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The Consumer Bankruptcy Creditor Distribution Study

Final Report

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I. Introduction

The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) was enacted in 2005 after twelve years of Congressional debate. The pressure to alter the consumer bankruptcy system through BAPCPA's enactment originated from the credit industry. This industry and their lobbyists put forth a narrative, adopted by many members of Congress, that the legislation was necessary to curb consumers' opportunistic behavior. Decrying the need for legislation addressing the "bankruptcy crisis," Representative Gekas (R - Pennsylvania) identified the problem as resulting from profligate and "reckless spenders" who were too freely "escaping their debts." The solution to this

¹ Lois R. Lupica, Maine Law Foundation Professor of Law, University of Maine School of Law. Thanks to: (i) Michael R. Donihue, Professor of Economics, Colby College for his role in statistical and economic analysis of the data, (ii) Ross Donihue, of MapsForGood.org for cartography, (iii) Bodie B. Colwell, Esq., University of Maine School of Law, 2011 for her leadership role in developing the database for Phase I of the Consumer Bankruptcy Fee Study; (iv) Nicholas Boston and Tristan E. Birkenmeier for developing the database for Phase II; (v) Heidi Gage, Rachel Deschuytner and Christine Hepler for their coding, administrative and research assistance; and (vi) Adam Anderson for his research assistance and help in building the Phase II database. We are also indebted to the Chief Bankruptcy Judges who graciously granted us PACER fee waivers that enabled our data collection. We are grateful for the financial assistance provided by the American Bankruptcy Institute Anthony H.N. Schnelling Endowment Fund, the National Conference of Bankruptcy Judges Endowment for Education, Colby College and the University of Maine School of Law. Special thanks to Margaret Howard and Nancy B. Rapoport, Chairs of the ABI Research Grants Committee, Samuel J. Gerdano, Executive Director of ABI and Judge Dennis R. Dow, Chair of the NCBJ Endowment for Education. In funding this research, neither the American Bankruptcy Institute Anthony H.N. Schnelling Endowment Fund nor the National Conference of Bankruptcy Judges Endowment for Education endorses or expresses any opinion with respect to any conclusions, opinions, or reports of any research funded by these grants.

“crisis,” according to Gekas, was to alter the bankruptcy system so that consumers would pay creditors more.² Thus, Congress adopted the goal of transforming the bankruptcy system so that consumers would no longer be able to use it to discharge the debts that they could purportedly afford to pay.

Congress tried to do this in a number of ways. First, because unsecured creditors typically receive little or nothing in chapter 7 cases, they limited consumer access to chapter 7 by adopting a means test: only debtors who pass the means test would be eligible to file under chapter 7.³ The means test requires that each prospective debtor’s monthly income be offset by local, IRS, and other expense standards and adjusted for geographic location.⁴ In addition, family size must be below a certain threshold.⁵ Strongly favoring below-median income debtors and all debtors holding higher secured debts, the means test was supposed to result in fewer chapter 7 cases, and thus the discharge of fewer unsecured debts.

Second, in addition to enacting the chapter 7 means test designed to steer debtors away from chapter 7 into chapter 13, Congress also made chapter 13 harder to access. In addition to lengthening the required time period between bankruptcy filings,⁶ consumers must now, as a prelude to access, fulfill a number of new requirements, including enrollment in a pre-petition credit counseling course,⁷ and compliance with the mandate to produce a dramatically increased number of personal and financial documents and historical records prior to filing.⁸

Third, BAPCPA made the discharge in chapter 13 harder to achieve. Both pre- and post-filing, more is required of and from both debtors and their

² National Bankruptcy Review Commission Report: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary, 105th Cong. 2-3 (1997) (statement of Rep. Gekas).

³ 11 U.S.C. § 707(b) (2012). See Official Bankruptcy Form B22A: Chapter 7 Statement of Current Monthly Income and Means Test Calculation, *available at* <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>.

⁴ *Id.*

⁵ *Id.*

⁶ 11 U.S.C. § 1328 (2012).

⁷ 11 U.S.C. § 521(b) (2012).

⁸ 11 U.S.C. § 521(a)(1)(B) (2012).

attorneys. For example, in addition to attending and paying for a pre-filing credit counseling course, consumers must also complete a pre-discharge debtor education course.⁹ Myriad personal and financial documents must also be gathered in order to complete the filed schedules, including a complete list of all creditors and the amount and nature of their claims; the source, amount, and frequency of the debtor's income; a description of all of the debtor's property; and a detailed account of the debtor's monthly living expenses.¹⁰ Debtor's counsel must prepare a formal notice describing the debtor's bankruptcy options and warning of the consequences of asset concealment or fraud, and must also certify, "after reasonable investigation" that the information in the debtor's petition is "well grounded in fact."¹¹ Finally, in addition to expanding the categories of non-dischargeable debts, for most consumers, the finish line (the discharge) was moved; the repayment period was expanded from 36 to 60 months.¹²

One oft-speculated perhaps unintended consequence of BAPCPA that has recently been confirmed is an increase in the costs of access. The Consumer Bankruptcy Fee Study (the "Fee Study" or the "Consumer Fee Study") revealed the particulars of the cost of access: there is a significant post-BAPCPA increase in the cost of access to the chapter 7 and chapter 13 consumer bankruptcy systems.¹³ Holding all other factors constant, Total Direct Access Costs (TDAC) in chapter 7 consumer cases (which were defined to include filing fees, consumer counseling fees, debtor education fees and attorney fees) increased on average by an inflation-adjusted \$488 post-BAPCPA.¹⁴ With respect to chapter 13 cases, TDAC increased post-BAPCPA by \$667 in real terms.¹⁵

In identifying and monetizing the cost of bankruptcy access, the Fee Study not only revealed sharp cost increases in almost every jurisdiction, but also exposed the substantive impact of the procedural changes added by BAPCPA.¹⁶ In adding multiple layers of both complexity and administrative

⁹ 11 U.S.C. § 524 (d) (2012).

¹⁰ 11 U.S.C. § 521 (2012).

¹¹ 11 U.S.C. § 707(b)(4)A (2012); Fed. Rule Bankr. Proc. 9011.

¹² 11 U.S.C. § (2012).

¹³ Lois R. Lupica, *The Consumer Bankruptcy Fee Study: The Final Report*, 20 AM. BANKR. INST. L. REV. 17, Spring 2012.

¹⁴ *Id.*, at 86.

¹⁵ *Id.*, at 89.

¹⁶ *Id.*, at 98-108.

obligations to the consumer bankruptcy process, BAPCPA has resulted in cases taking longer, necessitating more attorney involvement, and thus many more costly attorney hours.¹⁷

The discovery of the magnitude of the increase of cost of system access caused by BAPCPA in turn begs the further question of the consequences of the more expensive and elaborate system. In an environment of finite assets, who, if anyone, benefitted from, was harmed or otherwise affected by these higher costs? Moreover, given BAPCPA's objective of increasing creditors' recoveries, have Congress' and the credit industry's objective been met?

This study seeks to answer these questions by examining creditor distribution data from chapter 13 and chapter 7 cases filed both before and after BAPCPA's enactment. In light of the significant increase in access costs and the fact that in many cases, some or all of the chapter 13 and all of the chapter 7 attorney's fee is paid post-petition from estate assets, we set out to examine whether one of the consequences of higher legal and other administrative costs is the erosion of post-petition estate assets that would otherwise be available to pay unsecured creditors. Further, in light of the Congressional objective of halting the use of "bankruptcy as a convenient financial planning tool [enabling consumers to] skip out on debts they could repay,"¹⁸ we wanted to discover whether, under the BAPCPA regime, consumers are in fact able to repay a larger percentage of their unsecured debts.

We analyzed an original set of distribution-related data extracted from the approximately 2.3 million chapter 13 consumer bankruptcy cases filed nationally between 2003 and 2009. The data set enables the comparison of creditor distributions for consumer cases filed under chapter 13 during pre-BAPCPA and post-BAPCPA time periods. Our analysis reveals BAPCPA does not appear to have achieved the primary objective of its proponents as unsecured distributions as a percentage of unsecured claims declined nationally by a statistically significant 3.2 percentage points in the post-BAPCPA time period. Moreover, unsecured distributions as a percentage of total distributions declined by 2.5 percentage points, a result that was also statistically significant.

With respect to chapter 7 cases, AACER provided us (in 2009) with case numbers for all of the chapter 7 consumer cases filed between 2003 and 2009:

¹⁷ *Id.*

¹⁸ See 144 CONG. REC. S10471 (1998) (remarks of Sen. Hatch).

5,849,702 cases.¹⁹ We obtained 356,619 case IDs for the same period from the Administrative Office of the United States Courts (“AOUSC”), which were identified as consumer asset cases (approx. 6.1% of all cases filed).²⁰ When we began our random sampling we discovered that some of the case IDs from the AOUSC were neither consumer cases nor asset cases. Thus we are fairly certain that of the 5.8 million chapter 7 consumer cases filed, less than 6% were asset cases. For our analysis we obtained data from Trustee reports for 1,103 consumer asset cases. In the chapter 7 asset cases we examined, distributions to unsecured creditors as a share of total distributions declined by 4.8%. Distributions to unsecured creditors as a percentage of claims declined by 8.9%. These results are statistically significant.

In our analysis, we examined creditor distribution data against the backdrop of the 2007-2009 macroeconomic recession. Until now, no study to date has controlled for the effect of business cycle conditions on bankruptcy cases. Specifically, we controlled for macroeconomic conditions at the time of filing that might reasonably affect a debtor’s decision to declare bankruptcy. Moreover, our study’s robust sample allows us to examine the effects of BAPCPA on the cost of bankruptcy access and creditor distributions controlling for differences in the way cases are handled across the United States.

To the extent we can identify and monetize any increase or decrease in creditor distributions over time and its determinants, law and policy makers will have better information about how well the consumer bankruptcy system is working, the extent to which it is meeting its objectives, the impact it has on the primary system stakeholders, as well as the degree of the costs of the system’s external effects.

II. Literature Review

The issue of BAPCPA-effects and consequences has been addressed in several scholarly articles in recent years. Some of the scholarship in the years preceding and immediately following BAPCPA’s enactment date was more

¹⁹ We thank Mike Bickford for his assistance in connection with providing case numbers which formed the basis for our original data set.

²⁰ We are indebted to William Rule, Senior Economist with the Administrative Office of the United States Courts for his assistance in developing the data bank of chapter 7 consumer asset cases.

speculative and predictive than empirical.²¹ As bankruptcy professionals, creditors, debtors and other parties-in-interest have experienced the operation of the post-BAPCPA bankruptcy system, researchers have begun to empirically study some of the effects of the amendments.²² Many of these studies, however, involve data that have been drawn from small samples, or involve estimates of debtor profiles and filing trends.

For example, a recent study examined the composition of filers since BAPCPA's effective date as well as the costs and numbers of filings.²³ The data from this study shows that between 2004 and 2007, the average fee for a chapter 7 filing increased 38%, while the average chapter 13 fees increased 63%.²⁴ These fee values were extracted from approximately 50 cases filed in 15 states. The researchers also examined annual counts of bankruptcy filings by zip code, and used census data to estimate the demographic characteristics of filers. Their estimated debtor profiles revealed that lower income- and asset-debtors were filing for bankruptcy at a lower rate than those debtors with higher incomes. According to these scholars, households with fewer assets also filed under chapter 13 at a higher rate than households with higher assets.²⁵

Professor Tal Gross, et al. also addressed the issue of the cost to administer a bankruptcy case and examined the degree to which legal fees affected the decision of liquidity-constrained households to file for bankruptcy.²⁶ The researchers studied the rate of filings by consumers within 40 weeks following each of the 2001 and 2008 one-time government tax rebates mandated by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Economic Stimulus Act of 2008, respectively, and compared these filing rates to the number of consumer cases filed within 30 weeks prior to each of

²¹ See e.g., James J. White, *Abuse Prevention 2005*, 71 MO. L. REV. 863, 874-876 (2006); Melissa B. Jacoby, *Ripple or Revolution? The Indeterminacy of Bankruptcy Reform*, AMER. BANKR. L.J. 169, 177 (2005).

²² See *supra* notes 15 to 17.

²³ Timothy Layton, Frank McIntyre and Daniel Sullivan, *Did BAPCPA Deter the Wealthy? The 2005 Bankruptcy Reform's Effect on Filings Across the Income and Asset Distribution*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1708119 (2010).

²⁴ *Id.*, at 7.

²⁵ *Id.*, at 14.

²⁶ Tal Gross, et. al., *Liquidity Constraints and Consumer Bankruptcy form Tax Rebates*, <http://ssrn.com/abstracts=1985272>.

these rebates.²⁷ Using a statistical model, the researchers estimated that 2.0 percent of liquidity-constrained filers in 2001 and 3.8 percent of liquidity-constrained consumer filers in 2008 could not afford to file for bankruptcy in the absence of the tax rebate.²⁸

The most comprehensive study of the “who,” “why” and “when” of consumer bankruptcy was conducted by the researchers of the Consumer Bankruptcy Project (CBP).²⁹ The CBP’s 2007 study did not rely upon population estimates of debtor characteristics, but used surveys and telephone interviews to gather profiles of a national sample of post-BAPCPA consumer debtors. Earlier CBP studies (drawn from samples in five districts) enabled comparison with profiles of pre-BAPCPA debtors.³⁰ The CBP series of studies have provided much needed information about who files for bankruptcy, why they file, the point in their financial distress they decide to file, and what effect the bankruptcy has on debtors’ lives over time. The CBP found that incomes of debtors filing for bankruptcy after BAPCPA were the same as the incomes of the families who filed for bankruptcy before the amendments. In addition, they found that post-BAPCPA filers’ had higher debt levels than their pre-BAPCPA counterparts.³¹ Moreover, notwithstanding their financial struggles, some consumers who would benefit from a bankruptcy reprieve are not accessing the system.³² They concluded that, notwithstanding the means test’s stated goal to deter “can-pay” debtors from bankruptcy, many “can’t pay” debtors were dissuaded from filing, and those who filed were in greater financial distress.³³

The Consumer Bankruptcy Fee Study provides the first, and most detailed, empirical examination of the operation of the bankruptcy *system* under BAPCPA.³⁴ In this study, Lupica traces out and quantifies the administrative costs of case administration under BAPCPA, as well a provides qualitative information and analysis drawn from surveys, interviews, and focus groups

²⁷ *Id.*, at 4.

²⁸ *Id.*, at 13.

²⁹ Robert M. Lawless, Angela K. Littwin, Katherine M. Porter, John A. E. Pottow, Deborah K. Thorne & Elizabeth Warren, *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 353 (2008).

³⁰ TERESA A. SULLIVAN, ET. AL., AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA (1989).

³¹ Lawless, *supra* note 29, at 358.

³² *Id.*, at 365.

³³ *Id.*, 377.

³⁴ Lupica, *supra* note 13, at 25.

about how the system was operating from the perspective of bankruptcy professionals (judges, trustees and attorneys).³⁵ Using a nationally representative sample of 11,221 bankruptcy cases randomly selected across filing from the 90 U.S. judicial districts, the Fee Study found a 27% increase in Total Direct Access Costs for post-BAPCPA discharged chapter 13 cases, with the national mean post-BAPCPA, attorney fee (the largest component of access costs) increasing from \$2,061 to \$2,564 in real terms.³⁶ In chapter 7 cases, Lupica found a 37% increase in Total Direct Access Costs for post-BAPCPA discharged chapter 7 asset cases and a 51% increase in Total Direct Access Costs for post-BAPCPA discharged chapter 7 no-asset cases.³⁷ The cases used by Lupica represent approximately 0.12% of all consumer bankruptcy cases filed between 2003 and 2009.

The qualitative data from Lupica's study also revealed sharp increases in case complexity, with attorneys, trustees and judges reporting that each case now takes longer to administer and manage.³⁸ Specifically, the study reported a more protracted pre-filing process resulting in significant negative effect on debtors and their attorneys.³⁹ Survey and focus group participants described numerous frustrating instances of preparing a debtor's petition and necessary schedules, only to have a debtor's decision to delay a filing necessitating a repeat of the exercise the following month.⁴⁰ In that time, a debtor's income, debt- and pay-off balances saw change, impacting the means test calculation. While attorney fees were markedly higher, attorneys reported that they were working harder for less money.⁴¹

The increase in both burdens and administrative costs of the consumer bankruptcy system beg the question of who is bearing these costs? Specifically, were the administrative expenses accompanying the BAPCPA amendments eroding assets in the estate that would otherwise be available for creditor repayment? Professors Price and Dalton were among the first researchers to begin to answer this question.⁴² Using an original database

³⁵ *Id.*, at 92-126.

³⁶ *Id.*, at 30.

³⁷ *Id.*

³⁸ *Id.*, at 121-124.

³⁹ *Id.*

⁴⁰ *Id.*, at 100.

⁴¹ *Id.*, at 121-124.

⁴² See Bruce M. Price & Terry Dalton, *From Downhill to Slalom: An Empirical Analysis*

gathered from chapter 13 cases filed in the Tenth Circuit, these researchers examined the question of whether unsecured creditors were repaid a greater percentage of the debt owed to them in the year following BAPCPA's enactment.⁴³ The study, using a small sample and examining distributions in the years immediately following BAPCPA's effective date, found a post-BAPCPA increase in general unsecured creditors' dividends.⁴⁴ This study further found that general unsecured debt made up a smaller percentage of total debt, post-BAPCPA.⁴⁵

Another researcher, Professor Jiménez, examined creditor distributions in chapter 7 assets cases by identifying administrative, priority, unsecured and secured distributions in a sample of 16 chapter 7 asset cases filed from the end of January to early March 2007.⁴⁶ She found that 7% of cases had non-exempt assets for distribution, and in these cases creditors received, at the median, 8% of their claim.⁴⁷

These studies make important contributions, but given what we know about state variation in bankruptcy environments,⁴⁸ a nationally representative sample of unsecured creditor distributions is needed to complete our understanding of BAPCPA's impact. In the analysis that follows, we provide an analysis of a nationally representative sample of unsecured creditor distributions in cases filed under chapter 7 and chapter 13 pre- and post-BAPCPA, and examine the effect of the BAPCPA amendments on secured and unsecured creditor distributions. Furthermore, our data set, covering the period from January 2003 through December 2009, enables us to not only examine data

of the Effectiveness of BAPCPA (and Some Unintended Consequences), 26 YALE L. & POL'Y REV. 135 (2007).

⁴³ *Id.*, at 138-139.

⁴⁴ Among the 129 chapter 13 cases in our sample that were filed in the 10th circuit (UT, WY, CO, NM, KS, and OK), only Colorado experienced an increase in unsecured distributions as a share of the estate total. The difference, however, was not statistically significant. See Table 2, *infra*, p. 22-23.

⁴⁵ Price, *supra* note 42, at 193-194.

⁴⁶ Dalié Jiménez, *The Distribution of Assets in Consumer Chapter 7 Bankruptcy Cases*, 83 Am. Bankr. L.J. 795, 797-798 (2009).

⁴⁷ *Id.*, at 805.

⁴⁸ Lupica, *supra* note 13, at 91; See also Frank McIntyre, et. al., *Did BAPCPA Deter the Wealthy? The 2005 Bankruptcy Reform's Effect on Filings Across the Income and Asset Distributions*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1708119 (2010).

from both pre-BAPCPA and post-BAPCPA cases, but also examine the effect of the “Great Recession of 2007-2009” on both claims and distributions. The robustness of our sample enables us to draw statistically significant conclusions about the extent to which BAPCPA has fulfilled its mandate.

III. Sampling Methodology

We constructed a nationally representative random sample of observations consisting of the claims and distributions made from each debtor’s estate using final Trustee Reports from a population of 2,319,079 non-commercial chapter 13 bankruptcy cases filed from 2003 through the end of 2009. Our goal was to create a database of detailed information for approximately 2,300 discharged cases, or 0.10% of the total population of non-commercial chapter 13 case filings during this period.

In a similar fashion, we also collected data for a nationally representative sample of 1,103 chapter 7 asset-only consumer bankruptcy cases randomly selected from a population of 5,170,281 chapter 7 total cases filed (both asset and no-asset) from 2004 through the end of 2009. Less than 5.6% of the total chapter 7 cases filed during this period were asset cases. Our sample of 1,103 bankruptcy filings represents 0.38% of this population of chapter 7 consumer asset cases.

To help ensure the representation of our sample, we stratified our random selection by each U.S. state (plus the District of Columbia) and by time period such that we randomly selected 0.10%, in the case of chapter 13 filings, of the cases filed in each state during the pre and post-BAPCPA periods (2003 through October 16, 2005 and October 17, 2005 and 2009, respectively), subject to a 5 case minimum for each state in each period. Our sample of chapter 7 consumer asset cases was obtained by stratifying our population of cases and randomly selecting in a similar fashion over both the pre- and post-BAPCPA time periods.

To obtain the appropriate Trustee Reports for our sample, we employed the Public Access to Electronic Court Records (“PACER”) online system to access the complete history of bankruptcy case files. Each court maintains its own database of case information within the larger PACER system. As a result, the format of the Trustee Reports, as well as the scope and level of detail of the case files differs widely both within individual judicial districts and across

states. Accordingly, each court has its own website to access its PACER system. We requested PACER fee waivers from all 90 districts.⁴⁹ We received waivers for 88 of those districts, paying the access fees for the remaining 2 districts.

For each case coded, we accessed the PACER website for the particular bankruptcy court in which the case was filed. From there, the case docket report was accessed. From the docket report, we were able to read and review and extract data from the Trustee Final Report.

IV. Pieces of the Distribution Pie

In cases filed under chapter 13, the trustee distributes payments to claimants, in accordance with the debtor's plan. The plan payments are based upon the debts to be paid under the plan, the requirements of chapter 13, the costs of administering the case, and the debtor's disposable income. Charts 1 and 2 present in summary fashion the relative pre- and post-BAPCPA shares of the "distribution pie" for chapter 13 consumer cases, using a national sample. These "pie pieces" include distributions to secured claimants, unsecured claimants, attorneys, trustees, priority claimants and refunds to the debtor.

⁴⁹ We are indebted to the many courts that generously granted us PACER fee waivers.

Chart 1

**Chapter 13 Cases
Pre-BAPCPA Distributions**

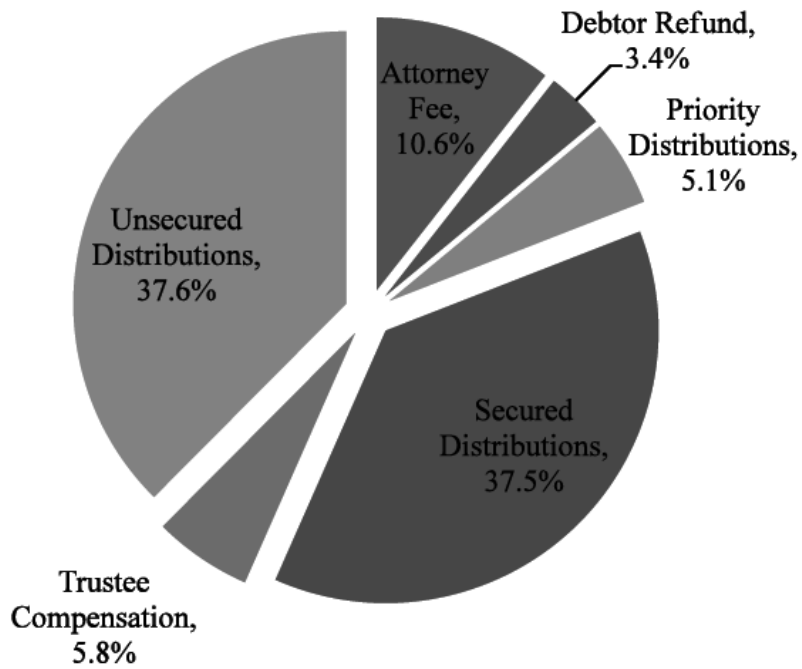
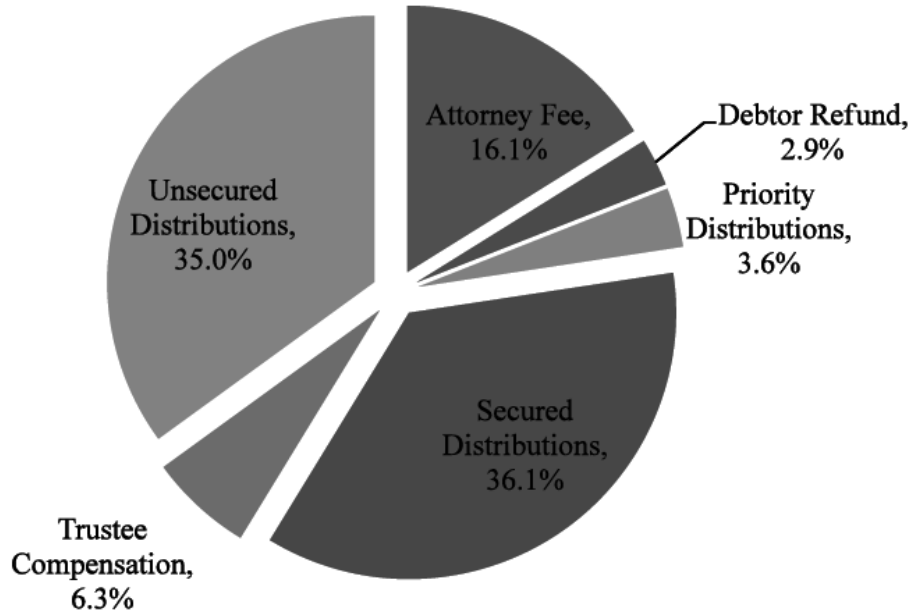


Chart 2

**Chapter 13 Cases
Post-BAPCPA Distributions**



In some (but not all)⁵⁰ chapter 13 cases in our data set, the administrative distributions include attorney fees paid “through the plan.” In cases where a percentage of the attorney fee is paid post-petition, the pie chart illustrating distributions reveals, nationally, an increase in attorney fees’ share of the pie from 11% pre-BAPCPA to 16% post-BAPCPA. Distributions to unsecured and secured creditors, as a share of all distributions, declined post-BAPCPA 2.6% and 1.4%, respectively.

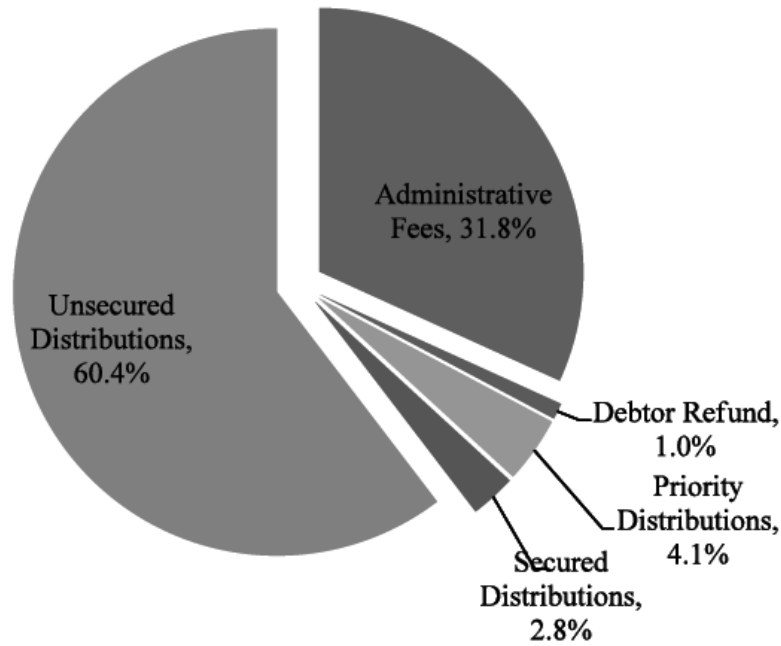
In cases filed under chapter 7, the trustee collects debtors’ non-exempt assets, liquidates and distributes the property to creditors and administrative claimants with valid claims. Charts 3 and 4 below present national data showing

⁵⁰ In some cases and circumstances, chapter 13 debtors pay the whole of their attorney fee pre-petition. In other chapter 13 cases, debtor’s attorney fees are paid, in whole or in part, post-petition “through the plan.”

the relative pre- and post-BAPCPA shares of the “distribution pie” for chapter 7 consumer asset cases. These “pie pieces” include distributions to secured claimants, unsecured claimants, administrative claimants, priority claimants, and debtor refunds.⁵¹

Chart 3

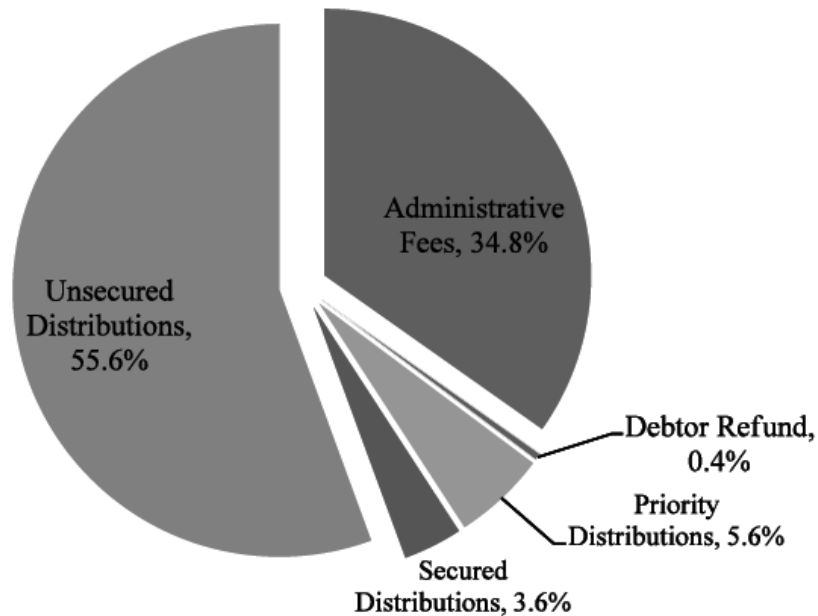
**Chapter 7 Consumer Asset Cases
Pre-BAPCPA Distributions**



⁵¹ Section 507 of the Bankruptcy Code sets forth the order in which claims are to be paid. In chapter 7 asset cases, administrative expenses are paid first. These expenses include trustee fees and expenses, with fees set in accordance with a statutorily prescribed schedule. Also included are the fees and expenses of professionals hired by the trustee, including attorneys, accountants, or auctioneers whose services facilitate the disposition of the assets.

Chart 4

**Chapter 7 Consumer Asset Cases
Post-BAPCPA Distributions**



In the chapter 7 asset cases we examined, distributions to unsecured creditors as a share of total distributions declined by 4.8%. The cost of administration of these cases increased by 3%. Secured distributions increased by .8%.⁵²

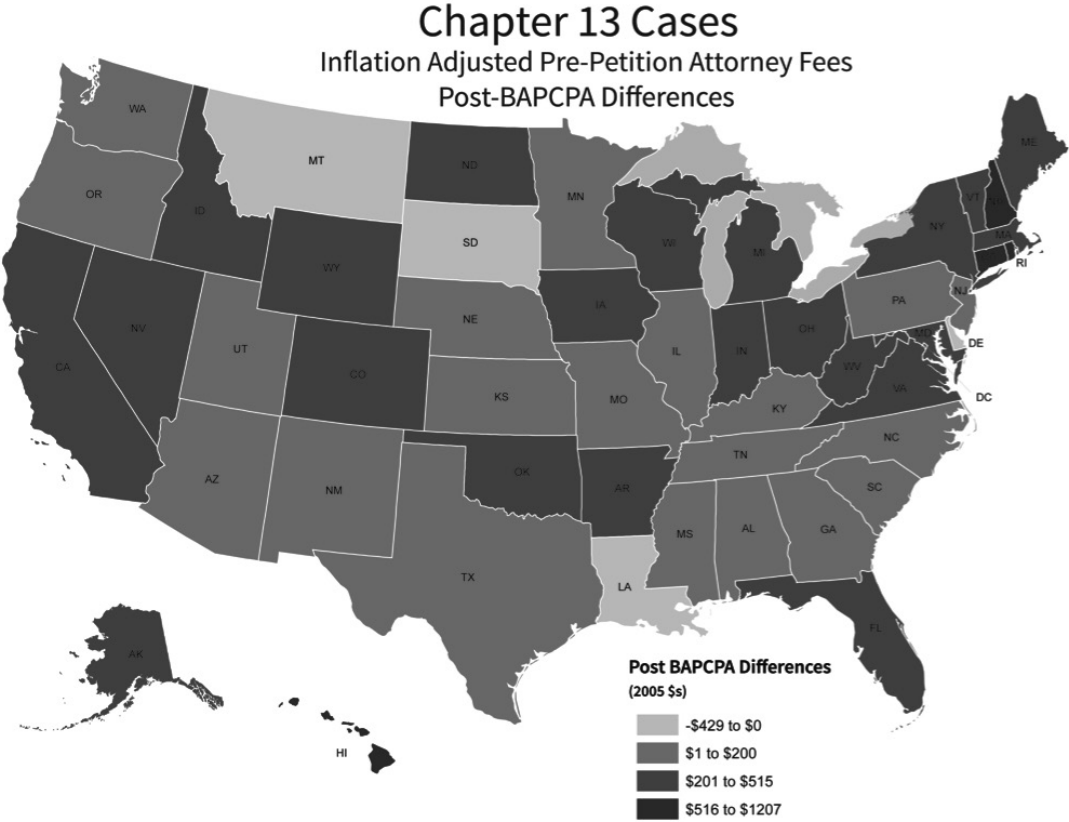
⁵² As noted above, in reviewing trustee final reports, we found numerous reporting inconsistencies from jurisdiction to jurisdiction, trustee to trustee, and even case to case, particularly with respect to how secured claims and distributions to secured creditors were reported.

V. Higher Post-BAPCPA Administrative Costs

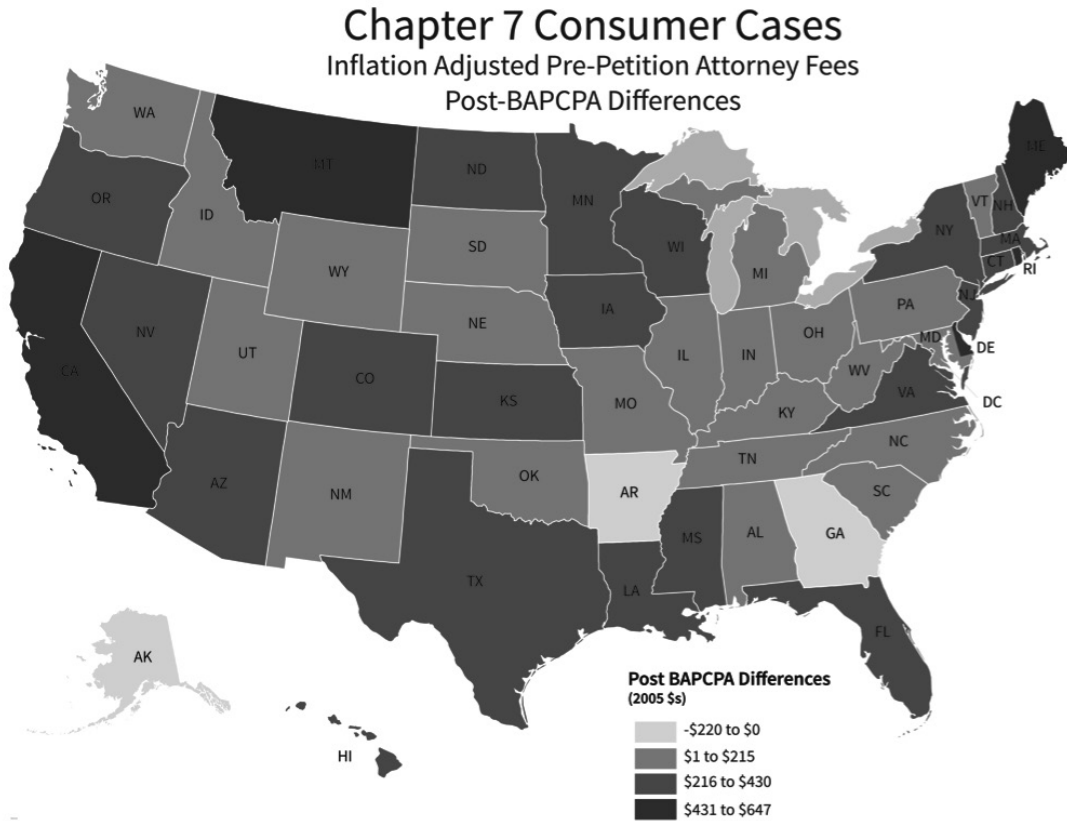
The finding of a post-BAPCPA increase in administrative distributions in both chapter 13 and chapter 7 cases is consistent with the Consumer Bankruptcy Fee Study's findings of higher administrative costs. The Fee Study's chapter 13 attorney fee data however, included fees paid by the debtor *both* pre- and post-petition.⁵³ In order to confirm the attorney fee findings in the Consumer Bankruptcy Fee study and affirm the findings of higher administrative distributions in this Study, we determined the mean differences in *pre-petition* attorney fees by state in chapter 13 and chapter 7 cases. Maps 1 and 2 present data from the Consumer Bankruptcy Fee Study that show post-BAPCPA differences in inflation-adjusted pre-petition attorney fees for chapter 13 and chapter 7 consumer cases, respectively. In each map, the darker the shading, the greater the post-BAPCPA difference. These maps illustrate that across the country, the post-BAPCPA period has witnessed a marked increase in the administrative cost of filing bankruptcy.

⁵³ In chapter 7 cases, attorney fees are almost always paid in full pre-petition; the bankruptcy code does not allow a debtor's attorney to be paid from chapter 7 estate property. *Lamie v. U.S. Trustee*, 540 U.S. 526 (2004) ("§ 330(a)(1) does not authorize compensation awards to debtors' attorneys from estate funds, unless they are employed as authorized by § 327. If the attorney is to be paid from estate funds under § 330(a)(1) in a chapter 7 case, he must be employed by the trustee and approved by the court.").

Map 1



Map 2



Tables 1 and 2 below present mean values in inflation adjusted terms, by state, for pre-petition attorney fees in chapter 13 and chapter 7 consumer cases, respectively. In both tables, the number of cases included in our sample for each state, pre- and post-BAPCPA, are included as well as the result of difference in means tests. The column labeled “Significantly different means” presents the results of two-sided difference tests, while the final two columns test the one sided hypotheses of whether or not the post-BAPCPA mean is significantly less than, or greater than, the pre-BAPCPA mean, respectively.

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Table 1: Chapter 13 Cases Pre-Petition Attorney Fees (2005 \$s)							*** p value < 0.01	** p value < 0.05	* p value < 0.10
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA	
	Cases	Mean	Cases	Mean					
AK	5	\$796	8	\$1,040	\$244				
AL	59	\$48	122	\$104	\$56			*	
AR	21	\$13	39	\$216	\$202	*		**	
AZ	10	\$910	22	\$973	\$63				
CA	82	\$556	153	\$907	\$350	***		***	
CO	9	\$481	17	\$941	\$460	**		**	
CT	13	\$1,427	11	\$2,208	\$781	**		**	
DC	3	\$369	8	\$583	\$214				
DE	5	\$584	5	\$155	-\$429	*	**		
FL	66	\$644	95	\$1,045	\$401	***		***	
GA	116	\$46	207	\$61	\$16				
HI	3	\$628	9	\$1,429	\$801	**		**	
IA	10	\$451	20	\$846	\$395	*		**	
ID	3	\$259	8	\$622	\$363				
IL	73	\$369	116	\$459	\$90				
IN	42	\$223	83	\$509	\$286	***		***	
KS	11	\$373	18	\$519	\$145				
KY	22	\$185	39	\$228	\$44				
LA	39	\$202	68	\$121	-\$82	*	**		
MA	19	\$1,058	34	\$1,494	\$436	*		**	
MD	33	\$701	42	\$949	\$248	*		**	
ME	23	\$866	13	\$1,137	\$271				
MI	35	\$162	68	\$408	\$247	***		***	
MN	14	\$350	21	\$429	\$79				
MO	39	\$349	55	\$495	\$147			*	
MS	13	\$212	47	\$280	\$68				
MT	17	\$736	11	\$632	-\$104				
NC	61	\$162	79	\$351	\$188	***		***	
ND	10	\$467	13	\$689	\$222			*	
NE	6	\$305	13	\$456	\$151				
NH	5	\$1,223	10	\$1,833	\$610				
NJ	32	\$630	46	\$704	\$74				
NM	7	\$689	12	\$855	\$167				
NV	18	\$431	37	\$740	\$309	**		***	
NY	51	\$801	85	\$1,125	\$324	*		**	
OH	56	\$364	97	\$596	\$233	***		***	
OK	23	\$394	40	\$637	\$243	**		**	
OR	12	\$605	16	\$618	\$13				
PA	78	\$540	77	\$623	\$83				
RI	3	\$423	6	\$1,630	\$1,207			*	
SC	40	\$692	32	\$775	\$83				

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Table 1: Chapter 13 Cases (continued) Pre-Petition Attorney Fees (2005 \$s)							*** p value < 0.01 ** p value < 0.05 * p value < 0.10	
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA
	Cases	Mean	Cases	Mean				
SD	3	\$528	8	\$442	-\$87			
TN	73	\$26	179	\$66	\$40	*		**
TX	121	\$380	129	\$409	\$29			
UT	21	\$154	18	\$266	\$112			
VA	38	\$201	61	\$471	\$270	***		***
VT	4	\$608	9	\$828	\$219			
WA	24	\$331	31	\$518	\$187			*
WI	9	\$149	24	\$663	\$514	**		**
WV	6	\$432	15	\$810	\$379			
WY	2	\$521	6	\$736	\$215			
Total	1,488	\$389	2382	\$526	\$138	***		***
States with Post BAPCPA > Pre BAPCPA				47				
States with Post BAPCPA < Pre BAPCPA				4				

From Table 1 we see that for 47 of the states (including the District of Columbia) the post-BAPCPA pre-petition attorney fee exceeded the pre-BAPCPA fee and for 24 of these states the difference was statistically significant.

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Table 2: Chapter 7 Consumer Cases Pre-Petition Attorney Fees (2005 \$s)							*** p value < 0.01	** p value < 0.05	* p value < 0.10
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA	
	Cases	Mean	Cases	Mean					
AK	5	\$1,470	4	\$1,251	-\$220				
AL	87	\$519	88	\$634	\$116	*		**	
AR	52	\$476	37	\$464	-\$12				
AZ	80	\$576	62	\$993	\$417	***		***	
CA	265	\$575	376	\$1,045	\$470	***		***	
CO	111	\$615	80	\$891	\$276	***		***	
CT	29	\$651	25	\$1,066	\$415	***		***	
DC	7	\$350	5	\$606	\$256				
DE	10	\$271	7	\$900	\$628	**		***	
FL	157	\$713	185	\$1,028	\$315	***		***	
GA	95	\$536	136	\$494	-\$42				
HI	12	\$522	7	\$939	\$417	**		**	
IA	61	\$592	32	\$965	\$373	***		***	
ID	33	\$385	16	\$538	\$154	*		**	
IL	273	\$589	152	\$802	\$213	***		***	
IN	178	\$503	154	\$704	\$201	***		***	
KS	56	\$500	30	\$733	\$233	***		***	
KY	105	\$418	68	\$540	\$121	**		**	
LA	78	\$461	34	\$700	\$239	***		***	
MA	69	\$777	55	\$1,012	\$235	**		**	
MD	90	\$546	57	\$708	\$161	**		***	
ME	17	\$509	11	\$1,156	\$647	***		***	
MI	129	\$525	103	\$656	\$131	***		***	
MN	35	\$795	57	\$1,183	\$389	***		***	
MO	126	\$597	80	\$797	\$201	***		***	
MS	26	\$457	29	\$745	\$287	**		***	
MT	14	\$680	7	\$1,179	\$499	**		***	
NC	86	\$832	55	\$985	\$153	**		**	
ND	5	\$566	6	\$867	\$302				
NE	23	\$613	20	\$621	\$8				
NH	17	\$734	15	\$970	\$236				
NJ	113	\$658	82	\$918	\$260	***		***	
NM	25	\$572	16	\$651	\$80				
NV	60	\$585	58	\$890	\$305	***		***	
NY	265	\$599	164	\$889	\$290	***		***	
OH	300	\$520	193	\$685	\$165	***		***	
OK	120	\$459	44	\$660	\$201	***		***	
OR	59	\$433	41	\$753	\$320	***		***	
PA	177	\$626	85	\$824	\$198	***		***	
RI	17	\$445	10	\$1,022	\$578	***		***	
SC	49	\$783	19	\$959	\$176				

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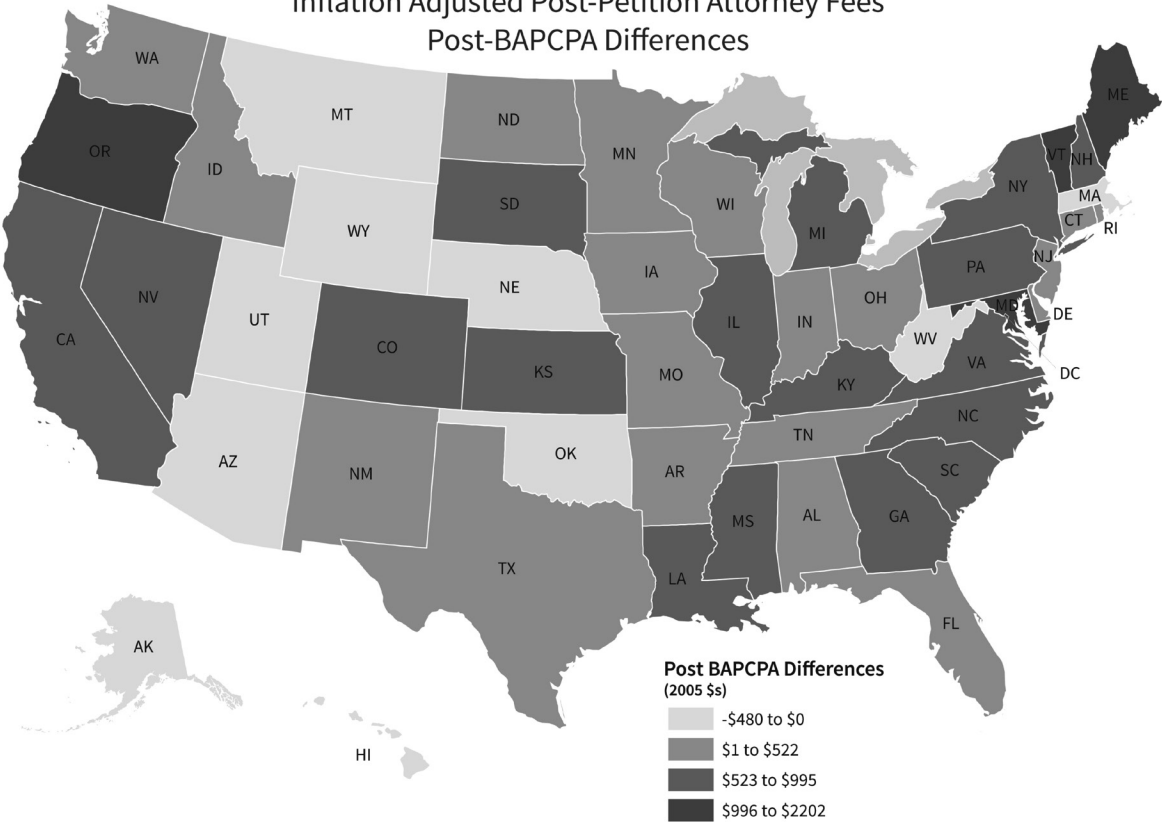
Table 2: Chapter 7 Consumer (continued) Pre-Petition Attorney Fees (2005 \$s)							*** p value < 0.01	** p value < 0.05	* p value < 0.10
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA	
	Cases	Mean	Cases	Mean					
SD	10	\$732	6	\$850	\$118				
TN	65	\$421	90	\$449	\$28				
TX	203	\$770	88	\$1,125	\$356	***		***	
UT	59	\$306	21	\$485	\$179	**		***	
VA	84	\$435	83	\$845	\$410	***		***	
VT	3	\$439	4	\$586	\$147				
WA	123	\$405	60	\$580	\$176	***		***	
WI	81	\$547	61	\$776	\$229	***		***	
WV	46	\$540	22	\$692	\$152	**		**	
WY	11	\$701	9	\$822	\$121				
Total	4,201	\$571	3149	\$821	\$250	***		***	
States with Post BAPCPA > Pre BAPCPA				48					
States with Post BAPCPA < Pre BAPCPA				3					

We find that for chapter 7 consumer cases the results are similar (see Table 2). Post-BAPCPA, pre-petition attorney fees are significantly greater than pre-BAPCPA and this difference is widespread across the country.

We also found that post-petition administrative distributions (the costs of administering the case) increased post-BAPCPA. To illustrate, Map 3 and Table 2.5 demonstrate that there was a significant increase in post-petition attorney fees, post-BAPCPA, for chapter 13 cases. According to our sample, post-petition attorney fees increased in 41 of the states. The difference in average post-petition attorney fees was statistically significant in 26 of the states as well as for the nation as a whole. Thus, post-BAPCPA, there was a marked increase in the cost of administering both chapter 7 and chapter 13 consumer bankruptcy cases.

Map 3

Chapter 13 Cases
Inflation Adjusted Post-Petition Attorney Fees
Post-BAPCPA Differences



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Table 2.5: Chapter 13 Cases Post-Petition Attorney Fees (2005 \$s)							*** p value < 0.01	** p value < 0.05	* p value < 0.10
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA	
	Cases	Mean	Cases	Mean					
AK	5	\$1,258	6	\$895	-\$363				
AL	47	\$1,466	55	\$1,754	\$288	***		***	
AR	23	\$1,487	20	\$1,730	\$243				
AZ	11	\$2,163	10	\$2,022	-\$142				
CA	44	\$1,941	77	\$2,647	\$705	*		**	
CO	6	\$1,502	9	\$2,145	\$643	**		**	
CT	6	\$936	8	\$977	\$41				
DC	5	\$576	6	\$1,728	\$1,152	***		***	
DE	5	\$1,158	6	\$1,679	\$522				
FL	42	\$1,405	51	\$1,429	\$24				
GA	74	\$1,854	104	\$2,439	\$585	***		***	
HI	5	\$1,305	6	\$1,220	-\$85				
IA	6	\$955	12	\$1,335	\$380				
ID	5	\$1,739	6	\$2,257	\$519				
IL	47	\$1,775	77	\$2,332	\$556	***		***	
IN	24	\$1,690	35	\$2,100	\$410				
KS	8	\$1,324	10	\$1,895	\$570	*		**	
KY	11	\$1,192	17	\$2,060	\$868	**		***	
LA	23	\$1,435	31	\$2,322	\$888	***		***	
MA	12	\$1,257	13	\$1,041	-\$216				
MD	21	\$681	19	\$1,930	\$1,250	***		***	
ME	14	\$3,071	6	\$5,273	\$2,202			*	
MI	35	\$1,989	42	\$2,749	\$760			*	
MN	8	\$1,300	14	\$1,459	\$160				
MO	22	\$1,752	24	\$1,966	\$214				
MS	11	\$901	20	\$1,673	\$772	***		***	
MT	12	\$1,653	9	\$1,173	-\$480				
NC	41	\$1,483	36	\$2,292	\$809	***		***	
ND	5	\$936	6	\$1,336	\$400				
NE	6	\$2,331	8	\$2,050	-\$281				
NH	5	\$607	6	\$1,370	\$763				
NJ	32	\$1,534	23	\$1,920	\$386				
NM	5	\$1,339	9	\$1,383	\$44				
NV	10	\$1,981	15	\$2,976	\$995	**		**	
NY	46	\$990	64	\$1,590	\$600	***		***	
OH	41	\$1,224	49	\$1,645	\$421	**		***	
OK	16	\$1,488	30	\$1,344	-\$144				
OR	8	\$1,585	9	\$2,894	\$1,309	**		**	
PA	43	\$1,490	52	\$2,182	\$692	**		**	
RI	5	\$935	5	\$1,060	\$125				
SC	18	\$1,241	16	\$1,801	\$560	*		**	

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Table 2.5: Chapter 13 Cases (continued) Post-Petition Attorney Fees (2005 \$s)							*** p value < 0.01	** p value < 0.05	* p value < 0.10
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA	
	Cases	Mean	Cases	Mean					
SD	5	\$1,326	6	\$2,117	\$791	*		**	
TN	85	\$1,405	79	\$1,888	\$482	***		***	
TX	92	\$1,840	84	\$2,151	\$311			*	
UT	13	\$2,081	12	\$2,073	-\$9				
VA	24	\$1,392	30	\$2,237	\$845	***		***	
VT	5	\$527	7	\$1,625	\$1,098	**		***	
WA	16	\$1,404	17	\$1,868	\$464			*	
WI	9	\$1,170	14	\$1,546	\$377				
WV	5	\$616	8	\$550	-\$66				
WY	5	\$1,158	6	\$1,044	-\$115				
Total	1,072	\$1,532	1,284	\$2,011	\$479	***		***	
States with Post BAPCPA > Pre BAPCPA				41					
States with Post BAPCPA < Pre BAPCPA				10					

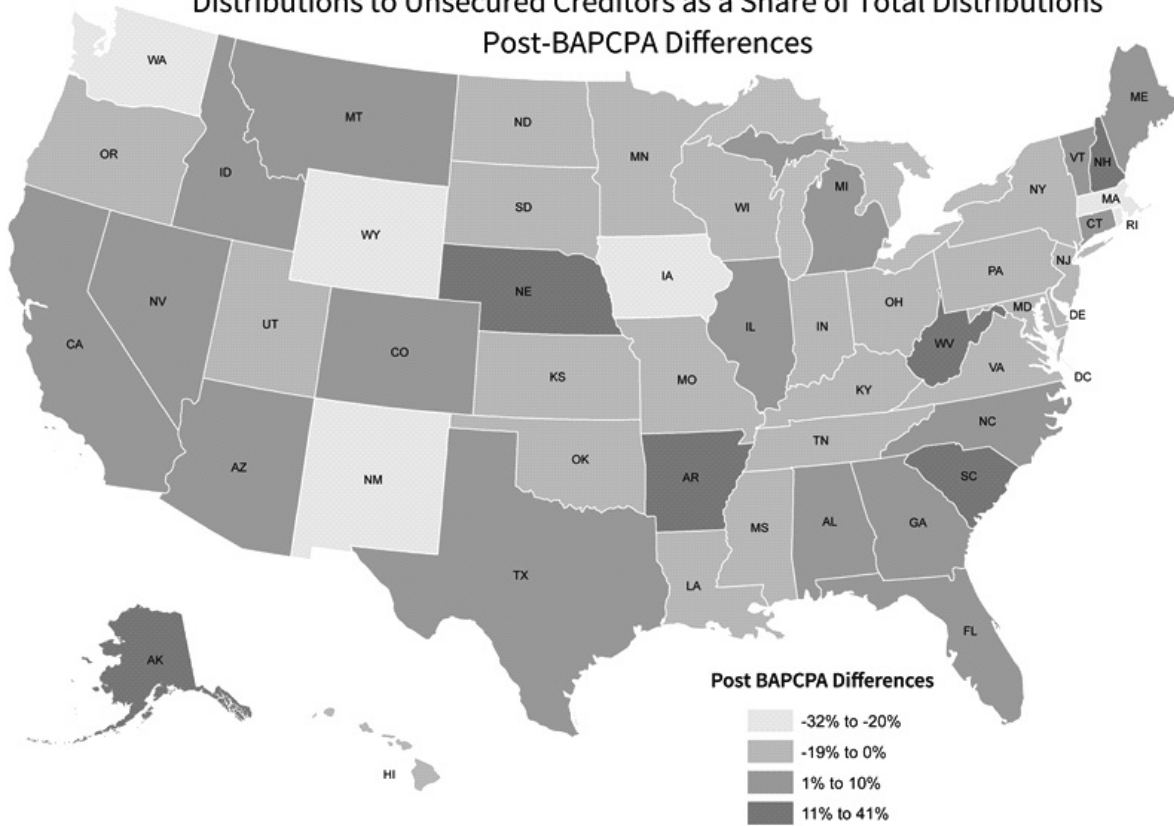
VI. Creditor Distributions

We hypothesized that an increase in administrative costs would mean that some portion or portions going to other claimants (the other slices of the “pie”) must decrease. In order to test this hypothesis, state by state, we calculated unsecured distributions in chapter 13 and chapter 7 consumer cases as a percentage of total distributions and a percentage of unsecured claims. Maps 4 through 7 illustrate the impact of BAPCPA on distributions to unsecured creditors as a share of total distributions and as a percentage of unsecured claims for each state and the District of Columbia for both chapter 13 and chapter 7 consumer asset cases. For each map, the lighter shading indicates either a post-BAPCPA decrease, or small increase in distributions to unsecured creditors; both as a share of total distributions and as a percent of unsecured claims.

Map 4

Chapter 13 Cases

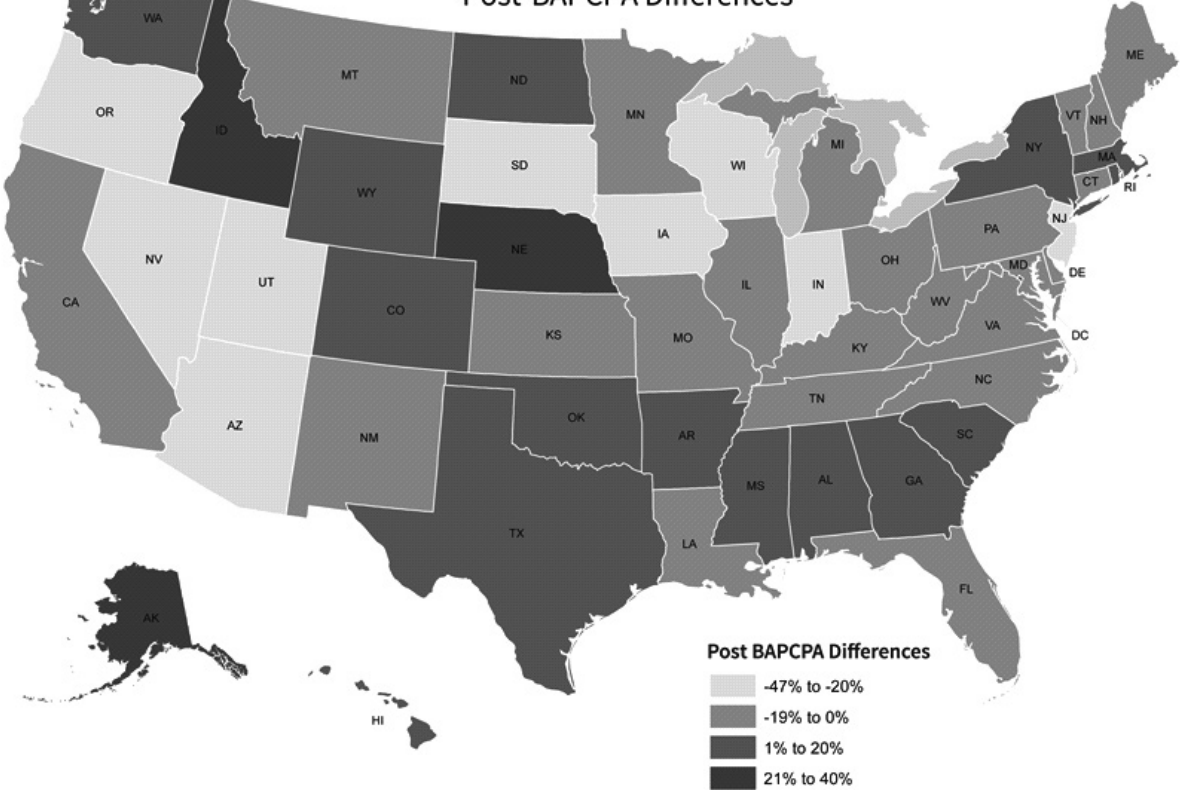
Distributions to Unsecured Creditors as a Share of Total Distributions
Post-BAPCPA Differences



Map 5

Chapter 13 Cases

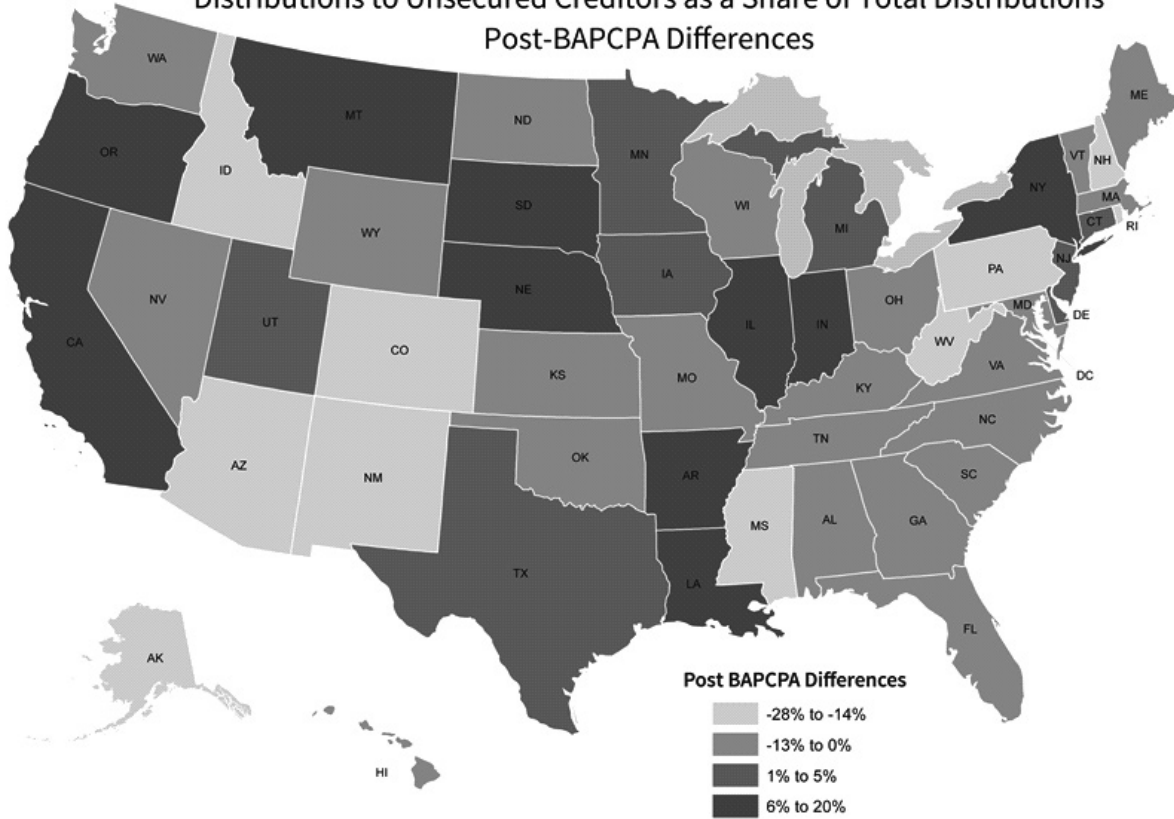
Distributions to Unsecured Creditors as a Percentage of Unsecured Claims
Post-BAPCPA Differences



Map 6

Chapter 7 Consumer Asset Cases

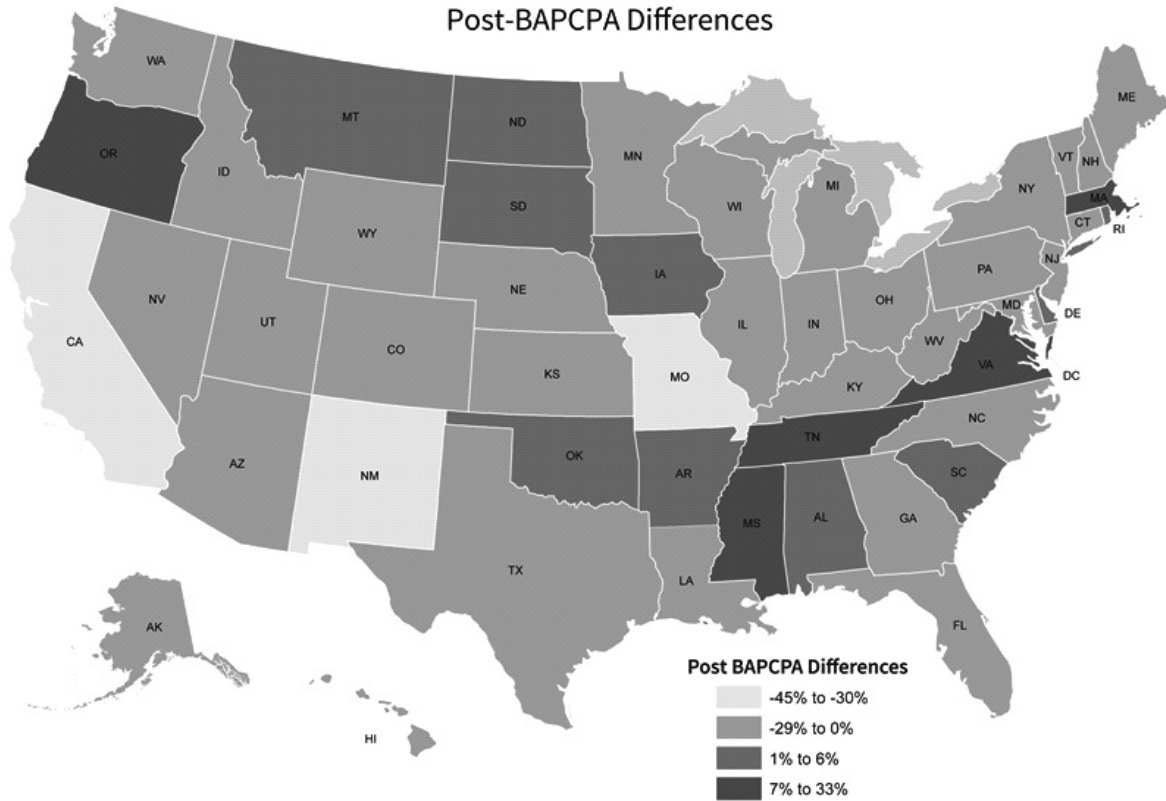
Distributions to Unsecured Creditors as a Share of Total Distributions
Post-BAPCPA Differences



Map 7

Chapter 7 Consumer Asset Cases

Distributions to Unsecured Creditors as a Percentage of Unsecured Claims
Post-BAPCPA Differences



Tables 3 through 6 present the underlying data for distributions to unsecured creditors and accompanying difference in means tests for each state plus the District of Columbia. For both chapter 13 and chapter 7 consumer asset cases, mean distributions to unsecured creditors in the U.S., as a share of total distributions and as a percent of unsecured claims, declined post-BAPCPA in a statistically significant fashion.

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Table 3: Chapter 13 Cases Distributions to Unsecured Creditors as a Share of Total Distributions							*** p value < 0.01	** p value < 0.05	* p value < 0.10
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA	
	Cases	Mean	Cases	Mean					
AK	5	25.5%	6	65.8%	40.3%	**		**	
AL	47	33.2%	55	33.9%	0.7%				
AR	23	24.9%	20	37.5%	12.5%		*		
AZ	11	24.2%	10	29.5%	5.2%				
CA	44	33.9%	77	35.4%	1.5%				
CO	6	39.0%	9	48.1%	9.1%				
CT	6	34.8%	8	41.3%	6.6%				
DC	5	50.1%	6	26.7%	-23.4%	*	**		
DE	5	34.3%	6	25.9%	-8.4%				
FL	42	40.9%	51	47.2%	6.3%				
GA	74	24.2%	104	28.8%	4.6%				
HI	5	53.5%	6	46.3%	-7.3%				
IA	6	68.0%	12	47.4%	-20.6%		*		
ID	5	42.3%	6	49.3%	7.0%				
IL	47	32.7%	77	33.2%	0.5%				
IN	24	43.3%	35	30.6%	-12.7%		*		
KS	8	25.0%	10	11.9%	-13.1%	*	**		
KY	11	50.2%	17	39.3%	-10.9%				
LA	23	41.6%	31	21.7%	-19.9%	***	***		
MA	12	64.7%	13	43.9%	-20.8%		*		
MD	21	54.6%	19	42.9%	-11.7%		*		
ME	14	30.4%	6	30.4%	0.1%				
MI	35	36.9%	42	41.6%	4.7%				
MN	8	54.8%	14	51.6%	-3.2%				
MO	22	35.7%	24	32.7%	-3.0%				
MS	11	14.8%	20	12.0%	-2.8%				
MT	12	33.7%	9	42.6%	8.8%				
NC	41	29.3%	36	36.0%	6.7%				
ND	5	84.7%	6	79.2%	-5.4%				
NE	6	9.9%	8	51.0%	41.1%	***		***	
NH	5	40.7%	6	75.6%	34.8%	*		**	
NJ	32	49.2%	23	41.9%	-7.3%				
NM	5	58.9%	9	37.6%	-21.3%				
NV	10	32.2%	15	36.7%	4.5%				
NY	46	65.1%	64	49.0%	-16.1%	***	***		
OH	41	43.8%	49	31.2%	-12.7%	*	**		
OK	16	44.1%	30	36.1%	-8.0%				
OR	8	46.7%	9	29.4%	-17.4%				
PA	43	45.1%	52	31.9%	-13.3%	**	**		
RI	5	54.6%	5	23.3%	-31.3%	**	**		
SC	18	26.4%	16	37.6%	11.2%				

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Table 3: Chapter 13 Cases (continued) Distributions to Unsecured Creditors as a Share of the Total Distributions							*** p value < 0.01 ** p value < 0.05 * p value < 0.10	
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA
	Cases	Mean	Cases	Mean				
SD	5	66.4%	6	62.9%	-3.5%			
TN	85	34.3%	79	25.5%	-8.7%	**	**	
TX	92	22.4%	84	24.5%	2.1%			
UT	13	32.1%	12	26.0%	-6.1%			
VA	24	40.8%	30	38.8%	-1.9%			
VT	5	39.1%	7	46.1%	7.0%			
WA	16	56.8%	17	36.6%	-20.2%	*	**	
WI	9	31.1%	14	22.5%	-8.7%			
WV	5	33.0%	8	56.6%	23.6%			
WY	5	75.3%	6	43.0%	-32.2%	*	**	
Total	1,072	37.6%	1,284	35.0%	-2.5%	**	**	
States with Post BAPCPA < Pre BAPCPA				29				
States with Post BAPCPA > Pre BAPCPA				22				

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Table 4: Chapter 13 Cases Distributions to Unsecured Creditors as a Percentage of Unsecured Claims							*** p value < 0.01	** p value < 0.05	* p value < 0.10
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA	
	Cases	Mean	Cases	Mean					
AK	5	19.2%	6	59.0%	39.8%	*		**	
AL	47	52.1%	52	54.6%	2.5%				
AR	23	23.1%	20	24.9%	1.9%				
AZ	11	47.7%	10	22.9%	-24.9%		*		
CA	44	48.7%	77	48.5%	-0.2%				
CO	6	28.3%	9	39.8%	11.5%				
CT	5	77.0%	8	64.7%	-12.3%				
DC	5	72.1%	6	100.0%	27.9%			*	
DE	5	46.5%	6	44.7%	-1.7%				
FL	40	49.6%	49	42.7%	-6.9%				
GA	73	40.6%	103	45.8%	5.2%				
HI	5	32.7%	6	35.1%	2.4%				
IA	6	80.3%	12	44.0%	-36.3%	**	***		
ID	5	12.2%	6	49.1%	36.9%	**		**	
IL	43	53.5%	77	50.0%	-3.6%				
IN	24	58.1%	35	31.3%	-26.8%	**	***		
KS	8	27.0%	10	13.8%	-13.2%				
KY	11	57.2%	17	51.2%	-6.0%				
LA	22	54.0%	30	37.2%	-16.8%		*		
MA	12	41.9%	12	46.4%	4.6%				
MD	21	73.5%	18	62.5%	-11.0%				
ME	14	63.8%	6	54.0%	-9.8%				
MI	34	53.8%	42	45.5%	-8.2%				
MN	8	37.4%	14	21.2%	-16.3%		*		
MO	22	33.8%	24	27.7%	-6.1%				
MS	11	23.7%	19	30.8%	7.2%				
MT	12	26.8%	9	20.3%	-6.5%				
NC	40	35.9%	36	31.0%	-4.9%				
ND	5	44.5%	6	47.2%	2.7%				
NE	6	21.0%	8	59.9%	39.0%			*	
NH	5	61.1%	6	45.0%	-16.1%				
NJ	30	63.1%	23	40.2%	-22.9%	*	**		
NM	5	43.5%	9	38.1%	-5.3%				
NV	9	48.8%	15	27.9%	-21.0%				
NY	46	41.6%	63	53.2%	11.6%			*	
OH	40	46.6%	49	32.9%	-13.7%		*		
OK	16	54.5%	30	69.3%	14.9%			*	
OR	8	71.4%	9	24.2%	-47.3%				
PA	42	43.1%	52	30.1%	-13.0%		*		
RI	5	54.2%	5	61.6%	7.3%				
SC	18	31.8%	15	42.9%	11.1%				

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Table 4: Chapter 13 Cases (continued) Distributions to Unsecured Creditors as a Percentage of Unsecured Claims							*** p value < 0.01	** p value < 0.05	* p value < 0.10
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA	
	Cases	Mean	Cases	Mean					
SD	5	72.1%	6	52.0%	-20.1%				
TN	81	62.9%	79	54.3%	-8.6%		*		
TX	90	26.4%	84	39.5%	13.1%	**		***	
UT	13	57.9%	12	12.5%	-45.4%	***	***		
VA	23	39.7%	29	37.0%	-2.7%				
VT	5	35.4%	6	26.8%	-8.6%				
WA	16	44.6%	16	44.7%	0.1%				
WI	9	62.9%	14	33.8%	-29.1%		*		
WV	5	48.8%	8	47.6%	-1.2%				
WY	5	48.8%	6	54.8%	6.0%				
Total	1,049	46.3%	1,269	43.2%	-3.2%	*	**		
States with Post BAPCPA < Pre BAPCPA				32					
States with Post BAPCPA > Pre BAPCPA				19					

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Table 5: Chapter 7 Consumer Asset Cases Distributions to Unsecured Creditors as a Share of Total Distributions							*** p value < 0.01	** p value < 0.05	* p value < 0.10
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA	
	Cases	Mean	Cases	Mean					
AK	6	61.1%	16	44.6%	-16.5%				
AL	6	59.3%	19	50.0%	-9.2%				
AR	6	45.2%	15	50.6%	5.4%				
AZ	8	73.4%	18	55.3%	-18.1%	*	**		
CA	6	45.6%	19	53.5%	7.9%				
CO	8	70.0%	16	41.7%	-28.3%	**	**		
CT	6	69.4%	20	71.3%	2.0%				
DC	6	62.0%	18	50.1%	-11.9%				
DE	6	55.3%	9	58.1%	2.8%				
FL	18	64.6%	20	55.1%	-9.5%		*		
GA	6	44.6%	15	39.7%	-4.9%				
HI	6	52.2%	12	46.3%	-5.9%				
IA	6	61.3%	15	65.0%	3.7%				
ID	6	73.8%	15	58.0%	-15.8%				
IL	6	41.5%	15	50.1%	8.6%				
IN	10	57.2%	18	66.6%	9.4%				
KS	6	64.7%	15	52.4%	-12.3%				
KY	6	68.1%	15	67.5%	-0.6%				
LA	6	58.3%	15	67.3%	9.0%				
MA	6	47.0%	15	38.0%	-9.0%				
MD	6	56.9%	15	45.1%	-11.8%				
ME	6	73.8%	13	62.7%	-11.1%				
MI	6	51.7%	15	55.0%	3.3%				
MN	6	58.7%	15	58.9%	0.2%				
MO	6	63.5%	15	58.2%	-5.3%				
MS	6	72.7%	11	52.8%	-19.9%	*	**		
MT	6	57.1%	15	63.9%	6.8%				
NC	6	57.1%	15	51.6%	-5.5%				
ND	6	55.5%	13	49.1%	-6.4%				
NE	6	40.0%	15	46.4%	6.4%				
NH	6	74.0%	9	57.9%	-16.1%		*		
NJ	6	37.7%	14	40.6%	3.0%				
NM	6	50.1%	12	35.4%	-14.7%				
NV	6	76.3%	15	69.5%	-6.9%				
NY	6	47.4%	15	62.8%	15.4%				
OH	20	67.9%	18	61.6%	-6.4%				
OK	6	61.7%	14	56.9%	-4.7%				
OR	6	44.3%	15	63.7%	19.3%				
PA	6	63.2%	14	42.9%	-20.3%		*		
RI	6	80.2%	14	61.4%	-18.7%		*		
SC	6	63.3%	15	53.3%	-10.0%				

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Table 5: Chapter 7 Consumer Asset Cases (continued) Distributions to Unsecured Creditors as a Share of Total Distributions							*** p value < 0.01 ** p value < 0.05 * p value < 0.10	
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA
	Cases	Mean	Cases	Mean				
SD	6	57.3%	15	70.7%	13.4%			*
TN	6	60.5%	15	59.7%	-0.8%			
TX	6	33.6%	15	36.9%	3.3%			
UT	6	71.6%	15	72.0%	0.5%			
VA	6	67.2%	15	63.2%	-4.0%			
VT	6	58.7%	13	56.2%	-2.5%			
WA	6	56.2%	15	53.7%	-2.5%			
WI	6	69.2%	15	58.9%	-10.3%			
WV	6	70.6%	13	52.6%	-18.0%		*	
WY	6	66.4%	15	65.4%	-1.0%			
Total	340	60.2%	763	55.5%	-4.7%	***	***	
States with Post BAPCPA < Pre BAPCPA				33				
States with Post BAPCPA > Pre BAPCPA				18				

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Table 6: Chapter 7 Consumer Asset Cases Distributions to Unsecured Creditors as a Percentage of Unsecured Claims							*** p value < 0.01	** p value < 0.05	* p value < 0.10
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA	
	Cases	Mean	Cases	Mean					
AK	6	25.0%	16	8.5%	-16.6%	**	**		
AL	6	15.8%	19	21.2%	5.5%				
AR	6	27.0%	15	18.3%	-8.7%				
AZ	8	31.1%	17	7.1%	-24.0%	***	***		
CA	5	65.1%	17	27.7%	-37.3%	**	**		
CO	8	24.9%	13	4.6%	-20.3%	**	**		
CT	6	40.2%	20	23.4%	-16.8%		*		
DC	6	65.8%	18	21.2%	-44.6%	**	***		
DE	6	46.1%	9	48.3%	2.2%				
FL	18	25.1%	20	7.7%	-17.4%	**	**		
GA	5	49.7%	15	29.3%	-20.4%				
HI	6	30.2%	12	23.8%	-6.5%				
IA	6	8.0%	15	13.9%	5.9%				
ID	6	38.6%	13	21.4%	-17.2%				
IL	6	25.0%	15	20.0%	-5.1%				
IN	10	20.4%	18	10.8%	-9.6%				
KS	6	24.9%	13	18.3%	-6.6%				
KY	6	28.2%	14	17.6%	-10.6%				
LA	6	16.7%	15	15.1%	-1.6%				
MA	6	18.3%	14	33.5%	15.1%				
MD	6	41.0%	15	17.0%	-24.0%		*		
ME	6	21.9%	13	16.2%	-5.7%				
MI	6	35.2%	14	7.8%	-27.4%	**	**		
MN	5	26.6%	15	5.7%	-20.9%	*	**		
MO	6	50.0%	15	13.2%	-36.9%	***	***		
MS	6	12.4%	11	44.9%	32.5%	*		**	
MT	6	5.8%	15	6.9%	1.1%				
NC	6	45.0%	15	24.9%	-20.1%				
ND	6	8.0%	13	10.6%	2.6%				
NE	5	26.5%	14	9.5%	-17.0%		*		
NH	6	35.1%	9	15.1%	-20.0%				
NJ	6	48.9%	14	26.8%	-22.1%		*		
NM	6	44.8%	12	15.2%	-29.7%	*	**		
NV	6	39.1%	15	19.3%	-19.8%		*		
NY	6	14.1%	15	11.7%	-2.4%				
OH	19	25.6%	18	18.8%	-6.8%				
OK	5	18.7%	14	23.2%	4.4%				
OR	6	4.7%	15	17.2%	12.4%				
PA	6	38.7%	14	17.2%	-21.5%		*		
RI	6	50.5%	14	51.5%	0.9%				
SC	6	19.9%	13	23.8%	3.9%				

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Table 6: Chapter 7 Consumer Asset Cases (continued) Distributions to Unsecured Creditors as a Percentage of Unsecured Claims							*** p value < 0.01	** p value < 0.05	* p value < 0.10
State	Pre BAPCPA		Post BAPCPA		Difference	Significantly different means	Post BAPCPA < Pre BAPCPA	Post BAPCPA > Pre BAPCPA	
	Cases	Mean	Cases	Mean					
SD	5	13.8%	15	17.7%	3.9%				
TN	5	26.1%	14	41.9%	15.8%				
TX	4	31.7%	14	6.1%	-25.6%	**	**		
UT	6	30.0%	15	12.5%	-17.4%	*	**		
VA	6	25.1%	15	40.8%	15.8%				
VT	6	23.4%	13	16.4%	-7.0%				
WA	5	21.7%	15	17.2%	-4.5%				
WI	6	26.1%	14	22.7%	-3.4%				
WV	6	28.5%	13	28.3%	-0.1%				
WY	6	34.5%	15	26.8%	-7.7%				
Total	329	28.9%	744	19.5%	-9.4%	***	***		
States with Post BAPCPA < Pre BAPCPA				37					
States with Post BAPCPA > Pre BAPCPA				14					

The results presented in Tables 3 through 6 above include average (mean) values of unsecured creditor distributions as a percentage of unsecured creditor claims, and unsecured creditor distributions as a percentage of total distributions, with a test of the difference in means pre- and post- BAPCPA for the chapter 13 and chapter 7 cases in our sample. The “difference in means” approach accounts for differences in sample size and variability in the two sub-samples, but does not take into account differences in the way bankruptcies are treated across states. Furthermore, it does not reflect underlying macroeconomic conditions. From the results in these tables, we see that, contrary to the intent of the proponents of BAPCPA, unsecured distributions have declined nationally in a statistically significant fashion post-BAPCPA both as a share of unsecured creditor claims and as a share of total distributions in the case of both chapter 13 and chapter 7 filings.

It is not the intent of our study to draw inferences about the effects of BAPCPA on individual states, thus some care in the interpretation of the mean distributions in Tables 3 through 6, as well as in Maps 4 through 7, should be taken.

VII. Modeling Framework

The central question of this study is how the BAPCPA provisions impacted distributions to unsecured creditors. As indicated in the maps and tables above, a comparison of means and ratios between periods presents some limitations due to inherent differences in the way bankruptcies are handled across states. Furthermore, our sample period of 2003 through 2009 witnessed the most severe economic recession since the Great Depression. An accurate estimate of the impact of BAPCPA on creditor distributions must account for these factors.

To address this question more carefully and take into account confounding factors that may have played a role in the distribution of debtor's assets in bankruptcy, we developed a regression model in which we control for the 'natural experiment' afforded by implementation of the BAPCPA provisions. The approach we chose controls for both the pre- and post-BAPCPA periods as well as idiosyncratic differences across states. Our first question was whether or not we could confirm the results from the Consumer Bankruptcy Fee Study concerning the post-BAPCPA effects on attorney fees using state-level data compiled from Trustee Reports. According to our regression results, in which we controlled for fixed effects across states and using the monthly percent change in state-wide employment to control for macroeconomic effects, attorney fees on average were \$444 higher in inflation-adjusted 2005 post-BAPCPA. As in the Fee Study, employment changes had a significant effect on attorney fees during the post-BAPCPA period. According to our results, for states that experienced a 0.1 percentage point monthly drop in employment during the recession of 2007-09, attorney fees were on average \$104 lower. These results are broadly consistent with those reported in the Consumer Bankruptcy Fee Study.⁵⁴

Turning now to our question of the impact of BAPCPA on distributions to unsecured creditors, recall that our study is limited to the data available from the Trustee Reports, specifically the distributions made from the debtor's estate, including claims on those distributions from secured and unsecured creditors. As throughout our analysis, in the regressions that follow, all dollar figures are inflation-adjusted using the Bureau of Economic Analysis' chain-weighted price index for personal consumption expenditures on legal services. Chapter 13 cases require a repayment plan that generally assumes some form of employment for the debtor, thus we included the state-wide one month percent

⁵⁴ Lupica, *supra* note 13, at 86.

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change in employment in the month of filing as a control for macroeconomic effects resulting from the recession that occurred during our sample period.

The Great Recession of 2007-2009 was in large part the result of an unsustainable run-up in housing prices and collapse in the home mortgage market and related financial derivatives. We therefore also included the year-over-year change in the fraction of ‘seriously delinquent’ mortgages, defined as mortgages that are in foreclosure or with payments more than 90 days past due. The results of our regressions for chapter 13 cases are reported below.

Table 7: Chapter 13 Cases Regression Models	(1)		(2)		(3)	
	Distributions to Unsecured Creditors as a Share of Total Distributions		Distributions to Unsecured Creditors as a Fraction of Unsecured Claims		Distributions to Secured Creditors as a Share of Total Distributions	
	Pre-BAPCPA	Post-BAPCPA	Pre-BAPCPA	Post-BAPCPA	Pre-BAPCPA	Post-BAPCPA
		-7.079 ***		-12.940 ***		5.602 ***
Business Cycle Effects						
Employment Change	-3.100	3.817	-9.363 **	11.508 *	3.415	12.450 ***
Mortgage Delinquencies	-7.491 **	-7.307 ***	-8.242	-13.890 ***	-2.427	6.164 ***
Distribution Effects						
Attorney Fees	-0.004 ***	-7.081 ***	-0.003 ***	-12.940 ***	-0.001	5.599 ***
Administrative Costs	0.008 ***	-7.071 ***	0.008 ***	-12.931 ***	0.016 ***	5.618 ***
Unsecured Distributions					-0.002 ***	5.601 ***
Secured Distributions	-0.001 ***	-7.080 ***	-0.0005 ***	-12.940 ***		
Priority Distributions	-0.001	-7.080 ***	-0.001 ***	-12.941 ***	-0.001 ***	5.601 ***
Debtor Distributions	-0.0001	-7.079 ***	-0.00005 ***	-12.939 ***	-0.0002	5.602 ***
State-level Fixed Effects		***		***		***
Observations		2,356		2,356		2,356
Adjusted R ²		0.41		0.15		0.45
Generous Exemption State Effects		***		***		***
	*** p value < 0.01 ** p value < 0.05 * p value < 0.10					

There are three regression models reported in Table 7. The first explains distributions to unsecured creditors as a share of total distributions; the second models distributions to unsecured creditors as a fraction of unsecured claims; and the third describes distributions to secured creditors as a share of total distributions. Each model includes the explanatory factors for macroeconomic effects described above, as well as the inflation-adjusted dollar value of each of the other components of total distributions in the bankruptcy cases. We also include state-level fixed effects to control for idiosyncrasies in the way different states handle bankruptcy cases. Our sample includes 2,356 chapter 13 cases filed from 2003 through 2009 in the 50 U.S. states plus the District of Columbia. In the final row of Table 7 we report the results of our joint test for the significance of the generous exemption states (IA, KS, MN, OK, and NV) relative to the other U.S. states. These test results are calculated from the model described above, but including only state-level fixed effects for the 5 generous exemption states.

Model 1, in the first column of Table 7, presents our regression results for distributions to unsecured creditors as a share of total distributions. According to our results, we find that unsecured distributions as a share of the total estate were on average 7.079 percentage points lower post-BAPCPA, all else fixed. Recall the size of the estate is substantially fixed and thus increases in any of the other distribution components should reduce the amount available for distribution to unsecured creditors. Mortgage delinquencies are highly significant for this model, while employment changes have no statistically significant effect on unsecured distributions as a share of total distributions.

Model 2 identifies even greater post-BAPCPA impacts for unsecured distributions as a fraction of unsecured claims in chapter 13 cases. According to our results, the ratio of distributions to claims for unsecured creditors falls by 12.9 percentage points during the post-BAPCPA period, all else fixed. Defined in this fashion, the macro-economy is a significant factor in explaining post-BAPCPA changes in unsecured distributions. According to our results, a decrease in the monthly change in employment of 0.1 percentage points corresponds to a statistically significant decrease in post-BAPCPA unsecured distributions relative to unsecured claims of about 1.3 percentage points on average. Mortgage delinquencies are even more important as an increase in the year-over-year change in seriously delinquent mortgages of one full percentage point reduces distributions to unsecured creditors relative to claims on average by almost 14 (13.89) percentage points.

Model 3 examines the effect of this set of explanatory factors on secured distributions as a share of total distributions. The results here are somewhat mixed. The post-BAPCPA effects are all statistically significant, but of different signs than for the case of unsecured distributions. Increases in employment post-BAPCPA increase secured distributions, as expected. However, increases in seriously delinquent mortgages also appear to coincide with a larger share of secured distributions relative to total distributions on average. Similarly, *ceteris paribus* increases in any of the other distributional components of a debtor's estate coincides with increases in the share of distributions going to secured creditors according to our results.

We further considered the effect of exemptions on creditor distributions, given how much the “generosity” of exemption statutes varies from state to state, and between states and the federal bankruptcy scheme. Moreover, there is little uniformity in the liquidity of items covered in each exemption statute. For example, some states and the Federal scheme have what is known as a “wild card” exemption, whereby a debtor can exempt any type of property, typically up to a fixed dollar amount. In addition, in certain states, debtors may apply the unused portion of their homestead to any type of property, which is in essence a “bonus wild card” exemption.

Map 8, set forth below, identifies states with the most ‘generous’ exemptions among the 50 U.S. states and the District of Columbia.

Map 8

States with Generous Exemption Policies



In Map 8 we characterize a state as ‘generous’ if the dollar value of the exemption for a particular asset type was more than one standard deviation above the national mean. Note that five states, Iowa, Kansas, Minnesota, Oklahoma, and Nevada, were particularly generous in that the amount exempted for three or more asset types exceeded the national norm by more than one standard deviation. While there are studies examining the effect of exemptions on the availability of credit,⁵⁵ to our knowledge, there is no research examining impact on the value of the property available for distribution to secured and unsecured creditors.

⁵⁵ See e.g., Jeremy Berkowitz and Michelle J. White, *Bankruptcy and Small Firms’ Access to Credit*, National Bureau of Economic Research, Working Paper 9010, available at <http://www.nber.org/papers/w9010> (2002).

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We found statistically differences in each of our models among the five generous exemption states relative to the other states, which would imply that exemptions do in fact matter in chapter 13 bankruptcy cases.

Table 8 presents three similar models from our sample of chapter 7 consumer asset cases.

Table 8: Chapter 7 Consumer Asset Cases Regression Models	(1)		(2)		(3)	
	Distributions to Unsecured Creditors as a Share of Total Distributions		Distributions to Unsecured Creditors as a Fraction of Unsecured Claims		Distributions to Secured Creditors as a Share of Total Distributions	
	Pre-BAPCPA	Post- BAPCPA	Pre-BAPCPA	Post- BAPCPA	Pre-BAPCPA	Post-BAPCPA
		-3.991 **		-5.084 **		0.990
Business Cycle Effects						
Employment Change	-0.189	3.787	2.813	0.160	1.405	-0.620
Mortgage Delinquencies	-2.301	-3.104 *	-1.406	-5.521 ***	1.782 **	0.677
Distribution Effects						
Administrative Costs	-0.0002	-3.991 **	0.001 ***	-5.084 **	0.001 ***	0.990
Unsecured Distributions					-0.0001 ***	0.990
Secured Distributions	-0.0001 **	-3.991 **	0.0002 ***	-5.084 **		
Priority Distributions	-0.001 ***	-3.993 **	-0.001 ***	-5.085 **	-0.0003 **	0.990
Debtor Distributions	-0.0002	-3.991 **	0.001 ***	-5.084 **	-0.0001	0.989
State-level Fixed Effects		***		***		**
Observations		1,103		1,103		1,103
Adjusted R ²		0.20		0.15		0.25
Generous Exemption State Effects		none		none		none
	*** p value < 0.01		** p value < 0.05		* p value < 0.10	

From our results it would appear that there are significant post-BAPCPA effects for unsecured distributions in chapter 7 consumer asset cases. Specifically, unsecured distributions for chapter 7 asset cases are significantly

lower post-BAPCPA both as a share of total distributions and as a fraction of unsecured claims. For secured distributions, however, we found no significant post-BAPCPA effects.⁵⁶ For all three models in Table 8, the state-level fixed effects were statistically significant. However, and somewhat surprisingly, we found no statistically significant effects arising from states with generous exemptions for distributions in chapter 7 asset cases, unlike what we found in chapter 13 cases.

VIII. Discussion and Policy Implications

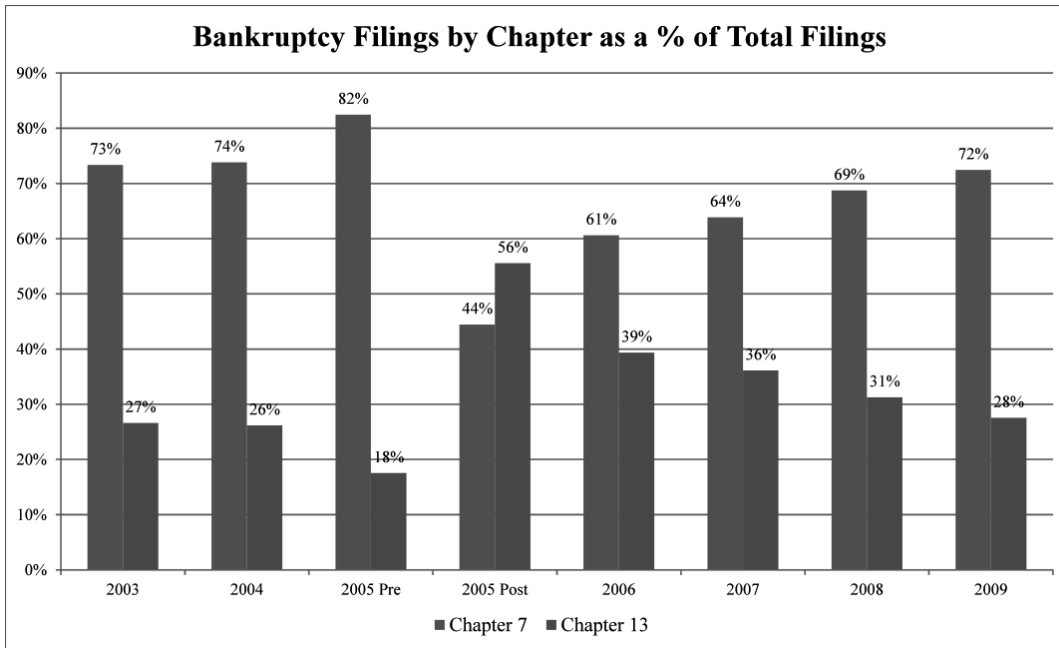
BAPCPA was designed by its proponents to correct some of the purported imbalances in the consumer bankruptcy system by preventing the discharge of debts consumers can afford to pay. It was aggressively lobbied for by the credit industry, with the hope that more consumer debt would be repaid and less discharged. The data revealed in the Creditor Distribution Study should give pause to those who lobbied for the BAPCPA amendments expecting creditor recoveries to be higher.

As noted, the architects of BAPCPA used a number of methods to accomplish their objectives. The most controversial and debated BAPCPA feature was the means test. The means test was designed to shift “can pay” filers from chapter 7 to chapter 13, where there likely would be a distribution to unsecured creditors. In examining the proportion of chapter 7 and chapter 13 consumer cases filed from 2003 to 2009, we did find a decline in the number of chapter 7 cases filed, relative to the number of chapter 13 cases, immediately following BAPCPA’s effective date in 2005. By 2006, however, the number of chapter 7 cases filed steadily *increased* each year while the number of chapter 13 cases filed *decreased*. By 2009, the number of chapter 7 cases filed, as a percent of all consumer cases, returned to pre-BAPCPA levels.

Chart 5 below sets forth chapter 7 and chapter 13 consumer filings as a percentage of all consumer filings

⁵⁶ Again, as we reviewed trustee reports filed across the country, we found a great deal of variation in how secured claims and secured distributions were reported.

Chart 5



Moreover, the Consumer Bankruptcy Project revealed that although in 2007, the ratio of chapter 7 to chapter 13 filers was higher than it was pre-BAPCPA, median income among both chapter 7 and chapter 13 debtors in 2007, was virtually identical to the incomes of debtors’ that filed under each respective chapter in the pre-BAPCPA period.⁵⁷ Thus, the means test *did not* block supposed higher-income “can-pay” consumers’ access to chapter 7 (where typically a greater percentage of unsecured debts are discharged) and steer these debtors into chapter 13 (where typically a greater percentage of unsecured debts are repaid).

Not only is this filing trend confirmed by the CBP and the Consumer Fee Study data, but it reinforces the ultimate conclusion of the Creditor Distributions Study: creditors have done worse under BAPCPA. In chapter 13 cases, unsecured distributions as a percentage of unsecured claims declined nationally by a statistically significant 3.2 percentage points in the post-BAPCPA

⁵⁷ Lawless, *supra* note 29, at 359–362.

time period. Even in the few chapter 7 consumer cases where there were assets to distribute, unsecured distribution as a share of unsecured claims declined by 8.9 percent. Thus, creditors received lower distributions as a percentage of their claims under both chapter 13 and in chapter 7 asset-cases post-BAPCPA. Furthermore, it only took a few years for the number of chapter 7 no-asset cases (~95% of all cases filed) to return to the pre-BAPCPA highs and the number of chapter 13 cases filed to return to the pre-BAPCPA lows. Even for the short time that the means test may have pushed a higher proportion of debtors in chapter 13, these debtors were not the “presumptively abusive high-income earners” that BAPCPA was targeting.⁵⁸ The sorting function of the means test has become even less effective in recent years, with the chapter 7/chapter 13 ratio currently at pre-means test levels.⁵⁹

Another articulated objective of BAPCPA was to make the bankruptcy system harder to access generally, thus deterring some debtors’ from too-easily filing.⁶⁰ The CBP drew some inferences from their data and trend lines about the “800,000 missing filers” (the drop in the number of consumer bankruptcies from 2005 to 2007).⁶¹ The CBP offered two possible theories about these 800,000 consumers. First, “[i]f the debt loads and debt-to-income ratios of the 800,000 squeezed out were just as bad as those who still filed for bankruptcy in 2007, then ...[there is] yet more evidence of BAPCPA’s pernicious effects in excluding people randomly from financial relief. If the debt loads and debt-to-income ratios were better (even if their incomes were the same), then ... they

⁵⁸ Lawless, *supra* note 29, at 359–362.

⁵⁹ The objective of shifting consumers from chapter 7 into chapter 13 also was designed to benefit secured creditors. Significant changes to bankruptcy code sections 1325(a)(5) and 1325(b) supposed to draw assets from unsecured creditors into the hands of car lenders. In addition, changes in perfection timing for preference defenses, among others, were designed to improve the position of secured creditors.

⁶⁰ 152 Cong. Rec. S10647-48 (daily ed. Sept. 29, 2006) (statement of Sen. Grassley) (“We have seen bankruptcy rates fall dramatically from about 2 million bankruptcies in 2005 to the point where I doubt there will be over 1 million bankruptcies in 2006, if current trends continue For now, almost one year later, bankruptcy reform seems to have been a success.”); “[A significant] factor motivating comprehensive reform is that the present bankruptcy system has loopholes and incentives that allow and—sometimes—even encourage opportunistic personal filings and abuse Some bankruptcy debtors are able to repay a significant portion of their debts, according to several studies. Current law, however, has no clear mandate requiring these debtors to repay their debts.” H.R. Rep. No. 109-031, (I), at 92 (2005) (statement of Rep. Gekas).

⁶¹ Lawless, *supra* note 29 at 375-377.

were still struggling with total debts that exceeded two and a half years of income and short-term debts that matched about nine months of income, all without seeking protection that had once been readily available to them.”⁶² The CBP researchers continued by observing, “If either of these interpretations of the debt load data is correct—that any financial sorting was either non-existent or at best a gradation of inability to pay—then it may be that the 800,000 in 2007 who might otherwise have filed will find their way to bankruptcy in 2008 or 2009.”⁶³ In fact, the number of consumer cases filed affirmed this prediction, with filings significantly increasing in 2008, 2009, and years following, with the balance between chapter 13 and chapter 7 cases restored to the pre-BAPCPA level.

Even once a consumer accessed the bankruptcy system, scores of provisions were included in BAPCPA that were designed to make the process more difficult and the discharge harder to achieve. In exploring the issue of how the bankruptcy system was operating and how BAPCPA was working in practice, the Consumer Fee Study examined the effects of these systemic impediments.⁶⁴ The Fee Study’s central question was the monetary and practical impact of the hurdles, mandates and rules that were put into place to deter debtor’s from “too easily filing” by extracting data from case files of those consumers who could not be dissuaded from filing.⁶⁵ The Fee Study endeavored to quantify the cost of the administration of consumer cases post-BAPCPA, and compare to the costs of administration before the amendments, as well as identify the specific policies and practices affecting these costs.⁶⁶ The focus of the Fee Study was on the consumer bankruptcy system and its principal stakeholders.

The Fee Study drew from its qualitative data gleaned from focus groups, interviews and survey instruments to conclude that BAPCPA adversely impacted the efficient operation of the consumer bankruptcy system.⁶⁷ The qualitative data revealed that consumer cases filed under BAPCPA are more (i) protracted, as measured from the date of the debtor’s first contact with a bankruptcy

⁶² *Id.*

⁶³ *Id.*, at 377.

⁶⁴ Lupica, *supra* note 13, at 27.

⁶⁵ *Id.* at 28.

⁶⁶ *Id.*

⁶⁷ *Id.* at 29.

attorney; (ii) expensive, both with respect to attorney fees, and Total Direct Access Costs, and (ii) administratively cumbersome and time-consuming, from the debtors', the debtor's attorneys', trustees' and judges' perspectives.⁶⁸ The Fee Study identified those who were the "losers" under BAPCPA (debtors, attorneys, trustees and the courts) and monetized the extent of these losses.⁶⁹

The Creditor Distributions Study addressed the final question with respect to the validity of the means test: were the losses identified offset by any gains? Did creditors receive greater percentage of their claims under BAPCPA? Did BAPCPA result in any winners?

Our data show that there were no winners under BAPCPA.⁷⁰ No matter how you examine the question, unsecured creditors did worse under BAPCPA. Unsecured distributions declined nationally as a share of total distributions in both chapter 13 and chapter 7 asset cases. This decline is statistically significant. Under both chapters, administrative expenses increased significantly, eating up a greater share of the pie. We also expected to see an increase in secured distributions, given the favor with which secured creditors were treated by BAPCPA,⁷¹ but this was not the case. We speculate that the sharp decline in the value of real estate during our study years, as well as the inconsistency with which secured claims and distributions were reported account for this finding. Fewer filers had any housing equity thus were unable to "save the house" by paying their mortgagor through their chapter 13 plan. Moreover even when there may have been mortgage payments made by the debtor, the payments were not always reflected in the Chapter 13 Trustee Final Reports. In chapter 7 cases, in many instances, fully encumbered assets were abandoned by the trustee, and thus the liquidation and distributions were similarly not reflected in the case final report.

⁶⁸ As defined in the Consumer Bankruptcy Fee Study to include attorney fees, filing fees, and fees for the mandatory credit counseling and debtor education courses. *Id.*, at 121-124.

⁶⁹ *Id.*

⁷⁰ Notwithstanding the Fee Study's finding that debtor's attorneys were paid more, on average per case post-BAPCPA, attorneys reported making less money on each consumer case. Attorneys noted that each case takes longer to prepare, and thus post-BAPCPA cases take more attorney and paralegal hours. *Id.*

⁷¹ See note 51, *supra*.

Unsecured distributions, as a percentage of claims also declined nationally in both chapter 13 and chapter 7 asset-cases. In all cases examined, regression analysis revealed a significant “BAPCPA-effect” on the ratio of distributions to claims. Moreover, as was the case for the finding of lower unsecured distributions as a percentage of total distributions, the macro-economy is a significant explanatory factor. In the finite-asset-zero-sum bankruptcy distribution environment, an increase in administrative costs would have to impact distributions to other parties. Given that unsecured creditors are at the end of the line in terms of priority of distribution, it makes sense that they would bear the brunt of this impact. Moreover, when our results are analyzed in light of the CBP findings of consumer filers’ higher debt levels, it is no wonder creditors were among the ranks of the losers under BAPCPA.

Some scholars have claimed that the credit lobby knew this would happen all along.⁷² For example, in accord with Professor Mann’s theory of the “sweat box,” BAPCPA was pushed forward by the consumer finance industry, not to increase their recoveries in bankruptcy, but in order to delay inevitable filings.⁷³ According to Mann, it is during this period of delay that creditors’ receive the robust recoveries that seem to elude them once a consumer files for bankruptcy relief.⁷⁴

Even if unsecured creditors contemplated and counted on voluntary repayment by financially distressed debtors during the period of pre-filing delay,⁷⁵ it seems as unlikely that the credit industry would be happy about or indifferent to the possibility of post-BAPCPA decreased dividends. Perhaps it was magical thinking that there were lurking high income can-pay debtors, who

⁷² Ronald J. Mann, *Bankruptcy Reform and The “Sweat Box” of Credit Card Debt*, 2007 ILL. L. REV. 375 (2007).

⁷³ *Id.*, at 379.

⁷⁴ *Id.*

⁷⁵ Moreover, even if BAPCPA deterred or delayed some filings, in the absence of voluntary repayment, creditors must resort to non-bankruptcy debt collection measures. Non-bankruptcy debt collection is expensive, and if the debtor cannot or will not pay their debt outside of bankruptcy, the creditor has to incur the time and costs of obtaining a judgment against the debtor, and attaching and executing on nonexempt assets to realize on the judgment. Moreover, debtors with lower income and higher debt loads may have few if any non-exempt assets from which to collect and the collecting creditor may find itself in competition with many similarly situated creditors.

would be drawn out by BAPCPA and led into chapter 13 to repay a significant percentage of their unsecured debt.

IX. Conclusion

Congress' and the financial services lobbyists' conflicting and inconsistent objectives in advocating for BAPCPA's enactment provides the likeliest explanation for the data showing lower dividends to creditors under BAPCPA. It is hard to imagine that a bankruptcy system designed to punish debtors, rebuke attorneys, burden trustees and curtail the discretion of bankruptcy judges would result in a more efficient debt repayment system. The Congressional goal of transforming the bankruptcy system so that consumers would no longer be able to use it to discharge the debts that they could purportedly afford to pay was based upon the false premise that there were consumers discharging debts that they were, in the absence of chapter 7, able to pay. The Creditor Distribution Study data, read together with the Consumer Bankruptcy Fee Study data has confirmed that the consumer bankruptcy system under BAPCPA is more difficult to access, less efficient, more cumbersome, more expensive, provides debtors with less effective relief, and is a less effective mechanism for debt repayment.