# 2010 Report of Statistics Required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

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# Contents

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## Introduction

Pursuant to 28 U.S.C. § 159(b), enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the Director of the Administrative Office of the United States Courts (AO) is required to submit an annual report to Congress on certain bankruptcy statistics detailed in 28 U.S.C. § 159(c). 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. This report is prepared to fulfill this requirement. Tables in this report display data in the aggregate, by circuit, and by district.

## Summary of Findings

During calendar year 2010, more than 1.5 million bankruptcy petitions were filed by individuals with predominantly nonbusiness debt, an increase of 9 percent over the number of filings in calendar year 2009. Approximately 71 percent of these cases, the same percentage as in 2009, were filed under chapter 7, in which a debtor's assets are liquidated and the nonexempt proceeds are distributed to creditors. About 28 percent, down from 29 percent in 2009, were filed under chapter 13, in which individuals who have regular income and debts below a statutory threshold make installment payments to creditors pursuant to a court-confirmed plan. One percent of the cases were filed under chapter 11, which allows businesses and individuals to continue operating while they formulate plans to reorganize and repay their creditors.[1]

More than 1.4 million consumer cases—that is, cases with predominantly nonbusiness debt—were closed during calendar year 2010. Of these, approximately 1.3 million (about 92 percent of the total) were filed after October 17, 2006, and therefore lie within the scope of the reporting requirement.[2] Approximately 85 percent of the 1.3 million closed consumer cases included in the data analyzed for this report were closed under chapter 7, about 15 percent were terminated under chapter 13, and fewer than 1 percent were closed under chapter 11. Since the duration of a typical chapter 11 case or chapter 13 case is three to five years, closings under these chapters are somewhat underrepresented in the data analyzed in this report. Likewise, closings under chapter 7 are overrepresented relative to the total population of cases closed by the bankruptcy courts in 2010.

Consumer debtors seeking bankruptcy protection under chapters 7, 11, or 13 during 2010 reported holding total assets in the aggregate

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[1] Consumer cases filed under chapter 11 are relatively infrequent (about 14 percent of chapter 11 cases filed in calendar year 2010 were nonbusiness cases) and are generally believed to result when debtors exceed the debt restrictions of 11 U.S.C. § 109(e), which, through March 31, 2010, restricted 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. Effective April 1, 2010, those limits were raised to $360,475 and $1,081,400, respectively.

[2] In 2007, 47 percent of the cases closed were eligible for inclusion in this report; in 2008, the total rose to 72 percent; in 2009, the total rose to 83 percent. This report includes data from 99 percent of the chapter 7 nonbusiness cases (1,129,960 of 1,141,555) terminated during 2010, 93 percent of the chapter 11 cases (892 of 958), and 66 percent of the chapter 13 cases (206,987 of 315,142).

amount of $407 billion and total liabilities in the aggregate amount of $473 billion. However, two debtors—one each in the Western District of Washington (WA-W) and the Southern District of Texas (TX-S)—accounted for nearly $200 billion of these assets and $100 billion of these liabilities. Excluding the assets and liabilities of those two debtors, the total assets reported by all other consumer debtors rose 5 percent over the comparable 2009 numbers, and the total liabilities for the same set of cases rose 15 percent over the comparable data for 2009. (When considering the magnitude of these increases, recall that consumer filings in 2009 rose 9 percent over the previous year.)

The median average monthly income reported by all debtors was $2,800 (3 percent higher than 2009), and the median average reported monthly expenses were $2,872 (2 percent higher than 2009).[3] From filing to disposition, chapter 7 consumer cases closed in 2010 had a mean time interval of 178 days and a median time interval of 120 days. A total of 359,972 reaffirmation agreements were reported as filed in 251,243 chapter 7 consumer cases terminated during 2010. In 26 percent of the chapter 13 cases filed during 2010, debtors indicated they had filed for bankruptcy during the previous eight years, 2 percent fewer than in 2009.

## Tables

In accordance with BAPCPA, the bankruptcy statistics in this report are itemized by chapter of the Bankruptcy Code and report only data in cases filed by individual debtors with predominantly nonbusiness debts ("consumer cases"). In chapter 7 cases, debtors' assets are liquidated, and the nonexempt proceeds are distributed to creditors. Under chapter 11, debtors are allowed to continue operating while they formulate plans to reorganize and repay their creditors. Businesses are more likely than consumers to file under chapter 11, although some consumers whose debts exceed statutory

**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 Debtors' Attorneys | 9 |

[3] Debtors calculate their average monthly incomes and average monthly expenses during the six months prior to filing and report them to the courts on line 16 of Schedule I (income) and line 18 of Schedule J (expenses). The AO then calculates the median of the average monthly incomes reported by debtors for all districts and circuits.

thresholds for chapter 13 file under chapter 11. Under chapter 13, individuals with regular income and debts below a statutory threshold make installment payments to creditors pursuant to court-confirmed plans. The tables noted in the list on page 6 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 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, Table 1D reports assets and liabilities for cases filed under chapter 13.[4]

## Methodology and Data Limitations

### Debtor-Provided Data

The U.S. bankruptcy courts send the AO data when a case is filed, when motions are entered in the case, and when the case is terminated. The data are then compiled annually for the purpose of this report. Many BAPCPA tables, particularly those reporting data on debtors’ assets, liabilities, income, and expenses, rely on data provided by debtors when they submit forms, schedules, motions, agreements, and other filings to the court. Most of these data, as specified in 28 U.S.C. § 159(c), are provided exclusively by the debtors and are not validated either by the courts or the AO.

With respect to data collected from forms and schedules submitted at filing, debtors may fail to provide some or all of the data required for BAPCPA tables. Therefore, analyses involving two or more columns in any table may overstate or understate differences. When all required data are missing, either because of omission or delayed submission, analyses involving the data and the number of cases become unreliable. Therefore, caution should be used when analyzing columns of data or comparing any column of data to the number of cases filed.

Reliance on debtor-provided data can introduce other sources of error. One likely source of error arises when a debtor inaccurately reports assets, liabilities, income, or expenses at the time of filing. Those inaccuracies, if significant enough, can affect district, circuit, and national totals for the relevant fields in the tables in this report. An example of the impact that one or two cases can have on national data occurred in 2010, when a debtor filing a chapter 7 bankruptcy petition claimed assets of nearly $99 billion and debts of nearly $16,000, and another debtor filing a chapter 13 bankruptcy petition reported $96.9 billion in assets against $100 billion in liabilities. The debtors in these two cases account for 48 percent of all assets and 21 percent of all liabilities reported by debtors eligible for inclusion in this report.

### Data on Cases Filed and Closed

Another limitation to the data relates to tables reporting on closed cases. Under 28 U.S.C. § 159(a), clerks of court must collect statistics on debtors who meet certain criteria. Judiciary data systems in place when BAPCPA was signed into law were not capable of collecting and reporting those data. Accordingly, the Judiciary built a new data system to collect the data required under 28 U.S.C. § 159, which was put in place on October 17, 2006.

The tables in this report reflect cases filed or closed during calendar year 2010. All cases filed in 2010 are addressed in the report. However, the statute’s requirement to report on specified characteristics of specific types of debtors for which data have been collected since October 17, 2006, reduces the number of reported cases to only those commenced after October 17, 2006, and closed

[4] “C” is reserved for cases filed under chapter 12, which does not apply to consumer cases.

during 2010. As a result, tables based on cases closed during the reporting period reflect only a subset of all cases closed during the period. This limitation primarily affects cases closed under chapter 13, because cases filed under chapter 7 typically close within a year. As a result, the data in Tables 3, 5, 6, 8D, and 9D should be interpreted with particular caution, as they include a disproportionate number of cases closed without plan completion compared to all chapter 13 cases closed in 2010. For example, a typical chapter 13 case that results in a standard discharge usually exceeds three years in duration—and often takes as long as five years—and could include an order on valuation of property. On the other hand, 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 debtors dismissed during 2010 (the fourth full year after the effective date of the statute) to chapter 13 debtors discharged is higher than the ratio of dismissed debtors to discharged debtors for all chapter 13 cases closed in 2010.

An additional limitation relates to the first column of data in each table, which presents total cases. Some tables include reopened and transferred cases in the totals, but others omit these cases. Reopened and transferred cases are excluded when the data would be duplicative. For example, totals for assets and liabilities at the original filing of a case are the same for each reopening of that case. Counting the cases twice (once at filing and once at reopening) would distort the data on reported assets, liabilities, income, and expenses. In all other instances in which they would not affect the results, these cases are included.

## Transaction Data

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

In many instances, BAPCPA 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. For this reason, the case must be concluded before the AO 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 based only on data from cases closed during the reporting period. These tables 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 specific type of transaction, but the characteristics of each transaction 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 include certification from the debtor's attorney and one of which does not, 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 AO had to implement new data collection methods based on docketing activity in order 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 AO has identified many of these issues and is actively pursuing remedies. For example, previously the electronic system had captured data only from orders on motions. Courts did not gain the ability to transmit to the AO data on orders issued by judges without a motion's having been filed by one of the parties (*sua sponte* orders) until the release of version 3.2 (bankruptcy) of the Case Management/Electronic Case Files (CM/ECF) software on April 24, 2008. As a result, data from *sua sponte* orders may be less complete than data from orders on motions. Those data collection efforts are in their early stages, and the results provided are likely to change as courts respond to new reporting processes and data collection processes improve.

Because transaction data are captured from docket activity, the collection of accurate transaction data relies on debtors, their attorneys, and other case parties who file motions, agreements and other documents with the court to identify them appropriately. 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 may be undercounted or not counted at all.

## Assets and Liabilities Reported by Debtors

Tables 1A, 1B, 1D, and 1X report 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 Official Bankruptcy Form 6—Summary (B6—Summary of Schedules). All tables that report assets and liabilities (1A, 1B, 1D, and 1X) 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 a debtor at the time of filing or within approximately 15 days of filing as required by statute and are not typically updated as the case proceeds. Only data provided during the initial filing of each case are included in Tables 1A, 1B, 1D, and 1X; data for reopened and transferred cases are excluded to prevent duplicate reporting.

"Net scheduled debt" is defined in BAPCPA as 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."

"Net scheduled debt," however, overstates the amount of debt actually discharged by the amount of secured debt (e.g., mortgage(s) on real property and many car loans) that has not been voided. A discharge in bankruptcy releases the debtor from personal liability for certain specified types of debts. Although a debtor is not personally liable for discharged debts, a valid lien that has not been voided in the bankruptcy case will remain in effect after the bankruptcy case has been closed. 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.

Table 1X shows that individual debtors with primarily nonbusiness debt seeking bankruptcy protection under chapters 7, 11, or 13 during 2010 reported holding total assets in the aggregate amount of $407 billion.[5] Sixty-five percent of these assets were categorized as real property, and 35 percent were categorized as personal property. By comparison, filers in 2009 reported total assets in the aggregate amount of $200 billion. The 2010 amount, which represents a 103 percent increase in reported assets, accompanied a 9 percent increase in the number of cases filed and an 8 percent increase in the number of cases filed with complete schedules. However, excluding the two filers who each reported more than $95 billion in assets, the total assets reported by all other filers increased 5 percent over 2009. Outside of TX-S and WA-W, whose totals were disproportionately affected by the data provided by the excluded debtors, filers in the Central District of California (CA-C) reported the largest amount of total assets for any district ($27.2 billion), followed by the Eastern District of California (CA-E) ($12.0 billion) and the Northern District of California (CA-N) ($9.8 billion). Apart from TX-S and WA-W, debtors in CA-N reported the most assets per completed schedule, at $296,000 in assets on average. For courts with more than 10 filers in 2010, filers in the District of Guam (GU) reported the fewest assets, with the mean filer reporting $54,000 in assets.

Debtors reported total liabilities in the aggregate amount of $473.8 billion, with 68 percent of liabilities categorized as secured claims, 1 percent as unsecured priority claims, and 31 percent as unsecured non-priority claims.[6] Total liabilities grew 45 percent over 2009, but if the $100 billion in liabilities reported by one debtor in WA-W are excluded, liabilities reported by all other debtors rose 15 percent over 2009. Overall, debtors categorized 97 percent of debts and obligations as dischargeable debt. Aside from WA-W, the highest total was for debtors in CA-C, who reported $44.7 billion in liabilities, followed by debtors in the District of New Jersey (NJ) with $40.9 billion in liabilities.

Table 1A shows that debtors in chapter 7 consumer cases reported total assets in the aggregate amount of $235.4 billion, a 79 percent increase over the 2009 amount, with 9 percent more cases filed and 9 percent more cases with completed schedules. One of the two debtors who reported nearly $100 billion in assets filed a case under chapter 7 in TX-S. Excluding the data from that case reduces the assets reported nationally to $136.4 billion, a 4 percent increase over 2009, and causes 80 percent of assets to be categorized as real property and 20 percent as personal property. Filers in CA-C reported the largest amount of total assets at $19.1 billion, followed by debtors in CA-E ($7.2 billion) and the Northern District of Illinois ($6.6 billion). Debtors reported total liabilities in the aggregate amount of $273.9 billion, with 54 percent of liabilities categorized as secured claims, 1 percent categorized as unsecured priority claims, and 45 percent categorized as unsecured non-priority claims. The total reported for liabilities was 15 percent greater than the comparable number for 2009. The secured claims component of the liabilities rose 7 percent, and unsecured nonpriority

[5] One debtor in TX-S claimed $99 billion in assets (almost all in personal property), and one debtor in WA-W claimed $97 billion in assets (almost all in real property). These two cases account for one half of the assets reported by all consumer debtors who filed bankruptcy in 2010. The $97 billion in real property accounts for about one-third of all real property assets in this report; the $99 billion in assets were reported as personal property, accounting for more than two-thirds of all the personal property assets reported by debtors whose filings were eligible for inclusion in this report.

[6] One debtor in WA-W reported liabilities of over $100 billion, nearly all secured claims.

claims increased 35 percent. The amount of unsecured priority claims fell 60 percent.[7] Debtors in consumer cases in NJ reported $38.1 billion in total liabilities, the highest amount, followed by those in CA-C with $33.5 billion. 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 by debtors as $3.1 billion in Table 1B, an increase of 13 percent over the amount reported in comparable cases in 2009. A 29 percent rise occurred in the number of filings, and a 36 percent increase in the number of filings with complete schedules. Seventy-eight percent of assets were categorized as real property and 22 percent as personal property. Debtors in CA-C reported the largest amount of total assets in any district ($728 million), followed by filers in the Northern District of California (CA-N) ($358 million). As reflected in the table, debtors reported total liabilities in the aggregate amount of nearly $4.8 billion, 44 percent greater than the comparable 2009 figure, with 64 percent of liabilities categorized as secured claims, 2 percent as unsecured priority claims, and 34 percent as unsecured non-priority claims. Debtors in consumer cases in CA-C recorded the largest dollar amount of total liabilities for any district at $913 million, and those in the District of Arizona reported the second-largest dollar amount of liabilities with $543 million.

Overall, debtors characterized 95 percent of debts and obligations as dischargeable debt. Consumer cases filed under chapter 11 are relatively uncommon (0.1 percent of all consumer cases filed in 2010) 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 limit chapter 13 to debtors with less than $360,475 in noncontingent, liquidated, unsecured debts and noncontingent, liquidated, secured debts of less than $1,081,400.

As reflected in Table 1D, debtors filing consumer cases under chapter 13 reported total assets in the aggregate amount of $168.6 billion, an increase of 155 percent over the comparable figure for 2009, compared to an 8 percent increase in filings and a 6 percent increase in the number of filings with completed schedules. The 155 percent increase is mainly driven by the debtor in WA-W who claimed $96.9 billion in assets and $100.0 billion in liabilities. Excluding that debtor, the assets reported by consumer chapter 13 debtors rose 8 percent, and $55.2 billion of the $71.7 billion of reported assets (77 percent) were categorized as real property and 23 percent of assets as personal property. Outside of WA-W, debtors in CA-C reported $7.3 billion in total assets, the largest amount for any district, while those in CA-E had the second-highest total assets with $4.8 billion. Total liabilities were reported in the aggregate amount of $195.1 billion, 131 percent more than the comparable figure for 2009, although those totals are distorted by the debtor in WA-W who reported $100 billion in liabilities. Without that debtor, total liabilities would be $95.1 billion, and the increase in liabilities would be a more modest 12 percent. Excluding the data provided by that debtor, 76 percent of the $95.1 billion in liabilities were categorized as secured claims, 2 percent as unsecured priority claims, and 22 percent as unsecured non-priority claims, the same as 2009. Other than WA-W, debtors in consumer cases in CA-C recorded the largest dollar amount of total liabilities for any district with $10.3 billion, followed by those in CA-N, who reported $6.1 billion in total liabilities. Overall, debtors categorized 94 percent of debts and obligations as dischargeable debt.

[7] The 2009 data included one case in which the debtor reported nearly $5.2 billion in unsecured priority claims, nearly two-thirds of the national total for unsecured nonpriority claims reported nationwide. Without this case, the amount reported for unsecured priority claims in 2010 would have exceeded the amount reported for 2009.

## Income and Expenses Reported by Debtors

Tables 2A, 2B, 2D, and 2X present 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). All tables in this series address cases filed during the reporting period by individual debtors with primarily nonbusiness debt. Current monthly income data reflect income from all sources for the last full month prior to the bankruptcy filing. Average monthly income data reflect total income for the last full six months prior to the bankruptcy filing, divided by six.[8] The data for these tables are provided exclusively by the debtors and are not validated by the courts. A debtor typically provides these data at the time of filing or within 14 days after filing as required by the Federal Rules of Bankruptcy Procedure (Fed. R. Bankr. P.). 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.[9]

As reflected in Table 2X, 1,504,569 consumer cases were filed in 2010 under chapters 7, 11, and 13 across the nation, and 1,419,060 debtors completed the forms needed to include their data in these tables.[10] The median current monthly income of debtors who completed the relevant forms was $3,060, almost the same as the $3,054 median current monthly income reported in 2009. The median average monthly income[11] was $2,800, a 3 percent increase over 2009, and the median average expenses[12] were $2,872, a 2 percent increase over 2009. CA-N had the highest median current monthly income with $4,093, and the District of Puerto Rico (PR) had the lowest median current monthly income with $1,684. Filers in the same two districts also had the highest and lowest median average monthly incomes (CA-N with $3,705 and PR with $1,766, respectively). CA-N had the highest median average expenses with $4,040, and PR had the lowest with $1,610.

Of the 1,071,769 consumer cases filed under chapter 7 in 2010, 1,034,208 (96 percent) were filed with complete schedules needed to include data in Table 2A. The median current monthly income reported in such cases was $2,823, the median average monthly income was $2,550, and the median average expenses were $2,841. The District of Alaska had the highest median current monthly income with $3,571, and PR had the lowest with $1,118. Debtors in the District of Connecticut (CT) had the highest median average monthly income with $3,134, and those in PR had the lowest with $1,282. The median average for expenses was highest in CA-N with $3,677 and was lowest in PR at $1,410.

Table 2B reveals that 1,900 consumer cases were filed under chapter 11 during 2010. Of these, 1,522 (80 percent) were filed with completed schedules necessary to include data in Table 2B. These numbers reflect the limited use of chapter 11 reorganizations by individual debtors. Twelve districts reported no consumer filings under this

[8] Current monthly income data are reported on Form 22A Line 12 for chapter 7 filings, form 22B Line 11 for chapter 11 filings, and Form 22C Line 20 for chapter 13 filings. Data for average monthly income and average expenses are derived from Schedule I and Schedule J, respectively.

[9] 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).

[10] The number of cases with completed schedules differs between the Table 1 series and the Table 2 series because those tables draw data from different cells in the summary of schedules. If a debtor completed all necessary fields for inclusion in the Table 1 series, but not the Table 2 series, then that case and its data were included in the appropriate tables in the Table 1 series but not in the Table 2 series, and vice versa.

[11] See note 3

[12] See note 3.

chapter; two additional districts reported no filings with completed schedules. CA-C reported the largest number of filings with 314. Nationwide, the median current monthly income reported was $7,935, the median average monthly income was $9,212, and the median average expenses were $9,749.

A total of 430,900 chapter 13 consumer cases appear on Table 2D as filed in 2010. For 383,330 (89 percent) of those cases, completed schedules were filed as needed to include data in Table 2D. The median current monthly income for such cases was $3,899, the median average monthly income was $3,584, and the median average expenses were $2,953. Filers in the Eastern District of New York (NY-E) had the highest median current monthly income with $6,699, and those in the Western District of Tennessee (TN-W) had the lowest with $2,000. Debtors in NY-E also had the highest median average monthly income at $5,846, and debtors in TN-W had the lowest at $2,000. The median average expenses were highest in the Southern District of New York at $4,917 and were lowest in TN-W at $1,495.

## Time Interval from Filing to Closing

In accordance with 28 U.S.C. § 159(c)(3)(D), Table 3 reports the mean time interval between filing and closing for consumer cases under chapters 7, 11, and 13 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 closed during 2010. Reopened cases are excluded from this table because most reopened cases are filed and closed relatively quickly to settle administrative matters and do not proceed in the same way as original filings.[13] 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, 2010, a total of 1,306,409 consumer cases opened on or after October 17, 2006, were terminated under chapters 7, 11, and 13, with a mean time interval from filing to disposition of 230 days and a median time interval of 124 days. The mean is 14 percent higher than that for 2009, and the median is one day greater than in 2009. The growth in the mean disposition time is likely due in part to a different universe of cases eligible for inclusion in the data calculations, a factor that becomes particularly evident in the time intervals elapsed for chapter 11 cases and chapter 13 cases, which typically take longer than chapter 7 cases to close, particularly if plans are completed.

Of the 1,102,546 chapter 7 consumer cases filed on or after October 17, 2006, and closed in 2010, the mean time interval from filing to disposition was 178 days, and the median time interval was 120 days. By comparison, the mean time interval in 2009 was 168 days and the median was 120 days. The Middle District of Louisiana had the highest median of any district at 325 days, and the Western District of Virginia (VA-W) had the lowest median at 98 days.

A total of 862 chapter 11 consumer cases filed on or after October 17, 2006, were closed in 76 districts during 2010. The mean time interval from filing to disposition was 377 days (up from 338 days in 2009), and the median time interval was 322 days (up from 296 days in 2009). Only 22 districts had 10 or more chapter 11 cases closed in

[13] Tables 4, 5, 6, 8A-8X, and 9A-9X include reopened cases, whereas Table 3 does not include reopened cases. Accordingly, the total for cases closed in Table 3 may differ from the total in other tables.

2010. Of those 22 districts, the Middle District of Tennessee had the highest median at 479 days, and the Southern District of California had the lowest median at 167 days.

A total of 203,001 chapter 13 consumer cases filed on or after October 17, 2006, were terminated during 2010. The mean time interval from filing to disposition was 512 days (up from 393 days in 2009), and the median time interval was 399 days (up from 337 days in 2009). The District of Kansas (KS) had the highest median at 909 days, and the Southern District of Florida had the lowest median at 80 days. However, the median and mean do not accurately convey the time required for a typical chapter 13 case because the majority of the chapter 13 cases closed were dismissed, not closed due to plan completion.[14]

## Reaffirmation Agreements

A debtor may enter into a reaffirmation agreement with a creditor to continue paying a dischargeable debt following bankruptcy. If an attorney represents the debtor during the bankruptcy, the debtor's attorney may or may not represent the debtor during negotiation of a reaffirmation agreement. For purposes of this report, a reaffirmation agreement is considered "pro se" if it was submitted without the certification of an attorney contained in Part C of Form 240A, regardless of whether the debtor was otherwise represented in the case by an attorney.

Table 4 reports only on reaffirmation agreements filed in cases under chapter 7. Although reaffirmation agreements are technically possible under other chapters of the Bankruptcy Code, they are found almost exclusively in chapter 7 cases. 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 needs to negotiate a reaffirmation agreement acceptable to the creditor. However, under chapters 11, 12 and 13, subject to certain restrictions, the terms of a secured claim may be altered, and the debtor will 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 orders with respect to reaffirmation agreements filed with certification by debtors' attorneys. In these instances, the reaffirmation agreement between the debtor and creditor is 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 certification 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 is 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.

For these reasons, the data reported for approved reaffirmation agreements may not be representative of the total number of reaffirmation agreements executed by the parties. Furthermore, the difference between the number of reaffirmation agreements filed and the number of reaffirma-

[14] See Table 6.

tion agreements approved does not represent the number of reaffirmation agreements denied.

As Table 4 illustrates, a total of 359,972 reaffirmation agreements were reported as filed in 1,129,955 chapter 7 consumer cases terminated during the 12-month period ending December 31, 2010.[15] CA-C had the highest total number of cases in which reaffirmation agreements were filed (16,741), followed by the Eastern District of Michigan (12,470). Nationwide, 22 percent of chapter 7 cases closed had at least one reaffirmation agreement filed; the Northern District of Mississippi (MS-N) reported the highest percentage of cases closed that had at least one reaffirmation agreement filed (43 percent). In 11 percent of cases with reaffirmation agreements filed, one or more agreements was submitted without attorney certification (pro se). CA-C had the highest number of cases in which at least one pro se reaffirmation agreement was filed (3,883 cases). VA-W and KS had the highest percentage of cases in which one or more reaffirmation agreements were filed pro se (95 percent).

Slightly more than 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 2010, the District of Montana (MT) reported the highest percentage of cases in which at least one reaffirmation agreement was approved (508 of 581, or 87 percent), followed by the MS-N (39 percent), and the Southern District of Illinois (25 percent). These three districts accounted for 52 percent of the cases in which at least one reaffirmation agreement was approved.

## 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 Fed. R. Bankr. P. 3012. Table 5 shows the number of cases closed in 2010 in which final orders were 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. Additional columns of data were added to provide further perspective on the required data. Due to the complexities of implementing the data collection methods for transaction data, certain data collection issues have precluded the collection of all the indicators as to whether a determination of value is above or below the amount of the claim.

A total of 206,984 chapter 13 consumer cases were terminated in 2010. Final orders determining the value of property securing a claim were entered in 2,767 of the cases. In 1,335 cases, the value of property was reported in one or more final orders; in 598 of those cases, at least one final order valued the property at less than the full amount of the claim.

A case may have more than one final order determining the value of property securing a claim. As a result, 3,551 final orders were entered in the 2,767 cases. Determinations of the value of property were reported in 1,883 final orders, of which 715 were valued below the amount of the claim. The District of South Carolina reported that 875 final orders had been entered determining the value of property securing a claim, the highest total of any district. Thirty-six percent of the final

[15] 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 meeting 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."

orders determining the value of property securing a claim (1,288 final orders) were entered in districts that constitute the Eleventh Circuit, although 19 percent of chapter 13 consumer cases closed were closed in those districts.

Table 5 reports on cases filed on or after October 17, 2006, by individual debtors with primarily nonbusiness debt and closed by the end of the reporting period. The data in this table are subject to the limitations described in the section above on cases filed and closed. 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 remains artificially low in this report compared to the total population of cases closed under chapter 13. 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 plan 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 2010 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.

## Chapter 13 Cases Closed by Dismissal or Plan Completion

Table 6 shows the number of cases in which plans were completed in chapter 13 consumer cases, separately itemized by the number of modifications made to the plans. Table 6 also reports the number of chapter 13 consumer cases dismissed, the number dismissed for failure to make payments under the plan, 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 reopened are not included in the total for cases refiled after dismissal.

A total of 206,984 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, 2010. Table 6 illustrates that 177,858 of these cases were dismissed; in 28,751 cases (14 percent of cases closed), the debtors were discharged after completing repayment plans, up from 6 percent in 2009. The increase in percentage of cases closed resulting in discharge of the debtor likely reflects, at least in part, the nature of the cases included in the data for each year. Because chapter 13 plans typically take three to five years to complete, and because this report only includes cases filed after October 17, 2006, any report using data that includes any case closed before October 17, 2011, will disproportionately include dismissals relative to discharges. The degree to which the data are biased in favor of dismissal should diminish each year, and each year's report should see more discharges simply because those cases reach their conclusions after longer periods of time than cases where the debtors are dismissed.

Of the 28,751 chapter 13 consumer cases in which debtors completed repayment plans, 2,800 (10 percent) had plans that were modified at least once prior to plan completion. The Eastern District of North Carolina (NC-E) had the most plan completions with 1,728, followed by the Northern District of Georgia (GA-N) with 1,246 plan completions. Among districts with at least 10 closed cases, NC-E had the highest percentage of cases (52 percent) closed by plan completion, followed by the Northern District of New York (49 percent).

Nationwide, failure to make plan payments was cited in 49 percent of cases as the reason for dismissal, the same as in 2009. Eighty-five percent of all cases dismissed in NC-E were dismissed for failure to make payments, the highest percentage of any district. MT had the lowest percentage of its dismissals made for failure to make payments (1 percent), followed by CT (2 percent). Table 6 shows that 17,614 cases were refiled after dismissal.

## Prior Filings Reported by Debtors

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 bankruptcy petition (Official Form 1) that they previously had filed a case 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 Table 7 are provided exclusively by the debtors and are subject to the limitations described in the section above on debtor-provided data.

In 26 percent (112,656) of the 430,900 cases in which debtors sought protection under chapter 13 in 2010, the debtors stated they had filed a bankruptcy petition during the previous 8 years. In the remaining 74 percent of cases, debtors either indicated they had not filed for bankruptcy during the previous 8 years (318,230) or did not report this information (14 cases). GA-N had the largest number of cases in which debtors reported prior filings at 7,879 cases, followed by CA-C with 7,554 cases. Debtors filing in TN-W recorded the highest percentage of cases with prior filings at 51 percent, followed by the Eastern District of Arkansas with 44 percent. The districts with the lowest percentage of cases in which debtors indicated prior filings (among districts with more than 10 consumer filings under chapter 13) were GU, MT, and the District of Vermont, where prior filings were reported in only 10 percent of cases.

## 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(k)),
- collusive bidding (11 U.S.C. § 363(n)),
- violation of the 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 Fed. R. Bankr. P. 9011,
- improper activity related to pretrial conference and order (Fed. R. Bankr. P. 7016),
- sanctionable discovery requests, responses, or objections (Fed. R. Bankr. P. 7026),
- failure to make or cooperate in discovery (Fed. R. Bankr. P. 7037),
- failure to prosecute or to comply with court orders and rules (Fed. R. Bankr. 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 reported in another.

Because a creditor may be reprimanded for misconduct in many ways, many of which may not be explicitly recorded on a court's docket as a sanction, this table does not provide a comprehensive picture of sanctions imposed against creditors in bankruptcy courts. Moreover, 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 Bankruptcy Rules do not permit the award of punitive damages for every violation classifiable as creditor misconduct. However, only punitive damages are reflected in the Table 8 series.

Table 8X shows that creditors were fined for misconduct in 119 consumer cases closed during 2010 and that orders to pay punitive damages were issued in 12 of those cases. Creditor misconduct was recorded in 95 chapter 7 cases; punitive damages were awarded in 12 of those cases and totaled $53,000. Creditor misconduct was reported for 1 chapter 11 consumer case and 23 chapter 13 consumer cases closed during 2010, with no punitive damages awarded.

## Rule 9011 Sanctions Imposed Against Debtors' Attorneys

Fed. R. Bankr. 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 Table 9 series captures only misconduct that rises to the level required for sanctions under Fed. R. Bankr. 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.

Table 9X shows that of the 1,337,832 consumer cases filed on or after October 17, 2006, and terminated during the 12-month period ending December 31, 2010, sanctions were imposed against debtors' attorneys in 17 chapter 7 consumer cases; damages totaling $10,000 were awarded in five cases, three of which were in the Western District of New York. No sanctions were imposed in any chapter 11 consumer cases. Of the 206,984 chapter 13 consumer cases terminated in 2010, sanctions were assessed in 6 cases, with damages totaling $7,000 awarded in three of those cases.