.J. 395, 400 (2009) (noting need for attorney assistance to comply with section 707). Consumer bankruptcy attorneys have noted that collecting pay advices from clients for the requisite period of time has been among the most challenging and time consuming of the new requirements. *See* A. Mechele Dickerson, *Race Matters in Bankruptcy Reform*, 71 MO. L. REV. 919, 942–43 (2006) (describing time and costs of compliance). Some attorneys have stated that they have hired a new employee whose exclusive job it is to collect the needed documentation from consumer debtors.

[35] *See* 11 U.S.C. § 342(b) (2006) (describing notice to be given to consumer debtor); *see also* David Gray Carlson, *Means Testing: The Failed Bankruptcy Revolution of 2005*, 15 AM. BANKR. INST. L. REV. 223, 229

that the information provided by debtor in his or her petition is "well grounded in fact."[36] To avoid sanctions and potential civil liability, attorneys are required to verify the information given to them by their clients with respect to the list of creditors, assets and liabilities, and income and expenditures.[37] All of this takes time, and for lawyers, as well as for other professionals, time is money.

The cost of the new consumer bankruptcy requirements was detailed in the first post-BAPCPA study of the financial impact of the bankruptcy amendments.[38] This study, conducted by the Government Accounting Office ("GAO"), examined the costs of BAPCPA on the U.S. Trustee Program, the federal judiciary, consumers, and private trustees.[39] The U.S. Trustee Program was found to have incurred significant costs in connection with its role in the implementation of the means test, debtor audits, data collection and reporting, as well as counseling and education requirements.[40]

(2007) (describing notice process); Gary Neustadter, *2005: A Consumer Bankruptcy Odyssey*, 39 CREIGHTON L. REV. 225, 332 (2006) (discussing notice requirement). A debtor may receive a section 342(b) notice from the court clerk. *See* § 342(b) (stating "clerk shall give [debtor] written notice").

[36] *See* § 707(b)(4)(C) (2006) (stating certifications are made by lawyer's signature on petition). Section 707 makes bankruptcy attorneys liable for misleading statements and inaccuracies in schedules and documents submitted to the court or to the trustee. *See* § 707(b)(4)(D) (declaring attorney's signature certifies he or she has no knowledge of incorrect information). To avoid sanctions and potential civil penalties, attorneys need to verify the information given to them by their clients regarding the list of creditors, assets and liabilities, and income and expenditures. *See* H.R. REP. NO. 109-31, *supra* note 2, at 116 (discussing estimated impact of requirements). Completing a reasonable investigation of debtors' financial affairs and, for chapter 7 cases, computing debtor eligibility, requires attorneys to expend additional effort. *See id.* (noting additional effort by attorneys will cause increase in fees). Prior to BAPCPA's enactment, the American Bar Association said that this requirement would increase attorney costs by $150 to $500 per case. *See id.* (explaining additional costs will fall on clients).

> Based on the 1.6 million projected filings under chapter 7 (liquidation) and chapter 13 (rehabilitation), CBO estimates that the direct cost of complying with this mandate would be between $240 million and $800 million in fiscal year 2007, the first full year of implementation, and would remain in that range through fiscal year 2010.

See id. at 116–17. The Congressional Budget Office stated that they expected that some of the additional costs incurred by attorneys would most likely be passed on to their clients. *See id.* at 117.

[37] *See* H.R. REP. NO. 109-31, *supra* note 2, at 116 (discussing estimated impact of requirements). An attorney representing a consumer bankruptcy debtor is required to file a written statement of the compensation paid to the attorney, or the compensation agreed to be paid to the attorney for services rendered in contemplation of or in connection with the bankruptcy case. This must be done within one year before the filing of the bankruptcy petition and done whether or not the attorney makes a specific application for compensation. *See* 11 U.S.C. § 329(a) (2006) (requiring statement of compensation); *see also* FED. R. BANKR. PROC. 2016(b) (requiring disclosure of compensation).

[38] *See* U.S. GEN. ACCOUNTABILITY OFFICE, GAO 08-697, REPORT TO CONGRESSIONAL REQUESTERS, BANKRUPTCY REFORM, DOLLAR COSTS ASSOCIATED WITH THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005, at 3–6 (2008) [hereinafter *GAO Report*] (summarizing results of study).

[39] *Id.* at 41 (describing objectives of report, including "(1) new costs incurred as a result of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 . . . by the Department of Justice and the federal judiciary, (2) new costs incurred as a result of the act by consumers filing for bankruptcy, and (3) the impact of the act on private trustees").

[40] *Id.* at 11 (discussing cost estimates for U.S. Trustee Program).

Consumer bankruptcy attorney fees incurred in chapter 7 cases were also examined in the GAO study: a nationwide random sample of 176 chapter 7 cases filed pre-BAPCPA were compared to 292 randomly selected chapter 7 cases filed post-BAPCPA.[41] The study found that the average attorney fee for a chapter 7 case increased by $366.[42]

With respect to attorney's fees in chapter 13 cases, the GAO study confined its examination to a review of 48 judicial districts' "no-look" fees and found an increase in nearly every district studies, with more than half of the districts showing an increase of 55 percent or more.[43] The GAO study concluded that filing for consumer bankruptcy was more costly for debtors, private trustees, and the U.S. Trustee following BAPCPA's enactment.[44]

The result of a series of interviews with half a dozen consumer debtor attorneys concerning the costs of consumer bankruptcy was recently published in Professor James J. White's article, *Abuse Prevention*.[45] The interview subjects unanimously concluded that the cost of consumer chapter 7 cases rose significantly following BAPCPA's enactment.[46] The reasons cited for the increase in costs were related to the necessity of multiple meetings with prospective debtors prior to filing:

> The first visit would be to explain the Section 342 disclosures and to begin collecting information. The second might be to get additional information and to arrange the counseling briefing, commonly done by telephone in the lawyer's office. Last, the lawyer himself will have to verify the information given by the debtor and hector the debtor for his tax return and pay stub. The lawyer will also have to do the mandated factual investigation . . . [including] getting credit reports, . . . lien searches, and checking

---

[41] *Id.* at 22 (indicating 176 cases chosen were pre-BAPCPA and 276 chosen were post-BAPCPA).

[42] *Id.* at 22–23 (noting average attorney fee increased by 51%).

[43] *Id.* at 25 ("In more than half of those districts and divisions, the increase was 55 percent or more.").

[44] *Id.* at 21 (stating evidence from stakeholders demonstrates legal fees increased since effective date of BAPCPA). A single-district study, entitled *An Empirical Examination of the Direct Access Costs to Chapter 7 Consumer Bankruptcy: A Pilot Study in the Northern District of Alabama*, was published in 2008 addressing the issue of BAPCPA's total direct costs. Robert J. Landry III & Amy K. Yarbrough, *An Empirical Examination of the Direct Access Costs to Chapter 7 Consumer Bankruptcy: A Pilot Study in the Northern District of Alabama*, 82 AM. BANKR. L.J. 331, 332 (2008). As part of this study, data was gathered in pre- and post-BAPCPA chapter 7 cases in the Northern District of Alabama. *Id.* at 333 (indicating time range of state and location of cases). This study examined approximately one hundred chapter 7 cases, from each of the two time periods, concluding that costs were higher following the bankruptcy amendments. *Id.* at 345 (suggesting studies show "attorneys' fees and total direct access costs" increased following reform act). The study's conclusion called out for a national empirical study of the costs of BAPCPA. *Id.* at 347 (explaining when solid empirical analysis and reform in consumer bankruptcy policy occur, "meaningful reform [will] be attained").

[45] White, *supra* note 21, at 875 (noting assessment of direct costs was created by interviewing dozen of lawyers representing chapter 7 debtors).

[46] *Id.* ("My respondents were unanimous in concluding that the cost of consumer Chapter 7's will rise significantly.").

> other public records to determine if the client is listed as the owner of real property.[47]

In recent years, however, numerous consumers in financial distress chose not to file for bankruptcy: the number of consumers filing for bankruptcy protection declined following BAPCPA's enactment.[48] In the first large-scale national sample of households that filed for bankruptcy after BAPCPA, the Consumer Bankruptcy Project investigated whether the ostensible "evil" BAPCPA was enacted to address – high income abusers of the bankruptcy system – was effectively eradicated by the reform legislation.[49] Since BAPCPA's enactment, median family incomes have declined, basic expenses have risen, debt loads have multiplied, and the number of foreclosures and loan defaults has increased. Yet, fewer families have taken advantage of the bankruptcy debt relief system.[50] Because there was no difference in income level between families filing for bankruptcy before BAPCPA and after BAPCPA's enactment, the study concluded that the families that were shut out of the bankruptcy system were not the system's "gamers," but those consumers the bankruptcy system is designed to offer relief to: households with high debt loads and incomes comparable to pre-BAPCPA filers.[51]

The Consumer Bankruptcy Project's study examined the question of *who* left the bankruptcy system post-BAPCPA.[52] The question of *why* these consumers left remains unanswered, although a number of plausible theories have been raised.[53] For example, some have theorized that families in need may not be filing for bankruptcy because they are "discouraged by the negative publicity surrounding the 2005 amendments, concerned about the stigma associated with bankruptcy, or

---

[47] *Id.* at 875 76.

[48] *See* Lawless et al., *supra* note 27, at 351 (highlighting sharp reduction of 800,000 bankruptcy filings after amendments); *see also*, Laura B. Bartell, *From Debtors' Prisons to Prisoner Debtors: Credit Counseling For the Incarcerated*, 24 EMORY BANKR. DEV. J. 15, 27 n.86 (2008) (noting non-business bankruptcy filings dropped during first quarter of 2006); Carlson, *supra* note 35, at 318 (2007) (indicating bankruptcy filings dropped from September 2005 to September 2006).

[49] *See* Lawless et al., *supra* note 27, at 352 (proclaiming Consumer Bankruptcy Project's purpose of examining whether BAPCPA has resulted in its promised effect).

[50]

> If bankruptcy filings had continued at the same level as they had been immediately before enactment of BAPCPA, about 1.6 million petitions would have been filed in 2007 – about twice as many as the 827,000 bankruptcy filings that actually occurred. The sharp reduction in filings after the amendments represents about 800,000 families that would have filed but did not. In the face of deteriorating economic circumstances, the absence of these families from the bankruptcy system is strong evidence that BAPCPA has had a powerful effect on families in financial trouble.

Id. at 351.

[51] *See id.* at 353 (indicating study's data revealed no shift in incomes of pre- and post-BAPCPA filiugs).

[52] *See id.* at 352 (explaining study's focus on who, rather than how many, filed for bankruptcy after 2005).

[53] *See* Sommer, *supra* note 1, at 192. ("There is no doubt that bankruptcy relief will be more expensive for almost all debtors, less effective for many debtors, and totally inaccessible for some debtors as a result of the new law.").

dissuaded by aggressive debt collectors and debt consolidation firms,"[54] who bully them into believing they can no longer file for bankruptcy.[55] Others have observed that procedural obstacles require greater up-front access costs[56] and increased emotional fortitude, which are hindering some consumers in financial distress from filing.[57]

The Pilot Study has examined the extent to which these procedural requirements have been monetized. By identifying the costs of access of the bankruptcy system prior to BAPCPA's enactment and comparing it to cases filed following the amendments, a clear picture of the changes has come into focus. The National Study will seek to confirm the results of the study of what costs have changed and the impact of BAPCPA on attorneys' practice, debtors' experiences, and the bankruptcy system of debt collection as a whole.

II. THE PILOT STUDY: SAMPLE SELECTION

The data for the Pilot Study were collected from consumer bankruptcy cases filed in six judicial districts. Three judicial districts from each of the eleven judicial circuits were initially selected: one from each of the high, low, and medium population states in the circuit, as determined by the July 1, 2008 Population Estimate published by the U.S. Census, leaving a pool of thirty-three judicial districts.[58] Six judicial districts were randomly selected from the pool of thirty-three judicial districts for Pilot Study sampling. Data was collected in the Pilot Study from (i) the Middle District of Florida, (ii) the Northern District of Illinois, (iii) the Northern District of Georgia, (iv) Maine, (v) Utah, and (vi) the Southern District of West Virginia. A stratified sampling method was used to ensure that cases from low, medium, and high population states were represented in the Pilot Study sample.

Fifty chapter 7 cases from each of the six Pilot Study districts were then randomly selected from the consumer cases filed in 2003 and 2004 (pre-

---

[54] In answer to the question of what deterred consumers who did not file for bankruptcy from filing, consumer bankruptcy attorneys consistently cited aggressive and misleading tactics of debt consolidation companies as a significant factor.

[55] *See* Lawless et al., *supra* note 27, at 386 (positing aggressive debt collection tactics may cause families to believe bankruptcy is not available to them).

[56] *See* Mann, *supra* note 22, at 378–79 (suggesting BAPCPA causes delays in filing, which generates more credit card interest revenue); White, *supra* note 21, at 874 (arguing any increased procednral burden creates additional costs).

[57] *See* White, *supra* note 21, at 874–76 (discussing how imposition of additional procednral burdens would raise costs of bankruptcy and reduce number of consumer filings). Professor James J. White observed, "[b]y raising the cost in hundreds of little ways, you might make bankruptcy unpalatable to many who currently take bankruptcy." *Id.* at 874.

[58] *See* U.S. Census Bureau Population Estimates, http://www.census.gov/popest/archives/2000s/vintage_2008/ (last visited Mar. 31, 2010). In states with more than one judicial district, the district with the highest population city was selected. Where there was an even number of states in a circuit, I calculated the average popnlation for the circnit and selected the state with a popnlation that was closest to that number; that state was identified as the "median population" state from that circuit.

BAPCPA),[59] and fifty chapter 7 cases from each of the same districts were randomly selected from consumer cases filed in 2007 and 2008 (post-BAPCPA).[60] For each period of time, the same number of chapter 13 cases from each Pilot Study district was sampled.

The core sample studied in the Pilot Study contains 293 chapter 7 cases filed in 2003 and 2004, and 299 chapter 7 cases filed in 2007 and 2008. The core sample of chapter 13 cases studied in the Pilot Study was 414, 295 chapter 13 cases filed in 2003 and 2004, and 119 chapter 13 cases filed in 2007 and 2008. These numbers reflect the dismissal of some cases for lack of petition information and an insufficient number of chapter 13 cases.

Using the definitions developed in connection with the Bankruptcy Data Project, non-commercial cases filed by actual people, not entities, were examined.[61] All cases studied in the sample were closed, but not dismissed.[62] Joint petitions were considered to be one bankruptcy case. We made no distinction between individual and joint petitions. AACER created a random list of bankruptcy case files that fit the criteria for the study.[63]

III. DATA COLLECTION PROCESS

The Principal Investigator, together with the research assistants, examined case file samples in order to develop the data collection procedure. Over a series of meetings, a data entry Excel spreadsheet and a Coding Manual were developed. The Excel spreadsheet template included forty-nine data points. It was developed with an eye toward collecting data concerning a multitude of potential predictors of costs of access to the consumer bankruptcy system. For each column on the spreadsheet, the Coding Manual describes the data point and directs the research

---

[59] Half were selected from the first six month of 2003 and 2004, and half were selected from the second six months of 2003 and 2004.

[60] Half were selected from the first six month of 2007 and 2008, and half were selected from the second six months of 2007 and 2008.

[61] *See* Bankruptcy Data Project at Harvard, *supra* note 23. The Bankruptcy Data Projects describes the classification of cases as follows:

> Noncommercial: cases not classified as commercial cases.
> Commercial: cases filed by legal entities, plus those with other indicia that the filing is related to a business. That is, the debtor may be an individual who indicates on the petition that she is "doing business as" another entity or the debtor may list a Tax ID number instead of a Social Security Number.
> Individual: cases filed by actual, natural people (teachers, doctors, and the like).
> Entity: cases filed by legal entities (corporations, partnerships, and the like).

See id. (explaining classification of petitions can be searched for in Bankruptcy Filings Database).

[62] Following a presentation of the Pilot Study, a member of the study's advisory committee observed the utility of discovering what fees attorneys received in cases that were dismissed and converted, in addition to fees received in cases that were confirmed. The National Study will not exclude cases from the sample study based on their outcome.

[63] I am indebted to Mike Bickford at AACER for his patience and generous support of this project.

assistant to the place or document in the docket where the information is likely to be found. It also instructs the research assistant on how the data is to be entered (the relevant "Code"), and sets forth any data validation measures applied to that column. As each filed case was examined, data was entered on the spreadsheet in accordance with the instructions in the Coding Manual.

IV. QUALITY CONTROL MEASURES

Throughout the data collection process, the research team met frequently to evaluate the integrity of the data collection procedure. Quality control was approached two different ways: (i) data validation was built into the data entry spreadsheet, and (ii) ten percent (10%) of cases were double coded.

Data validation is a function built into Excel spreadsheets that allows only approved entry of values into the cells. For example, in the Pilot Study, the column "Single or Joint Petition" allows either "S" or "J," but not other values or letters. If a non-approved value is entered into the cell, a pop-up screen alerts the user that they cannot continue until an approved value is entered. Data validation acts as a check on typographical errors and other mistakes.

The second approach to quality control consisted of a research assistant blindly coding 10% of all cases that had been coded by other research assistants. After the coding was finished, the research assistants compared both data sets, reconciled any differences, and further refined data collection procedures.

V. DESCRIPTIVE STATISTICS

A. Total Direct Access Costs

The initial question studied was whether Total Direct Access Costs were higher after the Bankruptcy Reform Act of 2005 was enacted than they were before. Total Direct Access Costs were defined to include (i) debtor's attorney fees and expenses, (ii) trustee fees and expenses, (iii) filing fees, (iv) credit counseling and debtor education fees, and (v) any other professional fees.

Debtor's attorney fees and expenses, trustee fees and expenses, filing fees and other professional fees were extracted from chapter 7 and chapter 13 bankruptcy cases filed in 2003 and 2004, and compared to those fees incurred in chapter 7 and chapter 13 cases filed in 2007 and 2008. In addition, most debtors who filed for bankruptcy protection following BAPCPA's enactment are required to receive "credit counseling" from a government-approved organization within 180 days prior to filing.[64] We added $50 for pre-filing "credit counseling" and $50 for pre-

[64] *See* 11 U.S.C. § 109(h)(1) (2006) (requiring individual debtors to obtain credit counseling from approved agency during 180-day period preceding filing of bankruptcy petition).

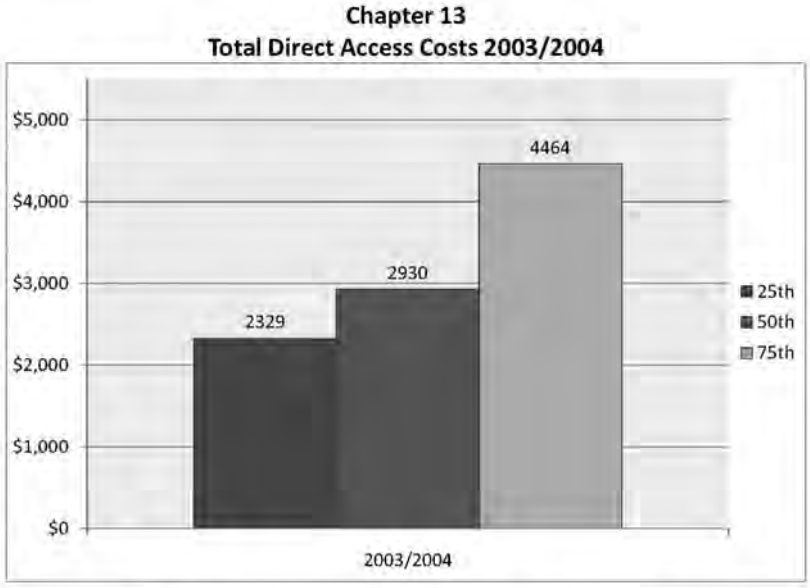
discharge "debtor education" for each bankruptcy case that was filed in 2007 and 2008.[65]

1. Chapter 13

For our sample of chapter 13 cases filed in 2003 and 2004, the median Total Direct Access Costs was $2,930. The 25th percentile of Total Direct Access Costs was $2,329 and the 75th percentile was $4,464.

[65] This was the median fee charged by the credit counseling and debtor education providers who were surveyed. The "Total Direct Access Costs" post-BAPCPA does not reflect the rare cases in which debtors received a waiver of the requirement to receive counseling. Under section 109(h)(3), a debtor may be exempt from the credit counseling requirement with written certification that describes exigent circumstances that merit waiver. *See* §109(h)(3)(A) (2006) ("[R]equirements of paragraph (1) [credit counseling] shall not apply with respect to a debtor who submits to the court a certification that - - (i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1) . . . ."). Additionally, the debtor must have requested credit counseling services, but been unable to obtain them, within five days from the debtor's request of the waiver. *See* §109(h)(3)(A)(ii) (describing "7-day period beginning on the date on which the debtor made that request" for credit counseling services). Courts have strictly construed the requirement for credit counseling and few judges have granted waivers. For example, in *In re Booth*, No. 05-045002-LMK, 2005 WL 3434776 (Bankr. N.D. Fla. Oct. 24, 2005), the debtors alleged the "exigent circumstances" of impending foreclosure of their home and repossession of their vehicle, but failed to certify that they had requested, but had been unable to obtain, the required credit counseling within five days from their request. *Id.* at *1. Judge Killian dismissed the case as having been filed by an ineligible person. *Id.* at *2. In *In re Monteiro*, No. 05-85018, 2005 Bankr. LEXIS 2695, at *1 *2 (Bankr. N.D. Ga. Oct. 31, 2005), a *pro se* debtor requested a waiver of the requirement, arguing she had been to credit counseling in the past and it had not been productive, and that her present situation was too complex for credit counseling. The court gave the debtor an opportunity to supplement her request with specific grounds complying with section 109(h)(3) and obtaining a credit briefing within the 30 days of the commencement of her bankruptcy case. *Id.* at *7–*8. In another chapter 13 case, filed to stop a foreclosure, the debtor was held ineligible under section 109(h) and the case was dismissed. *See In re* Sosa, 336 B.R. 113, 114–15 (Bankr. W.D. Tex. 2005). The court noted that dismissal might adversely affect the automatic stay in the next case, to stop the next foreclosure, but stated: "[t]he Court's hands are tied. The statute is clear and unambiguous. The debtors violated the provision . . . and are ineligible to be Debtors in this case. It must, therefore, be dismissed." *Id.* at 115. A Minnesota bankruptcy court also found that failure to meet the requirements of section 109(h) made the putative debtor ineligible to be a debtor; held this lack of eligibility to constitute cause for dismissal under section 707(a); and stated that dismissal was "the only possible outcome . . . ." *In re* LaPorta, 332 B.R. 879, 884 (Bankr. D. Minn. 2005).

Figure 1.1



The median Total Direct Access Costs for chapter 13 cases filed in 2007 and 2008 was $4,077. The 25th percentile of Total Direct Access Costs was $3,374 and the 75th percentile was $4,661 (see Figure 1.2 below).[66]

[66] Unless otherwise indicated, all dollars are adjusted for inflation using the Consumer Price Index. *See* United States Department of Labor, http://www.bls.gov/cpi (last visited Mar. 31, 2010).

Figure 1.2

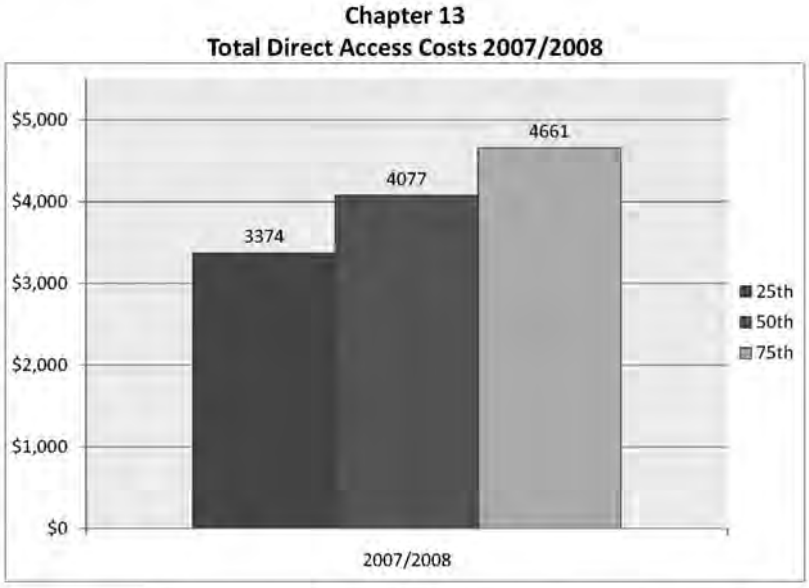


Figure 1.3 below compares the Total Direct Access Costs pre-BAPCPA to the Total Direct Access Costs post-BAPCPA. There was a significant increase from 2003-2004 to 2007-2008 in each of the 25th, 50th, and 75th percentiles: a 39% increase at the median, a 45% increase at the 25th percentile, and a 4% increase at the 75th percentile.

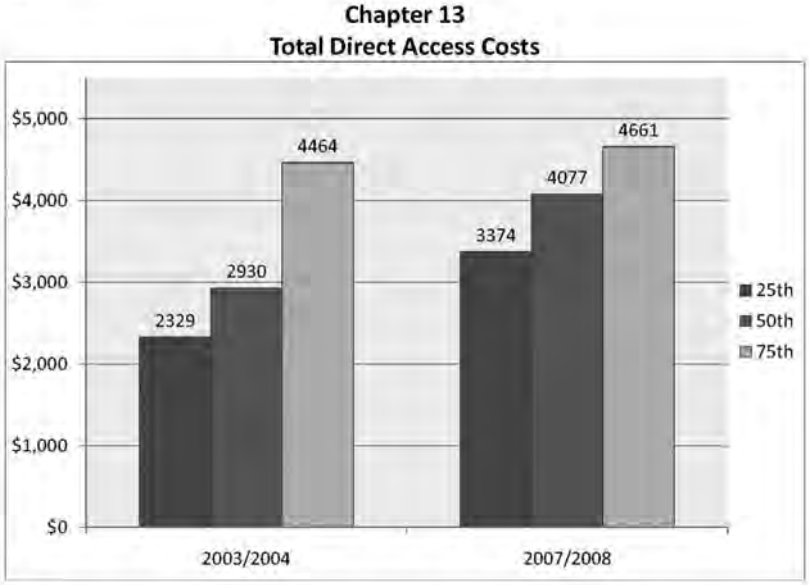
A number of fixed costs increased as a result of the amendments to the Bankruptcy Code. For example, filing fees increased from $185 (in 2003) to $274 (in 2008)—an increase of $89 (48%).[67] Median debtor's attorney fees and expenses in chapter 13 cases increased from $2,000 to $3,000 (a 50% increase). In addition, the costs of credit counseling and debtor education added approximately $100 to each chapter 13 case filed in 2007 and 2008.[68]

---

[67] The fees required to be paid by debtors filing for bankruptcy under chapter 13 include a $235 statutory fee and a $39 miscellaneous administrative fee (total $259). *See* 28 U.S.C. § 1930(a)(1)(A) (2008) (imposing filing fees).

[68] *See* A. Mechele Dickerson, *Can Shame, Guilt or Stigma Be Taught? Why Credit-Focused Debtor Education May Not Work*, 32 LOY. L.A. L. REV. 945, 946–47 (1999) (noting debtors are required to enroll in educational programs); Nathalie Martin & Ocean Tama y Sweet, *Mind Games: Rethinking BAPCPA's Debtor Education Provisions*, 31 S. ILL. U. L.J. 517, 540 (2007) (highlighting controversy surrounding whether or not debtor education is effective).

Figure 1.3



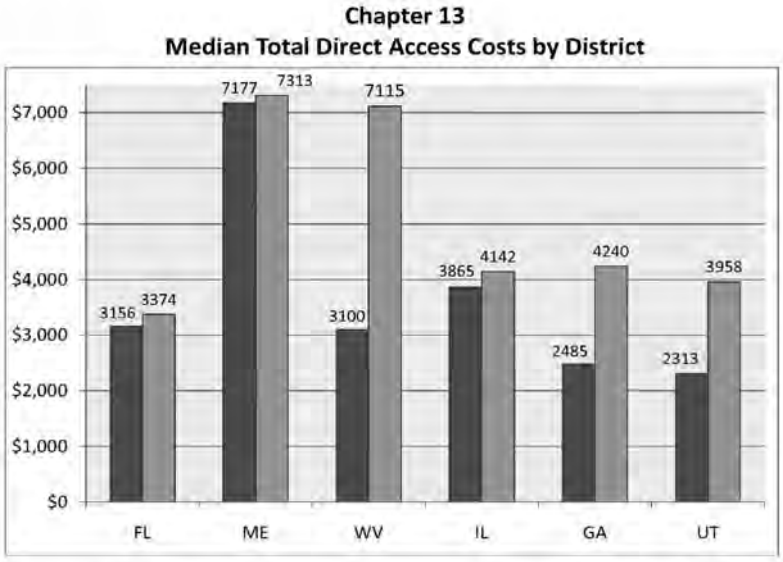
The data gathered in each of the Pilot Study districts may be of interest to courts, debtor's attorneys, and trustees in these individual districts. Although there was a lot of variation in Total Direct Access Costs among Pilot Study Districts for chapter 13 cases, Figure 1.4 below reveals that costs to access the bankruptcy system increased post-BAPCPA, in every district studied. Because there are some costs that are fixed by statute and thus, apply in all cases across the country, the costs that varied between districts were attorney fees (and expenses) and trustee fees.

Sharp increases in Total Direct Access Costs, pre- and post-BAPCPA (as was found in the Southern District of West Virginia (129% increase), the Northern District of Georgia (70% increase) and Utah (71% increase) suggest that attorney fees and/or trustee fees increased significantly in chapter 13 cases. If the increase can be attributed to trustee fees, that may mean more assets are being administered by the trustee or the practice of administering assets changed (such as mortgages being paid inside the plan, rather than outside the plan). If the cost increases are attributable to increased attorney fees, then that may be a reflection of the attorney responsibilities added by BAPCPA.

It is interesting to observe that at least among the districts selected for the Pilot Study, the highest Total Direct Access Costs were in low population jurisdictions.

This seems to counter the common belief that costs are higher in larger cities than they are in smaller cities or rural areas.

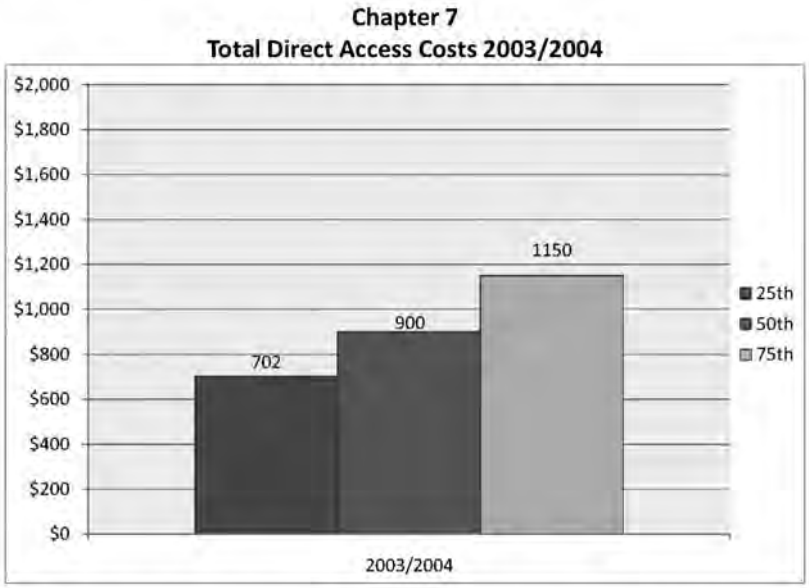
Figure 1.4



2. Chapter 7

The median Total Direct Access Costs for chapter 7 consumer cases filed in 2003 and 2004 was $900. For cases filed during this period, the 25th percentile of Total Direct Access Costs was $702 and the 75th percentile was $1,150 (see Figure 2.1 below).

Figure 2.1



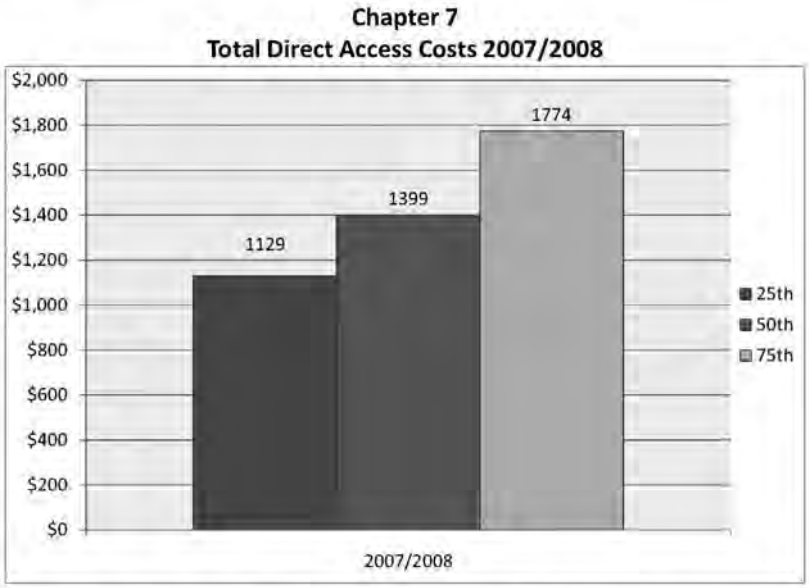
Following the enactment of the Bankruptcy Reform Act, the median Total Direct Access Costs for chapter 7 consumer cases increased from $900 to $1,399 (representing a 55% increase). Costs in the 25th percentile were $1,129 and $1,774 in the 75th percentile. As was the case with chapter 13, the filing fees for chapter 7 increased following BAPCPA. In 2003-2004, the filing fee was $209 for chapter 7 cases; for cases filed in 2007-2008, the fee is $299—an increase of 43%.[69] In addition, the costs of credit counseling and debtor education added approximately $100 to each chapter 7 post-BAPCPA consumer bankruptcy case.[70]

---

[69] The chapter 7 "filing fees" can be broken down as follows: $245 statutory fee, $39 miscellaneous administrative fee, and $15 miscellaneous for chapter 7 trustees (total: $299). *See* § 1930(a)(1)(A).

[70] *See* GAO Report, *supra* note 38, at 5 ("Most consumers pay about $100 to fulfill these requirements since credit counseling and debtor education providers typically charge about $50 per session . . . .").

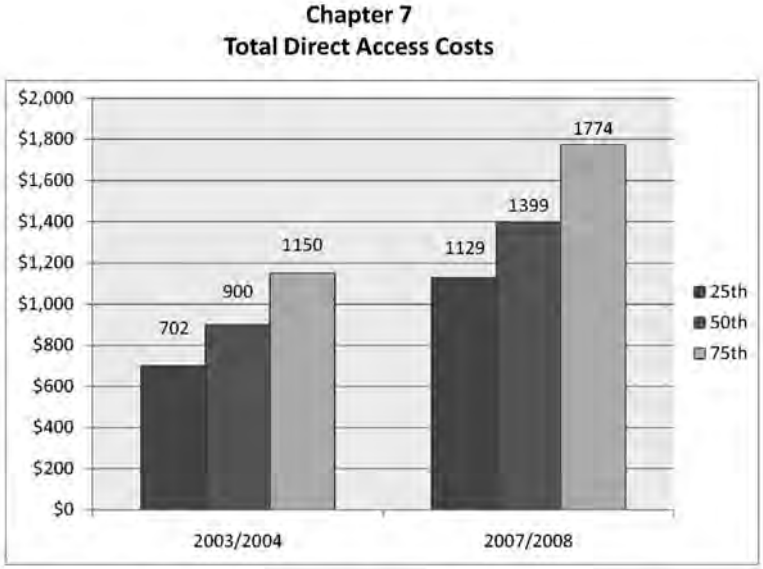
Figure 2.2



This data confirms the findings in the GAO study,[71] the single district study of chapter 7 fees in the Northern District of Alabama,[72] as well as Professor White's informal survey of bankruptcy attorneys.[73] Total Direct Access Costs for chapter 7 consumer cases significantly increased following BAPCPA's enactment.

[71] *See generally* GAO Report, *supra* note 38.
[72] *See generally* Landry and Yarbrough, *supra* note 44.
[73] *See generally ABI Fee Study*, *supra* note 12.

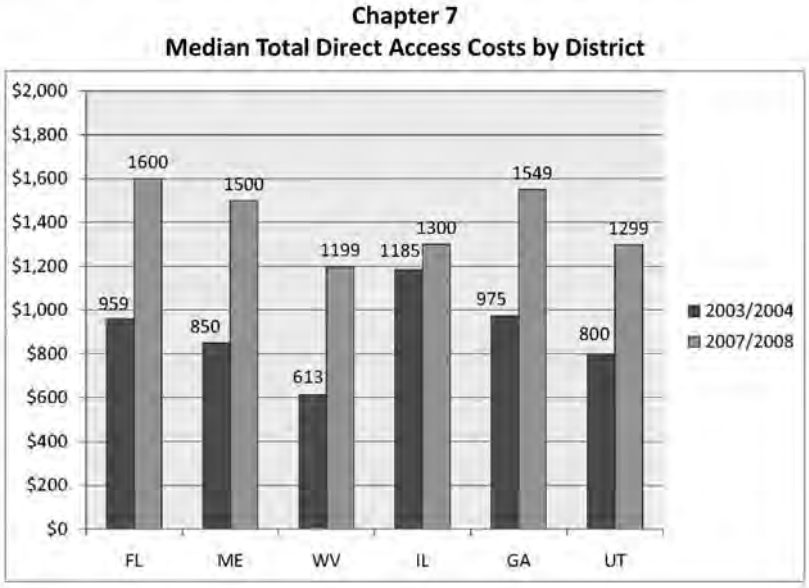
Figure 2.3



Similar to the Total Direct Access Cost data gleaned from chapter 13 cases, the data gathered in each of the Pilot Study districts with respect to Total Direct Access Costs in chapter 7 cases may be of interest to courts, debtor's attorneys, and trustees in the Access Costs for chapter 7 among Pilot Study Districts. Figure 2.4 below reveals that costs to access the bankruptcy system increased post-BAPCPA in every district studied. Filing fees, credit counseling, and debtor education fees are essentially fixed; given that most of the cases were no-asset cases (89%), the costs that varied between districts were primarily attorney fees.

It is interesting to observe that at least among the districts selected for the Pilot Study, the highest Total Direct Access Costs were in both high population (Middle District of Florida and Northern District of Georgia) and low population jurisdictions (District of Maine and Southern District West Virginia).

Figure 2.4



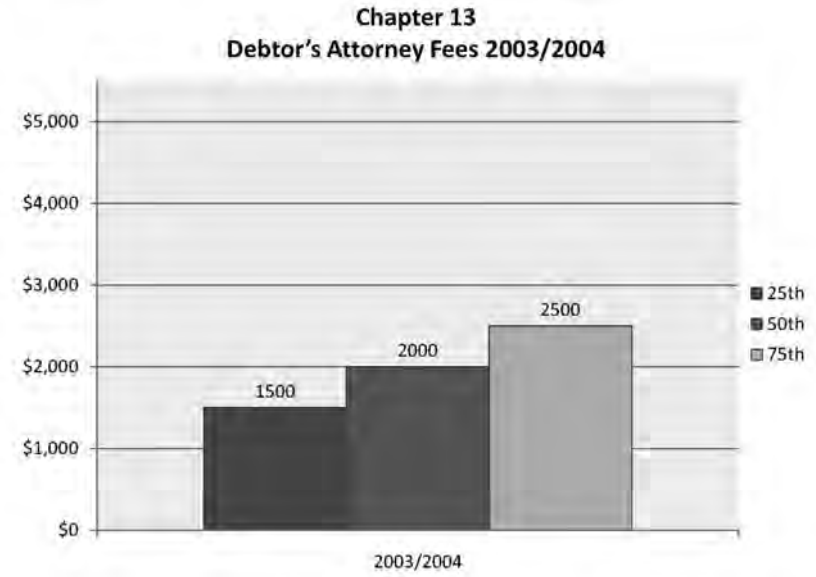
B. Debtor Attorneys' Fees

1. Chapter 13

Representing a debtor in chapter 13 has always been a complex undertaking. Chapter 13, even prior to BAPCPA's enactment, was an onerous process for debtors and required them to adhere to a court-supervised repayment plan for three to five years. Counsel is charged with the task of explaining the complex process of the treatment of debtor's secured and unsecured debt, often necessitating the development of a strategy to "save" a home and/or vehicle. Once a chapter 13 plan is filed, there is the potential for plan challenges and other proceedings requiring on-going attorney time.

Representation of a chapter 13 debtor in 2003-2004 yielded attorneys a median fee of $2,000. The 25th percentile fee is $1,500 and the 75th percentile fee is $2,500.

Figure 3.1

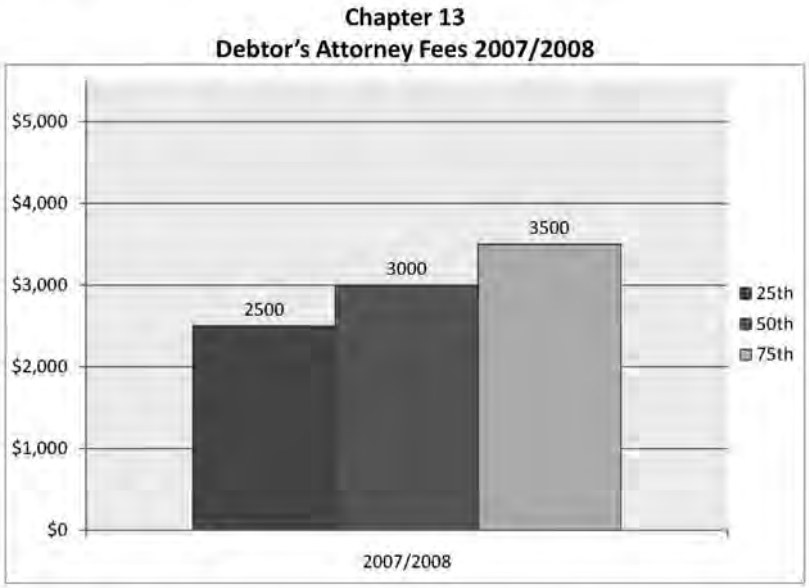


As noted above, many of the 2005 amendments to the Bankruptcy Code impose added responsibilities on prospective debtors. Accordingly, it was predicted that these added responsibilities would increase chapter 13 debtor's legal fees. A means test calculation must be performed in all cases filed after BAPCPA's enactment, new documentation must be produced, notices must be served, certificates must be obtained, and attorneys must conduct more rigorous investigations of debtor's allegations.[74]

The data supports these predictions. The median fee charged by attorneys representing chapter 13 debtors in our sample is $3,000. The fee charged in the 25th percentile is $2,500 and the fee charged in the 75th percentile is $3,500.

[74] *See supra* notes 28–37 and accompanying text (discussing means test).

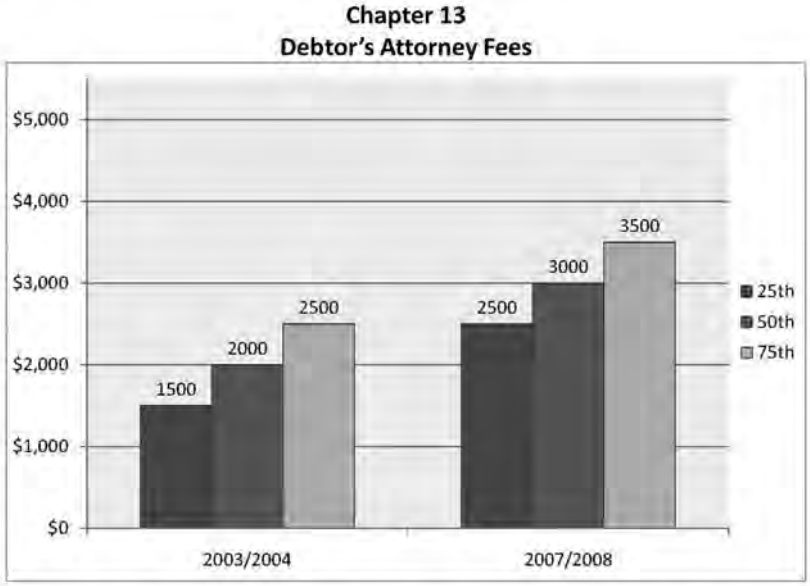
Figure 3.2



There was a 66% increase between the median chapter 13 attorney fees in 2003-2004 and 2007-2008. The fees in the 25th percentile represent a 66% increase and the fees in the 75th percentile increased by 40%. The increased responsibilities and obligations imposed upon debtor (and thus debtor's attorney) may account for the bulk of this increase. It may also be the case that chapter 13 cases, post-BAPCPA, are more complex post-filing, and involved more challenges, contested actions and proceedings, and thus, court and attorney time.[75] This issue will be more fully explored in the National Study.

[75] *See supra* Section II (discussing how additional BAPCPA requirements protract litigation in chapter 13 cases).

Figure 3.3

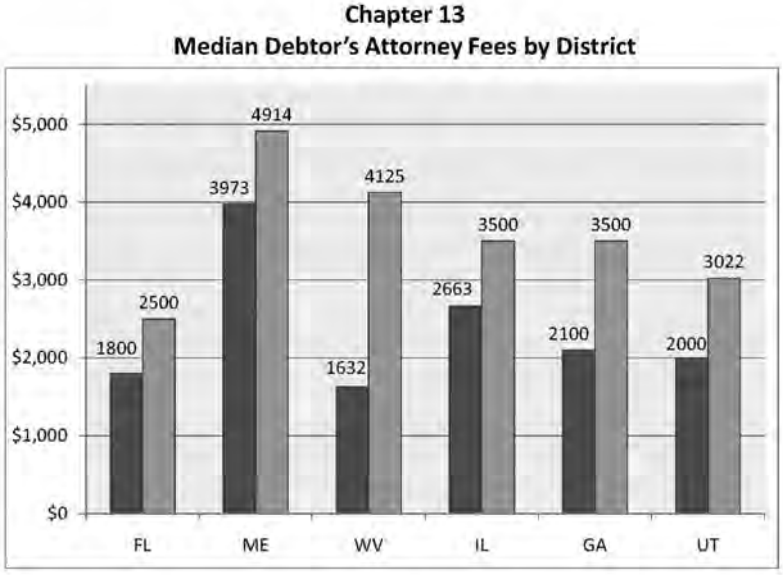


As noted in the discussion of the findings revealed in Figure 1.4, the costs to access the bankruptcy system increased post-BAPCPA in every district studied. Because there are some costs that are fixed by statute, and thus, apply in all cases across the country, the costs that varied between districts were attorney fees and trustee fees.

The sharpest increase in attorney fees was found in West Virginia (a $2,493 increase, in the 50th percentile). Fees for chapter 13 attorneys in Georgia, Utah, Maine, and Illinois increased by 66%, 51%, 24%, and 31%, respectively. At least, in these jurisdictions, it does not appear as if more assets are being administered—the bulk of the increase in Total Direct Access Costs can be attributed to a rise in attorney fees.

If the increase *can* be attributed to trustee fees, that may mean more assets are being administered by the trustee or the practice of administering assets has changed (such as mortgages being paid "inside the plan," rather than "outside the plan"). If the cost increases are attributable to increased attorney fees, then that may be a reflection of the attorney responsibilities added by BAPCPA.

Figure 3.4



As noted above, many jurisdictions have enacted local rules or standing orders regarding attorney fees for debtors' counsel in chapter 13 cases.[76] Pursuant to these orders or rules, an itemized fee application is not required when an attorney seeks a fee that is at or below a specified threshold (known as a "no-look fee"). As observed in the 1991 ABI Fee Study, no-look fees are used in the name of judicial economy as a proxy for the conclusion that a consumer case is a "routine" one.[77]

There is a great deal of variation among districts with respect to both the amount of the no-look fee, as well as the tasks that must be performed for an attorney to have fees approved in excess of the no-look fee. Figure 3.5 below demonstrates that some districts' median attorney fees reflect an adherence to the

[76] In other jurisdictions, no-look fees are set by local rules, memorandum decisions, general orders or "local practice." *See* David S. Kennedy et al., *Attorney Compensation in Chapter 13 Cases and Related Matters*, 13 J. BANKR. L. & PRAC. 6 ART. 1, 12 (2004) (noting courts set no-look fees based on various locality considerations); Dennis Montali et al., *Recent Developments in Business Bankruptcy*, 29 CAL. BANKR. J. 551, 562 (2008) (describing no-look fee approval process for Northern District of California Bankruptcy Court); Scott F. Norberg & Nadja Schreiber Compo, *Report on an Empirical Study of District Variations, and the Roles of Judges, Trustees and Debtors' Attorneys in Chapter 13 Bankruptcy Cases*, 81 AM. BANKR. L.J. 431, 463 (2007) (indicating standing chapter 13 trustee "recommends to the court the standard 'no-look' fee for debtors' attorneys").

[77] *See ABI Fee Study*, *supra* note 12, at 169.

district's no-look fee, such as the District of Utah and the Northern District of Illinois.[78] Other districts, such as Maine, notwithstanding its relatively high no-look fee, reveal a sharp divide between actual attorney fees received and the district's no-look fee.[79]

The GAO Study collected information on the no-look fees in place in 48 districts before and after BAPCPA.[80] The study found that the chapter 13 no-look fee increased in almost all of the districts (or divisions)[81] studied. In more than half of those cases, the increase was 55% or more. The National Study will focus attention on the issue of no-look fees: how they are set; how frequently are they reviewed; how they compare to other jurisdictions; and how frequently fee applications for additional fees are filed and approved.

---

[78] *See generally In re* Debtor's Attorney Fees in Chapter 13 Cases, No. 07-mp-00002-MGW (M.D. Fla. Aug. 26, 2007) (on file with author).

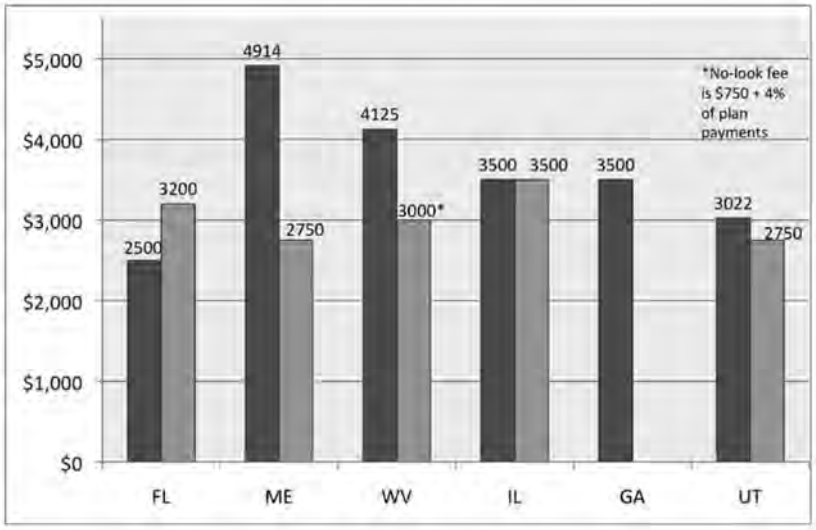
[79] *See* Conversation with Peter Fessenden, Standing Chapter 13 Trustee (Oct. 15, 2009) (on file with author).

[80] GAO Report, *supra* note 38, at 25 (explaining study was conducted by "collect[ing] information on the standard fees in place before and after the Bankruptcy Reform Act in 48 districts or divisions that collectively accounted for 65 percent of Chapter 13 filings in fiscal year 2007").

[81] *Id.* (indicating increase was 55% or higher in over half of districts). As noted in the GAO Study, "[a] division is a sublevel below that of a federal judicial district." *Id.* at 25 n.38.

Figure 3.5

Chapter 13
Median Debtor's Attorney Fees 2007/2008
Compared to No-Look Fee by District



2. Chapter 7

As is the case with chapter 13 debtor representation, representing debtors filing for bankruptcy under chapter 7 has become considerably more complicated since BAPCPA's enactment. As discussed above, the administration of the means test and the collection of supporting proof and documentation have added to the tasks required of chapter 7 attorneys.[82] We found that the median attorney fee charged by lawyers in chapter 7 consumer cases was $650 in 2003/2004. In 2007/2008, it had jumped to $1,000—representing a 53% increase. Attorney fees charged at the 25th percentile and the 75th percentile each increased by 40%. These findings are consistent with the findings in the GAO Study.

[82] *See supra* notes 28–37 and accompanying text.

Figure 4.1

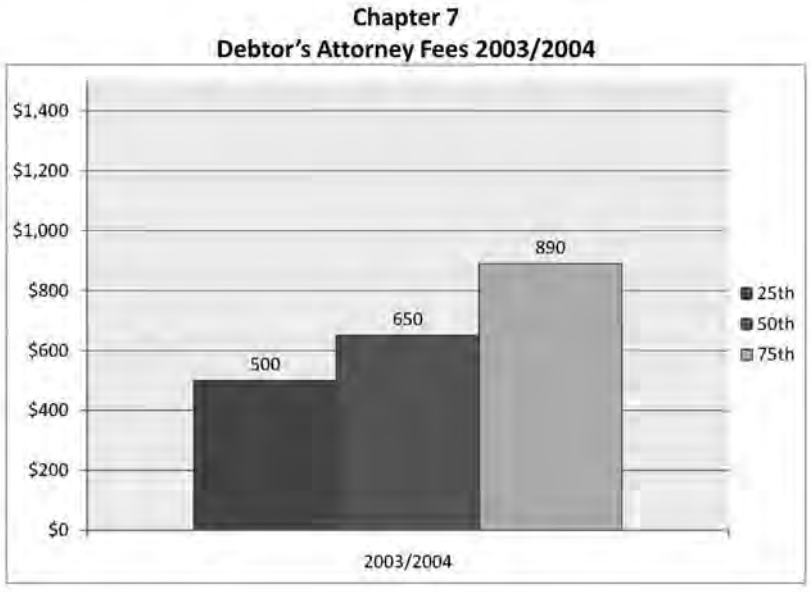

Chapter 7
Debtor's Attorney Fees 2003/2004
$1,400
$1,200
$1,000
$800
$600
$400
$200
$0
500
650
890
25th
50th
75th
2003/2004

Figure 4.2

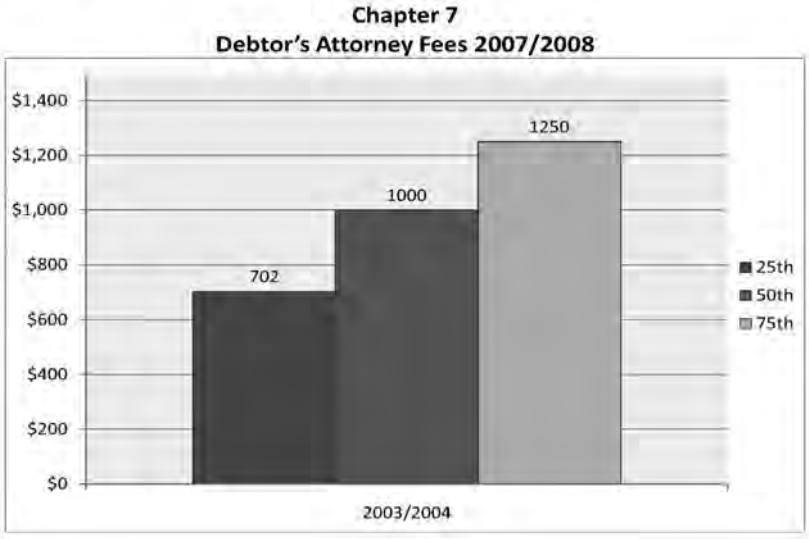
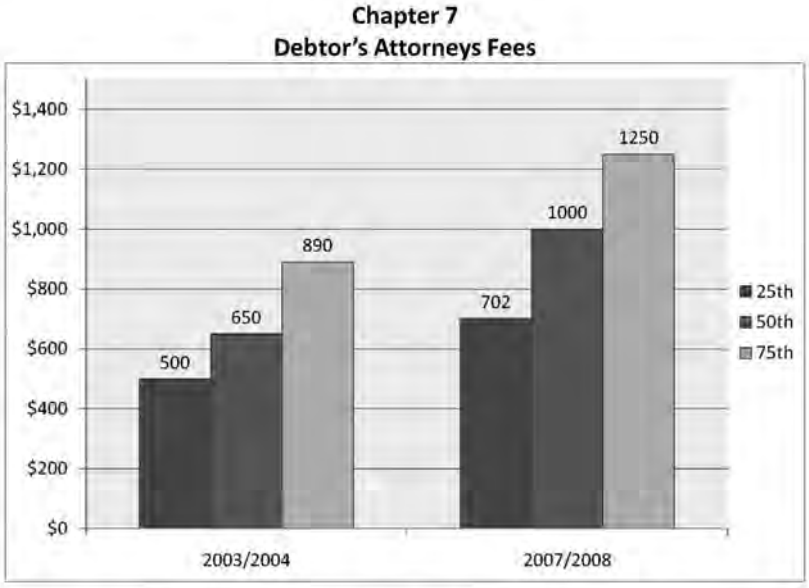
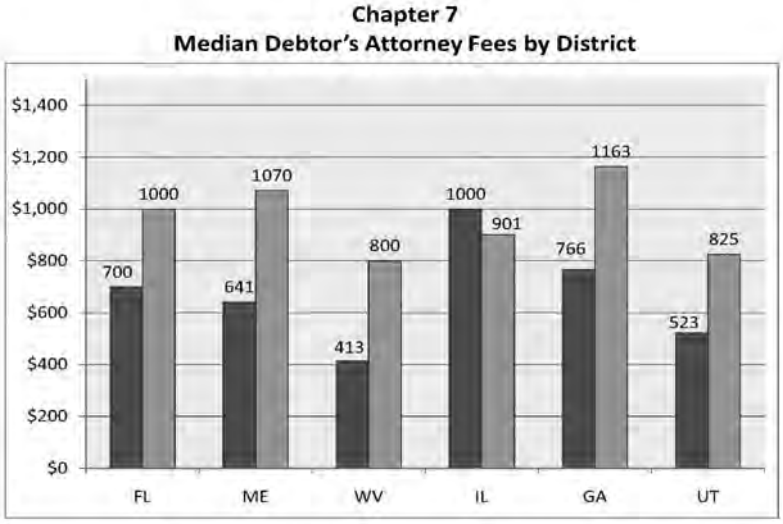

Chapter 7
Debtor's Attorney Fees 2007/2008
$1,400
$1,200
$1,000
$800
$600
$400
$200
$0
702
1000
1250
25th
50th
75th
2003/2004

Figure 4.3



When we looked at fees charged, district by district, we saw similarly sharp increases post-BAPCPA. In the Southern District of West Virginia, for example, fees in chapter 7 consumer cases increased by 93%. In the Northern District of Georgia, they increased by 51%.

Figure 4.4



We examined whether higher legal fees led more chapter 7 consumers to seek the aid of less expensive petition preparers, to seek *pro bono* counsel, or to file *pro se*. Figure 4.5 reflects debtors' use of petition-preparers and *pro se* debtors. In our sample, 6% of debtors filed *pro se* pre-BAPCPA. Seven percent of debtors filed *pro se* post-BAPCPA. Of those pre-BAPCPA debtors, 50% had the assistance of a petition preparer; post-BAPCPA, 34% of the *pro se* debtors used petition preparers.[83] Seven percent of our sample of pre-BAPCPA had the assistance of a *pro bono* attorney.[84] One percent post-BAPCPA debtors had the assistance of a *pro bono* attorney.[85] While some debtors file *pro se*, and other debtors found *pro bono* counsel, the vast majority of debtors, both pre- and post-BAPCPA, paid a lawyer to help them navigate the bankruptcy system.[86]

---

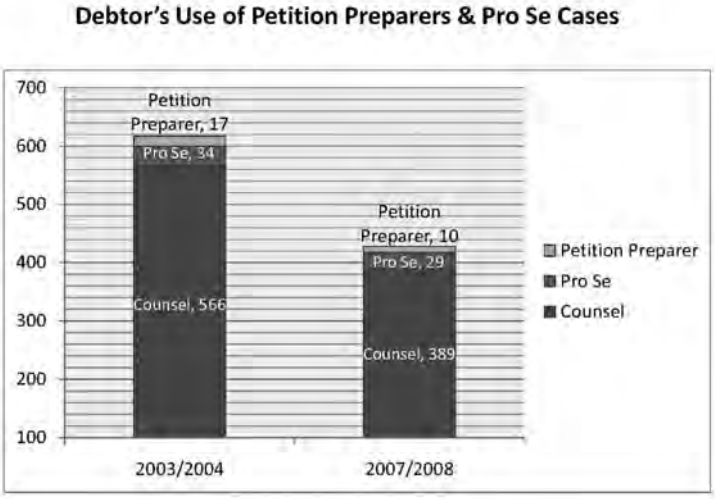
[83] In 2003/2004, there were 34 pro se cases in our sample, 17 of which used petition preparers. In 2007/2008, there were 29 pro se cases in our sample, 10 of which used petition preparers.

[84] Four out of 588 chapter 7 debtors had a *pro bono* attorney.

[85] Six out of 418 chapter 7 debtors had a *pro bono* attorney.

[86] Feedback received during a presentation of the Pilot Study suggested that this may not be the case in every jurisdiction.

Figure 4.5



VI. MODELING THE COSTS OF ACCESS

Describing the difference in costs, before and after the amendment of the Bankruptcy Code, has the advantage of simplicity, but, in order to account for the many variables that may influence the costs, other than the statutory amendments, a regression model is required. For example, debtors could be presenting more complex financial profiles in 2007/2008, and such complexity could account for the increase in costs. Variables, such as the value of personal property assets or the number of documents on the docket, may be proxies for case complexity. Linear regression models were developed to identify the strongest predictors of Total Direct Access Costs and Debtor's Attorneys Fees.

Linear regression is an approach to modeling the relationship between a response variable, (y), and one or more predictor variable, (x). Given "y" (i.e., Total Direct Access Costs), and a number of predictor variables (x_1 = pre/post BAPCPA, x_2 = number of documents in docket, x_3 = amount of secured claims,) linear regression analysis can be applied to quantify the strength of the relationship between "y" and x_1, x_2 or x_3. Total Direct Access Costs (in one model) and Debtor's Attorney's Fees (in another model) were identified as the response variables based

on the presumption that the value of each of these response variables is caused by or directly influenced by the predictor variables.

We began with a list of potential candidate predictors from the total list of coded variables, in an effort to identify the predictors that most influenced Total Direct Access Costs and Debtor's Attorney Fees. Certain candidate predictors were then omitted from the models for the reasons set forth below.

Omitted predictors	**Reason**
Estimated Value of Real Estate Assets	high correlation with Estimated Assets
Distribution to Unsecured Creditors	large number of zeroes (chapter 7)
	high correlation with Secured Claims (chapter 13)
Distribution to Secured Creditors	high correlation with Estimated Assets.
Estimated Secured Liabilities	high correlation with Secured Claims
Estimated Unsecured Liabilities	high correlation with Unsecured. Claims
Estimated Priority Liabilities	large number of zeroes

We narrowed the potential pool of predictors to the following: (i) Pre- or Post-BAPCPA, (ii) District, (iii) Single or Joint Petition, (iv) Number of Documents on Docket, (v) Number of Creditors, (vi) Estimated Assets, (vii) Estimated Debts, (viii) Current Monthly Income, (ix) Estimated Value of Personal Property, and (x) Unsecured Claims, and (xi) Secured Claims.

A. Chapter 13 – Total Direct Access Costs

Figure 5.1 below is a model analyzing Total Direct Access Costs in chapter 13, testing the six most highly correlated variables. The response variable is modeled as a linear function of p predictors. In this case, the response variable is Total Direct Access Costs and p, the number of predictors, is six. The departure of the model from the observed value of y is the error, e, or the residual. The model can be written as $y_i = \beta_0 + \beta_1 x_{1i} + \beta_2 x_{2i} + \ldots \beta_p x_{pi} + e_i$. B_0 is the intercept term or the predicted value of y, when all the predictors are equal to 0. The other βs are the regression coefficients for the predictors in the model. In Figure 5.1 below, the most egregious outliers were omitted from analysis under this model.

Figure 5.1

Model for Chapter 13 adjusted log Total Direct Access Costs (with certain outliers omitted)

Coefficients:

	Estimate	Std. Error	t value	Pr(>|t|)
(Intercept)	6.516058	0.214253	30.413	< 2e-16 ***
Pre- or Post-BAPCPA	0.255436	0.055859	4.573	6.47e-06 ***
Number of Documents	0.110236	0.029087	3.790	0.000175 ***
Secured Claims	0.019585	0.005699	3.437	0.000652 ***
Unsecured Claims	0.027549	0.009171	3.004	0.002837 **
Single or Joint Petition	0.093783	0.044309	2.117	0.034929 *
Est.Val.Pers.Prpty.Assets	0.033487	0.015904	2.106	0.035882 *

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.404 on 390 degrees of freedom
Multiple R-squared: 0.4096, Adjusted R-squared: 0.393
F-statistic: 24.6 on 11 and 390 D, p-value: < 2.2e-16

Analysis of Variance Table

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
District	5	29.793	5.959	36.5074	< 2.2e-16 ***
Pre- or Post-BAPCPA	1	3.413	3.413	20.9113	6.47e-06 ***
Number of Documents	1	2.344	2.344	14.3627	0.0001746 ***
Secured C.Claims	1	1.928	1.928	11.8104	0.0006524 ***
Unsecured C.Claims	1	1.473	1.473	9.0233	0.0028375 **
Single or Joint Petition	1	0.731	0.731	4.4799	0.0349289 *
Est.Val.Pers.Prpty.Assets	1	0.724	0.724	4.4334	0.0358821 *
Residuals	390	63.654	0.163	1.0000	---

In the above coefficient table, "estimate" is the coefficient estimate. For numeric variables, this is the predicted change in the outcome for a one-unit change in the predictor when all other predictors are held fixed. The "standard error" provides information about the uncertainty in the estimate. The "t-value" is the coefficient estimate divided by the standard effort. Pr(>[t]) is the p-value, which is the probability of getting this result under the null hypothesis that the coefficient estimate is zero—meaning that the predictor is unrelated to the outcome. The smaller the p-value, the more significant the predictor is. The retained model predictors all have a p-value that is less than 0.05.

The Analysis of Variance Table ("ANOVA Table") presents a test for the difference between two or more means. It is useful in showing the overall impact of

a categorical predictor. For numeric variables, the square of the t-value in the coefficient table is the F value in the ANOVA Table. The p-value is the probability of getting this result under the null hypothesis of no association between predictor and outcome. For numeric variables, the ANOVA Table provides the same p-values as the coefficient table.

In this model, the strongest predictor of higher Total Direct Access Costs is "Post-BAPCPA." Stated differently, taking potential confounders into account, Total Direct Access Costs are significantly higher, post-BAPCPA.[87] The number of documents in a case docket and the size of secured creditor claims (house and/or car) were also highly correlated. We recognized the number of documents in a case docket as a proxy for case complexity; the more motions, amendments, and other case documents filed, the more complex the case. Again, the ANOVA Table shows post-BAPCPA as having the greatest predictive value of high Total Direct Access Costs.

B. Chapter 7 – Total Direct Access Cost

Figure 5.2 below is a model analyzing Total Direct Access Costs in chapter 7, testing the six most highly correlated variables.[88] The most egregious outliers were omitted from analysis under this model.

[87] A confounding variable is an extraneous variable in a model that correlates, positively or negatively, with both the response variable and the variable predictors. These need to be controlled for to avoid a "false positive" conclusions.

[88] The same model was used to analyze the predictive value of variables present in chapter 7 cases: $y_i = \beta_0 + \beta_1 x_{1i} + \beta_2 x_{2i} + \ldots \beta_p x_{pi} + e_i 1$. *See* Figure 5.1.

Figure 5.2

Model for Chapter 7 adjusted log Total Direct Access Costs (with certain outliers omitted)

Coefficients:

	Estimate	Std. Error	t value	Pr(>|t|)
(Intercept)	5.619473	0.151750	37.031	< 2e-16 ***
Number of Documents	0.195333	0.024729	7.899	1.60e-14 ***
Pre- or Post-BAPCPA	0.279029	0.035271	7.911	1.47e-14 ***
Current Monthly Income	0.034240	0.011357	3.015	0.00269 **
Estimated Debts	0.063182	0.021687	2.913	0.00372 **
Est.Val.Pers.Prpty.Assets	0.041746	0.015197	2.747	0.00622 **
Secured C.Claims	-0.013445	0.005017	-2.680	0.00759 **

Residual standard error: 0.3931 on 537 degrees of freedom
Multiple R-squared: 0.347, Adjusted R-squared: 0.3336
F-statistic: 25.94 on 11 and 537 D, p-value: < 2.2e-16

Analysis of Variance Table

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
Number of Documents	1	9.639	9.639	62.3914	1.600e-14 ***
Pre- or Post-BAPCPA	1	9.669	9.669	62.5833	1.466e-14 ***
District	5	11.036	2.207	14.2869	3.820e-13 ***
Current Monthly Income	1	1.404	1.404	9.0887	0.002693 **
Estimated Debts	1	1.311	1.311	8.4880	0.003724 **
Est.Val.Pers.Prpty.Assets	1	1.166	1.166	7.5460	0.006216 **
Secured C.Claims	1	1.109	1.109	7.1813	0.007593 **
Residuals	537	82.963	0.154	1.0000	---

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Again, the smaller the p-value, the more significant the predictor is. The retained model predictors all have a p-value that is less than 0.05. The strongest predictor of higher Total Direct Access Costs in chapter 7 cases is the number of documents in a case docket. The more complex the cases, the more it costs. In a chapter 7 case, this is likely to mean that in "complex cases" (cases with a higher number of documents filed), there were assets to administer; and so, the trustee received more than the minimum fee. It may also mean that there were more issues to be addressed by debtor's attorney. Current monthly income is also a significant predictor of higher Total Direct Access Costs.

The second most significant predictor in this model is "Post-BAPCPA." Total Direct Access Costs are significantly higher in chapter 7 cases post-BAPCPA. The ANOVA Table similarly shows "Number of Documents" as having the greatest

predictive value of high Total Direct Access Costs with post-BAPCPA coming in second.

C. Chapter 13 – Total Debtor Attorney Fees

Figure 5.3 below is a model analyzing Total Debtor Attorney Fees in chapter 13, analyzing the three most highly correlated variables. The most egregious outliers were omitted from analysis under this model.

Figure 5.3

Model for Chapter 13 log adjusted Total Debtor Attorney Fees (with certain outliers omitted)

Coefficients:

	Estimate	Std. Error	t value	Pr(>|t|)
(Intercept)	6.62008	0.13699	48.325	< 2e-16 ***
Pre- or Post-BAPCPA	0.22439	0.04920	4.561	6.81e-06 ***
Number of Documents	0.12276	0.02987	4.110	4.81e-05 ***
Estimated Assets	0.06015	0.02568	2.342	0.019678 *

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.4143 on 394 degrees of freedom
Multiple R-squared: 0.3018, Adjusted R-squared: 0.2876
F-statistic: 21.29 on 8 and 394 D, p-value: < 2.2e-16

Analysis of Variance Table

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
District	5	21.326	4.265	24.8541	< 2.2e-16 ***
Pre- or Post-BAPCPA	1	3.570	3.570	20.8016	6.812e-06 ***
Number of Documents	1	2.900	2.900	16.8961	4.807e-05 ***
Estimated Assets	1	0.941	0.941	5.4849	0.01968 *
Residuals	394	67.614	0.172	1.0000	---

The strongest predictor of high Total Debtor's Attorney Fees in chapter 13 cases is "Post-BAPCPA." This is consistent with our descriptive findings: attorney fees are significantly higher following BAPCPA's enactment than prior to it. The number of documents in a case docket is also a highly correlated predictor. The ANOVA Table similarly shows "Post-BAPCPA" as having the greatest predictive value of high Total Debtor's Attorney Fees in chapter 13 cases.

D. Chapter 7—Total Debtor Attorney Fees

Figure 5.4 below is a model analyzing Total Debtor Attorney Fees in chapter 7 cases, testing the three most highly correlated variables. The most egregious outliers were omitted. Under this model (which includes chapter 7 no-asset cases), "Current Monthly Income" is the strongest predictor of high Attorney Fees. "Post-BAPCPA," in this case, has a lower degree of predictive significance.

Figure 5.4
Model for Chapter 7 log adjusted Total Debtor Attorney Fees (with certain outliers omitted)

Coefficients:

	Estimate	Std. Error	t value	Pr(>|t|)
(Intercept)	5.29004	0.30048	17.605	< 2e-16 ***
Current Monthly Income	0.11202	0.02889	3.877	0.000119 ***
Pre- or Post-BAPCPA	0.23140	0.09385	2.466	0.013986 *
Number of Documents.	0.14313	0.06605	2.167	0.030675 *

Residual standard error: 1.082 on 538 degrees of freedom
Multiple R-squared: 0.1036, Adjusted R-squared: 0.09027
F-statistic: 7.772 on 8 and 538 DF p-value: 6.804e-10

Analysis of Variance Table

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
District	5	37.72	7.54	6.4407	7.94e-06 ***
Current Monthly Income	1	17.61	17.61	15.0325	0.0001187 ***
Pre- or Post-BAPCPA	1	7.12	7.12	6.0796	0.0139861 *
Number of Documents	1	5.50	5.50	4.6958	0.0306753 *
Residuals	538	630.23	1.17	1.0000	

Figure 5.5, Total Debtor's Attorney Fees in chapter 7 cases with no-asset cases omitted, reveals five correlated variables. "Post-BAPCPA" and "Number of Documents" are the most highly correlated variables in this model.

Figure 5.5

Model for Chapter 7 log adjusted Total Debtor's Attorney Fees (16 observations with response = 0 deleted)

Coefficients:

	Estimate	Std. Error	t value	Pr(>|t|)
(Intercept)	5.22144	0.24620	21.208	< 2e-16 ***
Pre- or Post-BAPCPA	0.26973	0.04022	6.707	5.17e-11 ***
Number of Documents	0.09861	0.02904	3.395	0.000737 ***
Current Monthly Income	0.04224	0.01303	3.242	0.001264 **
Unsecured C.Claims	0.04366	0.02032	2.149	0.032085 *
Estimated Debts	0.05450	0.02482	2.196	0.028539 *

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.456 on 523 degrees of freedom
Multiple R-squared: 0.2416, Adjusted R-squared: 0.2271
F-statistic: 16.66 on 10 and 523 D, p-value: < 2.2e-16

Analysis of Variance Table

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
District	5	12.967	2.593	12.4723	1.881e-11 ***
Pre- or Post-BAPCPA	1	9.353	9.353	44.9825	5.171e-11 ***
Number of Documents	1	2.397	2.397	11.5285	0.0007375 ***
Current Monthly Income	1	2.185	2.185	10.5083	0.0012641 **
Unsecured C.Claims	1	0.960	0.960	4.6186	0.0320853 *
Estimated Debts	1	1.003	1.003	4.8219	0.0285391 *
Residuals	523	108.747	0.208	1.0000	---

VII. DISTRIBUTIONS TO UNSECURED CREDITORS

A. Chapter 13 Cases

Figure 6.1 below is a model analyzing distributions to unsecured creditors in chapter 13 cases. Distributions to unsecured creditors is negatively correlated with "Post- BAPCPA" (after deletion of one outlier) and positively correlated with Total Direct Access Costs. Stated differently, distributions to unsecured creditors in chapter 13 cases are lower post-BAPCPA than pre-BAPCPA. It is difficult, under this model, to necessarily assert a chain of causation.

Figure 6.1

Models for Chapter 13 Distribution to Unsecured Creditors

Coefficients:

	Estimate	Std. Error	t value	Pr(>|t|)
(Intercept)	-1.3654	1.9947	-0.684	0.494
Pre- or Post-BAPCPA	-3.0793	0.2886	-10.671	< 2e-16 ***
Total Direct Access Costs	1.5854	0.2407	6.586	1.42e-10 ***

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.612 on 402 degrees of freedom
Multiple R-squared: 0.2817, Adjusted R-squared: 0.2781
F-statistic: 78.83 on 2 and 402 D, p-value: < 2.2e-16

Analysis of Variance Table

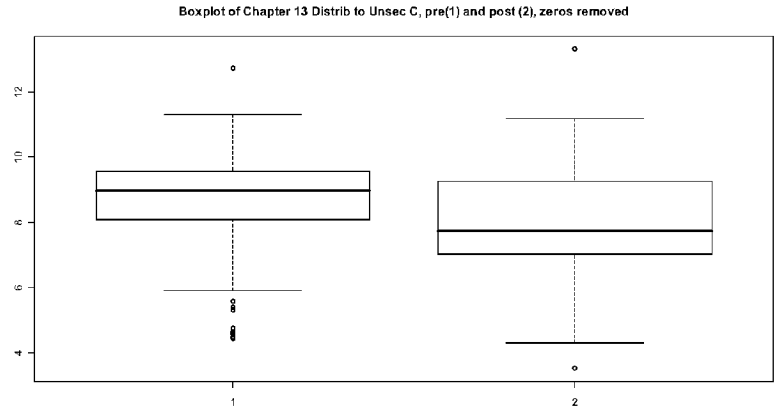
Response: x[, 48]

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
Pre- or Post-BAPCPA	1	776.66	776.66	113.871	< 2.2e-16 ***
Total Direct Access Costs	1	295.82	295.82	43.371	1.419e-10 ***
Residuals	402	2741.85	6.82	1.000	---

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Figure 6.2 below is a box plot revealing lower distributions to unsecured creditors in chapter 13 cases post-BAPCPA, than they received pre-BAPCPA.

Figure 6.2



B. Chapter 7 Cases

Figure 7.1 below is a model analyzing distributions to unsecured creditors in chapter 7 cases (including no-asset cases) with a single predictor: "Post-BAPCPA." This model is complicated because distributions to unsecured creditors are sometimes zero. But, even eliminating those cases, the coefficient is negative.

Figure 7.1

Model for Chapter 7 Distribution to Unsecured Creditors

Coefficients:

	Estimate	Std. Error	t value	Pr(> t|)
(Intercept)	11.5154	0.4120	27.95	<2e-16 ***
Pre- or Post-BAPCPA	-3.0849	0.3034	-10.17	<2e-16 ***

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.745 on 403 degrees of freedom
Multiple R-squared: 0.2042, Adjusted R-squared: 0.2022
F-statistic: 103.4 on 1 and 403 DF, p-value: < 2.2e-16

Figure 7.2 below is a model analyzing distributions to unsecured creditors in chapter 7 cases, excluding no-asset cases. The relationship to "Post-BAPCPA" is negative but not significant (most likely due to small sample size). There are several outliers, but omission of these outliers does not change the results. Figure 7.3 below is a box plot revealing lower distributions to unsecured creditors in chapter 7 cases post-BAPCPA than they received pre-BAPCPA.

Figure 7.2

Model for Chapter 7 adjusted, log, non-zero, Distribution to Unsecured Creditors

Coefficients:

	Estimate	Std. Error	t value	Pr(>|t|)
(Intercept)	-1.5683	1.7074	-0.919	0.36648
Pre- or Post-BAPCPA	-0.3837	0.3091	-1.242	0.22510
Total Direct Access Costs	1.2794	0.2015	6.349	8.47e-07 ***

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.8486 on 27 degrees of freedom
Multiple R-squared: 0.6967, Adjusted R-squared: 0.6405
F-statistic: 12.4 on 5 and 27 D, p-value: 2.621e-06

> fanova(tmp)

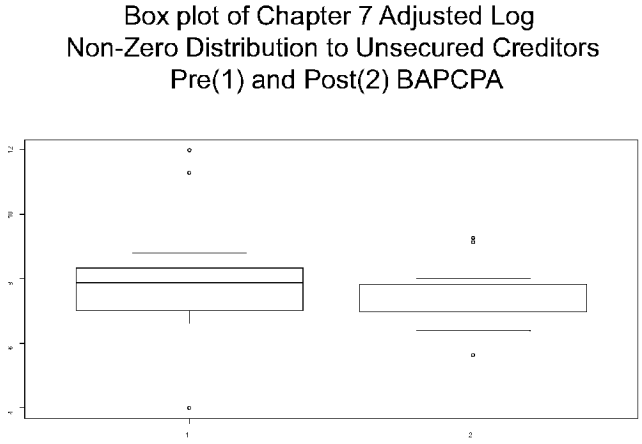
Analysis of Variance Table

Response: x[i, 48]

	Df	Sum Sq	Mean Sq	F value	Pr(>F)
District	3	10.2735	3.4245	4.7555	0.008663 **
Pre- or Post-BAPCPA	1	1.1099	1.1099	1.5413	0.225098
Total Direct Access Costs	1	29.0310	29.0310	40.3143	8.472e-07 ***
Residuals	27	19.4432	0.7201	1.0000	---

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Figure 7.3



CONCLUSION

The "new" consumer Bankruptcy Code, in operation for almost four years, set in motion a very different substantive policy for debt relief: it was cited by members of Congress as a new system that would weed out the system's "abusers" while still maintaining meaningful access for those debtors needing genuine relief.[89] In furtherance of this goal, the Bankruptcy Code now includes many new requirements that must be met by debtors, debtors' attorneys, and trustees. The Pilot Study examined both the direct and indirect costs of these new requirements.

The Pilot Study revealed that costs are higher post-BAPCPA than they were prior to the amendments' enactment. In particular, post-BAPCPA attorney fees increased significantly. The question remains whether the increase in costs is off-set by the benefits of a more efficient system that is less vulnerable to abuse?[90] Or

[89] "With respect to the interests of creditors, the proposed reforms respond to many of the factors contributing to the increase in consumer bankruptcy filings, such as lack of personal financial accountability, the proliferation of serial filings, and the absence of effective oversight to eliminate abuse in the system." H.R. REP. NO. 109-31, *supra* note 2, at 2 (footnotes omitted).

[90] The concept of using a cost-benefit analysis in evaluating a public policy had its origin in the U.S. Federal Navigation Act of 1936. Pursuant to this Act, the U.S. Corp of Engineers was directed to carry out projects for the improvement of the waterway system only if "the benefit to whosoever they accrue are in

have the changes simply made the bankruptcy process more costly and less attractive to debtors and potential debtors?

The Pilot Study also analyzed whether, even in light of increased costs, creditors received a larger distribution than they received under the "old" bankruptcy regime. The study found that in both chapter 13 and chapter 7 cases, distributions to unsecured creditors decreased.

Many questions remain to be studied as part of the National Consumer Bankruptcy Costs Study. Quantitative data will be gathered from consumer bankruptcy petitions from a larger, nationally drawn sample. This data will be analyzed both descriptively and using regression analysis in order to identify significant predictors of observed changes. In addition, consumer bankruptcy attorneys, trustees, and bankruptcy judges will be surveyed in an effort to provide answers to some of the *why* questions raised by the raw data. Finally, focus groups comprised of bankruptcy professionals will be convened around the country allowing the opportunity to capture interactive discussions of the impact of BAPCPA on the costs of bankruptcy and on bankruptcy practice. Results of the National Consumer Bankruptcy Costs Study will be reported in December 2011.

---

excess of the estimated costs." D. Pierce, *Cost Benefit Analysis and Public Policy*, 14 OXFORD REV. OF ECON. POL'Y 84, 85 (1998).

Mr. GOLD. Thank you, Mr. Chairman. And I want to just quote very briefly from the report. After interviewing many, many trustees around the country, the report quotes one, and this was agreed to many others, in fact, probably the vast majority, two or three times as much work in no-asset cases as trustees—I am paraphrasing—as trustees had to perform before BAPCPA, two or three times as much. So, you can imagine the $60 has not been raised; the amount of work is two or three times just since 2005 when BAPCPA was enacted.

Now, certain of our bankruptcy responsibilities are more demanding and challenging than others. Most recently, this new requirement of administering employee benefit plans with that whole range of Federal regulation under ERISA and other regulations, which now we are responsible for, with all the liabilities and all the issues that go along with that. That is very, very important work, and yet, again, that is all subsumed within the $60 fee, unless, of course, we are lucky enough that there might be an asset case involved.

In health care bankruptcies, trustees also have the obligation to transfer patient records and even the patients themselves sometimes from facilities that are being closed. And we have to safeguard patient privacy, of course, as well.

Mr. Chairman, this year the bankruptcy will handle some 1.5 million cases, and that is far greater than the total number of cases handled by all the other Federal courts. No system, however well designed, is better than the people who operate within it. Therefore, we must retain and attract competent, honest, and committed trustees. And as designed, our system will work only if we have these folks employed. Therefore, I certainly support, and these views are my own, but I certainly support the increase to $100 the no-asset fee.

And let me also finally echo Mr. Furr's comment with respect to the commission and how some bankruptcy judges around the country have interpreted what most bankruptcy lawyers think is very clear, that indeed the compensation is commission based. Like a real estate agent who sells a house gets 6 percent, bankruptcy trustees should get the commission as provided in the statute, and not adjusted by simply the views of a particular bankruptcy judge, unless of course there is wrongdoing or misdeeds and the like.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Gold follows:]

AMERICAN BANKRUPTCY INSTITUTE | www.abi.org

TESTIMONY OF H. JASON GOLD, ON BEHALF OF
THE AMERICAN BANKRUPTCY INSTITUTE
BEFORE THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON COURTS, COMMERCIAL AND ADMINISTRATIVE LAW
HEARING ON CHAPTER 7 BANKRUPTCY TRUSTEE
RESPONSIBILITIES AND REMUNERATION
JULY 27, 2011

Chairman Coble, Vice-Chairman Gowdy, Ranking Member Cohen and members of the subcommittee, I am Jason Gold, a partner in the McLean, Virginia office of Wiley Rein LLP, a law firm with over 275 lawyers practicing in nearly two dozen practice areas. I am the Chair of our firm's Bankruptcy and Financial Restructuring Practice and have more than 30 years of experience in complex restructuring and insolvency matters. In recent years, the focus of my practice has been on major media, retail, real estate, automotive, aviation and telecommunications cases.

Relevant to this hearing, I am also a Chapter 7 panel trustee in the Eastern District of Virginia, one of the nation's busiest courts. I have been a Chapter 7 trustee in this district for more than 24 years.

I appear today as a representative of the American Bankruptcy Institute, the nation's largest, multi-disciplinary association of insolvency professionals, with over 13,000 members. Founded in 1982 on Capitol Hill, ABI is non-profit and non-partisan, and since 1982 has provided continuing legal education in the field of bankruptcy, while also serving as a resource for members of Congress and their staff on matters affecting the bankruptcy system. We are honored to be asked to appear today to present views on the important role of Chapter 7 trustees in the bankruptcy system, and how best to fairly compensate trustees. The views I present today are mine.

I appreciate the opportunity to testify in support of the increase in compensation for chapter 7 bankruptcy trustees in those 90 percent of the chapter 7 bankruptcy cases filed nationally in which there are no assets to administer for the benefit of creditors. The $60 no-asset fee has not been raised since 1994 while the responsibilities placed upon me as a chapter 7 bankruptcy trustee have increased substantially. The increase is necessary, overdue and essential to the operations of our bankruptcy system which is the envy of the world.

[illegible]

Since being appointed as bankruptcy trustee, I have been designated as the chapter 7 trustee in over 21,000 cases. I first started practicing law as a solo practitioner in 1979 by hanging out a shingle after graduating from law school and passing the bar exam. I have been a solo practitioner, established and developed my own private law firm, and am now a partner at a major national multi-practice firm in Washington, D.C. I was certified as a business bankruptcy law specialist by the American Board of Certification in its first class in 1991, have maintained that certification to date, served on the committee that prepared the written course materials concerning the written examination necessary to become board certified, taught that course, and have served on the American Board of Certification's Board of Directors since 2010.

During my thirty two years plus legal career, I have represented the poorest of the poor in their individual consumer bankruptcy filings, small "ma and pa" businesses that failed and needed to be reorganized or liquidated, and represented local, regional and national banks and private lenders in their efforts to mitigate their losses upon being confronted with a bankruptcy filing. I have also been involved in some of the largest bankruptcies in the country, either representing creditors, committees of creditors formed in these larger cases, and have also represented large publicly traded companies reorganizing under chapter 11 of the Bankruptcy Code. My prior law firm, Gold Morrison & Laughlin, P.C. also had the privilege of being engaged as special counsel to the Attorney General of the Commonwealth of Virginia to advise and represent the Commonwealth on bankruptcy matters as assigned to us.

I provide this detail because I have experience in virtually every perspective and facet of liquidation and reorganization in the sometimes devastating wake of financial insolvency. My career as a bankruptcy lawyer and my views on the need for this fee increase comes from my experiences representing the poor, honest debtor in need of relief, a sovereign state seeking to advance and protect its interests, lenders and some of the largest corporations in some of the nationally prominent "mega-cases" of the last decade, all while acting as a chapter 7 bankruptcy trustee.

The Bankruptcy Trustee's Vital Role in Our System

Fortunately, most honest citizens of our country do not have any interaction with the Federal Courts. A bankruptcy filing may be the only time one of our citizens is exposed to the Federal Judiciary. When the bankruptcy law was changed in 1978 and Referees became Judges, the tasks of reviewing the bankruptcy filing, the lists of assets and liabilities and the bankrupt's pre-filing conduct was passed to the chapter 7 bankruptcy trustee. Almost all people filing for bankruptcy never appear in court before a bankruptcy judge, but rather appear before me, the chapter 7 trustee. These debtors' appearance at the first meeting of creditors required under Section 341 of the Bankruptcy Code may be their only exposure to the Federal Judiciary, the bankruptcy system and our government. It has been not only my duty and privilege, but also a distinct honor to serve as a panel bankruptcy trustee.

While I assume these duties willingly, the scope and responsibility of my role as the face of the bankruptcy system presents a number of challenges. The initial duties start after the bankruptcy cases is filed and before the debtor's appearance before me and creditors at the 341 meeting.

I must review the bankruptcy petition, the schedules of assets and liabilities, and the sworn statement of financial affairs prior to that meeting in each of the approximately 110 cases assigned to me every two weeks on a monthly basis before I conduct those meetings. In the 90 percent plus cases that are "no asset cases" and result in the filing of a "No Distribution Report", I have continued responsibilities and duties. All of this for $60 per case, and in those cases where the debtor is appearing *in forma pauperis*, for free. But "no asset" does not mean "no work".

There is still plenty of work to be done from ensuring that the debtor has performed the requirement to state his intention with respect to encumbered property, ensuring that the debtor has filed his Federal tax returns, along with a review of the most recent return, providing important notices to holders of domestic support obligations about the bankruptcy filing, reviewing the debtor's petition to see if he is eligible under the means test for Chapter 7 relief, conducting the Section 341 meeting and examination, among many other explicit duties.

Certain of my responsibilities are more demanding and challenging than others. If the debtor served as an administrator of an employee benefit

plan, as trustee, I am obligated to continue to perform the obligations required of that administrator. In health care bankruptcies, trustees also have obligations to transfer patients from facilities that are being closed and to safeguard patient privacy and healthcare records.

Serving as a cop on the beat is an essential part of the chapter 7 trustee function. The chapter 7 trustee thus is responsible for any determination of potential misconduct on the part of the debtor, including criminal activity to be reported to the United States Trustee Office for referral to the U.S. Attorney. Those debtors who seek to game the system are first rooted out by the Chapter 7 bankruptcy trustee, who has a fiduciary duty to the estate. Meeting this obligation is essential for the bankruptcy system to be properly policed and to work the way we have crafted it.

The 2005 Law Adds Significantly to Trustee Workload

With the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), our role and duties as trustees, and the role we play as a watchdog for the courts and the Office of the United States Trustee has expanded, without any increase in the base, no asset case fee.[1] Congress asked the Government Accountability Office to study the dollar costs associated with BAPCPA, including costs to private sector system providers such as Chapter 7 trustees. GAO found that the new law's requirements related to documentation, verification and reporting have increased the time and resources needed to be devoted to administer every case. Specifically, GAO found the provisions with the most significant impact include:

New documentation requirements. Trustees must confirm that debtors have submitted documentation required under the act, which includes 2 months of wage statements and the tax return from the year prior to filing. The trustees must safeguard all tax return documents according to procedures set by the Trustee Program—for example, access to tax records

[1] Attached to my testimony is the Preliminary Report on BAPCPA's Impact on Chapter 7 Trustees Administering Consumer Cases, prepared by Prof. Lois R. Lupica of the University of Maine. Prof. Lupica's work measuring empirically the costs of BAPCPA is funded by a grant from the ABI Anthony H.N. Schneiling Endowment Fund.

must be restricted and sensitive documents must be properly secured, destroyed, or returned to the debtor.

Domestic support obligations. In cases where a debtor has a domestic support obligation—alimony or child support—private trustees must notify the claimant (such as the custodial parent) and the relevant state child support enforcement agency of the bankruptcy. The trustee must notify applicable parties twice during the bankruptcy process—once around the time of the meeting of the creditors and once at the time of discharge.

Means test. Chapter 7 trustees must review the means test form submitted by debtors and verify the calculation of current monthly income. In those cases where the income is below the state median—and therefore not presumed abusive—the trustees are to verify that the income is truly below the median by examining wage statements and tax documents.

Uniform final reports. Once the Trustee Program issues a final rule, private trustees will be required to submit a uniform final report of each bankruptcy case. For Chapter 7 trustees, the proposed reporting forms add additional responsibilities since they require reporting data not currently collected for no-asset cases, and they must enter this information manually.

The Economic Burdens on Trustees Rise with the Caseload

The chapter 7 trustee executes the important public policy initiatives set forth in the Bankruptcy Code, serving a vast constituency of creditors, the debtor, the Bankruptcy Court and the Office of the United States Trustee. The volume is excessively high and the legal and factual issues presented are sometimes complicated and challenging. These tasks and responsibilities are not waived or reduced because the case is a no asset case.

Over the course of my career and tenure as a chapter 7 trustee, there have been hundreds, if not thousands of cases where substantial amounts of billable time and cost advances have been made to only realize at the end of the case, there is no recovery at all, and only the $60 fee is available as compensation. I understand this nature of my role as trustee and am fortunate to have such a firm as Wiley Rein that understands this process and is willing to endure the economic consequences of this part of my practice.

Of course, trustees at smaller more local practices may not have this type of support and without this fee increase, may not be able to continue to fulfill this vital role.

The role and workload of the nation's Chapter 7 trustees is also tied to the level of new bankruptcy cases filed in the United States. Until very recently, bankruptcy filings in the U.S. have grown sharply since the aftermath of Congress' major rewrite of the laws in 2005, with BAPCPA. For example, filings grew nationaliy from 617,660 in 2006 to nearly 1.6 million in 2010. More than 70 percent of these cases were filed under Chapter 7 of the Bankruptcy Code.

In the Eastern District of Virginia, there were 27,535 total non-business, or consumer, filings during 2010, and 18,211 of these were Chapter 7 cases, representing 66 percent of the total. The total number of cases in our district last year was the highest since 2005, and more than 200 percent higher than filings in 2006.

Conclusion

In the U.S., we ask much of our bankruptcy system, as no less than the commercial law courts of the country. The system will this year handle more than 1.5 million cases, far greater than the total cases handled by all the rest of the Federal courts. Indeed, no court system touches more people than bankruptcy. And no player within that system reaches both debtors and creditors like the Chapter 7 trustee. No system, however well designed, can be better than the people who operate within it. Therefore, we must retain and attract competent, honest and committed trustees. As designed, our present system simply will not work effectively without them. In other insolvency systems around the world, government officials on a public payroll handle the duties of administration, oversight, monitoring and investigation. But our system relies on private parties to provide these functions, at a fraction of the cost to the system and the taxpayers.

Statutory fees are increased for Court appointed counsel to the criminally accused and to jurors, but the $60 no asset fee to trustees, as quasi-judicial officers of the bankruptcy courts, has not been increased in over 17 years. Given the vital role that bankruptcy trustees play in the bankruptcy system, I recommend that Congress increase this fee to $120.

6

Mr. COBLE. Thank you, Mr. Gold.
Mr. Brewer?

TESTIMONY OF WILLIAM E. BREWER, JR., FOUNDER, THE BREWER LAW FIRM (RALEIGH, NC), ON BEHALF OF THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS

Mr. BREWER. Chairman Coble, Ranking Member Cohen, thank you for the opportunity to appear today on behalf of the National Association of Consumer Bankruptcy Attorneys. I am William E.

Brewer, Jr., and the president NACBA. NACBA is the only national organization dedicated to serving the interests of consumer bankruptcy attorneys and, more importantly, protecting the rights of consumer debtors in bankruptcy.

Some NACBA members, including my predecessor as president, serve as Chapter 7 trustees, giving us a broad perspective on the issues before the Subcommittee today. NACBA appreciates the opportunity to offer its views on compensation to Chapter 7 trustees in no asset cases.

Let me be clear. NACBA supports increased compensation for Chapter 7 trustees. We recognize that trustees have had not had their fees increased in 17 years, despite expanded duties under the 2005 Bankruptcy Act.

Let me emphatically clear. NACBA opposes any increase in fees for bankruptcy filers as a way to pay for the increased compensation to Chapter 7 trustees. Cash strapped and overburdened debtors have had the filing fees more than double in those same 17 years. Furthermore, their fees and other costs associated with filing bankruptcy have gone up a whopping 90 percent in the wake of the 2005 Act. Since 2005, the filing fees have increased from $205 to $299. This does not include the cost of the mandatory credit counseling. Incredibly, Congress increased fees on bankruptcy consumers as a way to reduce the deficit in 2006.

When Congress increased the filing fees in 2005, it was well understood that the new law would impose new responsibilities on Chapter 7 trustees. Why has not some portion of the $94 increase in the filing fee gone to Chapter 7 trustees to compensate them for their expanded workload, rather than further burden financially distressed Americans who have suffered an extended period of unemployment, home foreclosure, or other financial calamity by piling on yet another fee increase? Congress should determine where all the money is now going into the bankruptcy system is being spent, and reallocate the existing revenue so that the Chapter 7 trustees are adequately compensated.

Consumer debtors are already paying more than their share of the costs of the administration of the bankruptcy system.

There are approaches to this issue that NACBA can and will support. For example, in 2008, the Senate included language in Senate 1638 that would increase the compensation to Chapter 7 trustees, but also provided that no additional fee could be charged to the debtor for the fee increase to trustees. Under this approach, the court would fund the increase through the fees through the judicial conference that the United States already collects.

More recently, Representatives Cohen, Whitfield, and Conyers sponsored legislation in the last Congress, H.R. 4950, that would make a relatively modest adjustment to the percentage price points used to compensate trustees in cases in which there are assets, roughly 5 to 10 percent. This adjustment would supplement the fixed fee compensation that is provided in the no-asset cases. Under this approach, trustee compensation would be paid not only by debtors through existing filing fees, but also by creditors who directly benefit from a trustee's work in administering asset cases.

Fees could be charged for creditors for filing proofs of claim. There is an industry of debt buyers purchasing claims in bank-

ruptcy and benefitting from the system. A modest fee to file an assignment of claim could be imposed.

In summary, NACBA respects the role of the Chapter 7 trustees in maintaining the professional function of our bankruptcy system. We must ensure that the system continues to attract and retain competent, experienced, and qualified private trustees, like the ones here today, in light of this critical role. Increased compensation with Chapter 7 trustees is a part of that equation; however, it must not fall to the financially distressed consumers to shoulder that increase.

NACBA stands ready to work with this Subcommittee and other interested parties in advising an equitable approach to this issue. Thank you.

[The prepared statement of Mr. Brewer follows:]

Written Testimony of William Brewer

President, National Association of Consumer Bankruptcy Attorneys

Before the Subcommittee on Courts, Commercial and Administrative Law

Judiciary Committee

U.S. House of Representatives

"Chapter 7 Bankruptcy Trustee Responsibilities and Remuneration"

July 27, 2011

Chairman Coble, Ranking Member Cohen and Members of the Subcommittee:

My name is William Brewer and I am a practicing bankruptcy attorney in Raleigh, North Carolina. I serve as president of the National Association of Consumer Bankruptcy Attorneys (NACBA), on whose behalf I appear here today. NACBA is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy. Formed in 1992, NACBA has nearly 5,000 members located in all 50 states and Puerto Rico. NACBA's members represent a large number of the individuals who file bankruptcy cases in the United States Bankruptcy Courts. Some NACBA members also serve as Chapter 7 Trustees, giving us perhaps a unique perspective on the issues before the Subcommittee today.

NACBA appreciates the opportunity to offer its views on compensation to Chapter 7 Trustees for no-asset cases. We can all agree that bankruptcy trustees play an important role in the bankruptcy system. They are fiduciaries who must ensure that all assets are properly administered and that the debtor warrants a discharge. Typically, a bankruptcy trustee is charged with a number of responsibilities, among them the administration, investigation and oversight of a bankruptcy case. Trustees also undertake various investigatory and audit functions and prepare reports of findings.

The duties and responsibilities of Chapter 7 Trustees were expanded under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("2005 Act"). The Government Accountability Office (GAO) in a June 2008 study of the bankruptcy system[1] summarized these new responsibilities:

> "The Bankruptcy Reform Act has affected the responsibilities and caseloads of Chapter 7 and Chapter 13 private trustees. As a result of new provisions in the act, trustees must collect, track, store, and safeguard additional documents such as tax returns; notify appropriate parties of domestic support obligations; check calculations and review the accuracy of information in forms associated with the means test; and once finalized, will be required to comply with new requirements for uniform final reports. Private trustees told us that these new responsibilities have significantly increased the time and resources required to administer a bankruptcy case."

[1] "Bankruptcy Reform: Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005," Government Accountability Office, June 2008, GAO-08-697, accessed at: http://www.gao.gov/new.items/d08697.pdf

Despite these expanded responsibilities and increased filing fees, the compensation to Chapter 7 Trustees was not increased under the 2005 Act. In fact, the compensation for Chapter 7 Trustees has not been increased in 17 years and currently stands at $60 for administering a Chapter 7 case in which no assets are liquidated.

NACBA has been clear over the years in its support for increased compensation for Chapter 7 Trustees. At the same time, NACBA has been unequivocal that any such increase should not be borne by financially distressed debtors. The simple fact is that debtors already pay enough in filing fees to cover the costs of the administration of their bankruptcy case, including compensating Chapter 7 Trustees.

In just a one year span (April 2005-April 2006) Congress increased the fees associated with filing for bankruptcy by 43 percent, from $209 to $299. The filing fees were raised in the 2005 Act, in the 2005 emergency supplemental spending bill, and under the 2006 deficit reduction act.[2] But, these are not the only fee increases cash-strapped debtors have been saddled with under the 2005 Act. In that Act, Congress mandated that debtors go through pre-bankruptcy credit counseling and post-bankruptcy debtor education, at a cost of as much as $100 for the two sessions. The combined impact of the filing fee increases and counseling/education requirements pushed the cost of a Chapter 7 bankruptcy up more than 90 percent in the wake of the 2005 Bankruptcy Act.

Not surprisingly, debtors today also face increased legal fees associated with consumer bankruptcy relief as a result of the 2005 Bankruptcy Act. Attorneys must complete a lengthy form that includes various calculations of the debtor's income and expenses and collect additional documents from the debtor such as months' worth of paystubs and tax returns for multiple years. According to the GAO report, bankruptcy cases now involve a greater number of motions and hearings, which further increase the time an attorney spends on a case.

The GAO report on costs associated with the 2005 Bankruptcy Act further reveals the bureaucratic sprawl created by the law, significantly increasing the workload not only on Chapter 7 Trustees and bankruptcy attorneys, but also on the U.S. Trustee program and the judiciary. For example, the Trustee Program estimated its costs related to carrying out the responsibilities under

[2] Prior to the 2005 Act, the cost of filing a chapter 7 bankruptcy case was $209. This amount included the $155 statutory filing fee provided by 28 U.S.C. § 1930(a), an additional noticing fee of $39 assessed in all chapter 7 and chapter 13 filings pursuant to 28 U.S.C. § 1930(b), and another $15 fee used to provide funds necessary for additional compensation to chapter 7 trustees mandated by 11 U.S.C. § 330(b)(2), as amended by the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394 (1994). Enactment of the 2005 Act and several subsequent bills resulted in three Chapter 7 filing fee increases. The statutory filing fee was increased from $155 to $200 in the 2005 Act, resulting in a total Chapter 7 filing fee of $254. The statutory filing fee was again increased from $200 to $220 in P.L. 109-13, bringing the total Chapter 7 filing fee to $274. Yet another increase enacted in February of 2006 increased the statutory filing fee from $220 to $245, in P.L. 109-171 (effective April 9, 2006), resulting in the current total chapter 7 filing fee of $299.

the 2005 Act to be approximately $72.4 million over two years. The increased expenses went primarily to personnel costs to implement the means test and credit counseling/debtor education requirements, conduct debtor audits, comply with reporting requirements, establish information technology systems and expand facilities.[3] Likewise, the Judicial Conference noted that the 2005 Act created new docketing, noticing, and hearing requirements that make "addressing bankruptcy cases more complex and time consuming."[4]

Although it is not clear exactly how the revenue generated by the increased filing fees for debtors has been allocated, one might assume based on the GAO's findings that it has gone to pay for the costs associated with implementing and administering the new law, rather than to the Chapter 7 Trustees who actually handle the cases. If that is true, Congress may want to re-consider the needless and burdensome paperwork requirements imposed by the 2005 Act and instead use the funds now siphoned off for that purpose to increase the compensation to Chapter 7 Trustees.

In the meantime, Chapter 7 Trustees understandably are looking once again to Congress to increase their compensation. NACBA will support such a request provided that it does not increase the filing fees or other costs imposed on cash-strapped debtors. At least two proposals have been considered in recent years that NACBA could support:

- H.R. 4950, the "Chapter 7 Bankruptcy Administration Improvement Act" introduced on March 25, 2010 by Representatives Cohen, Whitfield and Conyers and referred to this Subcommittee for consideration. That legislation would make a relatively modest adjustment to the percentage price points used to compensate trustees in the cases where there are assets (roughly five to 10 percent of cases). This adjustment will supplement the fixed fee compensation that is provided in the no asset cases. Under this approach, trustee compensation would be paid not only by debtors through existing filing fees but also by creditors who directly benefit from the trustees' work in administering asset cases.
- Language incorporated in S. 1638, as reported by the Senate in 2008, which increased the compensation to Chapter 7 Trustees but also provided that no additional fee could be charged to the debtor to pay for the fee increase to trustees. Under this approach, the courts would fund the increase through the fees the Judicial Conference of the United States already collects.

NACBA respects the role of Chapter 7 Trustees in maintaining the professional functioning of our bankruptcy system. Our bankruptcy system should ensure that it continues to attract and retain competent, experienced, and qualified private trustees in light of the critical role they play in the system. Increased compensation for Chapter 7 Trustees is a part of that equation.

[3] 2008 GAO report, page 11.
[4] 2008 GAO report, page 14.

However, it is critical that financially distressed consumers not be asked to shoulder this increase.

NACBA stands ready to work with this Subcommittee and other interested parties in devising an equitable approach to this issue.

Mr. COBLE. Thank you, Mr. Brewer.
Mr. Hogan?

TESTIMONY OF BLAKE HOGAN, PRESIDENT, AMERICAN INFOSOURCE (HOUSTON, TX)

Mr. HOGAN. Mr. Chairman and Ranking Member Cohen, my name is Blake Hogan, and I am the president and founder of American InfoSource, the market leader in providing bankruptcy specific filing and information services to participants in the bankruptcy system. We are based in Houston, Texas, with operations in Oklahoma City, Oklahoma.

American InfoSource provides account management services and performs many bank case functions for eight of the largest financial institutions in the country, as well as health care institutions, retailers, utility, and telecom companies.

I would like to explain a little bit about myself and my company so that the Subcommittee can understand the views I have on the topic of trustee compensation.

In 1995, I built the first direct connection to the bankruptcy courts, creating the first comprehensive bankruptcy database of its kind. The business was sold to First Data Corporation in 1996, and the original organization has since been sold to another company. My current company, launched in 2000, has successfully automated bankruptcy procedures from notification, to payment processing in a safe, reliable, and cost-effective manner.

Today American InfoSource is the leading filer of bankruptcy claims, and, according to the administrative office of the U.S. Courts, we are the largest commercial purchaser of bankruptcy data. As a consequence, we have amassed a great deal of data about the actual function of the consumer bankruptcy system as it exists in practice.

I am pleased to provide my perspective to the Subcommittee on the important issue of Chapter 7 trustee compensation. As I have noted, and I want to reiterate, I provide services to lenders and trustees. American InfoSource is not a lender, creditor, borrower, or debtor. The perspective I bring to the issue is based on the sound data collection and analysis of the facts.

First, let me start by saying I personally support an increase in the no-asset fee for Chapter 7 trustees. Thanks in large measure to the hard work of many talented Chapter 7 trustees, our consumer bankruptcy system works as well as it does. It is only fair to ensure that this work is compensated according to its value.

I am confident that the fee set in 1994 has eroded in value over time. After all, prices for other goods and services have increased since 1994, and I believe the same would be true for the Chapter 7 no-asset fee.

I am aware that there have been past proposals to increase compensation to Chapter 7 trustee in no-asset cases by increasing commissions paid in asset cases under Section 326 of the Bankruptcy Code. Based on the data I have reviewed, such proposals would not work and would merely reduce dividends paid to creditors in Chapter 7 asset cases. As one of the witnesses today said in prior testimony in 2008 before this Subcommittee, Chapter 7 cases with significant assets are rare, and mostly in large metropolitan areas.

This is why the lack of decent compensation in no-asset cases is particularly difficult for trustees in small or rural areas.

Following this logic, increasing amounts paid in asset cases to those trustees who live and work in cosmopolitan areas will do nothing to help trustees in other areas of the country. For instance, our data shows that 75 percent of the asset cases are administered in 15 states.

Finally, I would like to address the question of whether increasing commissions under Section 326 would actually incentivize greater collection for creditors. While there may be anecdotal evidence to support this theory, there is no statistically significant data which supports this premise. I believe, based on our data, that creditors would in effect pay more for the same services if commission amounts under Section 326 were increased.

In sum, Mr. Chairman, it may be advisable for Congress to increase compensation in no-asset Chapter 7 cases. I also believe this should be done by increasing the statutory no-asset fee. Proposals to make up for below market no asset fee by increasing commissions in Chapter 7 asset cases would help only a select few trustees and would likely impose costs on creditors in the form of reduced dividends without collateral benefits to creditors.

We appreciate the opportunity to share our views, and I look forward to any questions that you might have.

[The prepared statement of Mr. Hogan follows:]

STATEMENT OF BLAKE HOGAN, PRESIDENT OF AMERICAN INFOSOURCE

"Chapter 7 Bankruptcy Trustee Responsibilities and Remuneration" July 27, 2011 Commercial and Administrative Law Subcommittee of the House Judiciary Committee

Mr. Chairman and Ranking Member Cohen, my name is Blake Hogan and I am the President and Founder of American InfoSource, the market leader in providing bankruptcy-specific filing and information services to participants in the bankruptcy system. We are based in Houston, Texas with operations in Oklahoma City, Oklahoma. American InfoSource provides bankruptcy account management services and performs many bankruptcy case functions for eight of the largest financial institutions in the country, as well as healthcare institutions, retailers, utility and telecom companies.

I would like to explain a little about myself and my company so that the Subcommittee can understand the views I have on the topic of trustee compensation. In 1995, I built the first direct connection to the bankruptcy courts, creating the first comprehensive bankruptcy database of its kind. The business was sold to First Data Corporation in 1996 and the original organization has since been sold to another company. My current company, launched in 2000, has successfully automated bankruptcy procedures from notification through payment processing in a safe, reliable and cost-effective manner. Today, American InfoSource is the leading filer of bankruptcy claims and according to the Administrative Office of the U.S. Courts; we are the largest commercial purchaser of bankruptcy data. As a consequence, we have amassed a great deal of data about the actual function of the consumer bankruptcy system as it exists in practice.

I am pleased to provide my perspective to the Subcommittee on the important issue of Chapter 7 trustee compensation. As I have noted and want to reiterate, I provide services to lenders and trustees. American InfoSource is not a lender, creditor, borrower or debtor. The perspective I bring to this issue is based on sound data collection and an analysis of the facts.

First, let me start by saying, I personally support an increase in the no asset fee for Chapter 7 trustees. Thanks in large measure to the hard work of many talented Chapter 7 trustees, our consumer bankruptcy system works as well as it does. It is only fair to ensure that this work is compensated according to its value. A fee that was set in 1994 has not increased since that time and should surely be reexamined. I am confident that the fee set in 1994 has eroded in value over time. After all, prices for other goods and services have increased since 1994 and I believe the same would be true for the Chapter 7 no asset fee.

Chapter 7 Case Analysis (2006-2010)

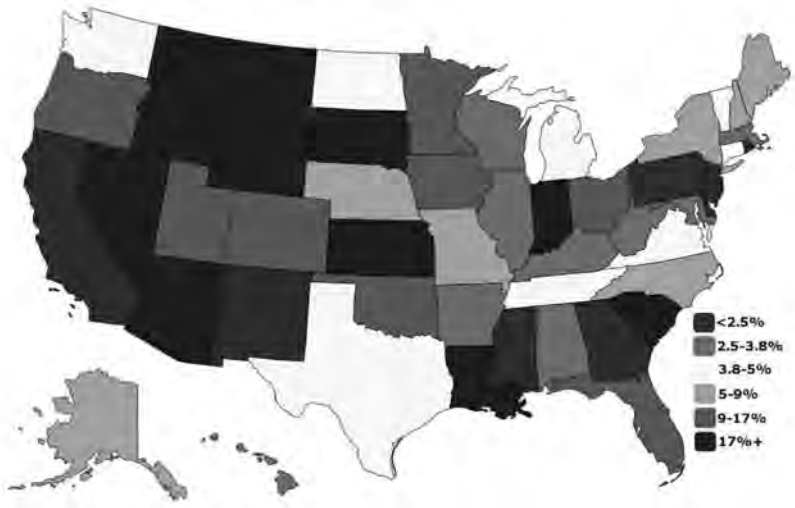
Filing Year	Total Ch7 Cases	Asset Cases	% of Total	No Asset Cases	% of Total
2006	360,464	30,529	8.47%	329,935	91.53%
2007	533,446	46,619	8.74%	486,827	91.26%
2008	761,276	64,242	8.44%	697,034	91.56%
2009	1,058,065	82,134	7.76%	975,931	92.24%
2010	1,129,124	86,461	7.66%	1,042,663	92.34%

**Data derived solely from information obtained from the Federal Bankruptcy Court System.*

Let me take just a moment to touch on the wide spectrum of duties Chapter 7 Trustees perform. Under section 704 of the Code, trustees must conduct a meeting of creditors, investigate the financial affairs of the debtor, collect the assets of the estate if any, liquidate the assets, report to the court and the US Trustee Program on all cases at least once annually, review claims, distribute assets, object to the debtors discharge if warranted and file a final report. In addition, since the passage of BAPCPA, trustee also must notify child support claimants and perform additional responsibilities in relation to various pension plans and health care bankruptcies. Much of this additional work and much of the work such as objecting to the debtors discharge is often performed by the trustee without ANY compensation to the trustee other than the $65.00 statutory fee.

I am aware that there have been prior proposals to increase compensation to Chapter 7 trustees in "no asset" cases by increasing commissions paid in assets cases under Section 326 of the Bankruptcy Code. Based on the data I have reviewed, such proposals would not work and would merely reduce dividends paid to creditors in Chapter 7 cases. As a prior President of the National Association of Bankruptcy Trustees noted in 2008 testimony before this Subcommittee, "Chapter 7 cases with significant assets are rare, and mostly in large metropolitan areas. This is why the lack of decent compensation in no asset cases is particularly difficult for Trustees is small or rural areas." Following this logic, increasing amounts paid in asset cases to these trustees who live and work in the cosmopolitan areas referenced in this testimony will do nothing to help trustees in other areas of the country.

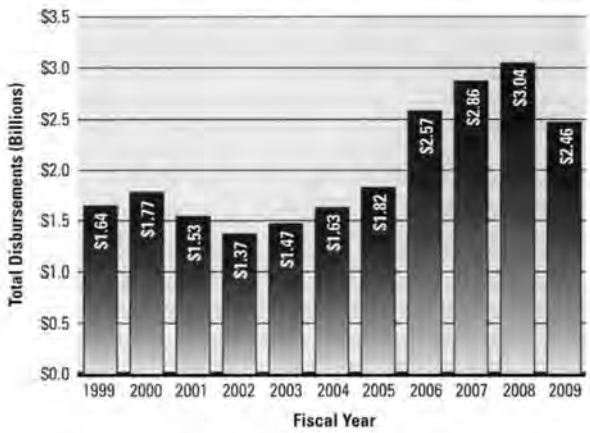
2010: Chapter 7A Cases as Percent of 7s



**Data derived solely from information obtained from the Federal Bankruptcy Court System.*

Finally, I would like to address the question of whether increasing commissions under Section 326 would actually incentive greater collections for creditors. While there may be anecdotal evidence to support this theory, there is no statistically significant data which supports this premise. I believe, based on our experience and data that creditors would in effect pay more for the same services if commission amounts under Section 326 were increased.

Chapter 7 Cases – Total Disbursements: Fiscal Years 1999-2009



Source: Executive Office for U.S. Trustees

In sum, Mr. Chairman, it may be advisable for Congress to increase compensation in "no asset" Chapter 7 cases. I also believe this should be done by increasing the statutory "no asset" fee. Proposals to "make up" for a below market "no asset" fee by increasing commissions in Chapter 7 asset cases would aid only a select few trustees and would likely impose costs on creditors, in the form of reduced dividends, without collateral benefits to creditors. We appreciate the opportunity to share our views and I look forward to any questions that you may have.

Mr. COBLE. Thank you, Mr. Hogan. Thanks to all of you for what you do. I just told Mr. Cohen, I have never been exposed to a bankruptcy matter, either as a trustee, creditor, or debtor. So, we look to you all as experts.

Gentleman, we try to comply with the 5-minute rule as well, so if you all could keep your questions tersely, we would appreciate that.

Mr. Furr, if you had your choice, would you rather be freed from the duty to wind down a debtor's ERISA case plans or raise trustee compensation in no-asset case?

Mr. FURR. I would rather raise the no-asset fee.

Mr. COBLE. Mr. Brewer, my fellow Carolinian. I have another question here.

Mr. Brewer, do you believe that a trustee who is not an expert in employment or labor law should have the duty to wind down the debtor's ERISA plans?

Mr. BREWER. I really see no need for that to happen, I mean. And if so, they have got to find some way to compensate them, for that can be a lot of work. Now, I have never done it. I have never served as a Chapter 7 trustee. So, I do not know how competent I am to answer that question, but I know from my friends of the trustees in North Carolina, they find it quite burdensome.

Mr. COBLE. They find it quite?

Mr. BREWER. Burdensome.

Mr. COBLE. Thank you, sir.

Mr. Gold, in your testimony, you advocate the raising of the $60 flat fee to $120. Do you have any recommendation how we in the Congress would alter the law to that end?

Mr. GOLD. How to fund that——

Mr. COBLE. Yes.

Mr. GOLD.—Mr. Chairman? Well, there are several ways as has been debated now for many years. My personal view is that perhaps a combination of ways might be effective. For example, raising the filing fee slightly or to some degree, which would less of a burden on debtors. I think trustees are very sensitive to the burden on debtors. But even the filing fee hasn't been raised since 2006, which is not nearly as long ago as 1994. But raising it perhaps slightly might be an advantage. And then perhaps raising funds through a more complicated, the PACER system, which is the electronic filing and data system used in bankruptcy in Federal courts. These are fees paid by law firms typically, and of course the public, to some degree. But law firms could certainly afford perhaps a one or two cent increase in PACER fees per page. But we understand there are complications with that with respect to the judiciary.

Mr. COBLE. Thank you, sir.

Let me beat the red light with a question to Mr. Hogan, and then I will yield to Mr. Cohen.

Mr. Hogan, are you aware of any evidence to support the proposition that raising the Section 326 commission would result in higher asset recoveries by trustees?

Mr. HOGAN. No, I am not. I think it is all about equity in the fact that if you take after State number 10, the number of asset cases that are administered in the United States, fewer than 3 percent of the cases in the remaining States are actually asset cases. So, it is very difficult to understand how taking an increase in fee on that would be equitable for a majority of the trustees in the program. It would not result in them having an increase in that.

Mr. COBLE. I thank you, sir.

The distinguished gentleman from Tennessee, Mr. Cohen, is recognized for 5 minutes?

Mr. COHEN. Thank you, Mr. Coble, and I will be quick.

Mr. Furr, how many Chapter 7 trustees have resigned since 2005?

Mr. FURR. We think about 20.

Mr. COHEN. About 20? And what was the principle reason why they resigned, do you think?

Mr. FURR. Well, the reason, and I put it in my part of my remarks here, a Chapter 7 trustee from Wisconsin resigned a few weeks ago, and decided the duties that he has to fulfill in a BAPCPA versus the amount of money he is being paid and the risk he takes, he resigned for that reason. And I hear that from time to time.

Most trustees are sticking to it and really trying to stay with it. This is a profession for most of us. I have been a trustee for over 22 years, and I am 61 years old. And I will be a trustee for many years to come. I enjoy it a lot; I do not want to give it up. And I think most trustees feel that way. It is a great way to practice law, or accounting if you are an accountant. And something I do not want to give up.

Mr. COHEN. Or Congress if you are a congressman.

Mr. FURR. That is correct.

Mr. COHEN. Yes.

Mr. FURR. I mean, a judge. Thank you, Mr. Cohen. So, I do not want to give it up. I think most trustees really do not. They want to struggle through this and find a solution.

Mr. COHEN. Can a trustee be forced to continue to serve by the judge in a Chapter 7 trustee case?

Mr. FURR. Yes, sir, he can. He could resign, but if he resigns and refuses to take a case, I think the U.S. Trustees Office would not take kindly to that.

Mr. COHEN. Mr. Gold, when a Chapter 7 trustee administers an asset case, who is the primary beneficiary to that?

Mr. GOLD. Well, typically it would be the creditors, Mr. Cohen. The creditors, of course, receive the benefit in terms of the money that is distributed. There are, of course, duties to the debtor as well and to the bankruptcy system, but in terms of the economic benefit, it is 100 percent, in my view, to the creditors.

Mr. COHEN. Okay. And are the creditors themselves, some of the creditors are against increasing this compensation, to the best of your knowledge?

Mr. GOLD. I think the creditor industry would not like to see the brackets increased on the asset cases, as was discussed earlier this morning, because that would in theory reduce the net amount that goes to the creditors. I do not agree with that. I think it is well understood in the American economy and capitalism, incentives do work. It is only a question of degree. And it is not to say that all incentives work, but if you increase the percentages, I think most trustees, I would certainly feel like this is now even a greater incentive to raise more money to work even harder.

So, increasing the brackets, I think, would be an advantage. And, frankly, I think it would be an advantage to the creditors as well, certainly the creditors because——

Mr. COHEN. Since it would be an advantage to the creditors, and since they are the primary beneficiaries of the trustees' work, should the doctrine of estoppel be invoked to say that they should estopped to be against any increase in the fees? [Laughter.]

Or should the definition of chutzpah be applied for being against it?

Mr. GOLD. Chutzpah could be a better word. My grandmother would agree, yes.

Mr. COHEN. Okay. Mr. Brewer, what is it that makes you believe that these, other than the fact that trustees have been having the same fee since '94 and that they are quitting the profession, that you think that their fee should be increased in asset cases as well as non-asset cases?

Mr. BREWER. Well, I mean, to me, the issue is they need more money, you know, for what they do. I think they are probably fairly adequately compensated based on the fee schedule for the asset cases. But we have got to find a way to increase the fee, whether it be another $60, $40, some amount, to the Chapter 7 trustee in the no-asset case.

The trouble is, in my opinion, that the consumer debtors, the no-asset folks, and they are the low people on the totem pole. If you are trying to look around for who can kind of suffer more financial difficulty, those are the people who can least do it. We just cannot put them on to those people. So, we have go to——

Mr. COHEN. But they are the closest to the floor, so they are the easiest to step on, and normally that is an easier solution.

Mr. BREWER. No, I understand, you know. I mean, these people, where I come from—you probably have the same in Tennessee. You know, you cannot get blood out of a turnip. And these folks are flat out turnips. And, you know, you can keep squeezing them, but at some point, you know——

Mr. COHEN. And BAPCPA caused them to pay some more money already, did it not, in 2005?

Mr. BREWER. Oh, very much so. There was some talk about, you know, what the Chapter 7 trustees duties have in cost. You ought to come to my office and look at the extra duties I have got. Chapter 7 trustees do not really have to deal with the means test much. That becomes——

Mr. COHEN. I am about to get to the red light.

Mr. Hogan, is Bank of America one of your clients?

Mr. HOGAN. Yes.

Mr. COHEN. And is Bank of America against this bill?

Mr. HOGAN. Again, I have not consulted with them with this, about whether they are for or against this bill.

Mr. COHEN. I will forgo further questions for the red light has appeared.

Mr. COBLE. Thank you, Mr. Cohen.

Gentleman, thank you all for your attendance today and your contribution to this very important issue.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond as promptly as they can so that their answers may be made a part of the record.

Without objection, all Members have 5 legislative days to submit any additional materials for inclusion in the record.

With that, again I thank the witnesses.

This hearing stands adjourned.

[Whereupon, at 10:23 a.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Statement of the Honorable Steve Cohen
For the Hearing on "Chapter 7 Trustee Responsibilities and Remuneration"
Before the Subcommittee on Courts, Commercial and Administrative Law

Wednesday, July 27, 2011 at 9:30 a.m.
2141 Rayburn House Office Building

As far as I can tell, no one seems to disagree that chapter 7 trustees deserve some sort of compensation increase after going for 17 years without any increase in per-case compensation for their work in non-asset cases, which constitute the bulk of chapter 7 cases.

The real debate is over how best to do this in a manner that is also fair to the other interested parties in the bankruptcy process, including debtors, creditors, and the judiciary.

Last Congress, I introduced H.R. 4950, the "Chapter 7 Bankruptcy Administration Improvement Act of 2010." That legislation offered an equitable solution to the problem of how to fairly increase trustee compensation.

H.R. 4950 would have increased the potential compensation that chapter 7 trustees could earn by increasing the maximum percentages of assets that could be used to compensate trustees in asset cases under section 326 of the Bankruptcy Code – percentage caps which, incidentally, have also not been raised since 1994.

At the same time, the bill maintained some judicial discretion to determine the reasonableness of trustee compensation, clarified that trustee compensation in asset cases should be treated as a commission, and avoided increasing the cost burden on debtors of an increased filing fee.

In this way, the bill increased potential compensation for trustees while at the same time recognizing the judiciary's prerogatives and also protecting already financially strapped and overburdened debtors from additional costs.

When I introduced the bill, it was my understanding that all parties that would be impacted by it were on board with my proposal. Ultimately, though, certain creditor interests raised concern that the bill would reduce their potential recoveries in future chapter 7 asset cases.

It is only fair that creditors be asked to shoulder a marginally greater burden than they currently do in ensuring increased compensation for chapter 7 trustees.

One of the principal purposes of chapter 7 trustees is to protect and maximize the size of the bankruptcy estate so that its assets can be liquidated and the proceeds distributed to creditors to the greatest extent possible.

In short, chapter 7 trustees' work primarily benefits creditors. Therefore, creditors should be prepared to give up just a little to increase compensation for those trustees.

While I believe that my bill offered the best solution to increasing chapter 7 trustee compensation in an equitable manner, I am open to considering other suggestions that all interested parties can get behind.

I would be deeply concerned, however, with any measure that forces the burden of increasing trustee compensation onto consumer debtors. Consumer debtors already pay a disproportionate share of the costs of the bankruptcy system. Moreover, as I noted, it is creditors, not debtors, who mostly benefit from the work of chapter 7 trustees. Equity demands that consumer debtors not be forced to bear the burden of a trustee compensation increase.

With the economy continuing to struggle, the last thing Congress should do is to increase financial burdens on people who are already on the brink of financial ruin.

My charge to our witnesses is to develop a solution that increases compensation for chapter 7 trustees, does not burden consumer debtors, and addresses the concerns of creditors. I thank Chairman Coble for holding this hearing and I look forward to a fruitful discussion.

Response to Post-Hearing Questions from Robert C. Furr, Founding Partner, Furr & Cohen, P.A. (Boca Raton, FL)

Questions for the Record
Rep. Howard Coble
Chairman
Subcommittee on Courts, Commercial and Administrative Law
For the Hearing on "Chapter 7 Bankruptcy Trustees' Responsibilities and Remuneration"
July 27, 2011

Robert Furr:

From Mr. Coble

1. **Mr. Hogan testified at the hearing that asset cases are unequally distributed among the judicial districts and that raising the commission levels in section 326 would therefore lead to inequitable pay raises among trustees. Do you acknowledge this? In light of these statistics, do you still believe a raise of the section 326 commissions is a just way to raise trustee compensation?**

   As we have said many times, every Chapter 7 case begins as a no asset case, until the hard work of the trustee yields assets for the estate. Regardless of whether a trustee has a higher or lower than average number of cases, we believe that motivated trustees will find more assets.

   We think an adjustment to 326 commissions can certainly be part of the solution. Creditors – including the federal government from back tax revenue – will benefit from increased collections. We would hope that the creditor community would understand that any class of persons, with no increase in compensation for 17 years, will become less motivated and less experienced.

   In contrast to the stated testimony, we would note with interest that the chart Mr. Hogan appended to his testimony would suggest that asset cases are *greater* in very rural states like South Dakota, Nebraska, Nevada, Montana, and Wyoming, whereas, states like California, New Jersey, Pennsylvania, Georgia and Delaware would rank among the *lowest* states in asset cases. We think this Committee may want to review this data further.

   The Congress determined in 1994 that a trustee should receive a percentage of the funds collected and distributed by the trustee in a Chapter 7 asset case. The schedule established in 1994 called for a payment to a trustee of diminishing percentages at certain break points. Those break points are $5,000, $50,000 and $1,000,000. If adjusted for inflation $5,000 is now $7,654 and $50,000 is now $76,548.00 according to the CPI adjustment index from the Department of Labor. In order for compensation to remain approximately the same as 1994, an adjustment in this range is very necessary.

2. **Can you approximate how many chapter 7 trustees have forfeited their position on the chapter 7 trustee panel in the last 2 years due to lack of adequate compensation?**

We do not keep records of the number of departures from the panel nationally. We do, however, know that four trustees in the last year who served as NABT Board members departed the trustee panel due primarily to the lack of adequate compensation. We know that trustees are very frustrated that their pay has been frozen for 17 years. We think this question is best directed to the EOUST, but note it probably does not record *a reason* for a person's departure from the panel.

We should add that trustee duties have increased since 1994, with no compensation adjustment. For example, a trustee will: ensure that recipients of child support are notified that an obligor has declared bankruptcy; make efforts to transfer patients at health facilities to other facilities that are similar in quality care and in close proximity, and safeguard patient health records; investigate if there are outstanding criminal referrals; recover delinquent taxes for governmental entities; and, guard against financial fraud. BAPCPA, the bankruptcy reform bill of 2005, added to the duties of trustees, including the extraordinary administration and termination of pension plans from bankrupt business debtors.

3. **When the United States Trustee for a region announces an opening on the chapter 7 trustee panel, aren't there a significant number of applicants for the position? And if so, how do you square that reality with your assertion that trustees need a pay raise?**

The U.S. is experiencing a record number of bankruptcies. As we understand it, "applying" for a position on the panel is the mere act of sending a resume, and we understand that many possess no professional qualifications for the position. We also understand that the EOUST often over selects trustee positions because they know the attrition rate is high. It is very difficult for a new trustee to engage in this work and make it a gainful profession. No asset cases pay only $60 a case. In some cases, that fee may not even be paid if the debtor moves for an IFP waiver. Asset cases require the hard work of the trustee to find and dispose of assets, after all Chapter 7 is "liquidation" bankruptcy. It is estimated that approximately 5% of all cases have assets, and within that class, nearly two-thirds have assets less than $5,000. The asset break points have not been adjusted in 17 years. Once a new trustee begins to be assigned cases, it can take an average of 3 to 5 years to before this can be a cost-effective line of legal work.

Qualified trustees will be very hard to replace, and the efficiency of the bankruptcy system will decline considerably as trustees leave the practice.

To answer the second question, we would note that every witness at the hearing stated that trustees need a raise. It would require a nearly $30 per case raise just to keep pace with the figures that were set in 1994 – thus it is not even a "raise" just an adjustment to maintain consistency with the Congress' decision in 1994.

We would also add that in IFP cases we are not paid at all when the filing fee is waived, and that our duties have increased substantially since the enactment of BAPCPA in 2005.

From Mr. Cohen

1. **Mr. Hogan states that increasing the amount chapter 7 trustees receive in asset cases would not incentivize trustees to be more aggressive in locating and liquidating assets. What is your response?**

   We disagree. Per case fees or asset break points have not been adjusted in 17 years, and there is no empirical evidence that suggests this proposition is correct. We think the break points in asset cases motivate trustees to create more asset cases and return greater funds to creditors. These break points have not been adjusted for 17 years, so they too have fallen victim to declining values. It takes time to find and liquidate assets. Every trustee must balance that time and expense of an extensive investigation may reveal no assets – and the trustee will earn a flat fee of $60. We believe that an equitable increase in the break point will put trustees back to where they were in 1994. The commission based system is designed to motivate trustees. Common sense suggests that higher commissions will motivate trustees even more.

   If the amount of this compensation was reduced, would that have any impact on the incentive of trustees to locate and liquidate assets?

   Of course it would. A typical trustee's practice has at least one other employee, and an increase is needed to pay that overhead. We firmly believe that over time, as the trustee community has been treated with second class status in the bankruptcy system – with no compensation adjustment in 17 years, the quality of trustees will decline. Asset cases will be fewer with less experienced trustees. Creditors and bankruptcy attorneys must understand that if compensation adjustments are not addressed it will lead to the slow deterioration of the efficiencies of the bankruptcy system.

2. **Do chapter 7 trustees primarily work on behalf of creditors when they administer assets?**

   Trustees work on behalf of debtors, creditors and the Court. We are the "trustee" of the bankruptcy system on behalf of all parties. Creditors certainly benefit from the hard work of trustees to collect assets that are scheduled or even unscheduled in bankruptcy. Debtors benefit because an independent party is insuring that the rules of the bankruptcy court are carried out in a fair and impartial manner, and they are not subject to creditor abuse. In some cases, debtors benefit from the trustee work and are returned "surplus" funds after all creditors are paid. In this type of case, we take no percentage from the surplus funds returned. In summary, we are the linchpin of the bankruptcy system. Without us, the system will not run as efficiently as it does. It is has been a good public/private partnership for the bankruptcy system and should be allowed to function effectively, not hindered by lack of adequate compensation.

3. **What is the typical percentage fee that creditor collection attorneys charge their clients?**

   A PriceWaterhouseCoopers survey provides additional evidence that debt collection agencies are costly. The study revealed that in 2005 alone, U.S. businesses sent a $141 billion in delinquent consumer debt to collections and that debt collection agencies collected $51 billion in past due debt, keeping close to 25% of that as compensation. Other publicly reported estimates are that debt collection agencies can take as much as 40%. Trustees are collecting debt for creditors in bankruptcy at a fraction of that cost, approximately 4-5%.

4. **Much of the bankruptcy system is user-funded. In light of the fact that the various fees chapter 7 debtors must pay to obtain bankruptcy have substantially increased, do you think it is fair that creditors should also be asked to pay more to obtain the benefits of the services provided by chapter 7 trustees?**

   Trustee compensation is a core function of the bankruptcy system. Before 1994, the trustee compensation was approximately 40% of the filing fee. As of November 1, 2011, it will now comprise less than 20% due to the AO administrative fee increase. The filing fee is covering costs of the AO, EOUST and even the general U.S. Treasury. We defer to Congress' judgment on how to fund a compensation adjustment, but we think it is fair for all parties, including creditors to cover the costs of the trustee function, as they do now in asset cases. Additionally, we think an adjustment to the asset case 326 break points will likely be a net positive for the creditor community.

5. **Approximately how many chapter 7 trustees have resigned since 2005 solely because the $60 no asset case filing fee has not been increased?**

Similar to what we stated in our response to Chairman Coble, we do not keep records of the number of departures from the panel nationally or the reason for the departure. We do, however, know that four trustees in the last year who served as NABT Board members departed the trustee panel due primarily to the lack of adequate compensation. We know that trustees are very frustrated that their pay has been frozen for 17 years. We think this question is best directed to the EOUST, but note that the Trustee's office likely does not record *a reason* for a person's departure from the panel.

Response to Post-Hearing Questions from H. Jason Gold, Partner, Wiley Rein LPP (Washington, DC) and Chapter 7 Trustee (E.D. VA)

Questions for the Record
Rep. Howard Coble
Chairman
Subcommittee on Courts, Commercial and Administrative Law
For the Hearing on "Chapter 7 Bankruptcy Trustees' Responsibilities and Remuneration"
July 27, 2011

H. Jason Gold:

From Mr. Coble

1. Can you please elaborate on the specific burden that section 704(a)(11) places on chapter 7 trustees? Would that burden be alleviated if the trustee were able to hire a qualified termination administrator to close out the employee benefit plan?

Response:

The rules and regulations, to say nothing of the practical issues, governing the administration of employee benefit plans are complex. As we know, there exists a rather large and sophisticated industry that administers these plans and that advises businesses accordingly. Trustees rarely have this expertise and therefore must sometimes struggle to properly perform the duties established under section 704(a)(11). It would be helpful if the statute was amended to authorize the retention of such a skilled and experienced termination administrator. For this provision to be effective it should include the following elements:

A. The termination administrator should be authorized at the discretion of the trustee and to keep costs to a minimum there should not be a requirement for notice to parties and court approval. Of course like every other expenditure in a case, the transaction with a termination administrator would be fully disclosed on the trustee's final report and account; and

B. It should be made clear that reasonable the reasonable costs to terminate the plan and distribute the assets to the beneficiaries are to be charged to the plan, again with full disclosure to the bankruptcy court as well as to the Department of Labor and the Internal Revenue Service on the Form 5500 or other appropriate filing.

From Mr. Cohen

1. You state in your prepared statement that "[s]erving as a cop on the beat is an essential part of the chapter 7 trustee function" and that the trustee "thus is responsible for any determination of potential misconduct on the part of the debtor, including criminal activity to be reported to the United States Trustee Office for referral to the U.S. Attorney."

How many incidents of debtor misconduct have you reported for each of the past three years?

Response:

My best estimate is that I have *formally* reported no more than one incident per year. However I have informally discussed with the US Trustee several other observations of unusual, suspicious or unreasonable conduct by debtors and their counsel. The US Trustee in our district typically follows up on both formal and informal reports.

How many incidents of creditor misconduct have you reported for each of the past three years?

Response:

I have observed several instances of what could be creditor misconduct over the past three years but I have not reported any in a formal manner. These instances related solely – in my best recollection – to violations of the automatic stay. Normally debtor's counsel in our jurisdiction is very diligent in bringing these violations to the attention of the bankruptcy court. There is therefore no need for the trustee to take action.

2. Given all of the statutory duties imposed under current law on chapter 7 trustees, which as you say were significantly increased as a result of the 2005 amendments to the Bankruptcy Code, why would anyone want to serve as a chapter 7 trustee, particularly in light of the low compensation for no-asset cases?

Response:

The answer to this question is best expressed by the common sense observation that the quality of trustees and the work they do will likely continue to decline unless compensation is increased. As has been said before, the best trustees may become increasing frustrated with the low compensation and therefore leave the trustee panel in order to pursue other legal or accounting work that pays a little better.

Response to Post-Hearing Questions from William E. Brewer, Jr., Founder, The Brewer Law Firm (Raleigh, NC)

Questions for the Record
Rep. Howard Coble
Chairman
Subcommittee on Courts, Commercial and Administrative Law
For the Hearing on "Chapter 7 Bankruptcy Trustees' Responsibilities and Remuneration"
July 27, 2011

William Brewer:

From Mr. Coble

1. *Some have proposed raising the chapter 7 filing fee to finance a chapter 7 trustee pay raise. I understand you oppose this idea. But what if the in forma pauperis threshold were also raised so as to prevent the increased filing fee from affecting the poorest of chapter 7 debtors?*

   Even if the *in forma pauperis* thershold was raised, NACBA would oppose this approach. It would not solve the problem because *in forma pauperis* is discretionary with the court and courts do not always grant it even for debtors below the threshold, especially if the debtor has paid an attorney.

2. *Some have proposed raising chapter 11 filing fees to finance a chapter 7 trustee pay raise. Why should chapter 11 debtors bear the burden of paying chapter 7 trustees more money? How does this proposal make sense?*

   It makes sense because chapter 11 cases are enormously more complicated and take far more court resources to handle, far out of proportion to the difference in filing fees. A chapter 11 case can take 50 times the judicial resources of a chapter 7 case and the very large cases may take thousands of times as much resources. In fact, the chapter 7 debtors, and by extension the chapter 7 trustees currently subsidize chapter 11 cases.

3. *What is your view of the proposal to give chapter 7 trustees more compensation by amending section 326?*

NACBA supports this approach of modifying the breakpoints for percentage fees to the trustees. The creditors who benefit from the trustees' work would pay a bit more for it.

From Mr. Cohen

1. *Mr. Furr says that there is "no cap" on fees paid to chapter 7 debtor's counsel. What is your response?*

It is true only in a theoretical sense that there is no fixed dollar limit on fees to debtors' counsel. Debtors' counsel's fees are disclosed and subject to review for reasonableness by the court, so

they are capped at what the court finds to be the reasonable value of the services rendered. These fees also are controlled by the free market. Debtors'counsel are not guaranteed an income the way trustees are.

Consumer attorneys compete in the marketplace like all other businesses on the basis of price and quality. The compensation of chapter 7 trustees on asset cases has increased over the years because the value of nonexempt assets has increased over the years with inflation. As to the fee for no-asset cases, NACBA does not argue that the fee should not be increased. NACBA simply points out that the funds to do so must not come from consumer debtors who are already paying more than their fair share of the costs of the bankruptcy system.

2. *Mr. Furr appears to say that it would be only fair to increase chapter 7 trustee compensation in light of the fact that debtor's counsel now charge 40% to 50% more following the enactment of the 2005 amendments to the Bankruptcy Code. What is your response?*

This is not a valid comparison. The issues of debtors' counsel compensation, trustee compensation and an increase in filing fees to pay for an increase in trustee compensation are separate issues. Whether consumer debtor attorneys are fairly compensated is controlled by the market, but the courts have the ability to make corrections on those rare occasions when the market fails. Trustee compensation needs to be enough to attract and retain good and competent trustees. If it does not, eventually the system will suffer. In reality, this does not seem to be happening, even though the no-asset fees have been frozen for 19 years. However, NACBA recognizes that it may begin to happen and does not oppose an increase in the no-asset fee. However, linking an increase in the no-asset fee to an increase in the filing fee is not appropriate. Filing fees have been increased numerous times in the last 19 years without any increase in the no-asset fee, so to argue that the two must be linked is incongruous. There are other ways to increase the compensation to chapter 7 trustees without increasing the filing fee on consumer debtors, who already pay more than the costs they impose on the bankruptcy system.

3. *One proposal to increase trustee compensation is to increase the bankruptcy filing fee that debtors must pay to commence a chapter 7 case. Please explain why increasing the filing fee by another $40 or so is problematic.*

Costs for debtors already have increased significantly over the last several years. As such, consumer debtors are subsidizing other parts of the bankruptcy system already. We should not ask them to shoulder an even greater proportion of the burden.

4. *In light of the responsibilities of a chapter 7 trustee, would you say that the trustee primarily works on behalf of creditors?*

Yes.

5. *What suggestions does NACBA have to increase the compensation paid to chapter 7 trustees in light of the objections that some creditors have raised to H.R. 4950 from the 111th Congress, as articulated by Mr. Hogan?*

Increase Chapter11 fees, shift more of current Chapter 7 filing fee to trustees, modify the break points by amending section 326, as described above, or charge a fee for filing proofs of claim.

Response to Post-Hearing Questions from Blake Hogan, President, American Infosource (Houston, TX)

Questions for the Record
Rep. Howard Coble
Chairman
Subcommittee on Courts, Commercial and Administrative Law
For the Hearing on "Chapter 7 Bankruptcy Trustees' Responsibilities and Remuneration"
July 27, 2011

Blake Hogan:

From Mr. Coble

1. In your testimony you made reference to statistics your company has developed regarding the distribution of asset Chapter 7 cases across the United States. Could you elaborate on your finding and describe the source of the data used to support your conclusions?

AIS compiles our Bankruptcy data from the PACER system. We connect with each court's system daily to update our database with new filing information as well as to create updates to previously filed accounts. We are able to produce analytics from our core Bankruptcy database as well as other consumer databases that we compile or license. I have attached an example report that I used to provide statistics to the Subcommittee.

From Mr. Cohen

1. If the National Association of Bankruptcy Trustees supports increasing the percentage of compensation that its members receive when administering asset chapter 7 cases as a way to increase trustee compensation overall, as proposed by H.R. 4950 from the 111th Congress, why do you care whether doing so is geographically equitable?

The issue, as stated, was the need to increase all of the Trustees' compensation in an equitable fashion. The data shows that a few of the Trustees would benefit while the vast majority of panel trustees would not.

2. You state that increasing the amount chapter 7 trustees receive in asset cases would not incentivize trustees to be more aggressive in locating and liquidating assets.

   What is the basis for this conclusion?

It would not impact all trustees and therefore would not be a comprehensive incentive.

If the amount of this compensation was reduced, would that have any impact on the incentive of trustees to locate and liquidate assets?

Again, to be effective, incentives need to apply to the entire panel.

Would your opinion change if the National Association of Bankruptcy Trustees represented to you that increasing the fees its members receive for administering asset chapter 7 cases would provide a greater incentive for trustees to be even more aggressive in locating and liquidating assets?

The previous answer applies here as well.

3. Do you know that the typical collection percentage that attorneys charge for recovering a debt for their creditor clients can range from 30% to 40% of the amount collected?

Trustees are not licensed debt collection agencies. The Trustee is an appointee of the Justice Department authorized to manage the estate of the debtor within the guidelines of the US Bankruptcy Code.

How do the percentages authorized under Bankruptcy Code section 326 compare with those rates?

It is my opinion that they are different processes and therefore do not compare.

4. Why shouldn't creditors pay more for the services of chapter 7 trustees given that they benefit disproportionately from those services?

The issue, as discussed in the subcommittee hearing, is that the base charge of $60 per case for Chapter 7 non-asset cases has not been increased since 1994 despite nearly all other fees in the Bankruptcy process increasing during the same period of time. In addition, it is my impression from customers that debtors, not lenders, benefit disproportional from Chapter 7 liquidations.

State	CaseCount	AssetCases		NoAssetCases		% of All Asset Cases	Cummulative Percentage
FL	83129	12640	15.21%	70489	84.79%	14.61%	14.61%
AZ	34696	7312	21.07%	27384	78.93%	8.45%	23.06%
OH	53368	5904	11.06%	47464	88.94%	6.82%	29.88%
IN	34104	5788	16.97%	28316	83.03%	6.69%	36.57%
CA	197064	4919	2.50%	192145	97.50%	5.68%	42.26%
CO	27289	4830	17.70%	22459	82.30%	5.58%	47.84%
NV	22303	4311	19.33%	17992	80.67%	4.98%	52.82%
NY	44361	4141	9.33%	40220	90.67%	4.79%	57.61%
MI	56783	2681	4.72%	54102	95.28%	3.10%	60.70%
OR	15602	2388	15.31%	13214	84.69%	2.76%	63.46%
KS	7786	2084	26.77%	5702	73.23%	2.41%	65.87%
UT	12083	2073	17.16%	10010	82.84%	2.40%	68.27%
MO	23624	1825	7.73%	21799	92.27%	2.11%	70.38%
MN	19159	1814	9.47%	17345	90.53%	2.10%	72.47%
IL	61506	1801	2.93%	59705	97.07%	2.08%	74.56%
ID	7217	1682	23.31%	5535	76.69%	1.94%	76.50%
LA	7238	1680	23.21%	5558	76.79%	1.94%	78.44%
TX	28541	1625	5.69%	26916	94.31%	1.88%	80.32%
VA	25190	1225	4.86%	23965	95.14%	1.42%	81.74%
WA	26487	1143	4.32%	25344	95.68%	1.32%	83.06%
MD	22358	1104	4.94%	21254	95.06%	1.28%	84.33%
OK	12074	1054	8.73%	11020	91.27%	1.22%	85.55%
IA	8861	919	10.37%	7942	89.63%	1.06%	86.61%
MT	2544	902	35.46%	1642	64.54%	1.04%	87.65%
PA	27614	840	3.04%	26774	96.96%	0.97%	88.63%
NC	14353	832	5.80%	13521	94.20%	0.96%	89.59%
NJ	31507	802	2.55%	30705	97.45%	0.93%	90.51%
TN	25536	742	2.91%	24794	97.09%	0.86%	91.37%
GA	42037	718	1.71%	41319	98.29%	0.83%	92.20%
WI	24515	689	2.81%	23826	97.19%	0.80%	93.00%
MA	17905	682	3.81%	17223	96.19%	0.79%	93.79%
NH	4469	625	13.99%	3844	86.01%	0.72%	94.51%
KY	18233	572	3.14%	17661	96.86%	0.66%	95.17%

CT	10258	540	5.26%	9718	94.74%	0.62%	95.79%
AL	14816	486	3.28%	14330	96.72%	0.56%	96.35%
WY	1265	465	36.76%	800	63.24%	0.54%	96.89%
SD	1774	416	23.45%	1358	76.55%	0.48%	97.37%
AR	9059	359	3.96%	8700	96.04%	0.41%	97.79%
NE	5503	306	5.56%	5197	94.44%	0.35%	98.14%
SC	4736	241	5.09%	4495	94.91%	0.28%	98.42%
ME	3540	230	6.50%	3310	93.50%	0.27%	98.69%
PR	4487	226	5.04%	4261	94.96%	0.26%	98.95%
WV	5361	174	3.25%	5187	96.75%	0.20%	99.15%
MS	7826	150	1.92%	7676	98.08%	0.17%	99.32%
NM	5960	124	2.08%	5836	97.92%	0.14%	99.46%
HI	3141	94	2.99%	3047	97.01%	0.11%	99.57%
DE	2524	88	3.49%	2436	96.51%	0.10%	99.68%
ND	1406	74	5.26%	1332	94.74%	0.09%	99.76%
VT	1309	58	4.43%	1251	95.57%	0.07%	99.83%
DC	870	55	6.32%	815	93.68%	0.06%	99.89%
AK	920	50	5.43%	870	94.57%	0.06%	99.95%
RI	4749	35	0.74%	4714	99.26%	0.04%	99.99%
GU	137	7	5.11%	130	94.89%	0.01%	100.00%
VI	18	2	11.11%	16	88.89%	0.00%	100.00%

United States Government Accountability Office

GAO

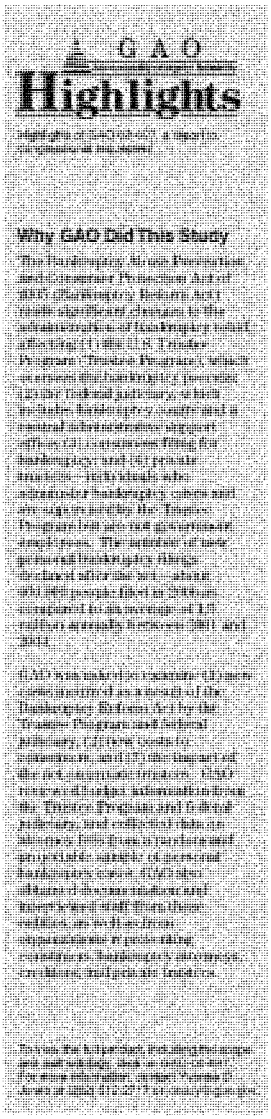
Report to Congressional Requesters

June 2008

BANKRUPTCY REFORM

Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

GAO-08-697



GAO

Highlights

Why GAO Did This Study

June 2008

BANKRUPTCY REFORM

Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

What GAO Found

The Trustee Program estimated that its costs to carry out responsibilities resulting from the Bankruptcy Reform Act were approximately $72.4 million for fiscal years 2005 through 2007. These costs were mostly for staff time for ongoing activities related to the means test, debtor audits, data collection and reporting, and counseling and education requirements. The federal judiciary could not isolate all costs related to the act since it broadly affected nearly all bankruptcy court staff and operations, but estimated about $48 million was incurred in one-time start-up costs for such things as training and revisions of rules, forms, and procedures. These estimates do not incorporate the effect of the decline in bankruptcy filings since the act, which presumably has helped reduce the Trustee Program's and judiciary's overall costs, but has also reduced fee revenues. Trustee Program filing fee revenues declined from $74 million to $52 million between fiscal years 2005 and 2007, and federal judiciary filing and miscellaneous fee revenues declined from $237 million to $135 million.

Consumers filing for bankruptcy pay higher legal and filing fees since the Bankruptcy Reform Act went into effect. Based on a random sample of bankruptcy files, GAO estimated that the average attorney fee for a Chapter 7 case increased from $712 in February-March 2005 to $1,078 in February-March 2007. For Chapter 13 cases, the standard attorney fees that individual courts approve rose in nearly all the districts and divisions with such fees that GAO reviewed, and in more than half the cases the increase was 55 percent or more. As a result of the act and subsequent budget legislation, total bankruptcy filing fees have risen from $209 to $299 for Chapter 7 and from $194 to $274 for Chapter 13. GAO estimated that the proportion of Chapter 7 debtors filing without an attorney had declined and did not find a significant change in the proportion of such debtors receiving free legal assistance. In addition, fees to meet the act's credit counseling and debtor education requirements are typically about $100, although some clients receive a fee reduction or a full waiver.

Private trustees told GAO that new Bankruptcy Reform Act requirements related to documentation, verification, and reporting have increased the time and resources they spend administering each case. The caseload of some private trustees has declined in concert with the significant decline in bankruptcy filings that has occurred since the act went into effect, but trustees' overall rate of attrition has not changed significantly.

Contents

Figures

Abbreviations

AOUSC	Administrative Office of the United States Courts
Bankruptcy Reform Act	Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
Trustee Program	U.S. Trustee Program

GAO
Accountability * Integrity * Reliability
United States Government Accountability Office
Washington, DC 20548

June 27, 2008

Congressional Requesters

Congress enacted major bankruptcy reform legislation with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Reform Act), most of the provisions of which became effective in October 2005.[1] The act made many significant changes to the administration of consumer bankruptcy relief and has resulted in certain new responsibilities for the various entities involved in the bankruptcy process. Within the judicial branch (or federal judiciary), these entities include the 90 bankruptcy courts; the Administrative Office of the United States Courts, which provides the courts with central support functions; and the bankruptcy administrators in the six judicial districts in Alabama and North Carolina. Within the executive branch, the Department of Justice's U.S. Trustee Program (Trustee Program) oversees bankruptcy case administration in most federal judicial districts and litigates to enforce the bankruptcy laws. The Bankruptcy Reform Act also has affected the roles and responsibilities of the approximately 1,400 "private trustees." These trustees are private individuals who are appointed and supervised by the Trustee Program or bankruptcy administrators and are responsible for administering bankruptcy estates and distributing assets as appropriate to creditors.

Among other things, the Bankruptcy Reform Act established a means test for determining whether a consumer is eligible for bankruptcy relief under Chapter 7 (in which assets are liquidated and debts discharged) or must file under Chapter 13 (which involves a court-approved plan for repayment of debts) or under Chapter 11. The act required procedures be established for audits of consumer bankruptcy cases by a certified public or licensed accountant. Further, the act required the federal judiciary to collect and publish certain annual statistics on bankruptcy cases. In addition, consumers must receive approved credit counseling before filing a petition in bankruptcy court and take an approved debtor education course before having debts discharged. The act also increased bankruptcy filing fees, and is widely believed to have affected the fees bankruptcy attorneys charge

[1]Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (Apr. 20, 2005) (as amended, Bankruptcy Reform Act).

consumers for these cases. The number of new consumer bankruptcy filings declined after implementation of the Bankruptcy Reform Act—about 600,000 people filed for bankruptcy in 2006 as compared with an average of 1.5 million people annually from 2001 through 2004.

In light of these changes, you asked us to report on new costs resulting from the Bankruptcy Reform Act. The specific objectives of this report are to examine (1) new costs incurred as a result of the Bankruptcy Reform Act by the Department of Justice and the federal judiciary, (2) new costs incurred as a result of the act by consumers filing for bankruptcy, and (3) the impact of the act on private trustees. Our review focused on the impact of the act with regard to consumer (that is, personal) bankruptcies and not business bankruptcies. Further, the scope of the first two objectives is limited to the monetary (dollar) costs incurred by federal entities and consumers and not on other ways the Bankruptcy Reform Act may have affected them. The scope of this report also is limited to costs directly related to the process of filing for bankruptcy, and not on the overall financial impact the act may be having on consumers. Finally, this report did not seek to assess the benefits of the Bankruptcy Reform Act and is therefore not an evaluation of the merits of the act.

To address the objectives, we obtained documentation from, and interviewed representatives of, the Trustee Program; the federal judiciary, including the Administrative Office of the United States Courts (AOUSC) and selected individual bankruptcy courts; Congressional Budget Office; and organizations representing consumers, bankruptcy attorneys, the financial services industry, and Chapter 7 and Chapter 13 trustees. For the first objective, we reviewed available data on the budgets of the Trustee Program and the federal judiciary for fiscal years 2003 to 2009. We asked the Trustee Program and the judiciary to provide estimates of their spending, including staff time, dedicated to implementing the Bankruptcy Reform Act. We did not verify these estimates, although we reviewed and analyzed them and we interviewed the staff who provided the estimates to understand how they were created. We determined that the estimates were sufficiently reliable for our purposes. For the second objective, to determine changes in attorney fees for Chapter 7 bankruptcy cases, we selected two random and projectable samples of cases (from before and after the act) and collected information on the attorney compensation, if any, from the disclosure statements regarding compensation that are

required to be filed by debtors' attorneys.[2] To determine changes in attorney fees for Chapter 13 cases, we collected data on the standard fees set by 48 judicial districts or divisions (a sublevel below that of judicial district). These fees represent the amount most attorneys charge consumers to handle a Chapter 13 case in those divisions or districts. To determine costs associated with credit counseling and debtor education courses, we obtained data from the Trustee Program and a credit counseling trade organization and reviewed information we collected previously for a report on that topic.[3] To determine changes in filing fees, we reviewed changes in fees made by the Bankruptcy Reform Act and subsequent budget legislation. For the third objective, we reviewed provisions of the Bankruptcy Reform Act that affect private trustees' roles and responsibilities and the Trustee Program's policy and procedure manuals for private trustees. We also interviewed professional associations representing private trustees and conducted individual and group interviews of, collectively, 21 Chapter 7 and Chapter 13 private trustees, who were chosen because they served in districts that represented a range of sizes and geographic regions. A more extensive discussion of our scope and methodology appears in appendix I.

We conducted this performance audit from June 2007 through June 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

The Trustee Program and the federal judiciary have both incurred new costs—mostly in staff resources—as a result of the Bankruptcy Reform Act, but these costs are difficult to measure since it is not always possible to isolate the amount of staff time devoted specifically to implementing the act's requirements. At our request, the Trustee Program estimated that

[2]Estimates from our review of Chapter 7 filings are based on a probability sample and are subject to sampling error. At the 95 percent confidence level, all fee estimates have margins of error of +/- 6.3 percent or less and all percentage estimates have sampling errors of +/- 6 percentage points or less. Appendix I contains additional information about our survey of Chapter 7 files and the sampling error for our estimates.

[3]GAO, *Bankruptcy Reform: Value of Credit Counseling Requirement Is Not Clear*, GAO-07-203 (Washington, D.C.: Apr. 6, 2007).

for fiscal years 2005 through 2007, its costs related to carrying out responsibilities resulting from the Bankruptcy Reform Act were approximately $72.4 million, mostly for personnel. The costs included $42.5 million to implement the means test, $6.1 million related to credit counseling and debtor education requirements, and $3.0 million to supervise and conduct debtor audits. Additional funds were spent for studies, reporting requirements, and information technology needs related to the act. The federal judiciary could not isolate costs specifically resulting from the Bankruptcy Reform Act since the act had a broad effect on nearly all bankruptcy court staff and operations. However, the judiciary did estimate that $48.4 million was incurred in costs for specific start-up activities associated with the initial implementation of the act's requirements. The largest of these costs was for staff time dedicated to revisions of the Bankruptcy Rules, official forms, court operating procedures, and the courts' electronic filing, docketing, and case management system. Other major expenses were for training, statistical and reporting requirements, and new responsibilities for the bankruptcy administrators who oversee cases in certain districts. The cost estimates for the Trustee Program and the judiciary do not incorporate the effect of the decline in bankruptcy filings since the act, which presumably has helped reduce their overall costs to some extent. As a result of the decline in bankruptcy filings since the passage of the act, revenues from bankruptcy-related filing and other fees declined between fiscal year 2005 and fiscal year 2007—from $74 million to $52 million for the Trustee Program and from $237 million to $135 million for the federal judiciary.

Since the implementation of the Bankruptcy Reform Act, there have been increased costs to individual consumers filing for bankruptcy resulting from higher attorney fees and filing fees, as well as new fees to meet credit counseling and debtor education requirements. Based on a review of legal fee disclosure forms in our random sample of Chapter 7 personal bankruptcy filings, we estimate that the average attorney fee for a Chapter 7 case increased from $712 in February–March 2005 to $1,078 in February–March 2007. The proportion of Chapter 7 debtors filing without an attorney (pro se) was about 11 percent in February–March 2005, according to our sample estimate, as compared to 5.9 percent in calendar year 2007, according to AOUSC data. We did not find a statistically significant difference in the proportion of Chapter 7 debtors receiving free legal assistance between the 2 years. For Chapter 13 cases, our review found the standard attorney fee approved by courts (and which, in practice, is the fee Chapter 13 attorneys typically charge their clients) rose in nearly all the districts and divisions with such fees. In more than half of these cases, the increase was 55 percent or more. The act raised Chapter 7 filing

fees by $65 and reduced Chapter 13 filing fees by $5. However, as a result of further changes to filing fees made by the Deficit Reduction Act of 2005, total bankruptcy filing fees since 2005 have risen from $209 to $299 for Chapter 7 filers and from $194 to $274 for Chapter 13 filers. The act included a new provision allowing these filing fees to be waived for qualified Chapter 7 debtors, and these fees were waived in 2.1 percent of Chapter 7 personal bankruptcy cases filed in fiscal year 2007. The Bankruptcy Reform Act also included a new requirement that consumers receive credit counseling from an approved provider before filing for bankruptcy and complete a debtor education course before debts can be discharged. Most consumers pay about $100 to fulfill these requirements since credit counseling and debtor education providers typically charge about $50 per session, according to data from the Trustee Program and other sources. The act requires that these services be provided without regard to a client's ability to pay, but providers vary significantly in their policies for waiving or reducing fees. To address this variation, the Trustee Program issued a proposed rule in February 2008 stating that a client's inability to pay for credit counseling shall be presumed if the client's household income is less than 150 percent of the poverty line.

The Bankruptcy Reform Act has affected the responsibilities and caseloads of Chapter 7 and Chapter 13 private trustees. As a result of new provisions in the act, trustees must collect, track, store, and safeguard additional documents such as tax returns; notify appropriate parties of domestic support obligations; check calculations and review the accuracy of information in forms associated with the means test; and, once finalized, will be required to comply with new requirements for uniform final reports. Private trustees told us that these new responsibilities have significantly increased the time and resources required to administer a bankruptcy case. The $60 fee Chapter 7 trustees collect for each case they administer remained unchanged with the passage of the Bankruptcy Reform Act. The caseload of private trustees has declined since the act in concert with the decline in filings. From fiscal years 2004 through 2007, Chapter 7 filings—personal and business—declined from 1.2 million to 484,000, and Chapter 13 filings declined from 454,412 to 310,802. However, the one-time surge in filings that occurred just prior to the act helped offset these declines in caseload since Chapter 7 trustees receive a portion of assets liquidated and Chapter 13 trustees receive a portion of payments to creditors, both of which can take several years to complete. Our analysis of data provided by the Trustee Program showed that Chapter 7 trustees collectively received an estimated $192 million in total compensation in fiscal year 2005 and an estimated $212 million in fiscal year 2007, while Chapter 13 trustees received about $31 million in fiscal

year 2005 and about $32 million in fiscal year 2007. Attrition among private trustees has not changed significantly since the implementation of the Bankruptcy Reform Act, according to our analysis of Trustee Program data, although the program is moving more slowly to fill trustee vacancies given the reduced number of bankruptcy filings.

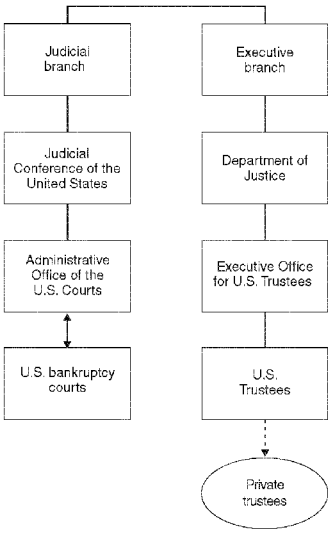
We provided a draft of this report to the Administrative Office of the United States Courts and the Department of Justice, which provided technical comments that we incorporated as appropriate.

Background

Bankruptcy is a federal court procedure designed to help both individuals and businesses eliminate debts they cannot fully repay as well as help creditors receive some payment in an equitable manner. Individuals usually file for bankruptcy under one of two chapters of the Bankruptcy Code. Under Chapter 7, the filer's eligible nonexempt assets are reduced to cash and distributed to creditors in accordance with distribution priorities and procedures set out in the Bankruptcy Code. Under Chapter 13, filers submit a repayment plan to the court agreeing to pay part or all of their debts over time, usually 3 to 5 years. Upon the successful completion of both Chapter 7 and 13 cases, the filer's personal liability for eligible debts is discharged at the end of the bankruptcy process, which means that creditors may take no further action against the individual to collect any unpaid portion of the debt. Most debtors who file for bankruptcy use an attorney, but some debtors represent themselves without the aid of an attorney and are referred to as pro se debtors.

The bankruptcy system is complex and involves entities in both the judicial and executive branches of government (see fig. 1).

Figure 1: Overview of the Bankruptcy System



Source: GAO analysis.

Note: While not shown in this graphic, the judicial branch oversees private trustees in six judicial districts.

Within the judicial branch, 90 federal bankruptcy courts have jurisdiction over bankruptcy cases. The Administrative Office of the United States Courts (AOUSC) serves as the central support entity for federal courts, including bankruptcy courts, providing a wide range of administrative, legal, financial, management, and information technology functions. The Director of AOUSC is supervised by the Judicial Conference of the United States, the judiciary's principal policy-making body. Within the executive branch, the Trustee Program, a component of the Department of Justice, is responsible for overseeing the administration of most bankruptcy cases. The program consists of the Executive Office for U.S. Trustees, which

provides general policy and legal guidance, oversees operations, and handles administrative functions, as well as 95 field offices and 21 U.S. Trustees—federal officials charged with supervising the administration of federal bankruptcy cases.[4] The Trustee Program appoints and supervises approximately 1,400 private trustees, who are not government employees, to administer bankruptcy estates and distribute payments to creditors.[5]

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was signed into law on April 20, 2005, and most of its provisions became effective on October 17, 2005. The following are among the most significant changes the act made with respect to consumer bankruptcies:

- *Means test.* The act established a new means test to determine whether a debtor is eligible to file under Chapter 7. If a debtor's current monthly income minus allowable living expenses exceeds certain thresholds, a Chapter 7 petition is presumed to be abusive and the debtor may have to file under Chapter 11 or under Chapter 13 (which requires repayment of at least a portion of outstanding debt over a period of several years under a court-approved plan) or receive no bankruptcy relief at all.[6]

- *Credit counseling and debtor education.* The act created certain counseling and education requirements for filers. To be a "debtor" (that is, eligible to file for bankruptcy), an individual, except in limited circumstances, must receive credit counseling from a provider approved by the Trustee Program (or the bankruptcy administrator, if applicable). In addition, prior to discharge of debts, debtors must complete a personal financial management instructional course—typically referred to as debtor education—from an approved provider.[7]

[4]Bankruptcy cases in Alabama and North Carolina are not administered by the Trustee Program; instead, bankruptcy administrators within the judicial branch administer the cases in the judicial districts in those states.

[5]For the purposes of this report, we use "private trustees" to refer to Chapter 7 trustees and Chapter 13 trustees.

[6]Bankruptcy Reform Act § 102, 119 Stat. at 37-42 (amending 11 U.S.C. § 707). A debtor may overcome the presumption of abuse by demonstrating to the court special circumstances, such as a serious medical condition or a call to active duty in the armed forces, which justify further adjustments to a debtor's current monthly income. Such adjusted current monthly income may overcome the presumption of abuse.

[7]Bankruptcy Reform Act § 106 (b)-(c), 119 Stat. at 38 (amending various sections of Title 11 of the U.S.C.). The act also sets forth procedures and standards for the Trustee Program and bankruptcy administrators, as applicable, to use in approving agencies and providers. Bankruptcy Reform Act § 106(c), 119 Stat. at 38-41 (codified at 11 U.S.C. § 111).

- *Debtor audits*. The act required that procedures be established for independent audit firms to audit bankruptcy petitions, schedules, and other information in consumer bankruptcy cases filed on or after October 20, 2006. The act specified that the procedures should include random audits of at least one out of every 250 bankruptcy cases in each judicial district, as well as additional audits of cases with incomes or expenditures above certain statistical norms.[8]

- *New reporting and data collection requirements*. The act required that the judiciary collect certain new aggregate statistics and report on them annually beginning no later than July 1, 2008.[9] The act also required that the Attorney General—who delegated the authority to the Trustee Program—draft rules requiring private trustees to submit uniform final reports on individual bankruptcy cases that include certain specified information about the case.[10]

The Bankruptcy Reform Act was enacted, in part, to address certain factors viewed as contributing to an escalation in bankruptcy filings. As shown in figure 2, consumer bankruptcy filings in the United States more than doubled between 1990 and 2004, with an average of more than 1.5 million people filing annually between 2001 and 2004. In the months leading up to the effective date of the act (October 17, 2005), bankruptcy filings rose dramatically because many consumers believed it would be more difficult to receive bankruptcy protection once the act went into effect.[11] Immediately after the act went into effect, filings fell substantially. Although filings have been rising since that time, they are still well below historic levels, with about 823,000 Chapter 7 and Chapter 13 consumer bankruptcies reported in calendar year 2007.

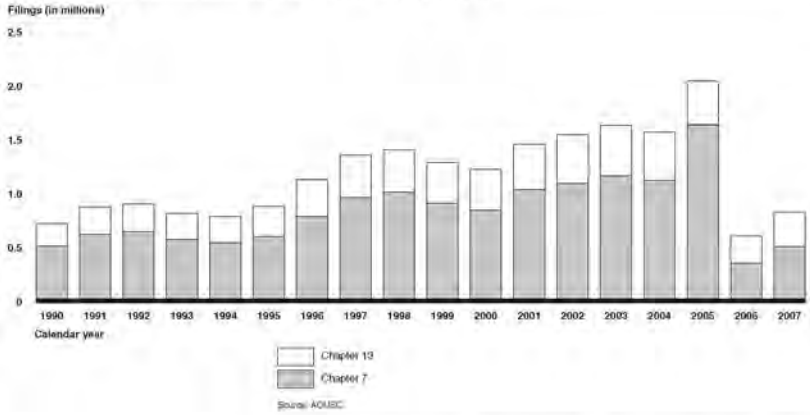
[8]Bankruptcy Reform Act § 603(a) – (b), 119 Stat. at 122-23 (amending 11 U.S.C. § 586).

[9]Bankruptcy Reform Act § 601(a), 119 Stat. at 119-20 (codified at 11 U.S.C. § 159).

[10]Bankruptcy Reform Act § 602, 119 Stat. at 120-22 (codified at 11 U.S.C. § 589b).

[11]Oct. 17, 2005 was the effective date for most of the provisions of the Bankruptcy Reform Act, including the prefiling credit counseling requirement and the Chapter 7 means test.

Figure 2: Number of Personal Bankruptcy Filings, Calendar Years 1990–2007



Note: Excludes personal bankruptcy filings under Chapter 11. While most bankruptcies filed under Chapter 11 involve a corporation or partnership, individuals also can file under Chapter 11. From 1990 through 2007, fewer than 0.5 percent of personal bankruptcies were filed under Chapter 11.

Trustee Program Incurred Approximately $72 Million in Overall Costs, and the Judiciary Approximately $48 Million in Start-up Costs, Related to the Bankruptcy Reform Act

The Trustee Program estimated its costs related to carrying out responsibilities resulting from the Bankruptcy Reform Act to be approximately $72.4 million in fiscal years 2005-2007, mostly in personnel costs, to implement the means test and credit counseling and debtor education requirements, conduct debtor audits, comply with reporting requirements, establish information technology systems, and expand facilities. The federal judiciary could not isolate costs specifically resulting from the Bankruptcy Reform Act since the act had a broad effect on nearly all bankruptcy court staff and operations, but did estimate that $48.4 million was incurred in one-time costs associated with start-up activities to implement the act's requirements. The largest of these expenses related to necessary revisions of the Bankruptcy Rules, official forms, and court operating procedures. The cost estimates for the Trustee Program and the judiciary do not incorporate the effect of the decline in bankruptcy filings since the act, which presumably has helped reduce their overall costs to some extent. However, this decline in filings also has resulted in some reduction in fee revenues for the Trustee Program and the judiciary.

In Fiscal Years 2005–2007, the Trustee Program Allocated about $72 Million for Responsibilities Resulting from the Bankruptcy Reform Act

Based on estimates developed at our request, the Trustee Program allocated approximately $72.4 million in fiscal years 2005 through 2007 to carry out responsibilities resulting from the Bankruptcy Reform Act.[12] The majority of these costs represented staff time dedicated to new tasks required by the act.[13] In some cases, the Trustee Program hired new staff—including 156 bankruptcy analysts, attorneys, paralegals, and other administrative and information technology personnel hired as of October 1, 2007—to fulfill new responsibilities. In other cases, the program reallocated the time and responsibilities of existing staff to meet the requirements of the act. While the scope of this report is largely limited to

[12]The Trustee Program generally was able to provide estimates of costs related to the act for fiscal years 2005–2007, but in some cases estimates for fiscal year 2005 were not available. However, program officials told us costs in this year were limited since the effective date of most of the provisions of the act was October 17, 2005. The Trustee Program's overall budget for all of its operations was approximately $174 million in fiscal year 2005, $212 million in fiscal year 2006, and $223 million in fiscal year 2007.

[13]For the purposes of this report, we use "costs" to refer to resources dedicated to a given initiative or activity, and not necessarily to refer to actual obligations or dollar outlays. The Trustee Program's financial system does not track obligations according to activities related to the Bankruptcy Reform Act, but rather according to a set of "object classes" established uniformly across the federal government. The classes categorize obligations according to the types of goods or services purchased, such as personnel compensation, supplies, and materials.

describing costs incurred through fiscal year 2007, many or most of those costs are for ongoing tasks that will continue in fiscal year 2008 and beyond.

These cost estimates are approximate for two major reasons. First, the Bankruptcy Reform Act had a broad impact on the agency's overall operations, and thus it is difficult to isolate staff time devoted specifically to elements of the act. Second, although the cost of overseeing each bankruptcy filing may have increased, to some extent this has been offset by the significant decline in the number of bankruptcy filings following the act, and the net effect on overall costs is difficult to measure.

As shown in table 1, the Trustee Program's most significant costs resulting from the Bankruptcy Reform Act for fiscal years 2005 through 2007 were related to the means test ($42.5 milliou), credit counseling and debtor edncation requirements ($6.1 million), debtor audits ($3.0 million), studies and reporting requirements ($5.6 million), information technology ($13.7 million), and facilities expansion ($1.5 million).

- *Means test.* As of October 1, 2007, the Trustee Program had hired 127 new staff for duties related to the means test, including attorneys who litigate cases and paralegals, bankruptcy analysts, and legal clerks who review the bankruptcy petition, supporting forms, and financial materials filed by every individual debtor in a Chapter 7 case to identify whether the case is "presumed abusive."[14] This involves an initial review of each debtor's income, a more thorough review of debtors with income exceeding the state median, and any related litigation. The program estimated it allocated $15.76 million in fiscal year 2006 and $26.7 million in fiscal year 2007 to implementing the means test.[15]

[14]Under the Bankruptcy Reform Act, the means test takes into account the debtor's current monthly income, debt burden, and various allowable living expenses. If the debtor's current monthly income minus allowable living expenses exceeds certain thresholds, a Chapter 7 petition is presumed to be abusive and the trustee, bankruptcy administrator, or a party in interest (such as a creditor) may seek dismissal of the case or conversion to a case under Chapter 11 or Chapter 13. Bankruptcy Reform Act § 102(a)(2)(C), 119 Stat. at 27-29 (amending 11 U.S.C. § 707(b)).

[15]Trustee Program officials noted that allocations for a given fiscal year were not necessarily obligated in that year. In particular, $20 million of the $26.7 million for fiscal year 2007 was carried over to fiscal year 2008 and then obligated as the program continued to fill means test staff positions.

- *Credit counseling and debtor education*. The Trustee Program established a separate unit responsible for developing application forms and procedures, approving and monitoring approved credit counseling and debtor education agencies, and taking steps to help ensure that filers were meeting the new requirements. The program initially used detailees from field offices to staff this unit until permanent staff could be hired. The program estimated its costs related to credit counseling and debtor education to be approximately $6.1 million for fiscal years 2005 through 2007.

- *Debtor audits*. The Trustee Program had to develop procedures for the audits described in the act. The program contracted with and supervised six third-party auditors, who completed nearly 4,000 debtor audits during fiscal year 2007. The program obligated $2.6 million in fiscal year 2007 for audit contracts. The Trustee Program estimated that staff time allocated to developing audit procedures and overseeing contractors cost $160,000 in fiscal year 2006 and $280,000 in fiscal year 2007.[16]

- *Studies and reporting requirements*. The Trustee Program estimated the costs of the act's various studies and reporting requirements—which include reports on the results of debtor audits and a study of the effectiveness of debtor education— to have been approximately $263,363 in fiscal year 2005, $3.15 million in fiscal year 2006, and $2.21 million in fiscal year 2007.[17]

- *Information technology*. The Trustee Program created several new data systems—including the Means Test Review Management System, Credit Counseling/Debtor Education Tracking System, and Debtor Audit Management System—and modified or updated several others. According to Trustee Program officials, these efforts cost $1.9 million in fiscal year 2005, $7.2 million in fiscal year 2006, and $4.6 million in fiscal year 2007.[18]

- *Facilities expansion*. To accommodate the additional staff hired as a result of the act, the Trustee Program expanded numerous offices. The

[16]In January 2008, the Trustee Program temporarily suspended its designation of cases subject to audit for budgetary reasons. The program resumed its designation of cases in May 2008, although random audits will now be conducted in 1 in 1,000 cases (as opposed to 1 in 250 cases) filed in a judicial district.

[17]The costs for fiscal year 2005 are actual obligations related to the debtor education study.

[18]These costs represent actual obligations, which largely consisted of third-party contracts and purchases of software and physical equipment.

expansion involved one-time build-out costs, for which the Trustee Program spent $1.42 million in fiscal year 2006 and $69,863 in fiscal year 2007.[19]

Table 1: Trustee Program's Estimated Allocation for Activities Resulting from the Bankruptcy Reform Act, Fiscal Years 2005–2007

Dollars in thousands

	Fiscal years			
Category	**2005**	**2006**	**2007**	**2005-2007**
Means test	$[a]	$15,760	$26,700	**$42,460**
Credit counseling and debtor education	531	3,014	2,532	**6,077**
Debtor audits	0	160	2,880	**3,040**
Studies and reporting requirements	263	3,150	2,211	**5,624**
Information technology	1,900	7,200	4,600	**13,700**
Facilities expansion	0	1,422	70	**1,492**
Total cost	**$2,694**	**$30,706**	**$38,993**	**$72,393**

Source: GAO analysis of data provided by the Trustee Program.

Note: In some cases, these estimated allocations represent staff time and other resources dedicated to a given initiative or activity, and not necessarily actual obligations or dollar outlays. The allocations for a given fiscal year were not always obligated in that year.

[a]Costs associated with the means test for fiscal year 2005 were not available since staff time associated with that function could not be isolated during that time period.

As of December 2007, the Federal Judiciary Had Dedicated Approximately $48 Million in Start-up Costs to Implement the Bankruptcy Reform Act

The Bankruptcy Reform Act had a significant effect on the operations of AOUSC and the bankruptcy courts. However, unlike the Trustee Program, where the act resulted in several discrete new functions and tasks, the impact on the judiciary has been more diffuse. In congressional testimony, a representative of the Judicial Conference noted that the act created new docketing, noticing, and hearing requirements that make addressing bankruptcy cases more complex and time-consuming.[20] In its fiscal year 2008 congressional budget justification, the judiciary estimated that as a result of the Bankruptcy Reform Act, it takes at least 10 percent more time

[19]These figures represent actual costs in terms of obligations.

[20]Prepared statement of Judge Julia S. Gibbons, Chair, Committee on the Budget, Judicial Conference of the United States, before the Senate Subcommittee on Financial Services and General Government, Committee on Appropriations, 110th Cong., 1st Sess. (Mar. 21, 2007).

to process a bankruptcy case. New or expanded tasks relate to additional petition documents, an increased number of motions and hearings, and new procedures associated with such things as rent deposits, tax return filings, and petitions to waive filing fees.

Because of the broad impact the Bankruptcy Reform Act has had on bankruptcy court staff and operations—affecting nearly all aspects of court operations and staff responsibilities and tasks—AOUSC could not readily differentiate costs resulting from the act ("new costs") from those costs incurred in everyday operations. Therefore, it did not provide us with estimates of the costs associated with any additional staff time needed to process a case resulting from the act. Further, as noted earlier, it is difficult to determine the extent to which new costs related to the act may be offset by overall cost savings associated with the decline in bankruptcy filings following the act. However, at our request, AOUSC did estimate that as of December 2007, $48.4 million was incurred for specific start-up activities to implement the act, which included $47.2 million in staff time and $1.2 million for travel, equipment, and contractors.[21]

As shown in table 2, these costs were incurred for the following functions:

- *Revision of rules, forms, and procedures.* The judiciary estimated that it spent approximately $32.5 million revising the Bankruptcy Rules, official forms, and court operating procedures to reflect provisions of the Bankruptcy Reform Act. About 98 percent of this amount was attributed to staff time and the remainder to travel and other expenses related to changes in the courts' case management system.

- *Training and communication to courts.* The judiciary estimated that it spent about $7.3 million to disseminate information on changes made by the act—through training and other means—to judges, clerks, bankruptcy administrators, and other personnel. The judiciary used broadcasts over the Federal Judicial Television Network, conference calls, national workshops and conferences, and the Internet to conduct training and make the information available. About 98 percent of the costs related to training and communication was for staffing.

[21]The Bankruptcy Reform Act included provisions authorizing new bankruptcy judgeships, but we did not include the costs of these new judgeships because they had been planned prior to and independent of the act.

- *Bankruptcy administrator responsibilities.* As noted earlier, in the six judicial districts in North Carolina and Alabama, the bankruptcy administrator program, rather than the Trustee Program, oversees the administration of bankruptcy cases. AOUSC estimated that the bankruptcy administrators' offices incurred an estimated $3.6 million in expenses for activities similar to those described above for the Trustee Program.

- *Statistical and reporting responsibilities.* The judiciary spent about $2.8 million—88 percent for staffing costs—on statistical and reporting responsibilities, which required revisions to the courts' electronic filing, docketing, and case management system. To prepare its annual statistical reports, the judiciary modified its electronic database and statistical infrastructure, reprogrammed software to accept new data elements, and prepared additional tables to conform to the statistical reporting required by the act. The judiciary also prepared several reports required by the act, including a report to Congress outlining the courts' procedures for safeguarding the confidentiality of filers' tax information.

- *Other items.* The judiciary spent an estimated $2 million on other activities related to the implementation of the act, of which about 98 percent was for staffing costs. These activities included revisions to studies to determine staffing needs and the revision and updating of publications and manuals for external parties.

Table 2: Federal Judiciary's Estimate of Start-up Costs to Implement the Bankruptcy Reform Act, as of December 2007

Dollars in thousands

Activity	Staffing costs (based on estimated full-time equivalents dedicated to task)	Other costs	Total costs
Revision of rules, forms, and procedures	$32,020	$512	**$32,532**
Training and communication to courts	7,185	151	**7,336**
Bankruptcy administrator responsibilities	3,520	112	**3,632**
Statistical and reporting responsibilities	2,432	343	**2,775**
Other items	2,080	34	**2,114**
Total cost	**$47,237**	**$1,152**	**$48,389**

Source: GAO analysis of data provided by AOUSC.

As a Result of Fewer Filings Since the Bankruptcy Reform Act, Revenues from Bankruptcy Filing Fees Have Declined

Revenues to the Trustee Program and federal judiciary from bankruptcy filing fees and other fees have declined since the implementation of the Bankruptcy Reform Act due to the reduction in the number of bankruptcy filings.

Trustee Program

Since 1997, the Trustee Program has been entirely self-funded from a portion of the filing fees paid by bankruptcy debtors, which are deposited in the U. S. Trustee System Fund.[22] As shown in figure 3, the Trustee Program's filing fee revenues (excluding Chapter 11 quarterly fees) have declined since the Bankruptcy Reform Act—from $68 million and $74 million in fiscal years 2004 and 2005, respectively, to $58 million and $52 million in fiscal years 2006 and 2007.[23] The Bankruptcy Reform Act and subsequent budget legislation increased bankruptcy filing fees, as discussed later in this report. In addition, the Bankruptcy Reform Act changed the portion of the filing fee allocated to various parties.[24] The net effect was that the amount received by the Trustee Program for each Chapter 7 filing increased from $42.50 to $89 while the amount received by the program for each Chapter 13 filing remained unchanged at $42.50. However, the decline in the number of consumer bankruptcy filings since the implementation of the act offset the increase in revenue per Chapter 7 case. As we discussed previously, the number of filings in 2006 and 2007 was less than half the annual number of filings in the years just prior to the act. To a more limited extent, Trustee Program revenues also have been

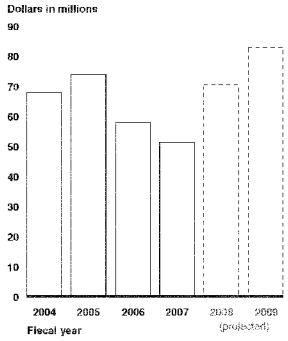
[22]Prior to fiscal year 1997 the Trustee Program's operations were funded through a combination of direct appropriations and offsetting collections. Fee revenues deposited in the United States Trustee System Fund are offsetting collections to amounts appropriated to the Attorney General for the Trustee Program. See 11 U.S.C. § 589a.

[23]The filing fee revenues we cite include fees from all bankruptcy filings—including both business and personal bankruptcies—but exclude Chapter 11 quarterly fees. Trustee Program staff told us that they do not track the proportion of filing fee revenues collected under each chapter of the Bankruptcy Code. Historically, about 40 percent of Trustee Program revenues come from filing fees paid in business and personal cases filed under Chapters 7, 11, 12, and 13, as well as interest earnings and other miscellaneous revenue. The remaining 60 percent come from quarterly fees paid in Chapter 11 business reorganization cases.

[24]Filing fees paid by a debtor are allocated among the U.S. Trustee System Fund, the federal judiciary and the private trustee. See Judiciary Appropriations Act, 1990, § 406(b), Pub. L. No. 101-162, 103 Stat. 988, 1016 (Nov. 21, 1989) (set out, as amended, as a note to 28 U.S.C. § 1931); 11 U.S.C. § 330 (b) and (d).

affected by a provision of the act that allows the court to waive the Chapter 7 filing fee for debtors below certain income thresholds.[25] Chapter 7 filing fees were waived for 2.1 percent of cases in fiscal year 2007, according to data provided by AOUSC.

Figure 3: Trustee Program's Filing Fee Revenues, Fiscal Years 2004–2009



Source: Trustee Program.

Note: These revenues represent fees paid at the time of filing received by the Trustee Program for personal and business bankruptcies under Chapters 7, 11, and 13.

The Trustee Program may expend the funds in the U.S. Trustee System Fund as appropriated by Congress. In its annual budget request to Congress, the Trustee Program provides an estimate of its filing fee revenues, based on the anticipated number of bankruptcy filings. In years where the actual amount of fee revenues deposited in the U.S. Trustee System Fund is greater than the amount appropriated for that year, the

[25] Bankruptcy Reform Act § 418(2), 119 Stat. at 109 (codified at 28 U.S.C. § 1930(f)). Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under Chapter 7 for an individual if the court determines that such an individual has income of less than 150 percent of the official poverty line.

excess fee revenue remains in the fund and is available until expended.[25] Accordingly, in years where the actual amount of fee revenues falls short of the amount appropriated for that year, the program may draw down monies from the fund. In fiscal years 2006 and 2007, the program drew down about $44 million and $92 million, respectively, from the U.S. Trustee System Fund, with congressional approval, to allow the program to operate at appropriated levels. In its 2009 budget request, the Trustee Program stated it expected bankruptcy filings to increase in the coming years and estimated its fee revenues would rise to approximately $70 million and $83 million for fiscal years 2008 and 2009, respectively.

Federal Judiciary

Funding for the federal judiciary comes from appropriations that are funded from filing and other fees, as well as "carry forward" balances from prior years.[27] The judiciary receives revenues from a portion of the fee charged for filing a bankruptcy petition, as well as from certain administrative fees and fees charged for filing certain motions.[28] The portion of the statutory filing fee received by the judiciary for each Chapter 7 bankruptcy petition increased from $52.50 to $63.51 and the portion received for each Chapter 13 petition remained unchanged at $52.50. In addition, the "miscellaneous administrative fee" paid to the courts by debtors in all bankruptcy cases remained at $39.

However, as with the Trustee Program, the decline in the number of bankruptcy filings (and to a lesser extent the provision allowing fee waivers in a limited number of cases) resulted in a reduction in the judiciary's overall bankruptcy fee revenues. As shown in figure 4, the judiciary's bankruptcy-related fee revenues declined from $221 million and $237 million in fiscal years 2004 and 2005, respectively, to $168 million and

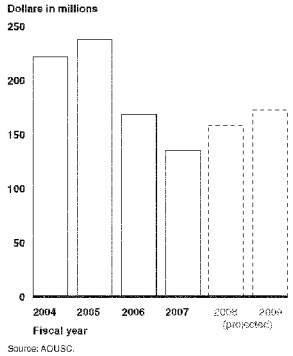
[25]Monies in the fund are available without fiscal limitation in such amounts as appropriated by Congress for the operation of the Trustee Program.

[27]Carry-forward balances are funds remaining in the judiciary-wide fee account from prior years that remain available until obligated.

[28]Two types of fees are collected by federal courts—statutory fees and "miscellaneous" fees. Statutory fees are those fees expressly established by statute; for bankruptcy courts, these are set forth in 28 U.S.C. § 1930(a). The Judicial Conference of the United States has statutory authority under 28 U.S.C. § 1930(b) to prescribe additional ("miscellaneous") fees in bankruptcy cases. See U.S.C. § 1930(b).

$135 million in fiscal years 2006 and 2007.[20] According to an AOUSC official, the reduction in bankruptcy fee revenues is offset by increases in appropriated funds. AOUSC officials have estimated that fee revenues will be $158 million in fiscal year 2008 and $172 million in fiscal year 2009.

Figure 4: Federal Judiciary's Bankruptcy Fee Revenues, Fiscal Years 2004–2009



Source: AOUSC.

Note: These revenues represent all statutory fees and miscellaneous fees received by the judiciary for personal and business bankruptcies under Chapters 7, 9, 11, 12, 13, and 15.

[20]These revenues represent all statutory fees and miscellaneous fees received by the judiciary for personal and business bankruptcies under Chapters 7, 9, 11, 12, 13, and 15. AOUSC staff told us they do not track the proportion of fee revenues collected under each chapter of the Bankruptcy Code.

Cost to Bankruptcy Filers Has Risen Due to Increased Legal and Filing Fees and New Counseling and Education Requirements

Based on our sample of bankruptcy files, we estimate that the average attorney fee for a Chapter 7 case has increased roughly 50 percent since the Bankruptcy Reform Act. The proportion of Chapter 7 debtors filing without attorney representation (pro se) appears to have declined, but we did not find a change in the proportion of Chapter 7 debtors receiving free legal assistance. For Chapter 13 cases, our analysis found the standard attorney fees that individual courts approve rose in nearly all the districts and divisions with such fees that we reviewed. Due to changes made by the Bankruptcy Reform Act and the Deficit Reduction Act of 2005, bankruptcy filing fees have risen by $90 and $80 for Chapter 7 and Chapter 13 filers, respectively. Fees related to the new credit counseling and debtor education requirements typically total about $100.

Average Attorney Fees Have Risen an Estimated 51 Percent for Chapter 7 Filings and Many Courts Have Approved Attorney Fee Increases for Chapter 13 Filings

Most debtors hire an attorney when seeking bankruptcy relief, and bankruptcy attorneys typically charge a fixed fee to handle a consumer bankruptcy case. Anecdotal evidence from a variety of stakeholders—including organizations representing bankruptcy attorneys, private trustees, and consumers—indicated that legal fees associated with seeking consumer bankruptcy relief have risen significantly since the effective date of the Bankruptcy Reform Act. According to bankruptcy attorneys and other parties involved in the process, significantly more legal work is required to meet the requirements of the new law. For example, satisfying the new means test for a bankruptcy filing requires completing a lengthy form that includes various calculations of the debtor's income and expenses. Attorneys also must collect additional documents from the debtor—such as pay stubs and tax returns—to satisfy new documentation requirements, and ensure compliance with new provisions related to credit counseling and domestic support obligations.[30] Bankruptcy cases since the act typically have involved a greater number of motions and hearings, according to AOUSC officials, which further can increase the time an attorney spends on a case. Finally, new provisions in the act require attorneys to attest to the accuracy of information in bankruptcy

[30]The Bankruptcy Reform Act included new provisions to help ensure that debtors in bankruptcy continue paying their child support obligations. See Bankruptcy Reform Act, Subtitle B of Title II, 109 Stat. at 50–59. For example, (1) domestic support obligations are given priority over all other unsecured claims, (2) domestic support obligations are nondischargeable, and (3) a bankruptcy court is authorized to withhold income that is property of the bankruptcy estate for payment of domestic support obligations under a judicial or administrative order. See 11 U.S.C. §§ 362(b)(2), 507(a) and 523(a)(5).

petitions.[31] Some parties have said that concerns about increased liability may have affected legal costs, but others have said this has not been a significant factor.

Chapter 7 Attorney Fees

To estimate how legal fees for Chapter 7 consumer bankruptcy cases may have changed since the implementation of the Bankruptcy Reform Act, we reviewed disclosures of legal fees contained in a nationwide random sample of 468 Chapter 7 consumer bankruptcy filings.[32] Our sample included 176 cases filed in February and March 2005—prior to the act's enactment—and 292 cases filed in February and March 2007—more than 15 months after the act went into effect.[33] The fee disclosure form that we reviewed does not necessarily constitute a full or final accounting of compensation actually paid, but rather states the amount the attorney agreed to accept.[34] However, bankruptcy attorneys, private trustees, and representatives of AOUSC and the National Association of Consumer Bankruptcy Attorneys with whom we spoke told us that the fee amount in these disclosures typically represents the actual amount paid by the debtor.

As shown in figure 5, on the basis of our sample we estimate that the average attorney fee in Chapter 7 consumer bankruptcy cases was $712 in February–March 2005 and $1,078 in February–March 2007.[35] The average fee therefore increased by $366—or 51 percent—during this 2-year

[31]See 11 U.S.C. § 707(b)(1)(C) (as added by Bankruptcy Reform Act § 102(a)(2)(C), 119 Stat. at 30). Among other things, section 707(b)(4)(C) provides that an attorney's signature on a bankruptcy filing constitutes a certification that the attorney (1) has performed a reasonable investigation as to the circumstances giving rise to the filing and (2) has determined that the filing is well-grounded in fact and does not constitute an abuse under section 707(b)(1).

[32]We accessed the bankruptcy filings through the federal judiciary's Public Access to Court Electronic Records system, which allows registered users to use the Internet to obtain case and docket information from federal appellate, district, and bankruptcy courts.

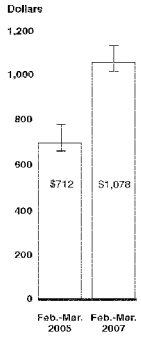
[33]To ensure that we did not include cases that were still open at the time of our review (and thus subject to changes in disclosed fees), we limited our sample to cases that had closed within 272 days of being filed.

[34]An attorney representing a debtor in bankruptcy is required to file with the court, whether or not the attorney applies for compensation, a written statement of the compensation paid to the attorney within 1 year before the filing of the bankruptcy petition or agreed to be paid to the attorney for services rendered in contemplation of or in connection with the bankruptcy case. See 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b).

[35]At the 95 percent confidence level, all fee estimates have margins of error of +/- 6.3 percent or less. See app. I for additional information about sampling error for estimates.

period.[35] (These averages include only cases in which the debtor paid an attorney; they exclude those cases in which the debtor filed without an attorney or received legal assistance at no charge. We discuss pro se and pro bono cases later in this report.)

Figure 5: Estimated Average Attorney Fee for Chapter 7 Personal Bankruptcy Cases, February–March 2005 and February–March 2007



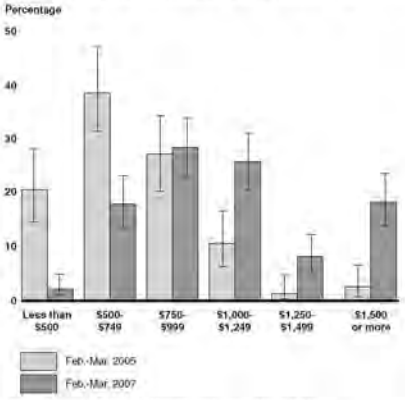
Source: GAO analysis of sample data from Chapter 7 consumer bankruptcy files.

Note: The lines within the bars represent the 95 percent confidence intervals for fee estimates.

Within each time period, the attorney fees showed considerable variability, bnt the increase in fees was evident across all fee ranges. For cases filed in February–March 2005, the fee was less than $750 in 59 percent of cases, from $750 to $999 in 27 percent of cases, and $1,000 or more in 14 percent of cases. For cases filed in February–March 2007, the fee was less than $750 in 20 percent of cases, from $750 to $999 in 28 percent of cases, and $1,000 or more in 52 percent of cases. Further, the fee exceeded $1,499 in 18 percent of cases in the 2007 time frame, as compared with 3 percent of cases in the 2005 time frame. Figure 6 illustrates the estimated frequency of these attorney fees.

[35]We did not adjust for inflation because the impact of inflation during this 2-year time period was small and such an adjustment would not have made a material difference to our findings.

Figure 6: Estimated Frequency of Attorney Fees for Chapter 7 Personal Bankruptcy Cases, February–March 2005 and February–March 2007



Source: GAO analysis of sample data from Chapter 7 consumer bankruptcy files.

Note: The lines within the bars represent the 95 percent confidence intervals for fee estimates.

Chapter 13 Attorney Fees

To determine the impact of the Bankruptcy Reform Act on legal fees paid for Chapter 13 bankruptcy cases, we collected and analyzed information on how standard attorney fees have changed since the effective date of the act. These fees—which often are also referred to as either "presumptively reasonable" or "no-look" fees—are fee amounts that individual courts have predetermined as reasonable compensation to an attorney representing a Chapter 13 debtor. An attorney who seeks to collect a fee up to that predetermined amount does not need to apply for court approval of the fee.[47] Such fees are used widely throughout the country for Chapter 13

[47] A debtor attorney seeking compensation from the bankruptcy estate must apply to the court for compensation. After a hearing, the court may award the attorney reasonable compensation for services rendered and reimbursement for actual and necessary expenses. Many courts, by order or local rule, have waived the application and hearing requirement if the compensation sought does not exceed a predetermined amount. See 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016.

cases and can be uniform across an entire judicial district or can vary by division or individual judge.[38] According to many of the participants with whom we spoke—including attorneys, private trustees, and court personnel—in locations with an established fee, that amount represents the actual fee attorneys charge Chapter 13 bankruptcy filers in the majority of cases.

We collected information on the standard fees in place before and after the Bankruptcy Reform Act in 48 districts or divisions that collectively accounted for 65 percent of Chapter 13 filings in fiscal year 2007.[39] For each of these districts or divisions, we gathered data on the amount of the standard fee, if any, as of (1) October 2005, just prior to the effective date of the Bankruptcy Reform Act; and (2) February 2008, which was more than 2 years after the act had been in effect.[40] Of the 48 districts or divisions we reviewed, 42 had court-set standard fees as of October 2005 and 41 had them as of February 2008.

Our analysis found that the Chapter 13 standard fee had increased in nearly all the districts and divisions with such fees. In more than half of those districts and divisions, the increase was 55 percent or more. As shown in figure 7, just prior to implementation of the act, standard fees ranged from $1,500 to $3,000 (with a median of $2,000). As of February 2008, the standard fees ranged from $1,800 to $4,000 (with a median of

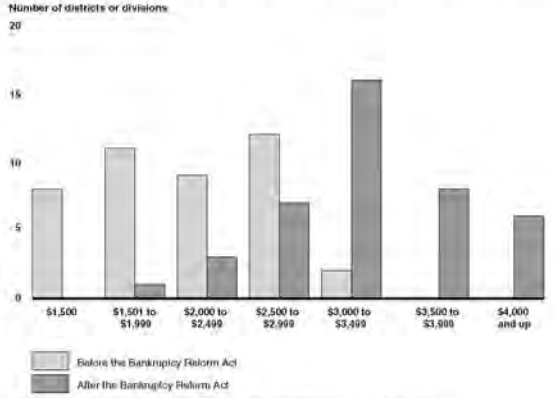
[38]A division is a sublevel below that of federal judicial district. Sometimes court procedures, typically defined as "local rules" or "administrative orders," are set at the division rather than district level.

[39]To collect these data, we interviewed Chapter 13 trustees, their designated staff, or bankruptcy court personnel in each location and reviewed the documentation on the fees as available in the court's published local rules and administrative orders.

[40]In some instances, the district or division had an imminent increase in its standard fee that had not been formally finalized. For those cases, we confirmed the increased amount subsequently. Further, a few districts and divisions had two or more standard fees based on the extent of services provided or the specific characteristics of the case. In such instances, we used the highest fee for both time periods for our analysis, although in one case, we used the mid-level fee because the Chapter 13 trustee told us it was the fee most commonly charged by attorneys in that district.

$3,000).[11] (See app. II for the full list of standard fees in these selected districts and divisions.)

Figure 7: Standard, Court-Set Chapter 13 Attorney Fees before and after the Bankruptcy Reform Act in Selected Judicial Districts and Divisions



Source: GAO analysis of the standard fees set by bankruptcy courts in selected judicial districts or divisions.

Several of the local rules and administrative orders that raised the standard fees specifically cited the Bankruptcy Reform Act as the reason for the change. For example, one order noted that the act's amendments "have had a material effect on the amount of time attorneys must devote to the representation of a Chapter 13 debtor" and that "many tasks which formerly might have been delegated to [nonattorney professionals, such as a paralegal] must now be handled personally by an attorney."[12] Similarly,

[11] Districts and divisions can vary considerably in the number of Chapter 13 bankruptcy filings that they handle. However, the medians we provide are not weighted for the number of filings and thus do not represent the median fee paid by all bankruptcy filers across these districts and divisions.

[12] General Order No. 2007-06, Attorney Compensation (Bnkr. S.D.Ga. posted Mar. 1, 2007).

several of the Chapter 13 trustees with whom we spoke told us that the standard fees were increased as a direct result of the act, which had increased the average amount of time an attorney spent on each case.

Although legal fees associated with seeking consumer bankruptcy relief have risen since the Bankruptcy Reform Act went into effect, in some cases creditors rather than debtors bear the true financial costs of the fee increase. For example, in many Chapter 13 cases, debtors enter a repayment plan in which only part of their total debt is paid to creditors and the rest is discharged. Approved claims for Chapter 13 attorneys' fees are paid out of the debtor's estate as an administrative claim—which are to be paid before most unsecured claims.[40] As a result, in a Chapter 13 bankruptcy case with a partial repayment plan, it may be the unsecured creditors rather than the debtor who absorb the cost of higher attorney fees.

Pro Se Filings

According to data from AOUSC, 6.3 percent of Chapter 13 cases and 5.9 percent of Chapter 7 cases were filed pro se (without an attorney) in calendar year 2007, which was the first year that the agency collected complete data on pro se filings.[41] The proportion of bankruptcy cases filed pro se varied substantially across judicial districts. For example, fewer than 2 percent of Chapter 7 cases were filed pro se in 25 districts, while more than 10 percent were filed pro se in another 16 districts. Some bankruptcy attorneys, consumer advocates, and bankruptcy court staff told us that based on anecdotal evidence, they believed that the overall proportion of bankruptcy petitioners filing pro se had increased since the Bankruptcy Reform Act, in large part because increases in legal fees made hiring an attorney less affordable. However, data from our sample of Chapter 7 consumer case files and from AOUSC suggest that the proportion of Chapter 7 bankruptcy cases filed pro se may actually have declined since the act. We estimate that 11 percent of Chapter 7 consumer cases were filed pro se in February–March 2005, compared with the 5.9

[40]11 U.S.C. §§ 507 and 1326(b).

[41]According to AOUSC staff, prior to October 17, 2006, AOUSC's case filing system did not comprehensively capture all cases filed pro se, and two large districts did not report pro se data at all. AOUSC data on Chapter 7 pro se filings included business cases, which accounted for about 4 percent of Chapter 7 filings in 2007.

percent of Chapter 7 cases that AOUSC reported were filed pro se in calendar year 2007.[45]

Debtors who file for bankruptcy without an attorney sometimes use the services of a nonattorney "bankruptcy petition preparer" to assist them in filing the petition.[46] Of the 19 cases filed pro se in our sample of Chapter 7 filings in February–March 2005, 15 were prepared by a nonattorney petition preparer; fee information was available for 9 of those cases and the average fee was $179. Of the nine cases filed pro se in our sample of Chapter 7 filings in February–March 2007, seven were prepared by a non-attorney petition preparer and the average fee was $302. (Because of the small sample size, these figures cannot be projected beyond the sample to all Chapter 7 petition preparer fees.)

Pro Bono Services

Various local legal services providers throughout the country employ staff attorneys who assist clients or match clients with private attorneys who volunteer their time to provide legal services at a discount or at no cost (pro bono). We spoke with providers at five agencies that provide legal services to bankruptcy filers, as well as a representative of the American Bar Association's Center for Pro Bono, about the effect the Bankruptcy Reform Act has had on the availability of pro bono services. In general, they said that fewer attorneys have been willing to volunteer their services to assist bankruptcy filers since the act went into effect, largely due to the increased time and responsibilities required to handle a bankruptcy case. As a result, clients must sometimes wait longer for a referral and one agency noted it had reduced the number of clients for whom it provided pro bono assistance.

We did not find a statistically significant difference in the proportion of Chapter 7 bankruptcy filers receiving free legal services since implementation of the Bankruptcy Reform Act. We estimate that 2.8 percent of filers received free legal services in February–March 2005,

[45]The 95 percent confidence interval for our 2005 estimate is from 6.6 percent to 16.4 percent.

[46]A bankruptcy petition preparer must file together with the bankruptcy petition, a declaration disclosing any fee received from or on behalf of the debtor within the 12 months immediately preceding the filing of the petition. 11 U.S.C. § 110(h)(2); see also Bankruptcy Form B280, "Disclosure of Compensation of Bankruptcy Petition Preparer." A "bankruptcy petition preparer" is defined as a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing. 11 U.S.C. § 110(a)(1).

compared with 4.5 percent of cases filed in February–March 2007.[47] (Additional filers may have received legal services at a discounted fee.) These findings do not necessarily contradict the anecdotal evidence that fewer attorneys may be offering pro bono bankruptcy services, because the decline in the number of bankruptcy filings since the act may diminish the effect of the reduced supply of such services.

Bankruptcy Reform Act Changed Filing Fees and Permitted Fee Waivers

As shown in tables 3 and 4, as a result of changes made in the Bankruptcy Reform Act and the subsequent Deficit Reduction Act of 2005, the total fees paid at the time of filing a bankruptcy petition under Chapter 7 rose from $209 to $299—an increase of $90. The total fees paid for cases under Chapter 13 rose from $194 to $274—an increase of $80. The total fees paid to file for bankruptcy protection include both statutory fees and "miscellaneous" fees, which are set by the Judicial Conference of the United States pursuant to statutory authority.[48] The Bankruptcy Reform Act, as amended, increased the statutory filing fee from $155 to $220 for Chapter 7 cases and decreased the statutory filing fee from $155 to $150 for Chapter 13 cases.[49] Subsequently, the Deficit Reduction Act, which was signed into law on February 8, 2006, raised these statutory filing fees from $220 to $245 for Chapter 7 cases and from $150 to $235 for Chapter 13 cases.[50] The "miscellaneous administrative fee" of $39 paid by all filers and the "miscellaneous fee for Chapter 7 trustees" of $15 paid by filers in a Chapter 7 case were not affected by either piece of legislation.

[47]The 95 percent confidence interval for the 2005 estimate is from 0.9 percent to 6.5 percent. The 95 percent confidence interval for the 2007 estimate is from 2.4 percent to 7.5 percent.

[48]See 28 U.S.C. § 1930(b).

[49]See Bankruptcy Reform Act § 325(a)(1), 119 Stat. 98 (amending 28 U.S.C. § 1930(a)).

[50]Deficit Reduction Act of 2005 § 10101(a), Pub. L. No. 109-171, 120 Stat. 4, 184 (Feb. 8, 2006). The additional revenue from the act's increases in statutory filing fees is deposited in a designated fund in the Treasury; these fee increases are available to the judiciary only to the extent subsequently appropriated by Congress.

Table 3: Changes in Chapter 7 Filing Fees Resulting from the Bankruptcy Reform Act and the Deficit Reduction Act of 2005

Chapter 7	Statutory fee	Miscellaneous administrative fee	Miscellaneous fee for Chapter 7 trustees	Total filing fee
Before the Bankruptcy Reform Act	$155	$39	$15	**$209**
As modified by the Bankruptcy Reform Act, as amended	$220	$39	$15	**$274**
As modified by the Deficit Reduction Act of 2005	$245	$39	$15	**$299**

Source: 28 U.S.C. § 1930(a) as amended.

Table 4: Changes in Chapter 13 Filing Fees Resulting from the Bankruptcy Reform Act and the Deficit Reduction Act of 2005

Chapter 13	Statutory fee	Miscellaneous administrative fee	Total filing fee
Before the Bankruptcy Reform Act	$155	$39	**$194**
As modified by the Bankruptcy Reform Act, as amended	$150	$39	**$189**
As modified by the Deficit Reduction Act of 2005	$235	$39	**$274**

Source: 28 U.S.C. § 1930(a) as amended.

However, the Bankruptcy Reform Act also contains a provision that allows the bankruptcy court to waive the filing fee in a Chapter 7 filing if the court determines that the filer has (1) an income of less than 150 percent of the income official poverty line (as defined in the Bankruptcy Code), and (2) the debtor is unable to pay the fee in installments.[51] Prior to the Bankruptcy Reform Act, bankruptcy courts had no authority to waive filing fees. Courts waived Chapter 7 filing fees in 2.1 percent of cases filed during fiscal year 2007, according to data provided by AOUSC.

[51]Bankruptcy Reform Act § 418(2) (codified at 28 U.S.C. § 1930(f)).

Required Credit Counseling and Education Cost about $100, and Fees Are Waived for Consumers Unable to Pay

As noted earlier, the Bankruptcy Reform Act required that individuals receive credit counseling before filing for bankruptcy and take a debtor education course before having debts discharged.[52] Information from a variety of sources indicates that most providers charge around $50 each, or slightly less, for the required credit counseling and debtor education sessions—a total of about $100 to fulfill both requirements.[53] During the summer of 2007, the Trustee Program's Credit Counseling and Debtor Education Unit collected and analyzed fee information from agencies approved to provide prefiling credit counseling and predischarge debtor education. The unit's review found that the median fee for credit counseling was $50 for an individual and $50 for a couple among the 156 approved credit counseling providers that charged a fee and for whom data were available.[54] An additional three credit counseling providers charged no fee. For debtor education, the reports indicated that the median fee was $50 for an individual and $55 for a couple for 81 approved debtor education providers that charged a fee and for whom data were available. An additional 20 debtor education providers charged no fee. The National Foundation for Credit Counseling, which periodically collects fee data from its members, reported similar findings.[55] The average prefiling credit counseling fee charged by the 68 member agencies that provided data to the National Foundation for Credit Counseling was $46.05 during

[52]Specifically, the act amended the federal bankruptcy code to require (1) individuals to receive budget and credit counseling from an approved provider before filing a petition in bankruptcy and (2) bankruptcy petitioners to complete an instructional course on personal financial management in order to have their debts discharged. Bankruptcy Reform Act § 106, Pub. L. No. 109-8, 119 Stat. 23, 37-42 (2005) (amending various sections of Title 11). For the purposes of this report, we refer to the prefiling budget and counseling requirement as the credit counseling requirement and the predischarge personal financial management course as the debtor education requirement.

[53]Representatives of the Financial Services Roundtable noted that because debtors' attorneys are sometimes the source of payment to the credit counseling agency, our data on Chapter 7 attorney fee disclosures may in some cases already capture the cost to consumers for credit counseling. However, a representative of the National Association of Consumer Bankruptcy Attorneys told us that attorneys who provide payment to credit counseling agencies are typically reimbursed directly by the client and this amount is not typically included in the legal fee reported in the disclosure forms we reviewed.

[54]These medians represent the full fee normally charged by the agency, which does not incorporate those cases where that fee is reduced or waived. Married couples may file a joint bankruptcy petition. Although a husband and wife may attend the same credit counseling and debtor education session, both must obtain credit counseling and debtor education and be issued separate certificates.

[55]The National Foundation for Credit Counseling includes more than 100 nonprofit member agencies, many of which use the name Consumer Credit Counseling Service®.

the period from July 1 to September 30, 2007.[56] Further, in our April 2007 report on credit counseling and debtor education, we reported that each of three largest providers of prefiling credit counseling—which together had issued about half of all certificates as of October 2006—charged exactly $50 for an individual credit counseling or debtor education session.[57] In a few cases, we identified smaller counseling and education providers with higher fees, such as $75 per session.

The Bankruptcy Reform Act requires that in order to become an approved provider of credit counseling or debtor education, any fee charged by such provider must be reasonable. However, the act did not specify criteria for determining whether a fee amount is "reasonable." On February 1, 2008, the Trustee Program's proposed procedures and criteria to be used by the program to approve credit counseling agencies were published.[58] The proposed rule provides that a fee of $50 or less for credit counseling services would be presumed to be reasonable, and that an agency seeking to be an approved provider must obtain prior approval from the Trustee Program in order to charge a fee of more than $50.[59] Trustee Program officials told us that a separate proposed rulemaking covering debtor education agencies was forthcoming.

The Bankruptcy Reform Act also required that credit counseling and debtor education providers offer their services without regard to the client's ability to pay.[60] Based on the periodic activity reports submitted by providers to the Trustee Program in 2006 and 2007, approximately 11 percent and 13 percent of clients had their fees waived for credit

[56]The $46.05 figure represents a weighted average to account for the varying numbers of credit counseling sessions performed by the agencies that responded to the survey. In addition, it excludes those cases where the fee was waived.

[57]GAO, *Bankruptcy Reform: Value of Credit Counseling Requirement Is Not Clear*, GAO-07-203 (Washington, D.C.: Apr. 6, 2007).

[58]*Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees*, 73 *Fed. Reg.* 6062 (Feb. 1, 2008) (proposed rule). This rule, once final, will supersede the provisions that address credit counseling agencies in the Trustee Program's Interim Final Rule published in 2006. See *Application Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustee*, 71 Fed. Reg. 38076 (Jul. 5, 2006) (interim final rule) (codified at 28 C.F.R. §§ 58.15-58.27).

[59]73 Fed. Reg. at 6070 (proposed 28 C.F.R. § 58.21(a)).

[60]11 U.S.C. §§ 111(c)(2)(B) and 111(d)(1)(E).

counseling and debtor education, respectively, and an additional 28 percent and 19 percent of clients received a partial reduction of the fee. Similarly, the National Foundation for Credit Counseling provided us with data showing that among member agencies surveyed, the fee for prefiling credit counseling was waived about 18 percent of the time between July, 1, 2007 and September 30, 2007.

Our April 2007 report noted that the policies of individual providers for waiving fees varied. Trustee Program data on the three largest providers showed significant variations in the proportions of clients whose fees were waived—from 4 percent to 26 percent for counseling sessions and from 6 percent to 34 percent for debtor education courses. As a result, our report recommended that the Trustee Program issue formal guidance on what constitutes a client's "ability to pay." In its proposed rule of February 1, 2008, the Trustee Program stated that the client shall be deemed unable to pay, and thereby entitled to a fee waiver, if the client's household income is less than 150 percent of the poverty line as defined by the Office of Management and Budget.[61]

Bankruptcy Reform Act Has Affected the Duties and Caseloads of Private Trustees

The Bankruptcy Reform Act has affected the responsibilities of Chapter 7 and Chapter 13 private trustees, largely as a result of new documentation, verification, and reporting requirements. The trustees with whom we spoke said the act significantly increased the amount of staff time needed to administer a bankruptcy case. The caseloads of many Chapter 7 and Chapter 13 trustees have declined since the act in concert with the decline in bankruptcy filings. However, as yet, the overall compensation to trustees collectively has not declined significantly because disbursements and repayments are still being made from the surge in bankruptcy filings that occurred just prior to the effective date of the act. Further, according to data provided by the Trustee Program, attrition among trustees has not changed significantly since the implementation of the act.

[61]73 Fed. Reg. at 6070 (proposed 28 C.F.R. § 58.21(b)). The proposed rule states that agencies may waive fees based on other considerations as well, such as the client's net worth or the percentage of the client's income from government assistance programs.

Private Trustees Have Additional Documentation, Verification, and Reporting Requirements

The Bankruptcy Reform Act has affected the responsibilities of Chapter 7 and Chapter 13 private trustees, largely as a result of new documentation, verification, and reporting requirements. As noted earlier, private trustees—individuals who are not government employees and are overseen in most districts by the Trustee Program—administer individual Chapter 7 and Chapter 13 bankruptcy cases. Chapter 7 trustees identify the debtor's available assets, liquidate them (turn them into cash), and distribute the proceeds to creditors.[82] Chapter 13 trustees administer cases according to a court-approved plan for the repayment of debt, collecting payments from the debtor and making distributions to creditors.[83] One of the key responsibilities for both Chapter 7 and Chapter 13 trustees is to preside over the meeting of creditors (commonly known as the "341 meeting"), in which the debtor must appear and answer questions under oath from the trustee and creditors.[84] In addition, trustees collect, review, and verify the information in the bankruptcy petition and the supporting documentation that lists the debtor's assets, liabilities, income, and expenditures. This ensures that exemptions are accurately claimed and that assets that can be liquidated are distributed to creditors.

The provisions of the Bankruptcy Reform Act with the most significant impact on the duties of the private trustees for personal bankruptcy cases are the following:

- *New documentation requirements.* Trustees must confirm that debtors have submitted documentation required under the act, which includes 2 months of wage statements and the tax return from the year prior to filing. The trustees must safeguard all tax return documents according to procedures set by the Trustee Program—for example, access to tax records must be restricted and sensitive documents must be properly secured, destroyed, or returned to the debtor.

- *Domestic support obligations.* In cases where a debtor has a domestic support obligation—alimony or child support—private trustees must notify the claimant (such as the custodial parent) and the relevant state child support enforcement agency of the bankruptcy. The trustee must

[82]Historically, about 95 to 97 percent of Chapter 7 cases yield no assets, and therefore the trustee makes no distribution of payments.

[83]In both Chapter 7 and Chapter 13 cases, some assets are exempted by federal or state law, and therefore may be retained by the debtor.

[84]11 U.S.C. § 341(a).

notify applicable parties twice during the bankruptcy process—once around the time of the meeting of the creditors and once at the time of discharge.

- *Means test.* Chapter 7 trustees must review the means test form submitted by debtors and verify the calculation of current monthly income. In those cases where the income is below the state median—and therefore not presumed abusive—the trustees are to verify that the income is truly below the median by examining wage statements and tax documents. Chapter 13 trustees use the means test form—in conjunction with other documents, such as tax returns—to determine what the debtor can afford to pay each month in a repayment plan.

- *Uniform final reports.* Once the Trustee Program issues a final rule, private trustees will be required to submit a uniform final report of each bankruptcy case.[55] For Chapter 7 trustees, the proposed reporting forms add additional responsibilities since they require reporting data not currently collected for no-asset cases, and they must enter this information manually. Chapter 13 trustees already submit final reports, although the proposed new forms require some additional information they must collect, such as assets abandoned.

Bankruptcy Reform Act Has Affected the Time and Resources Trustees Require to Administer Cases and Has Reduced Some Trustees' Caseloads

The Bankruptcy Reform Act has affected the time and resources required by trustees to administer bankruptcy cases, according to private trustees and representatives of the Trustee Program. We spoke with, collectively, 18 Chapter 7 and Chapter 13 trustees, as well as organizations representing them, about how the act has affected their work. While the experiences of individual trustees varied, all said that the act increased the amount of staff time it took to administer a bankruptcy case, with many reporting that the staff time needed per case roughly doubled. For example, trustees told us they require additional administrative and clerical support to help collect and track newly required documents, such as tax returns and wage statements. There also are costs associated with printing, storing, securing, and shredding these documents. The trustees also told us that the means test significantly increased the time spent reviewing documentation.

[55]Proposed rules were published in February 2008. See *Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of Title 11*, 73 Fed. Reg. 6447 (Feb. 1, 2008) (proposed rule).

In addition, while individual experiences varied, Chapter 7 and Chapter 13 trustees typically told us that the 341 meetings were taking longer, in part due to more questions about the documents submitted; additional time also is sometimes required to determine the addresses for notifying child support claimants for the domestic support obligations. Furthermore, the 341 meetings have been postponed more frequently because of debtors' delays in gathering the required documentation. In addition, according to the Trustee Program's notice of proposed rule making, the new uniform final reports will require Chapter 7 trustees to spend an estimated 10 additional minutes per case to collect and input newly required information, potentially adding $2,100 a year in increased costs.[96] Finally, a representative of the National Association of Chapter 13 Trustees noted that trustees have been required to make significantly more court appearances as a consequence of the additional hearings and litigation that have resulted from the Bankruptcy Reform Act.

The caseload of Chapter 7 trustees has declined significantly since the Bankruptcy Reform Act in concert with the decline in filings—from 1.2 million personal and business Chapter 7 bankruptcy filings in fiscal year 2004 to about 484,000 in fiscal year 2007. Chapter 7 trustees are unsalaried and typically work part time in their trustee duties. They collect a fee of $60 for each case they administer and this amount remained unchanged with the passage of the Bankruptcy Reform Act.[97] In addition, as noted earlier, a provision of the act allows the court to waive the filing fee for qualified Chapter 7 debtors, and for these cases the trustee receives no compensation at all.[98] In addition, for cases where there are assets to be liquidated, the Chapter 7 trustee receives a percentage—as prescribed by

[96]Trustee Program officials told us that these costs may be mitigated by plans to provide Chapter 7 trustees with certain data elements in electronic format, which will greatly expedite completion of the uniform final reports.

[97]A Chapter 7 trustee is paid $45 from the statutory filing fee, as well as an additional $15 miscellaneous filing fee collected by the clerk from the debtor upon the filing of the petition. See 11 U.S.C. § 330(b)(2) and the Bankruptcy Court Miscellaneous Fee Schedule issued in accordance with 28 U.S.C. § 1930(b).

[98]As noted earlier in this report, Chapter 7 filing fees were waived by the court in 2.1 percent of cases filed during fiscal year 2007, according to data provided by AOUSC.

statute—of the assets distributed to creditors, and also may be reimbursed for certain direct expenses.[69]

Although about 95 percent of Chapter 7 filings have traditionally been "no-asset" cases with $60 as the trustee's sole compensation, Chapter 7 trustees derive the majority of their overall revenues from those few cases involving disbursement of assets. It can take several years to completely disburse available assets. As a result, the dramatic surge in bankruptcy filings just prior to the Bankruptcy Reform Act's October 2005 implementation resulted in an increase in Chapter 7 trustees' overall compensation from 2005 to 2007, despite the decline in their caseload. According to our analysis of Trustee Program data, in fiscal year 2005, Chapter 7 trustees collectively received $191.7 million in total compensation ($111 million from asset disbursements and an estimated $80.7 million from filing fees), while in fiscal year 2007, they received $212.4 million in total compensation ($183.7 million from asset disbursements and an estimated $28.5 million from filing fees).[70] However, these revenues may decline in future years as assets from cases filed in 2005 are disbursed fully.

The caseload for Chapter 13 trustees since the Bankruptcy Reform Act also has declined, although less substantially—from 454,412 personal and business Chapter 13 filings in fiscal year 2005 to 310,802 in fiscal year 2007. In contrast to Chapter 7 trustees, Chapter 13 trustees are full time and typically run offices that employ other full-time staff. Chapter 13 trustees' compensation is based—up to a preset limit—on a percentage of the total payments made to creditors. The Chapter 13 trustee uses these funds to pay for rent, staff, and certain other office expenses. Most Chapter 13

[69]A court may allow reasonable compensation to trustees for services rendered in a Chapter 7 case or Chapter 13 case, subject to a statutory maximum allowed, plus reimbursement for actual and necessary expenses. 11 U.S.C. §§ 300 and 326. Trustees also can receive compensation for services rendered as a professional when the trustee retains himself or herself as attorney or accountant for the trustee. 11 U.S.C. § 328. For the purposes of this report, we limit our discussion to compensation received for those services rendered as trustee.

[70]These figures include both personal and business cases because available data on trustee compensation do not distinguish between the two. The figures exclude reimbursement for direct expenses and compensation for services rendered as a professional when the trustee retains himself or herself as attorney or accountant for the trustee. The Trustee Program provided us with data on trustee compensation from disbursed assets. To estimate compensation from the per-case fee, we multiplied the number of Chapter 7 filings for fiscal years 2005 and 2007 (excluding those in which the fee was waived) by $60.

repayment plans are either 3 years or 5 years in length and, as with Chapter 7 trustees, the surge in filings just prior to the Bankruptcy Reform Act has continued to be a source of revenue for Chapter 13 trustees despite the decline in filings. According to data provided by the Trustee Program, in fiscal year 2005, total compensation to Chapter 13 trustees was $31.02 million, averaging $162,432 per trustee. In fiscal year 2007, total compensation was $31.85 million, averaging $165,870 per trustee.

Attrition among Chapter 7 and Chapter 13 trustees has not changed significantly since the implementation of the Bankruptcy Reform Act, according to our analysis of Trustee Program data. This analysis found that the rate of attrition—due to resignations, retirements, or terminations—has stayed consistent at approximately 3 percent to 4 percent over the past several years.[71] Almost all of the private trustees with whom we spoke told us that they were not likely to leave their position, despite the challenges resulting from the Bankruptcy Reform Act. However, a Trustee Program official noted that the program has not always sought to fill vacancies that have occurred since the act because of the decline in filings.

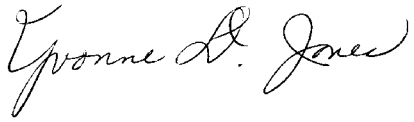
Agency Comments

We provided a draft of this report to AOUSC and the Department of Justice for comment. These agencies provided technical comments that we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. We will then send copies of this report to the Ranking Member of the Committee on the Judiciary, U.S. Senate; the Ranking Member of the Committee on the Judiciary, House of Representatives; the Director of the Administrative Office of the United States Courts; the Attorney General; and other interested committees and parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov. If you or your staffs have any questions concerning this report, please contact me at (202) 512-8678 or jonesy@gao.gov. Contact points for our Offices of Congressional Relations and Public

[71]To calculate the rate of attrition, we divided the number of trustees that departed (as of the end of the fiscal year) by the number of trustees at the beginning of the fiscal year.

Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.



Yvonne D. Jones
Director, Financial Markets and Community Investment

List of Requesters

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
House of Representatives

The Honorable Richard J. Durbin
The Honorable Russell D. Feingold
The Honorable Edward M. Kennedy
United States Senate

The Honorable Howard L. Berman
The Honorable William D. Delahunt
The Honorable Sheila Jackson-Lee
The Honorable Zoe Lofgren
The Honorable Jerrold Nadler
The Honorable Robert C. Scott
The Honorable Chris Van Hollen, Jr.
The Honorable Debbie Wasserman Schultz
The Honorable Melvin L. Watt
House of Representatives

Appendix I: Objectives, Scope, and Methodology

Our report objectives were to examine (1) new costs incurred as a result of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Reform Act) by the Department of Justice and the federal judiciary, (2) new costs incurred as a result of the act by consumers filing for bankruptcy, and (3) the impact of the act on private trustees. Our review focused on the impact of the act on personal and not business bankruptcies. Further, the first two objectives examined only the monetary (dollar) costs incurred by federal agencies and consumers and not on other ways that the Bankruptcy Reform Act may have affected them. In addition, the scope of this report is limited to costs directly related to the process of filing for bankruptcy, and not on the overall financial impact the act may be having on consumers. Finally, this report did not seek to assess the benefits of the Bankruptcy Reform Act and is therefore not an evaluation of the merits of the act.

To address all of the objectives, we reviewed the relevant provisions of the Bankruptcy Reform Act. We also obtained documentation from, and interviewed representatives of, the Department of Justice's U.S. Trustee Program (Trustee Program); the federal judiciary, including the Administrative Office of the United States Courts (AOUSC) and selected individual bankruptcy courts; Congressional Budget Office; and organizations representing consumers, including the National Consumer Law Center, and the financial services industry, including the Financial Services Roundtable.

To address the first objective on new costs to the federal government, we reviewed relevant budget-related documents. For the Department of Justice's Trustee Program, these included its actual or projected annual budgets for fiscal years 2005 through 2009, as well as annual budget and performance summaries, strategic plans, annual reports, and congressional testimonies by Trustee Program officials. For the federal judiciary, we reviewed congressional budget justifications for fiscal years 2003 through 2008, as well as annual reports, and congressional testimonies by officials of the Judicial Conference of United States and AOUSC. We also reviewed internal documentation from AOUSC on activities and timelines for implementing requirements of the Bankruptcy Reform Act.

Since the budget documentation generally did not identify costs specific to implementation of the Bankruptcy Reform Act, we requested the Trustee Program and federal judiciary to estimate costs to date incurred specifically as a result of the act, including the cost of allocated staff time. To develop its estimates, the Trustee Program primarily used information

from its fiscal year 2006 budget justification, which specified funds needed to address specific provisions of the act. For costs for debtor audit contracts, information technology, and facilities expansion—which were largely contract costs—the program provided actual obligations. The cost estimates from the judiciary were specific to a set of one-time activities undertaken to initially implement the Bankruptcy Reform Act and were based on a tracking report developed by AOUSC to monitor its efforts to implement the act. We did not verify the estimates provided to us by the Trustee Program and the federal judiciary, although we reviewed and analyzed them and we interviewed the staff who provided the estimates to understand how they were created. We determined that the estimates were sufficiently reliable for our purposes. The Bankruptcy Reform Act included provisions authorizing new bankruptcy judgeships, but we did not include the costs of these new judgeships because they had been planned prior to and independent of the act. In addition, we collected and analyzed data on the Trustee Program's and judiciary's revenues from bankruptcy-related statutory and miscellaneous filing fees.

To address the second objective on new costs to consumers, we reviewed changes in attorney fees and filing fees, as well as fees to fulfill the new credit counseling and debtor education requirements. To determine changes in attorney fees for Chapter 7 bankruptcy cases, we selected two random and projectable samples of cases (from before and after the Bankruptcy Reform Act) and collected information on the attorney compensation, if any, disclosed in the case file. From AOUSC's U.S. Party/Case Index, we selected a random sample of 193 Chapter 7 cases that had been filed nationwide during February or March 2005 and had closed within 272 days from the filing date. We chose this time period because it occurred just before the act was enacted. We selected another random sample of 307 cases filed during February or March 2007 that had closed within 272 days from the filing date. We chose this time period because it was about 16 months after the effective date of the Bankruptcy Reform Act; bankruptcy attorneys with whom we spoke said that most significant changes in attorney fees resulting from the act had occurred by that time. For both timeframes, we included only cases that had closed within 272 days of filing to ensure we did not include cases that were still open at the time of our review. From our sample, we excluded business cases since these were outside the scope of our review. We also excluded cases that had converted from Chapter 13 to Chapter 7 because it would not have been possible to determine the extent to which the attorney fee was based on work related to the Chapter 7 filing. Finally, we excluded cases in which necessary data were not accessible from the electronic file (which represented fewer than 3 percent of cases).

With these exclusions, we had an effective sample of 176 Chapter 7 cases from February–March 2005 and 292 cases from February–March 2007. Table 5 summarizes the population and sample disposition for the Chapter 7 filings sample.

Table 5: Population and Disposition of Our Sample of Chapter 7 Filings

	Feb.-Mar. 2005	Feb.-Mar. 2007	Total
Total population	191,012	71,106	**262,118**
Sample selected	193	307	**500**
Completed cases (in scope for study)	176	292	**468**
Total excluded (out-of-scope for study):	17	15	**32**
Dismissed	4	8	**12**
Business cases	0	2	**2**
Chapter 13 conversions	1	0	**1**
Other	0	1	**1**
Data not accessible	12	4	**16**

Source: GAO.

Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval (for example, plus or minus 6 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. As a result, we are 95 percent confident that each of the confidence intervals in this report will include the true values in the study population. All percentage estimates in this report based on our sample review of Chapter 7 filings have 95 percent confidence intervals of plus or minus 6 percentage points or less, unless otherwise noted. All numerical estimates other than percentages (for example, estimated mean Chapter 7 fees) have 95 percent confidence intervals of within plus or minus 6.3 percent of the value of those estimates, unless otherwise noted.

We performed our case file review using a data collection instrument that included uniform questions to ensure data were collected consistently. For each case, we reviewed the docket and relevant documents from the bankruptcy file to determine (1) the attorney fee, if any, disclosed in Form B203, the *Disclosure of Compensation of Attorneys for Debtor(s)*, and any amendments to that form; (2) whether the attorney represented the debtor

at no charge (pro bono); (3) whether the debtor filed without an attorney (pro se); and (4) the bankruptcy petition preparer fee, if any, disclosed in Form B280, the *Disclosure of Compensation of Bankruptcy Petition Preparer*.

We relied on data presented in bankruptcy documents filed with the courts by debtors, creditors, and debtor attorneys and electronically stored in the courts' Public Access to Court Electronic Records system. Bankruptcy courts and U.S. Trustees manage bankruptcy cases and perform some measures to verify data that help ensure the reliability of information provided in these case files. For example, bankruptcy court officials have measures to ensure that data entered into information systems are accurate. Other measures we used to ensure reliability of these data included relying on our past work using the U.S. Party/Case Index and Public Access to Court Electronic Records and by performing additional steps during our review to compare information between these two systems.

For attorney fees for Chapter 13 cases, we collected and analyzed changes since the Bankruptcy Reform Act in standard attorney fees approved by individual judicial districts or divisions—in 48 districts or divisions that collectively accounted for 65 percent of Chapter 13 filings in fiscal year 2007. For each of these districts or divisions, we collected the amount of the standard fee, if any, as of (1) October 2005, just prior to the effective date of the Bankruptcy Reform Act, and (2) February 2008, more than 2 years after the act went into effect. We obtained these data from published local rules or administrative orders, as well as through interviews with relevant Chapter 13 trustees and bankruptcy court personnel. A few districts and divisions had two or more standard fees based on the extent of services provided or the specific characteristics of the case. In such instances, we used the highest fee for both time periods for our analysis, although in one case, we used the mid-level fee because the Chapter 13 trustee told us it was the fee most commonly charged by attorneys in that district.

We also collected available data from AOUSC on the number of bankruptcies filed without an attorney (pro se) and spoke with representatives of the National Association of Consumer Bankruptcy Attorneys and the Business Law Pro Bono Project of the American Bar Association's Center for Pro Bono, and with attorneys at five firms that provide free or reduced-cost legal assistance to bankruptcy filers.

To review filing fees, we reviewed changes to these fees made by the Bankruptcy Reform Act, as amended, and the Deficit Reduction Act of 2005, as well as any changes made by the judiciary to nonstatutory fees. We obtained from AOUSC data on the number of cases in which the court waived the filing fee. To determine costs associated with credit counseling and debtor education requirements, we reviewed information in our prior report, *Bankruptcy Reform: Value of Credit Counseling Requirement Is Not Clear* (GAO-07-293), and reviewed and analyzed additional fee and waiver data provided to us by the Trustee Program. We also reviewed data provided to us by the National Foundation for Credit Counseling that included its members' fees for prefiling credit counseling. Finally, we interviewed officials from the Trustee Program's Credit Counseling and Debtor Education Unit and reviewed provisions of the agency's proposed rule related to credit counseling fees.

To address the third objective on private trustees, we reviewed provisions of the Bankruptcy Reform Act that affect private trustees' roles and responsibilities, as well as the Trustee Program's interim guidance and policy and procedure manuals for private trustees. We spoke with Trustee Program staff responsible for overseeing trustees and with officials from the National Association of Bankruptcy Trustees and National Association of Chapter 13 Trustees, two professional associations representing Chapter 7 and Chapter 13 trustees, respectively. We also reviewed published materials from the National Association of Bankruptcy Trustees, including a survey conducted of its members on the impact of the Bankruptcy Reform Act. In addition, we conducted individual and small group interviews of 10 Chapter 7 and 11 Chapter 13 private trustees. These trustees were chosen because they served in districts that represented a range of sizes and geographic regions. Finally, we collected and analyzed data from the Trustee Program on attrition rates for private trustees from fiscal years 2003 through 2007.

We conducted this performance audit from June 2007 through June 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Standard Attorney Fees for Chapter 13 Cases

The "standard fees" provided in table 6 represent standard amounts individual courts approve as reasonable compensation for an attorney representing a Chapter 13 debtor. The districts and divisions shown here collectively accounted for 65 percent of Chapter 13 filings in fiscal year 2007. A few districts and divisions had two or more standard fees. In such cases, the applicable fee is based on the extent of services provided or the specific characteristics of the case, as prescribed by local rules or administrative orders.

Table 6: Standard Attorney Fees for Chapter 13 Cases in Selected Districts and Divisions, before and after the Bankruptcy Reform Act

	Personal Chapter 13 filings (fiscal year 2007)	Standard fee before the act (as of Oct. 16, 2005)	Standard fee after the act (as of Feb. 2008)*
District			
Alabama, Middle District	3,851	$1,600	$2,500
Arkansas, Eastern & Western Districts	5,712	$1,500	$3,000
California, Eastern District	4,035	$2,500	$3,500
Florida, Southern District	3,146	$2,500	$3,000
Georgia, Middle District	5,973	$1,501	$2,500
Georgia, Northern District	15,710	$2,500	None
Georgia, Southern District	6,497	$1,500	$2,500
Illinois, Northern District	9,634	$3,000	$3,500
Maryland District	5,867	None	$2,000 $3,500 $4,500
Massachusetts District	4,382	$3,000	$4,000
Michigan, Eastern District	11,300	$1,500	$3,000
Missouri, Eastern District	3,739	$1,850	$3,000
Missouri, Western District	3,089	$2,000	$3,000
Mississippi, Southern District	3,390	$1,700	$2,500
New Jersey District	6,866	$2,500	$3,500
North Carolina, Middle District	3,273	$1,500	$3,000
Ohio, Southern District	8,078	$1,500	$3,000
Pennsylvania, Eastern District	4,681	$2,000	$3,000 $3,500
Pennsylvania, Western District	3,742	$2,000	$3,100
Puerto Rico District	5,581	$1,500	$3,000
South Carolina District	4,789	$1,800	$3,000

	Personal Chapter 13 filings (fiscal year 2007)	Standard fee before the act (as of Oct. 16, 2005)	Standard fee after the act (as of Feb. 2008)[a]
Tennessee, Eastern District	5,319	$1,600	$3,000
Tennessee, Middle District	5,095	$2,500	$3,000
Tennessee, Western District	13,045	$1,800	$2,400
Texas, Northern District	8,595	$2,000	$3,000
Texas, Southern District	7,263	$2,460	$3,085
Virginia, Eastern District	5,388	$1,500	$3,000
Washington, Western District	3,176	$1,800	$1,800
Division[b]			
Los Angeles, Calif., Central District	2,277	$2,500	$4,000
Northern/Santa Barbara, Calif., Central District	189	$2,500	$4,000
Riverside/San Bernardino, Calif., Central District	2,216	$1,750	$4,000
Santa Ana, Calif., Central District	535	$2,500	$4,000
Woodland Hills/San Fernando, Calif., Central District	1,314	$2,500	$4,000
Tampa, Fla., Middle District	4,119	$2,500	$3,300 $3,600
Fort Wayne, Ind., Northern District	519	None	None
Hammond, Ind., Northern District	1,754	$2,500	$2,800
Lafayette, Ind., Northern District	188	None	None
South Bend, Ind., Northern District	613	$2,500	$2,800
Alexandria, La., Western District	906	$2,100	$2,500
Las Vegas, Nev. District	3,281	$2,700	None
Albany, N.Y., Northern District	1,276	None	None
Syracuse, N.Y., Northern District	1,255	None	None
Utica, N.Y., Northern District	953	None	None
Akron, Ohio, Northern District	1,204	$2,000	$2,000
Canton, Ohio, Northern District	929	$1,250 $1,750	$1,500 $2,000
Cleveland, Ohio, Northern District	3,821	$1,200 $1,700	$3,000
Youngstown, Ohio, Northern District	1,183	$1,500	$3,000
Waco, Tex., Western District	619	$2,000	$3,000

Source: GAO.

[a]In some instances, the district or division had an imminent increase in its standard fee that had not been formally finalized as of February 2008. For those cases, we confirmed the increased amount subsequently.

[b]A division is a sublevel below that of the federal judicial district.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact	Yvonne D. Jones, (202) 512-6878 or jonesy@gao.gov
Staff Acknowledgments	In addition to the contact named above, Jason Bromberg, Assistant Director; Randy Fasnacht; Cynthia Grant; Carol Henn; Tiffani Humble; Kristeen McLain; Marc Molino; Mark Ramage; Carl M. Ramirez; Omyra Ramsingh; Barbara Roesmann; and Rhonda P. Rose made key contributions to this report.