

2007 Report of
Statistics Required by the
Bankruptcy Abuse Prevention and
Consumer Protection Act of 2005

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2007 Report of Statistics Required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

Introduction

Pursuant to 28 U.S.C. § 159(c), the Director of the Administrative Office of the United States Courts (AO) is required to submit the first annual report to Congress on bankruptcy statistics mandated by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) no later than July 1, 2008. Section 159(a) of Title 28 provides that clerks of the bankruptcy courts “shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11.” The Director of the AO is required to compile this information, analyze it, and make it accessible to the public as well as Congress. Each table in this report displays data in the aggregate, by circuit and by district.

Summary of Findings

During calendar year 2007, a total of 822,590 bankruptcy petitions were filed in cases with predominantly nonbusiness debt. Approximately 61 percent of these cases (500,613) were filed under chapter 7, in which a debtor’s assets are liquidated and the non-exempt proceeds are distributed to creditors. About 39 percent (321,359) were filed under chapter 13, in which individuals with regular income and debts below a statutory threshold make installment payments to creditors pursuant to a court-confirmed plan. Fewer than one percent (617) were filed under chapter 11,¹ which allows businesses and individuals to continue operating while they formulate plans to reorganize and repay their creditors.²

An estimated 862,462 cases with predominantly nonbusiness debt were closed during 2007. Of these cases, a total of 407,562 closed consumer cases are included in this report because of certain limitations imposed by the statute. Therefore, the number of cases closed and reflected herein on the BAPCPA tables are approximately 47% of the total number of cases closed during calendar year 2007. Approximately 86 percent of the consumer cases in this report (352,443) were closed under chapter 7, about 13 percent (54,958) were terminated under chapter 13, and fewer than one percent (161) were closed under chapter 11. Since the duration of a typical chapter 11 or chapter 13 case is three to five years, the proportion of closings under these chapters is artificially low in the current report and the proportion of chapter 7 cases closed is artificially high.

It should be noted that, as with any new data collection effort, there is no baseline with which to compare the reasonableness of these data. Consumer debtors seeking bankruptcy protection under chapters 7, 11, or 13 during 2007 reported holding total assets in the aggregate amount of \$108,485,865,000 and total liabilities in the aggregate amount of \$139,111,188,000. The median average monthly income of all debtors was \$2,490, and the median average monthly expenses were \$2,433. Chapter 7 consumer cases that closed in 2007 had an average time interval from filing to disposition of 124 days and a median time interval of 112 days. A total of 113,634 reaffirmation agreements were reported as filed in 80,839 chapter 7 consumer cases terminated during 2007. In 30

¹ Consumer cases filed under chapter 11 are relatively infrequent (about 10% of chapter 11 cases filed in calendar year 2007 were nonbusiness cases) and are generally believed to be the result of debtors’ exceeding the debt restrictions of 11 U.S.C. § 109(e) that currently restrict chapter 13 to debtors with less than \$336,900 in noncontingent, liquidated, unsecured debts and less than \$1,010,650 of noncontingent, liquidated, secured debts.

² The 822,590 bankruptcy petitions filed in 2007 include 1 case with predominantly nonbusiness debt filed under chapter 15. See Table F-2 in *Statistical Tables for the Federal Judiciary: December 31, 2007*.

percent of the chapter 13 cases filed during 2007, debtors indicated they had filed for bankruptcy during the previous eight years.

Because 2007 is the first year for which complete BAPCPA data were received and analyzed, no comparisons of these data to prior periods can be made. Such comparisons will be made in future years when more data are available.

Methodology and Data Limitations

Data on Cases Filed and Closed

Under 28 U.S.C. § 159(a), clerks of court must collect statistics on debtors who meet certain criteria. However, Judiciary data systems in place when BAPCPA was signed into law did not capture all of the data required for reporting purposes, nor were those data systems capable of collecting and reporting all such data. Accordingly, the Judiciary built a new data system and software for this purpose, which were implemented on October 17, 2006, the effective date of the statute.

The data in this report represent cases filed or closed during calendar year 2007. However, although all cases filed in 2007 are addressed in the report, the statute's requirement to report on specific types of debtors reduces the number of reported closed cases to only those commenced after the effective date of the statute and closed during the calendar year.

The primary consequence of this limitation is that data in any table based on cases closed during the reporting period may not be typical for a calendar year period. Such trends cannot be determined until BAPCPA data have been collected for a few years. That is, because all cases closed during the current reporting period must have been filed on or after October 17, 2006, the results for this report primarily will be based on shorter-duration cases than would typically be included, but will exclude many of the longer-duration cases opened

prior to October 17, 2006, that otherwise would have been included had this limitation on the filing date not been necessary. Therefore, the characteristics associated with cases of shorter duration likely will have a greater influence on the data results than they would in a typical year.

For example, a typical chapter 13 case that results in a standard discharge usually exceeds one year in duration – and often three to five years – and could include an order on valuation of property, whereas a typical chapter 13 case that terminates in a dismissal may last a few months or less and have no such orders. As a result, the ratio of chapter 13 cases dismissed during this first reporting period to chapter 13 cases closed may be disproportionate, because the number of cases filed and dismissed within the limited reporting window is likely to exceed the number filed and closed with different types of dispositions. Furthermore, activities such as reaffirmation agreements, valuation orders, creditor misconduct, and attorney sanctions are more likely to occur in cases of longer duration and therefore may not be recorded in representative numbers until a future reporting period.

This limitation has the greatest affect on tables that address cases closed (BAPCPA Tables 3 and 6) and transaction data (BAPCPA Tables 4, 5, 8, and 9; see section on transaction data below). This effect is particularly pronounced in this inaugural year of the BAPCPA report. As more BAPCPA data are accumulated in each succeeding year, the data should become more representative of typical conditions.

To understand the effect of this limitation, consider that 891,783 bankruptcy cases were closed during calendar year 2007, of which an estimated 862,462 were identified as cases with predominantly nonbusiness debt.³ However, only 407,562 cases closed during calendar year 2007 had been filed on or after October 17, 2006, by individual debtors with predominantly nonbusiness debt

³ See Table F in *Statistical Tables for the Federal Judiciary: December 31, 2007*. The AO estimated the number of consumer cases that were closed in 2007. In future years, these data will be captured within the existing tables.

seeking relief under chapters 7, 11, and 13. Due to this limitation, the number of cases closed and reflected on BAPCPA tables are approximately 47% of what they would normally be.

With regard to the first column in each table (the count of total cases), some tables include reopened cases and transferred cases in the total, but other tables omit these cases. These cases are excluded when the data would be duplicative, such as totals for assets and liabilities at both the original filing of a case and for each reopening of that case. In all other instances in which they would not affect the results, these cases are included.

Transaction Data

“Transaction data” refers to case-related activities that occur during bankruptcy proceedings such as reaffirmation agreements, valuation orders, creditor misconduct, and attorney sanctions (see BAPCPA Tables 4, 5, 8, and 9). Such data are typically captured in docketing activity.

In many instances, the statute requires a report of the total number of cases in which a specific type of transaction has occurred. This affects the way that transaction data are reported. A case may have more than one occurrence of a particular type of transaction. Therefore, the case must be concluded before one can report whether the case meets the requirement to be counted and to ensure that no case is counted more than once. Thus, tables based on transaction data are sourced only from cases closed during the reporting period, so these tables also are subject to the same limitations noted in the section on cases filed and closed, not only because of the requirement to characterize the type of case, but also because case activity that occurred prior to October 17, 2006, on a case that closed during the reporting period would not have been captured, causing transaction data to be underreported.

In addition, because a case may have more than one occurrence of a transaction but the char-

acteristics of each occurrence may be different, the case must be counted in each column of a table whenever any occurrence meets the criteria for data in that column. For example, a debtor may enter into more than one reaffirmation agreement. A case is counted in each column of the table whenever the case has one or more reaffirmation agreements meeting the criteria for such column. If a debtor enters into three reaffirmation agreements, two of which are endorsed by the debtor’s attorney and one of which is not endorsed by the debtor’s attorney, the case is counted in the column representing “number of cases with agreements filed pro se” as well as the column representing the “total number of cases with agreements filed.” Furthermore, if only one reaffirmation agreement in the example above is approved and two are denied by the court, the case is also counted in the column representing the “number of cases with agreements approved.”

As noted above, the Judiciary had to implement new data collection methods based on docketing activity to report the specific transaction data required by BAPCPA. These new methods consisted of changes to information technology systems, forms, and court practices implemented in October 2006 to correspond with the effective date of certain provisions of BAPCPA. Due to the complex nature of capturing certain types of data in the ordinary course of bankruptcy practice and the challenges associated with new information technology systems and processes, some residual issues still affect the uniform and accurate collection of transaction data. The Judiciary has identified many of these issues and is actively pursuing remedies. For example, when the data rely on court orders, at this time only orders on motions (or the equivalent) are captured. Data on orders issued by judges without a motion by one of the parties (*sua sponte* orders) are not currently collected for reporting. The Judiciary has initiated additional data collection methods to capture *sua sponte* orders for future reports.

Debtor-Provided Data

Many of the BAPCPA reporting requirements rely on data provided by debtors via the submission of forms, schedules, motions, agreements and other filings with the court. These data are provided exclusively by the debtors and cannot be validated either by the courts or the AO.

Some data are collected from the forms and schedules submitted at filing. Debtors or their attorneys may fail to provide some or all of the data required for these tables. When incomplete data are submitted, comparisons among two or more columns in any table may overstate or understate differences. Similarly, when all required data are missing, either because of omission or delayed submission, comparisons among the data and the number of cases become unreliable. Therefore, caution should be used when comparing columns of data or comparing any column of data to the number of cases filed.

Because transaction data are captured from docket activity, the collection of accurate transaction data relies upon debtors, their attorneys, or other case parties, who file motions, agreements, and other documents with the court. If a filer fails

to note the correct court event at docketing, the data may not be reported accurately or at all. If the filer submits multiple matters under a single court event, the activities either will be undercounted or not counted at all.

Tables

In accordance with the statute, the bankruptcy statistics are itemized by chapter with respect to Title 11 and report on data in cases filed by individual debtors with predominantly nonbusiness debts (“consumer cases”). In chapter 7 cases, a debtor’s assets are liquidated and the non-exempt proceeds are distributed to creditors. Under chapter 11, businesses and individuals are allowed to continue operating while they formulate plans to reorganize and repay their creditors. Under chapter 13, individuals with regular income and debts below a statutory threshold make installment payments to creditors pursuant to a court-confirmed plan. The tables noted in the chart below have been created for this report as specified in 28 U.S.C. § 159(c).

The naming convention used for the tables in this report provides that the alphabetic character

BAPCPA Report Tables		
Code	Description	BAPCPA Table
28 U.S.C. § 159(c)(3)(A) and 28 U.S.C. § 159(c)(3)(C)	Assets and Liabilities Reported by Debtors	1
28 U.S.C. § 159(c)(3)(B)	Income and Expenses Reported by Debtors	2
28 U.S.C. § 159(c)(3)(D)	Time Interval from Filing to Closing	3
28 U.S.C. § 159(c)(3)(E)	Reaffirmation Agreements	4
28 U.S.C. § 159(c)(3)(F)(i)	Property Valuation Orders	5
28 U.S.C. § 159(c)(3)(F)(ii)	Chapter 13 Cases Closed by Dismissal or Plan Completion	6
28 U.S.C. § 159(c)(3)(F)(iii)	Prior/No Prior Filings Reported by Debtors	7
28 U.S.C. § 159(c)(3)(G)	Creditor Misconduct and Punitive Damages	8
28 U.S.C. § 159(c)(3)(H)	Rule 9011 Sanctions Imposed Against Debtor’s Attorneys	9

immediately following the table number indicates the chapter(s) of the bankruptcy code associated with the cases included in the table. “A” indicates cases under chapter 7 only; “B” indicates cases under chapter 11 only; “D” indicates cases under chapter 13 only; and “X” indicates cases under chapters 7, 11, and 13 combined. For example, BAPCPA Table 1D includes only cases under chapter 13. “C” is reserved for cases filed under chapter 12, which does not apply to consumer cases.

Assets and Liabilities Reported by Debtors

The BAPCPA Table 1 series reports the assets and liabilities of debtors in total and by category of assets and liabilities, as well as the total net scheduled debt, reported by the debtors on the Official Bankruptcy Form 6 – Summary (B6 – Summary of Schedules). “Net scheduled debt” is the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories that are predominantly non-dischargeable. Debt that is predominantly non-dischargeable may include, but is not limited to, domestic support obligations, taxes, student loans and pension obligations. Thus, net scheduled debt approximates the amount of debt reported by the debtor at the time of filing that may be eligible for discharge (without regard to security interests) during the case and is referred to in 28 U.S.C. § 159(c)(3)(C) as the “aggregate amount of debt discharged in cases filed during the reporting period.”

A discharge in bankruptcy releases the debtor from personal liability for certain specified types of debts. The discharge is a permanent order prohibiting the creditors of the debtor from taking any form of collection action on discharged debts, including legal action and communications with the debtor such as telephone calls, letters, and

personal contacts. However, although a debtor is not personally liable for discharged debts, a valid lien (i.e., a charge upon specific property to secure payment of a debt) that has not been avoided (i.e., made unenforceable) in the bankruptcy case will remain after the bankruptcy case. Therefore, a secured creditor may enforce the lien to recover the property secured by the lien. The statute does not provide for linkage of either real or personal property valuations with any claims by creditors secured by such property in determination of “dischargeable” debt. As a consequence, “net scheduled debt” will overstate the amount of debt actually discharged by the amount of unavowed secured debt (e.g., mortgage(s) on real property and many car loans).

All tables in this series present data on cases filed during the reporting period by individual debtors with primarily nonbusiness debt. The data for these tables are provided exclusively by the debtors and cannot be validated by the courts. These data typically are provided by the debtor at the time of filing or within approximately 15 days of filing as required by statute and are not typically updated during the case. Only data provided during the initial filing of each case are counted in this table; data for reopened and transferred cases are excluded to prevent duplicate reporting.

BAPCPA Table 1X shows that individual debtors with primarily nonbusiness debt seeking bankruptcy protection under chapters 7, 11, or 13 during 2007 reported holding total assets in the aggregate amount of \$108,485,865,000. Seventy-seven percent of these assets were categorized as real property, and 23 percent were categorized as personal property. Filers in the Central District of California (CA-C) reported the largest amount of total assets in any district (\$11,917,549,000),⁴ followed by the Middle District of Florida (FL-M) (\$4,268,397,000) and the Eastern District of Michigan (MI-E) (\$4,253,439,000). Debtors reported

⁴ A pro se debtor in CA-C filed two separate chapter 13 cases and reported total assets of \$2,386,226,981 in each case; total liabilities reported by the debtor in the two cases were \$894,614 and \$1,001,314, respectively. These data are likely inaccurate, and the debtor has been ordered to appear to explain why the filings should not be considered abusive.

total liabilities in the aggregate amount of \$139,111,188,000, with 64 percent of liabilities categorized as secured claims, 2 percent categorized as unsecured priority claims, and 34 percent categorized as unsecured non-priority claims. Overall, debtors categorized 96 percent of debts and obligations as dischargeable debt. The highest total was that for debtors in CA-C, who reported \$8,674,868,000 in liabilities, followed by MI-E with \$8,631,820,000 in liabilities.

BAPCPA Table 1A shows that debtors in chapter 7 consumer cases reported total assets in the aggregate amount of \$51,245,179,000. Seventy-nine percent of assets were categorized as real property, and 21 percent were categorized as personal property. Filers in CA-C reported the largest amount of total assets at \$3,701,819,000, followed by debtors in MI-E (\$2,595,331,000) and the Eastern District of California (CA-E) (\$2,370,913,000). Debtors reported total liabilities in the aggregate amount of \$83,134,777,000, with 55 percent of liabilities categorized as secured claims, 2 percent categorized as unsecured priority claims, and 44 percent categorized as unsecured non-priority claims.⁵ Debtors in consumer cases in MI-E reported \$6,787,306,000 in total liabilities, the highest amount, followed by those in CA-C with \$5,522,764,000. Overall, debtors categorized 97 percent of debts and obligations reported as dischargeable debt.

The aggregate amount of total assets in chapter 11 consumer cases is reported as \$1,665,560,000 in BAPCPA Table 1B. Fifty-four percent of assets were categorized as real property, and 46 percent were categorized as personal property. Debtors in CA-C reported the largest amount of total assets in any district (\$485,255,000), followed by filers in Northern District of California (CA-N) (\$165,399,000). As reflected in the table, debtors reported total liabilities in the aggregate amount of \$1,255,404,000, with 67 percent of liabilities

categorized as secured claims, 4 percent categorized as unsecured priority claims, and 29 percent categorized as unsecured non-priority claims. Debtors in consumer cases in CA-N recorded the largest dollar amount of total liabilities for any district at \$131,673,000, and those in CA-C reported the second-largest dollar amount of liabilities with \$117,752,000. Overall, debtors characterized 94 percent of debts and obligations as dischargeable debt. Consumer cases filed under chapter 11 are relatively infrequent (about 10% of chapter 11 cases filed in calendar year 2007 were nonbusiness cases) and are generally believed to be the result of debtors' failing to meet the debt restrictions of 11 U.S.C. § 109(e) that currently restrict chapter 13 debtors' to those with less than \$336,900 in non-contingent, liquidated, unsecured debts and non-contingent, liquidated, secured debts of less than \$1,010,650.

As reflected in BAPCPA Table 1D, debtors filing consumer cases under chapter 13 reported total assets in the aggregate amount of \$55,575,126,000, with 76 percent categorized as real property and 24 percent categorized as personal property. Debtors in CA-C reported \$7,730,476,000 in total assets,⁶ the largest amount for any district, while those in the Northern District of Georgia (GA-N) had the second-highest total assets with \$2,383,801,000. Total liabilities were reported in the aggregate amount of \$54,721,006,000, with 77 percent categorized as secured claims, 2 percent categorized as unsecured priority claims, and 20 percent categorized as unsecured non-priority claims.⁷ Debtors in consumer cases in CA-C recorded the largest dollar amount of total liabilities for any district with \$3,034,352,000, followed by those in CA-N, who reported \$2,702,055,000 in total liabilities. Overall, debtors categorized 95 percent of debts and obligations as dischargeable debt.

⁵ Due to rounding, percentages may not total 100 percent.

⁶ See footnote 3.

⁷ See footnote 4.

Data in this table are subject to the limitations described in the section above on debtor-provided data. Therefore, caution should be used when comparing data in any category of assets or liabilities to that in any other category of assets or liabilities or when comparing data in any category of assets or liabilities to the number of cases filed.

Income and Expenses Reported by Debtors

The BAPCPA Table 2 series presents data on the income and expenses of debtors as reported by the debtors themselves on the Official Bankruptcy Form 6 – Summary (B6 – Summary of Schedules) and Official Bankruptcy Form 22A, 22B or 22C. All tables in this series address cases filed during the reporting period by individual debtors with primarily nonbusiness debt. The data for these tables are provided exclusively by the debtors and cannot be validated by the courts. A debtor typically provides these data at the time of filing or within 15 days of filing as required by statute. Only data provided during the initial filing of each case is counted in this table; data for reopened and transferred cases are excluded to prevent duplicate reporting. Median values are calculated only when 10 or more cases are reported.⁸

As reflected in BAPCPA Table 2X, in 2007 a total of 798,370 consumer cases were filed under chapters 7, 11, and 13 across the nation. The median current monthly income of all debtors was \$2,753, the median average monthly income⁹ was \$2,490, and the median average expenses¹⁰ were \$2,433. The District of Maryland (MD) had the highest median current monthly income with \$3,336, and the District of Puerto Rico (PR) had the lowest median current monthly income with

\$1,550. Districts in the first quartile reported median current monthly income between \$1,550 and \$2,487, districts in the second quartile reported median current monthly income between \$2,488 and \$2,708, districts in the third quartile reported median current monthly income between \$2,709 and \$2,942, and districts in the fourth quartile reported median current monthly income between \$2,943 and \$3,337.

The Southern District of Texas (TX-S) had the highest median average monthly income with \$3,191, and PR had the lowest with \$1,636. Districts in the first quartile reported median average monthly income between \$1,636 and \$2,215, districts in the second quartile reported median average monthly income between \$2,216 and \$2,390, districts in the third quartile reported median average monthly income between \$2,391 and \$2,645, and districts in the fourth quartile reported median average monthly income between \$2,646 and \$3,192. The Southern District of California (CA-S) had the highest median average expenses with \$3,211, and PR had the lowest with \$1,417.

A total of 480,635 chapter 7 consumer cases were filed in 2007, as shown on BAPCPA Table 2A. The median current monthly income reported in such cases was \$2,491, the median average monthly income was \$2,150, and the median average expenses were \$2,405. The District of New Hampshire (NH) had the highest median current monthly income with \$3,028, and PR had the lowest with \$914. Debtors in the Eastern District of Texas (TX-E) had the highest median average monthly income with \$2,659, and PR had the lowest with \$1,000. The median average for expenses was highest in CA-S at \$2,969, and was lowest in PR at \$1,110.

⁸ It is not meaningful to calculate medians when the number of cases is small. For this reason, the AO does not calculate medians for fewer than 10 cases at any aggregate level (e.g., district, circuit).

⁹ Debtors calculate their average monthly incomes during the six months prior to filing and report them to the courts on line 16 of Schedule I. The AO then calculates the median of the average monthly incomes reported by debtors for all districts and circuits.

¹⁰ Debtors calculate their average monthly expenses during the six months prior to filing and report them to the courts on line 18 of Schedule J. The AO then calculates the median of the average monthly expenses reported by debtors for all districts and circuits.

BAPCPA Table 2B reveals that a total of 587 consumer cases were filed under chapter 11 during 2007, reflecting the limited use of chapter 11 reorganizations by individual debtors. Twenty-five districts reported no filings under this chapter. CA-N reported the largest number of filings with 63. Nationwide, the median current monthly income reported was \$5,951, the median average monthly income was \$8,889, and the median average expenses were \$10,079. Of the 18 districts for which medians were calculated, CA-C had the highest median current monthly income with \$12,524. CA-C also had the highest median average monthly income with \$15,225. The District of Arizona (AZ) had the lowest median average monthly income with \$5,309, as well as the lowest median average expenses with \$4,773. At \$17,628, the median average expenses were highest in the Eastern District of New York (NY-E).

A total of 317,148 chapter 13 consumer cases appear on BAPCPA Table 2D as filed in 2007. The median current monthly income for such cases was \$3,307, the median average monthly income was \$3,146, and the median average expenses were \$2,482. NY-E had the highest median current monthly income with \$5,871, and PR had the lowest with \$1,749. Debtors in NY-E had the highest median average monthly income at \$5,464, and debtors in PR had the lowest at \$1,799. The median average expenses were highest in CA-C at \$4,646 and lowest in the Western District of Tennessee (TN-W) at \$1,383.

Data in this table are subject to the limitations described in the section above on debtor-provided data. Therefore, caution should be used when comparing data for any category of income or expenses to data for any other category of income or expenses or when comparing data for any category of income or expenses to the number of cases filed.

Time Interval from Filing to Closing

In accordance with 28 U.S.C. § 159(c)(3)(D), BAPCPA Table 3 reports the mean time interval

between filing and closing for consumer cases under chapters 7, 11, and 13 that were closed during the reporting period. The median time interval also has been included to provide perspective on the mean value by reducing the effect of data outliers, although median values are calculated only when 10 or more cases are reported.

This table presents data on cases filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt that were closed by the end of the reporting period. Only data provided during the initial filing of each case are included in this table; data for reopened cases are excluded, as most reopened cases are filed and closed relatively quickly to settle administrative matters and do not proceed in the same way as original filings. For transferred cases, the mean and median time intervals are calculated from the date the case is received at the new location to the closing of the case at that location.

During the 12-month period ending December 31, 2007, a total of 391,071 consumer cases were terminated under chapters 7, 11, and 13, with an average time interval from filing to disposition of 129 days and a median time interval of 113 days.

Of the 337,467 chapter 7 consumer cases closed in 2007, the average time interval from filing to disposition was 124 days, and the median time interval was 112 days. The Western District of Oklahoma (OK-W) had the highest mean of any district at 190 days. OK-W also had the highest median at 174 days, and the Eastern District of Missouri (MO-E) had the lowest median at 92 days.

A total of 139 chapter 11 consumer cases were closed in 44 districts during 2007. The average time interval from filing to disposition was 150 days, and the median time interval was 131 days. Only 3 districts had 10 or more chapter 11 cases filed: CA-C, which had a median time interval of 165 days; CA-N, which had a median time interval of 109 days; and MD, which had a median time interval of 104 days.

A total of 53,465 chapter 13 consumer cases were filed on or after October 17, 2006, and termi-

nated during 2007. The average time interval from filing to disposition was 155 days, and the median time interval was 137 days. The Western District of New York (NY-W) had the highest mean of any district at 248 days. NY-W had the highest median at 239 days, and the District of Massachusetts (MA) had the lowest median at 61 days. The median and mean are not representative because the majority of the chapter 13 cases were dismissed, not discharged.¹¹

Data in this table are subject to the limitations described in the section above on data on cases filed and closed. Because the maximum period that a case can be open is 440 days, the means and medians in this first report are especially low for chapter 11 and chapter 13 cases and will likely increase in the future. Therefore, caution should be used when relying on these data as representative of typical case duration.

Reaffirmation Agreements

A debtor who wishes to keep property that otherwise would be subject to repossession may enter into a reaffirmation agreement with the creditor to continue paying a dischargeable debt following the bankruptcy and to keep the property. If an attorney represented the debtor during the bankruptcy, the debtor's attorney may or may not endorse the reaffirmation agreement. For purposes of this table, a reaffirmation agreement is considered "pro se" if it was submitted without the endorsement of an attorney, regardless of whether or not the debtor was represented in the case by an attorney.

This table reports only on reaffirmations filed in cases under chapter 7. Although reaffirmation agreements are technically possible under other chapters of the Bankruptcy Code, as a practical matter, they are found almost exclusively in chapter 7. This is largely the direct result of provisions in the code under chapters 11, 12, and 13 that permit modification and restructuring of secured

claims. Modification of a secured creditor's rights is not possible under chapter 7 without consent of the creditor; hence, a debtor who wishes to retain collateral securing a claim will need to negotiate a reaffirmation agreement acceptable to the creditor. However, under chapters 11, 12, and 13, subject to certain restrictions, debtors may alter the terms of a secured claim and still retain use of the collateral, obviating the need for a reaffirmation agreement.

Varying local practices govern the procedures for approving and denying reaffirmation agreements filed with the courts. In many districts, the court does not issue an order with respect to a reaffirmation agreement filed with the endorsement of the debtor's attorney. In these instances, the reaffirmation agreement between the debtor and creditor are implicitly accepted without further court action and may or may not be recorded or otherwise noted in court documentation of the case. Reaffirmation agreements filed without the endorsement of an attorney may or may not receive a ruling by order of the judge; however, in many cases the judge will hold a hearing regarding the reaffirmation agreement. In some districts, every reaffirmation agreement must be submitted with a motion and draft order, as well as an affidavit of concurrence by the debtor's attorney (if any), and be subject to a hearing before the judge. Often, multiple reaffirmation agreements may be submitted together under a single motion, some with and others without attorney concurrence, and the order may lack clarity as to the decision of the court on individual reaffirmation agreements. Some courts have changed or are considering changes to their local rules and procedures to better track and document reaffirmation agreements and actions on them.

Regarding those instances in which the court issues an order approving or denying a reaffirmation agreement, at this time data on orders issued by a judge other than in response to a motion (i.e., *sua sponte* orders) cannot be collected for reporting. For these reasons, the number provided for

¹¹ See BAPCPA Table 6.

approved reaffirmation agreements may not be representative of the total number of reaffirmation agreements executed by the parties. Furthermore, the difference between the total number of reaffirmation agreements filed and the number of reaffirmation agreements approved does not represent the number of reaffirmation agreements denied.

As BAPCPA Table 4 illustrates, a total of 113,634 reaffirmation agreements were reported as filed in 80,839 chapter 7 consumer cases terminated during the 12-month period ending December 31, 2007.¹² MI-E had the highest total number of cases in which reaffirmation agreements were filed (4,755), followed by the Northern District of Illinois (IL-N) (3,252). In 10 percent of cases with reaffirmation agreements filed, one or more agreements were submitted without the endorsement of an attorney (*pro se*). The Western District of Virginia (VA-W) had the highest number of cases in which at least one *pro se* reaffirmation agreement was filed (601 out of 638). The District of South Carolina (SC) had the highest percentage of cases in which one or more reaffirmation agreements were filed *pro se* (100 percent).

Approximately 1 percent of cases in which a reaffirmation agreement was filed had at least one reaffirmation agreement approved by order of the court. However, as described above, this does not indicate that reaffirmation agreements were denied in 99 percent of the cases. In 2007, the Northern District of Mississippi (MS-N) reported the highest number of cases in which at least one reaffirmation agreement was approved (225 out of 580), followed by the Southern District of Illinois (IL-S) (121 out of 643) and the Eastern District of Oklahoma (OK-E) (117 out of 366). Together, these three districts accounted for 52 percent of the cases in which at least one reaffirmation agreement was approved.

BAPCPA Table 4 presents data on cases filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt that were closed by the end of the reporting period. Therefore, the data in this table are subject to the limitations described in the section above on data on cases filed and closed. Caution should be used when relying on these data as representative of cases closed during a reporting period. Furthermore, data in this table are subject to the limitations of collecting data on docketing activity as described above in the sections on debtor-provided data and transaction data, including limitations with respect to *sua sponte* orders. Since data on reaffirmation agreements are captured from docket activity, the collection of accurate data for this table is dependent on the submission and accurate recording of correct motions, agreements, and other filings with the court. If a filer fails to note the correct court event at docketing, the data may not be reported accurately or at all.

Property Valuation Orders

In some cases, motions are made to the court to determine the value of property securing an allowed claim pursuant to 11 U.S.C. §§ 506 and 1325 and to F.R.B.P. 3012. BAPCPA Table 5 reports the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim, as well as the number of final orders entered determining the value of property securing a claim as provided in 28 U.S.C. § 159(c)(3)(F)(i). Additional columns of data were added to provide further perspective on the required data. Due to the complexities of implementing the new data collection methods for transaction data, certain data collection issues have precluded the collection of all of the indicators as to whether a determination

¹² Because a debtor may enter into more than one reaffirmation agreement, a case is counted in any column of the table for which the case has one or more reaffirmation agreements that meet the criteria for that column. For example, if a debtor enters into three reaffirmation agreements, two of which are endorsed by the debtor's attorney and one of which is not endorsed by the debtor's attorney, the case is counted in the column for "number of cases with agreements filed *pro se*." If only one of the three reaffirmation agreements in the example above is approved by the court, the case is counted in the column for "number of cases with agreements approved."

of value is above or below the amount of the claim. These issues have been identified by the AO and are being analyzed.

A total of 54,958 chapter 13 consumer cases were terminated in 2007, including 1,627 cases in which plans were completed and 53,007 cases that were dismissed.¹³ Final orders determining the value of property securing a claim were entered in 201 of the cases closed in 2007. In 75 cases, the value of property was reported in one or more final orders; in 63 of those cases, at least one final order valued the property at less than the full amount of the claim.

Because a case may have more than one final order determining the value of property securing a claim, 273 final orders were entered in 201 cases. Determinations of the value of property were reported in 87 final orders, of which 75 were valued below the amount of the claim. CA-E reported that 48 final orders had been entered determining the value of property securing a claim, the highest total of any district. Sixty percent of the final orders determining the value of property securing a claim (165 final orders) were entered in the districts that constitute the 11th Circuit. Two of these districts, the Middle District of Florida (FL-M) and the Northern District of Alabama (AL-N), each reported 45 instances in which final orders were entered determining the value of property securing a claim.

BAPCPA Table 5 reports on cases that were filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt and closed by the end of the reporting period. Therefore, the data in this table are subject to the limitations described in the section above on case filing and case closing data. In particular, since the typical chapter 13 plan provides for payments over a period of three to five years, the proportion of closings by plan completion relative to cases closed by dismissal is artificially low in this report. The issue of property valuation often may not arise until the case is at or near confirmation. Consequently,

motions to value collateral should be relatively more infrequent among chapter 13 cases that are dismissed, especially among those dismissed prior to confirmation. Furthermore, since a plan under chapter 13 may not be completed for several years, and valuation orders will not be reported until the case is closed, the number of final property valuation orders reported for cases closed during 2007 will not be representative of a typical year. Thus, caution should be used when relying on these data as representative of typical cases closed during a reporting period.

Furthermore, data in this table are subject to the limitations for docketing activity described in the sections above on debtor-provided data and transaction data. Because data on valuation orders are captured from docket activity, collection of accurate data for this table is dependent on the submission of correct motions, agreements, and other matters with the court. If a filer fails to note the correct court event at docketing, the data may not be reported accurately or at all. In addition, if a filer submits multiple filings under a single court event, the activities will either be undercounted or not counted at all.

Chapter 13 Cases Closed by Dismissal or Plan Completion

BAPCPA Table 6 shows the number of chapter 13 consumer cases in which plans were completed, separately itemized by the number of modifications made to the plans as well as the number of chapter 13 consumer cases dismissed, the number dismissed for failure to make payments, and the number refiled after dismissal. For purposes of this table, a chapter 13 consumer case is counted as “refiled after dismissal” if the case was filed during the reporting period by one or more debtors who were party to a separate chapter 13 consumer case that was dismissed no more than 180 days prior to the filing date of the current case. Cases that are

¹³ See BAPCPA Table 6.

reopened are not included in the total for cases refiled after dismissal.

A total of 54,958 chapter 13 consumer cases filed on or after October 17, 2006, were closed by dismissal or plan completion during the 12-month period ending December 31, 2007. BAPCPA Table 6 illustrates that 53,007 of these cases were dismissed, and 1,627 cases were discharged after the debtors completed repayment plans. Of the 1,627 chapter 13 consumer cases in which debtors completed repayment plans, 7 cases had plans that were modified at least once prior to plan completion. The Northern District of New York (NY-N) had the most plan completions with 569,¹⁴ and the District of New Jersey (NJ) ranked a distant second with 69 plan completions. Overall, only 3 percent of cases were closed due to plan completions (see the limitations described above in the section on data on cases filed and closed).

The Northern District of Georgia (GA-N) had 4,622 cases closed by dismissal, the highest total for all districts. Nationwide, failure to make payments was cited in 32 percent of cases as the reason for dismissal. Eighty percent of all cases dismissed in the Southern District of Alabama (AL-S) were dismissed for failure to make payments. BAPCPA Table 6 shows that 7,771 cases were refiled after dismissal, with 852 cases refiled in GA-N and 774 in TN-W.

This table presents data on cases that were filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt that were closed by the end of the reporting period. Thus, data in this table are subject to the limitations described in the section above on data on cases filed and closed. Caution should be used when relying on these data as representative of typical rates of plan completion, case dismissal, and re-filing. The number of cases refiled after dismissal will be particularly affected, because data on both refiled cases and the prior dismissed cases are sub-

ject to these limitations. In addition, it appears that many cases were erroneously reported as closed for failure to pay plan payments when, in fact, the cases were closed for failure to pay fees.

Prior/No Prior Filings Reported by Debtors

BAPCPA Table 7 reports the number of cases in which individual debtors with primarily nonbusiness debts filed for protection under chapter 13 during the reporting period and indicated on the voluntary petition for bankruptcy (Official Form 1) that they previously had filed for bankruptcy under any chapter of the bankruptcy code during the preceding eight years (“prior filings”). Data for this table are captured at the time of filing, and only data on the initial filing of each case are counted in this table; data on reopened cases are excluded to prevent duplicate reporting. The data for this table are provided exclusively by the debtors.

Of the 317,146 cases in which debtors sought protection under chapter 13 in 2007, in 30 percent of the cases (93,737) debtors indicated they had filed for bankruptcy during the previous 8 years. In the remaining 70 percent of cases, debtors either indicated they had not filed for bankruptcy during the previous 8 years (223,245) or did not report this information (164 cases). TN-W had the largest number of cases in which debtors reported prior filings at 6,771 cases, followed closely by GA-N with 6,086 cases. Debtors filing in TN-W also recorded the highest percentage of cases with prior filings at 51 percent. The district with the lowest percentage of cases in which debtors indicated prior filings was the District of Alaska (AK) with only 10 percent of cases.

Data in this table are subject to the limitations described in the section above on debtor-provided data.

¹⁴This number is likely overstated because several hundred transferred cases were inadvertently duplicated, leading to an overcount in the number of cases closed with completed plans.

Creditor Misconduct and Punitive Damages

Title 28 U.S.C. § 159 (c)(3)(G) requires the Director of the AO to report on “the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct.” However, creditor misconduct is not a specific cause of action under Title 11. At least five violations of the Bankruptcy Code could be considered creditor misconduct: dismissal of an involuntary petition (11 U.S.C. § 303(i)), willful violation of the automatic stay (11 U.S.C. § 362(h)), collusive bidding (11 U.S.C. § 363(n)), violation of injunction against attempting to collect a discharged debt (11 U.S.C. § 524(a)(2) and (3)), and determination of dischargeability of consumer debt (11 U.S.C. § 523(d)). In addition, at least six activities related to the litigation process could also be considered creditor misconduct under certain circumstances: sanctionable filings under Federal Rules of Bankruptcy Procedure (F.R.B.P.) 9011, improper activity related to pretrial conference and order (F.R.B.P. 7016), sanctionable discovery requests, responses or objections (F.R.B.P. 7026), failure to make or cooperate in discovery (F.R.B.P. 7037), failure to prosecute or to comply with court orders and rules (F.R.B.P. 7041), and unreasonably or vexatiously multiplying proceedings (28 U.S.C. § 1927). As a consequence, what may be reported as creditor misconduct in one district may not be so reported in another.

A sanction imposed for creditor misconduct is likely limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Although sanctions may consist of or include directives of a nonmonetary nature, an order to pay a penalty into court, or an order directing payment to the movant of some or all of the reasonable attorneys’ fees and other expenses incurred as a direct result of the violation, the Bankruptcy Code and Rules do not permit the award of punitive damages for every violation classifiable as creditor misconduct. How-

ever, only punitive damages are reflected in the BAPCPA Table 8 series. Because a creditor may be reprimanded for misconduct in many ways, this table does not provide a comprehensive picture of sanctions imposed against creditors in bankruptcy courts.

BAPCPA Table 8X shows that creditors were cited for misconduct and ordered to pay punitive damages in three consumer cases closed during the 12-month period ending December 31, 2007. In one chapter 7 consumer case in the Eastern District of Louisiana (LA-E), punitive damages in the amount of \$750 were awarded, and in another chapter 7 case in the Southern District of Ohio (OH-S), punitive damages were awarded in the amount of \$500. No creditor misconduct was reported for chapter 11 consumer cases closed during 2007. One instance of creditor misconduct in a chapter 13 consumer case occurred in the Eastern District of Tennessee (TN-E) that resulted in an award of \$10,000 in punitive damages.

This table reports on cases that were filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt and closed by the end of the reporting period. Therefore, the data in this table are subject to the limitations described in the section above on data on cases filed and closed. Caution should be used when relying on these data as representative of typical for cases closed during a reporting period. Furthermore, data in this table are subject to the limitations of docketing activity as described in the sections above on debtor-provided data and transaction data, including those limitations involving *sua sponte* orders. Data on creditor misconduct are captured from docket activity, so accurate collection of data for this table is dependent on accurate docketing and submission of correct information on motions, agreements, orders, and other filings with the court. If a filer fails to note the correct court event at docketing, the data may not be reported accurately or at all. In addition, if a filer submits multiple filings under a single court event, the activities will be undercounted or not counted at all.

Rule 9011 Sanctions Imposed Against Debtors' Attorneys

FR.B.P. 9011 provides that attorneys may be sanctioned for improper or frivolous representations to the court submitted in any petition, pleading, written motion, or other paper. The rule states that "a sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." Any "sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, ... or an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." The BAPCPA Table 9 series captures only misconduct that rises to the level required for sanctions under FR.B.P. 9011. Because a debtor's attorney may be reprimanded for misconduct in other ways, this table does not provide a comprehensive picture of sanctions imposed against debtors' attorneys in bankruptcy courts.

BAPCPA Table 9X shows 406,067 consumer cases filed on or after October 17, 2006, and terminated during the 12-month period ending December 31, 2007; sanctions were imposed against debtors' attorneys in 5 of these cases. FR.B.P. 9011 sanctions were imposed against debtors' attorneys in three chapter 7 consumer cases. One of these cases was in the Eastern District of

Virginia (VA-E), but in that case no damages were imposed. Total damages of \$4,000 were awarded in two cases in CA-E. No sanctions were imposed in any chapter 11 consumer cases. Of the 54,958 chapter 13 consumer cases terminated in 2007, sanctions and damages were assessed in two cases in the Middle District of Georgia (GA-M), with damages awarded in the amount of \$1 in each case.

This table reports on cases that were filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt and closed by the end of the reporting period. Therefore, the data in this table are subject to the limitations described in the section above on data on cases filed and closed. Caution should be used when relying on these data as representative or typical of cases closed during a reporting period. Furthermore, data in this table are subject to the limitations of docketing activity as described in the sections above on debtor-provided data and transaction data, including limitations involving *sua sponte* orders. Data on FR.B.P. 9011 sanctions are captured from docket activity, so accurate collection of data for this table is dependent on submission of correct information on motions, agreements, and other filings with the court. If a filer fails to note the correct court event at docketing, the data may not be reported accurately or at all. In addition, if a filer submits multiple filings under a single court event, the activities will either be undercounted or not counted at all.