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#### An Empirical Study of Debtor Education in Bankruptcy: Impact on Chapter 13 Completion Not Shown

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#### Introduction

This article reports on findings in an empirical study of debtor education in bankruptcy. <sup>2</sup> Debtors in the study who took a short, mandatory course in financial management after filing a chapter 13 bankruptcy completed their plans at a higher rate than those who did not receive education. <sup>3</sup> When other local practices are also taken into account, however, it is not appropriate to conclude that there is a positive association between receiving education and completing a plan. <sup>4</sup>

In a sample of 7,746 chapter 13 debtors, the completion rate for the debtors who received education was 41.9 percent, while the rate for those who did not was 29.6 percent. <sup>5</sup> It is also noteworthy that a majority of debtors in both groups failed to complete their plans. <sup>6</sup>

Although the chapter 13 debtors in this study who received education achieved completion at a higher rate than those who did not, these findings should be interpreted with caution in light of the many other factors that influence plan completion. It is not possible to conclude on the basis of this study that debtor education contributes to plan success. Trusteeships that provide debtor education also use other strategies that may contribute more to plan completion than debtor education does. A rough coding of local practices, described in detail below, <sup>7</sup> was used to estimate statistically the relative importance of various practices. The results of multiple regression analysis suggest that use of wage orders (to have the debtors' employers pay the trustee directly) is associated with more plan completion, while debtor education is not associated with increased completion (indeed, it is negatively associated with plan completion). <sup>8</sup> This analysis also indicates that other factors not captured in the study, most obviously individual debtor characteristics, account more for variations in plan completion rates than administrative practices, including debtor education. Different attitudes toward bankruptcy and repayment in different areas also may influence plan completion. <sup>9</sup>

The study included data from five chapter 13 trusteeships, three with debtor education programs and two without them. <sup>10</sup> The completion rates are for all cases filed in 1994 in the five trusteeships. Data were first gathered in July 2000, after the 1994 cases had a chance to run the maximum statutory length of five years.

Debtor education is one practice among others that chapter 13 trustees have tried in a search for best practices. <sup>11</sup> Clearly, debtor education is not essential to higher rates of plan completion. An illustration of this point is provided by the experience in Charlotte, North Carolina, which had the highest completion rate (54.9 percent) in the study, even though it does not provide debtor education. <sup>12</sup> Bankruptcy officials in Charlotte use a number of other strategies that might be expected to contribute to plan completion. <sup>13</sup> These include: delaying full payment of attorneys fees for three years, permitting many low percentage, five-year plans, and use of wage orders to have debtors' employers pay the trustee directly. <sup>14</sup>

The three trusteeships in the study with debtor education programs had greatly varying completion rates as follows: San Antonio, Texas (54.1 percent); Greensboro, North Carolina (41.3 percent); and Fort Worth, Texas (34.4 percent). <sup>15</sup> All three of these programs require debtors to take a short course (approximately two to four hours) on one day. <sup>16</sup> The fifth trusteeship in the study, located in Sacramento, California, did not provide education and had a completion

rate of 18.2 percent.<sup>17</sup> Consistent with previous studies, this one provides more evidence that local practices and attitudes, sometimes called local legal culture, contribute to great variations in how our federal bankruptcy laws are implemented in different places.<sup>18</sup>

Part I of this article gives background concerning proposed legislation that would require all individual debtors to take a financial management course as a condition of discharge in chapter 7 or chapter 13. Part II discusses the issue of how to gauge success of debtor education in bankruptcy and explains why chapter 13 completion was chosen as the focus in this study. Part III presents the results in the empirical part of the study. Part IV describes the content of some of the leading existing debtor education programs in chapter 13 (focusing on those in San Antonio, Greensboro and Fort Worth, along with the program in Columbus, Ohio, a trusteeship not included in the statistical part of the study). Part V gives some information on a debtor education program in chapter 7 (in Nashville, Tennessee). Part VI discusses the need for further research. The conclusion questions whether it is advisable to expand upon existing programs without first obtaining more evidence of benefits from debtor education. It is hoped that the information gathered on the content, organization, and evaluation of these programs, reported below, will be helpful to those who have implemented or who contemplate implementing debtor education programs in bankruptcy.

## I. Background on the Proposal to Require Debtor Education in Bankruptcy

In 1997, the National Bankruptcy Review Commission recommended that, "All debtors in both chapter 7 and in chapter 13 should have the opportunity to participate in a financial education program."<sup>19</sup> Despite disagreements over other consumer bankruptcy issues,<sup>20</sup> all nine commissioners concurred in this recommendation, which did not call for a general requirement of education for all debtors.<sup>21</sup>

Several chapter 13 trusteeships have long had debtor education courses, beginning with Greensboro in the early 1970s.<sup>22</sup> There are also long-standing programs in Fort Worth and San Antonio.<sup>23</sup> These three programs have a basic course that is mandatory, and they also offer either an additional course that is voluntary or some form of one-on-one counseling or credit re-establishment assistance.<sup>24</sup> Another long-standing program is in Columbus, Ohio; this one is entirely voluntary and is focused on credit re-establishment as an incentive for participation.<sup>25</sup>

There has been some controversy about whether the Bankruptcy Code authorizes chapter 13 trustees to run financial education programs.<sup>26</sup> Statutory support can be found in Section 1302(b)(4) of the Bankruptcy Code, providing that trustees in chapter 13 "shall...advise, other than on legal matters, and assist the debtor in performance under the plan."<sup>27</sup> The bankruptcy commission called for more explicit authorization and for availability of programs for both chapter 13 and chapter 7 debtors.<sup>28</sup> In recent years, the Executive Office of the U.S. Trustees in the U.S. Department of Justice, which oversees the operations of most trustees, has been more supportive of the chapter 13 debtor education programs,<sup>29</sup> and many more chapter 13 trustees have started them. As of the middle of 2001, 37 chapter 13 trustees were offering instructional programs, according to a member of the Trustees Education Network, Inc. (TEN), a nonprofit organization that has developed a curriculum and that also offers other advice on setting up debtor education programs.<sup>30</sup>

Delivery of debtor education to chapter 7 debtors has not taken off to the same extent. Chapter 13 is administered by standing trustees who have staff and administrative offices.<sup>31</sup> Chapter 7 trustees are drawn from a panel in each area, and they do not have administrative support operations, making it difficult for them to offer debtor education.<sup>32</sup> A simple program implemented for chapter 7 debtors in Nashville, Tennessee, will be briefly described below.<sup>33</sup>

More than a million US households have filed in bankruptcy every year since 1996,<sup>34</sup> and millions of others find themselves struggling with over-indebtedness,<sup>35</sup> suggesting that lack of financial management skills is part of the problem. Congress now is considering legislation that would go a step further than the bankruptcy commission's recommendation of voluntary education for debtors in bankruptcy and require individuals to complete an instructional course in personal financial management as a condition of discharge of debts in either chapter 7 or chapter 13.<sup>36</sup> Under the legislation, for-profit as well as nonprofit entities could provide the course and could do so either in person, on the telephone, or on line.<sup>37</sup> Many persons interviewed in the course of this study questioned whether the legislation, which does not constrain credit-granting practices, neglects to treat the problem of increased over-indebtedness as a joint responsibility of debtors and creditors.<sup>38</sup> Several asked, somewhat facetiously, whether

creditors should have to undergo education.<sup>39</sup> In any event, with growing interest in debtor education in bankruptcy and the possibility of a legislative mandate for it, this study of existing programs is timely.

## II. Gauging Success of Debtor Education in Bankruptcy

In order to attempt to measure the success of debtor education in bankruptcy, it is necessary to define its purpose. Both the bankruptcy commission, in its 1997 report,<sup>40</sup> and Congress, in the proposed legislation,<sup>41</sup> treat the goal, broadly, as teaching personal financial management. The commission report adds some detail—that consumer debtors should learn to handle credit and to manage a personal or family budget, so as to re-establish their economic equilibrium and prevent repeated financial failure.<sup>42</sup>

Recent empirical evidence indicates that many individual bankruptcies are preceded by job disruptions (layoffs or loss of hours, for example), uninsured medical expenses and divorce.<sup>43</sup> Other individual debtors are self-employed,<sup>44</sup> and if they had business management problems, these are not addressed in a personal financial management course. The bankruptcy commission recommended that education be available but not generally be required,<sup>45</sup> thus implicitly recognizing that personal financial management education may not be needed by all debtors and that lack of the skills such courses teach may not have been the predominant cause or even a cause at all of some individual bankruptcies.<sup>46</sup> The pending legislation, by mandating education for all individual debtors, implicitly seems to say that all need it or, perhaps, that no one would be harmed by it. Nonetheless, debtor education is not free, and an absence of proof of benefit raises the question whether expending resources on education is justified.

It should be noted that personal financial management involves normative choices. How much should a person save? What sort of insurance should one have? What expenditures are sensible and what ones are foolish? Should some persons avoid credit entirely? If some use of credit is justifiable, should it only be used to buy a home and perhaps a car or to finance an education, but not to buy clothes and groceries and to go on vacation? Alternatively, is increased personal consumption financed by consumer credit a social good that helps to fuel our economy?<sup>47</sup>

Whatever financial goals individuals have, achieving them requires skills and appropriate attitudes that lead to necessary behavior. The skills and attitudes one needs to meet financial goals go beyond financial management. For example, if one lacks the skills and attitudes to get and keep a good job with health insurance, one's financial situation will be more precarious.<sup>48</sup> Success of debtor education could be gauged by testing skills or by measuring attitudes or behavior. Normative issues arise in deciding what skills, attitudes and behavior are desirable. Bankruptcy officials face these difficult questions as they implement programs and design standards and methods of evaluation for them.

This study examines completion of chapter 13 plans.<sup>49</sup> This is a behavioral gauge of successful financial management by debtors in bankruptcy. The reasons for taking this approach include that the Bankruptcy Code implicitly sets up completion of a repayment plan as a goal of chapter 13, that data could be gathered relatively easily, and that most existing financial education in bankruptcy is for chapter 13 debtors. We had hoped also to provide information on duration of plans and repayment achieved, but problems in our data set, discussed below, prevented this.<sup>50</sup> Information on duration and repayment would provide a picture that includes partial success (but because a chapter 13 debtor typically only gets a discharge upon completion of a plan, partial repayment might be a better description than partial success).<sup>51</sup>

It also would be desirable to examine the financial condition and behavior of debtors for a period after bankruptcy, for chapter 7 debtors as well as those in chapter 13. A longitudinal study of this sort would be much more difficult to accomplish, and we have not attempted one.

Completion of a chapter 13 plan is an exacting standard of personal financial management, given that most chapter 13 debtors do not achieve it. Previous research has indicated that nationally, less than a third of chapter 13 cases are closed as completed.<sup>52</sup> To complete a chapter 13 plan, a debtor typically has to live on a tight budget for three to five years and pay off some old unsecured debt. Many debtors also pay substantial amounts to hold on to collateral, such as homes and cars.<sup>53</sup>

The lack of success in chapter 13 raises the normative question whether completion should be made more achievable through legislative and administrative reform. The pending legislation does not appear designed with that goal in mind. It would exclude more debtors from chapter 7, making chapter 13 their only bankruptcy option,<sup>54</sup> and would require some chapter 13 debtors to live on even tighter budgets than is currently the norm<sup>55</sup> and to pay more for certain collateral such as cars.<sup>56</sup> The complexity of the pending legislation makes it hard to predict its effects, but it would not be surprising if it resulted, if enacted, in higher failure rates in chapter 13.<sup>57</sup>

In contrast to the lack of congressional focus on the problem of failed chapter 13 plans,<sup>58</sup> many chapter 13 trustees, backed up by bankruptcy judges, have attempted to improve debtors' performance. Local officials have experimented with a number of practices, discussed below, to increase plan completion.<sup>59</sup> Chapter 13 has long been understood as having a rehabilitative and educational purpose.<sup>60</sup> A debtor can learn self-discipline and financial responsibility by making a repayment plan and carrying it out, but the high non-completion rates in chapter 13 raise the issue whether many debtors are being set up for failure. One way to increase the success rate would be to discourage debtors likely to fail from filing in chapter 13 to begin with.<sup>61</sup> But to implement such a course of action effectively, we would need more empirical studies, particularly focusing on what individual characteristics of debtors are associated with plan completion.<sup>62</sup> Another way to increase plan success might involve convincing more debtors to give up collateral they cannot afford, but this would be difficult because retaining collateral such as homes and cars is often the principal goal of chapter 13 debtors.<sup>63</sup>

Existing education for chapter 13 debtors is provided after debtors have filed in bankruptcy and submitted their repayment plans. This timing, which the proposed legislation would also adopt, means the education comes too late for debtors to use lessons learned to draw up realistic budgets and to determine what collateral they can afford, two important components of a successful chapter 13 plan. On the other hand, instruction in tracking and trimming expenses and saving for contingencies may help debtors to live on a tight budget. Of course, it would be best if individuals learned to manage their personal finances early in life and avoided over-indebtedness.<sup>64</sup> All those involved in debtor education in bankruptcy believe that they are making up for a lack of personal financial education that ought to occur much earlier, ideally at home and in high school.<sup>65</sup>

The pending legislation also would require a credit counseling session, including preparation of a budget, before a debtor files in bankruptcy.<sup>66</sup> Although the proposed mandatory debtor education could be provided by for-profit entities, the agencies performing the proposed required counseling would have to be nonprofit organizations.<sup>67</sup> It is not clear to what extent existing credit counseling agencies would end up meeting the counseling requirement, if enacted, and how realistic the budgets prepared would be.<sup>68</sup> Under the pending legislation, some chapter 13 debtors would have to make use of IRS expense schedules in determining how much they must pay, and many observers believe these schedules underestimate necessary expenses for many households.<sup>69</sup> However, existing credit counseling agencies may use even tighter expense allowances.<sup>70</sup> It would continue to be primarily the job of debtors' lawyers to counsel debtors concerning chapter choice and, in the case of choice of chapter 13, about what sort of plan to propose. Previous research indicates a great range in how much effort lawyers devote to counseling their debtor clients.<sup>71</sup>

We had originally also planned to survey debtors concerning their perceptions of the financial management programs but this was not feasible because the trusteeships with debtor education programs that we studied were participating in a survey of debtors at the same time as this study.<sup>72</sup> A prior published study of one district<sup>73</sup> and regular course evaluation surveys conducted by the trusteeships<sup>74</sup> in this study all suggest that debtors' reactions to the courses offered are highly positive, especially right after taking them. Debtors do not seem to find these courses objectionable; to the contrary, they usually express appreciation for them. On the other hand, it is possible that chapter 13 debtors might register different opinions about debtor education later on, particularly after their plans fail. The pending legislation seems to contemplate that debtor surveys at the close of courses will be a sufficient gauge of effectiveness,<sup>75</sup> and this promises to be an easy standard to meet. Such surveys to some extent measure a "halo" effect of good feeling and relief rather than how much debtors have learned, whether their attitudes have changed or how they are likely to behave.<sup>76</sup> However, if these programs did no more than make debtors feel better, some might consider them successful.<sup>77</sup>

• *Sample*

The chapter 13 trusteeships in Fort Worth, San Antonio and Greensboro were chosen for study because they all have longstanding debtor education programs, provided to nearly all debtors.<sup>78</sup> These trusteeships also all use the same computerized accounting system, that of Chase Bankruptcy Information Systems. Columbus, Ohio, which also has a longstanding debtor education program, was not included in the statistical part of the study because that trusteeship does not use the Chase system. Chase system computer files were the source of our data, retrieved by computer search. Because chapter 13 cases typically involve three- to five-year plans of repayment,<sup>79</sup> we decided to gather information on cases filed in 1994 in order to have a set of cases that had run their full course by the time of data collection in July 2000. We gathered data from the computer files on all cases filed in 1994 and also on all cases filed in the second half of 1997. Many of the 1997 cases remained active at the time of collection; therefore we have not attempted to report completion data for the 1997 cases.

For control locations, we sought to identify trusteeships that also use the Chase accounting system and that are situated in areas with some demographic similarities to the locations of the other three trusteeships but in which no debtor education was provided. Because the Chase files do not include demographic information on debtors, we could only make a rough demographic match of locations. We looked for trusteeships in areas with similar population size and per capita income (according to US Census Bureau statistics). The locations of the two control trusteeships, Sacramento and Charlotte, match on these two demographic variables with, respectively, Fort Worth and Greensboro.<sup>80</sup> Neither Sacramento nor Charlotte offered debtor education during the years studied. Sacramento added a program in the summer of 2000.<sup>81</sup> We did not find a usable match for San Antonio. The table below shows the relevant demographic information.

Demographic Information on Locations

Trusteeship	1990 Metropolitan Population	1989 M.S.A. Per Capita Income
Fort Worth	1,361,034	14,845
Sacramento	1,340,010	15,570
Greensboro	1,050,304	14,454
Charlotte	1,162,093	14,611
San Antonio	1,324,749	11,828

All five trusteeships provided information from current files. In addition, three trusteeships that had conducted purges of closed cases also provided information from purged files. The purged files included information about the dates of the bankruptcy filing, first meeting of creditors, debtor education class, and case closing, and codes indicating the reasons for the case closures (for example, dismissed, converted to chapter 7, or plan completed), but no payment information.<sup>82</sup> The current files included the same information in the purged files and in addition details about plan amounts, secured, priority, and unsecured claims, attorney and trustee fees, and amounts disbursed by the trustees to creditors during the plan. All of the records from the relevant time periods in San Antonio and Greensboro were still in current files, while Sacramento, Charlotte, and Fort Worth provided both current and purged files. The purged files were for 1994 cases that had been closed in the first few years and that thus typically lasted a shorter time and were less likely to be completed than the non-purged cases. This caused limitations in the payment data collected from only

non-purged files. Also, problems in the database structure made it hard to determine duration or repayment. The database problems involved use of unrestricted fields. For example, dates were variously entered as September 25, 1996, Sept. 25, 1996, or 9/25/96. We had hoped to be able to report information on duration of plans and on repayment made, as partial indicators of success in chapter 13, but for a number of technical reasons, including corruption of some data in transmission, we were not able to do so.

In April 2001, we learned that 60 cases from the Sacramento trusteeship included in the study had been transferred from that trusteeship to a second Sacramento trusteeship newly created in March of 1999. We then retrieved information on the further progress of those cases and included them in our completion rates.

Completion information from a total of 7,746 cases filed in 1994 in the five trusteeships was collected and analyzed.<sup>83</sup> The number of 1994 cases received from each trusteeship is presented in the table below.

Cases by Year and City

City	1994 Filings
Fort Worth	2283
Sacramento	1977
Greensboro	1143
Charlotte	891
San Antonio	1452
Total	7746

Nearly all the individuals who filed in San Antonio, Fort Worth, and Greensboro participated in education programs, while the debtors in Sacramento and Charlotte did not receive any instruction.<sup>84</sup> The nature of the content of the education programs is discussed separately below.<sup>85</sup> The three education programs studied are very similar due to collaboration among these trusteeships on developing curricular materials.<sup>86</sup> More of the sample came from cities with debtor education; 4,878 cases were in this category, while 2,868 cases came from cities without debtor education.

The sample comes disproportionately from states where higher percentages of cases are filed in chapter 13 than is the case nationally.<sup>87</sup> Four of the trusteeships studied, Fort Worth, San Antonio, Greensboro and Charlotte, are in states where higher percentages of bankruptcy cases are filed in chapter 13 than the national average, while the fifth trusteeship, Sacramento, is in a state where chapter 13 is used less than the national average. As of 1994, 30% of bankruptcy filings nationally were in chapter 13.<sup>88</sup> The same percentages for the three states represented in this study were: 48.3% in Texas, 62.3% in North Carolina, and 20.3% in California.<sup>89</sup> Also, three of the five trusteeships (Charlotte, San Antonio, and Greensboro) have unusually high completion rates compared to the approximate national completion rate of 31 percent.<sup>90</sup> Fort Worth's rate is slightly above the national rate, and Sacramento's is significantly below.

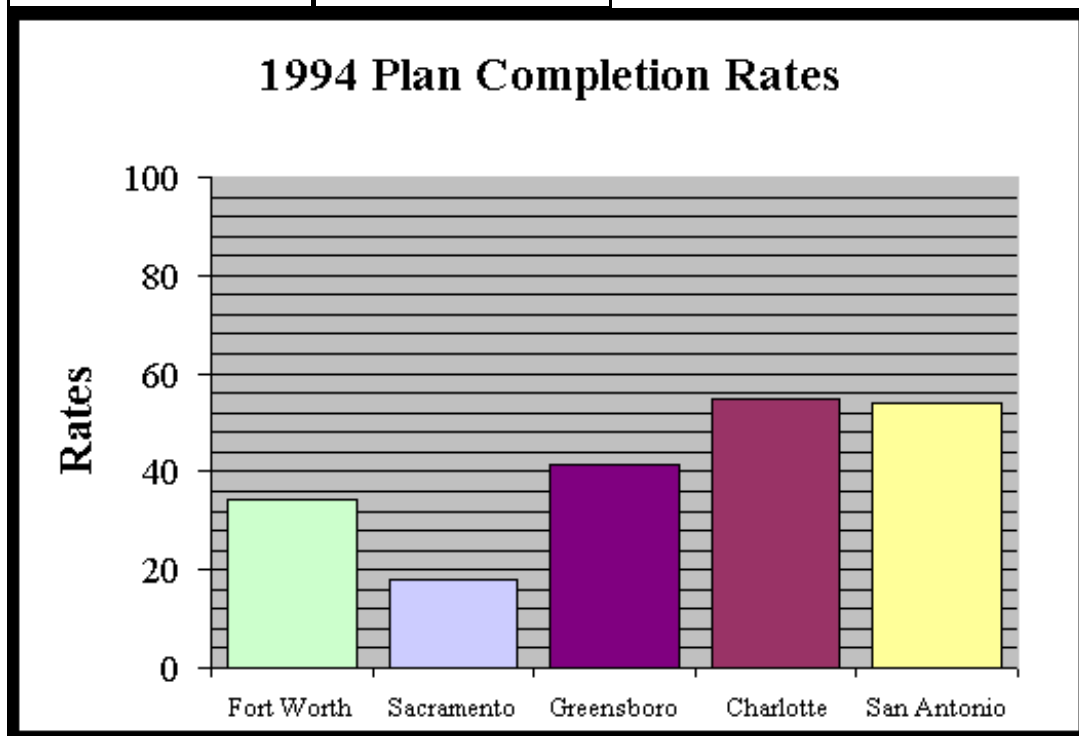
## B. Results Concerning Plan Completion Rates

The 1994 plan completion rates for the trusteeships are listed below.

1994 Plan Completion Rates

City	No. of Cases	Rate (%)
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Fort Worth	2283	34.4
Sacramento	1977	18.2
Greensboro	1143	41.3
Charlotte	891	54.9
San Antonio	1452	54.1
Total	7746	



The debtors in trusteeships that provided education had a completion rate of 41.9%, while those in trusteeships that did not provided education had a completion rate of 29.6%. These are true completion rates; completion rates are sometimes reported as a percentage of cases closed in a given a year,<sup>91</sup> but such figures are distorted by, among other factors, changes in volume of filings from year to year.<sup>92</sup> As will be discussed in the next two sections, analysis of other local practices suggests that factors other than debtor education account for the differences in plan completion rates found in the five trusteeships studied.

#### C. Local Practices Likely to Affect Completion

We identified local practices, other than debtor education, that might be expected to affect completion rates. The practices we examined were: amount of attorneys fees usually paid in each location<sup>93</sup> and timing of payment of fees,<sup>94</sup> easy acceptance of low percentage plans,<sup>95</sup> use of longer plans to keep payments low,<sup>96</sup> use of moratoriums to get debtors through income disruptions of a few months,<sup>97</sup> use of wage orders (to have employers make direct payment to the trustee),<sup>98</sup> and inclusion of regular mortgage payments (and not just arrearages) in plans.<sup>99</sup> The chapter 13 trustee in each city was interviewed about these practices as of 1994.<sup>100</sup>

Going rates for attorneys fees in each city are a product both of market forces and of local practices adopted by judges, sometimes at the recommendation of chapter 13 trustees, about what fee amounts will be allowed without special application by counsel.<sup>101</sup> From highest to lowest, the total chapter 13 attorneys fees typical in 1994 in the five cities (allowed without special application) were as follows (with completion rates indicated in parentheses):

### Typical 1994 Attorneys Fees (With City Completion Rate)

City	Fee	Completion Rate (%)
Fort Worth	\$1500	(34.4)
Sacramento	\$1750	(18.2)
Greensboro	\$900	(41.3)
Charlotte	\$1000	(54.9)
San Antonio	\$1700	(54.1)

In cities with higher fees, lawyers might be expected to be more likely to encourage clients to file in chapter 13 even when a repayment plan is not feasible, depressing completion rates.<sup>102</sup> On the other hand, when fees are higher, lawyers may be willing to take more time per case and do a better job of counseling.

If attorneys are paid early in plans, this might lead them to encourage chapter 13 filings without sufficient concern for whether plans would likely last long enough to be completed.<sup>103</sup> Sacramento, the city with the lowest completion rate, was the only city where a substantial down payment on fees at the outset (typically \$750 in 1994) was common. Charlotte, the city with the highest completion rate, was the only city that routinely paid fees in the plan over a period of more than a year and a half; fees in Charlotte were typically not paid in full until three years into a plan. Delayed payment gives attorneys an incentive to fashion plans capable of lasting longer. In setting payment policies, however, some judges and chapter 13 trustees, out of commitment to promoting use of chapter 13, also take into account giving attorneys an incentive to bring cases in that chapter, and higher fees paid early in the plan serve that purpose.

Four other practices were identified that might make completion more likely:

- Routine use of low percentage plans (defined here as less than 25 percent repayment proposed to unsecured creditors), facilitated by local judicial and trustee acceptance,<sup>104</sup> might be expected to correlate with higher completion rates because lower payment is easier to accomplish. On the other hand, some trustees stress that a livable budget is the key, and that a good rate of completion of higher percentage plans is achievable so long as budgets are kept reasonable.
- Longer plans let debtors spread out payments over a longer period, also making completion easier. Longer plans make it easier to keep budgets reasonable and are particularly attractive to debtors seeking to make substantial payments necessary to keep collateral. On the other hand, longer plans pose more risk of income disruptions or increased expenses that can prevent completion or make it more difficult.
- Payment moratoriums allow debtors to get through income disruptions of several months without a formal modification, dismissal or conversion to chapter 7.<sup>105</sup> On the other hand, moratoriums may either come too late to do any good in rescuing a plan or may encourage payment defaults that get debtors into trouble. Alternatively, plans may be too ambitious for moratoriums to be able to save them.
- Use of wage orders, where debtors' employers pay the trustee directly, reduces opportunity for debtors to default on making plan payments. One city, Greensboro, combines routine use of wage orders with having regular mortgage payments made through the plan in any case where the debtor was in default on the mortgage loan at the time of filing. The other cities include only the mortgage arrearage in the plan. Making all mortgage payments through the plan reduces the debtor's opportunity to default on the mortgage and thus reduces motions to lift stay, which can lead to termination of plans. On the other hand, this practice increases trustee fees.



The "yes" positions on each of the four practices listed below were those we expected to correlate with a higher completion rate. As will be discussed below, we were wrong in some of our predictions. <sup>106</sup>

#### Use of Practices That Might Cause Higher Completion

City	Low% Plans Routinely Confirmed	5–Year Plans Routinely Confirmed	Moratoriums Used	Wage Orders Used	Completion Rate (%)
Fort Worth	Yes	Yes	No	No	34.4
Sacramento	No	Yes	Yes	No	18.2
Greensboro	No	Yes	Yes	Yes, routinely	41.3
Charlotte	Yes	Yes	Yes	Yes, on default	54.9
San Antonio	No	Yes	Yes	Yes, routinely	54.1

In all five cities, five–year plans are routinely confirmed. Most debtors in all of the cities other than Greensboro need five–year plans to be able to propose to pay secured and priority debts as well as some portion of unsecured debts, although in Greensboro the plan lengths are more often 42–45 months. Differences in proposed plan length do not appear to be a significant factor in explaining the different results in these five cities, because five–year plans are readily permitted in all of them.

Interestingly, Charlotte, with the highest completion rate but no debtor education, adopted all of the other strategies that might be expected to increase completion. It had relatively low attorneys fees and delayed full payment to attorneys for three years, largely eliminating any incentive for attorneys to steer clients into chapter 13 plans, particularly unsustainable ones. It also permitted many low percentage, five–year plans. It used wage orders, although less aggressively than two of the other cities. Charlotte used wage orders only after a default on a plan payment (so that about one–third of its caseload was on wage orders), whereas San Antonio and Greensboro required wage orders from the outset unless the debtor successfully moved for an exception (most commonly, where the debtor was self–employed). The three cities that used wage orders had the three highest rates of completion. Fort Worth has since begun using wage orders as an option from the outset and requires them after plan default, but Sacramento continued not to use them at all. Policy objections to wage orders include that they interfere with the debtor's employment relationship, risking negatively affecting the employer's opinion of the debtor, <sup>107</sup> and that they do not require the debtor to take responsibility for making payment. <sup>108</sup> On the other hand, wage orders appear to increase plan completion and are a relatively cheap practice to implement, particularly in comparison to debtor education. <sup>109</sup>

The trustees in all five cities reported some easing of percentages of repayment expected in recent years, in response to debtors' higher debt burdens in relation to income. <sup>110</sup> Judges, who confirm plans, and chapter 13 trustees, who make recommendations concerning confirmation, can use the highly discretionary "good faith" test for confirmation to press for higher repayment than other statutory tests require. <sup>111</sup> (Other tests include paying creditors at least their liquidation shares <sup>112</sup> and committing all disposable income for three years unless full payment can be made in less time. <sup>113</sup>) San Antonio and Greensboro continued to resist low percentage plans (that pay unsecured creditors under

25 percent). <sup>114</sup> In these two cities as of 1994, most plans were for over 50 percent repayment to unsecured creditors. In Fort Worth and Charlotte, most plans were for less than 25 percent, and in Sacramento plans were averaging 35 to 40 percent. Interestingly, despite greater pressure for higher percentage plans in San Antonio and Greensboro, these two trusteeships had the second and third highest completion rates in the study. Fort Worth and Charlotte, where lower repayment was more easily accepted, had greatly varying completion rates (Charlotte's completion rate was 20 percentage points higher than Fort Worth's). Sacramento, in an intermediate position among the five trusteeships as far as its repayment expectations, had the lowest completion rate. In short, there is no apparent pattern of connection between repayment norms and completion rates in these trusteeships. <sup>115</sup>

#### D. Statistical Analysis of Local Practices

Multiple regression analysis <sup>116</sup> was performed to attempt to isolate effects on completion of four practices. The practices included in this analysis were use of education, typical amount of attorneys fees, use of moratoriums, and use of wage orders. We did not include in the analysis routine confirmation of five-year plans, because all of the trusteeships followed this practice, and we eliminated routine use of low percentage plans from the analysis because an effect from this practice could not be isolated from effects of other practices.

For attorneys fees, all cases from each trusteeship were coded with the typical fee paid in that location. Although in fact a range of fees is paid in each trusteeship, the rough coding used is defensible on the ground that most attorneys in each location are paid the typical fee or a fee close to the typical one. The other three practices were coded in binary fashion for all cases in the trusteeship, with a 1 for use of the practice and 0 for non-use. This form of coding is most defensible for debtor education, in that none of the 1994 debtors in Sacramento or Charlotte received education and nearly all in the other three cities did. <sup>117</sup> Also, the education in those three cities was fairly similar both in content and in length of the classes, as will be described below. <sup>118</sup> For the other two practices, moratoriums and wage orders, coding all cases in the trusteeship in the same way is more questionable. In the case of wage orders in Charlotte and moratoriums in all the cities that used them, we coded all cases from a trusteeship for a practice even though we knew the practice was used in only a minority of cases. This coding can be defended as representing ready availability of the practice in each case, when perceived to be needed. Obviously, this coding is crude; we did not have information on the actual practice used in the individual cases.

We stress that the regression analysis only produces estimates and may under- or over-estimate the effects of practices. The results are reported principally as a caution not to interpret the higher completion rate among debtors who received education, compared to those who did not receive education, as caused by the education.

The regression analysis indicated the following effects on completion:

Practice	Percentage Effect
Attorneys fees (effect from lowest to highest fee charged)	10%
Education	-12%
Wage Orders	50%
Moratoriums	-30%
Likely completion rate without other variables	22%

The analysis showed an increase of 1.6 percent in completion for each \$100 of attorneys fees, for a total positive effect from lowest to highest fee charged of 10 percent.

Education resulted in a small, significant and negative effect on completion rates. The other effects, positive and negative, are also all significant. The attorneys fees and moratorium effects are contrary to our predictions; we expected higher fees to be associated with decreased completion and use of moratoriums to be associated with increased completion. <sup>119</sup> As noted above, possible explanations are that higher fees may lead to better counseling, instead of an incentive to attorneys to promote chapter 13 even when not feasible, <sup>120</sup> and that moratoriums may have little ability to avoid plan failure because they are used too late or plans are too unrealistic to be saved.

This statistical analysis provides only approximate estimates of the effect of each practice on completion. The noted associations between local practices and plan completion are rough, but the regression analysis provides an important perspective that the higher completion rates in trusteeships with education may be due to factors other than education. When only wage orders are considered, there is an even stronger association between use of wage orders and completion. The completion rate among debtors in the trusteeships that used wage orders was much greater than in trusteeships that did not (50.1 percent to 26.9 percent), whereas trusteeships with education had a completion rate of 41.9, compared to 29.6 for those without education. This greater spread in completion rates between trusteeships that did and did not use wage orders is one example of why, when multiple regression analysis is used, education is associated with lower completion.

Although the regression analysis suggests that education is negatively associated with completion, it would not be appropriate to conclude that education actually causes lower completion rates. The regression analysis merely estimates effects, and in light of this fact, it may be that education has no effect one way or the other. Alternatively, the negative association between education and completion may involve education standing in as a proxy for other characteristics that cause a decrease in completion of plans in the trusteeships with education. Possible examples of such characteristics are lower income and higher debt among the debtors in those trusteeships. We have no information on those characteristics of the debtor population in each location. Education may help some debtors but not others. Also, a different educational format (for example, a longer program, with more opportunity for hands-on activities and feedback) might have a positive effect not shown here. <sup>121</sup>

Finally, the regression analysis only accounted for a small amount of the variance in completion ( $R^2=.08$ ). Relevant variables such as individual debtor characteristics that could affect income and expenses over the course of the plan may predict completion rates far better than this analysis, which explains less than 10 percent of the variance. This means that on the basis of the four administrative practices analyzed, including education, we are not able to predict well future completion rates or to explain well existing completion rates. Other factors account for most of the variance in completion.

#### IV. Description of Leading Chapter 13 Debtor Education Programs

##### A. History, Timing and Enforcement of the Course Requirement

The three trusteeships in the study that provide mandatory debtor education, Greensboro, Fort Worth and San Antonio, are all participants in the Trustees Education Network, Inc. (TEN), a nonprofit organization dedicated to promoting debtor education and providing support to chapter 13 trusteeships that offer it. <sup>122</sup> As a result of their cooperative efforts over some years, these three programs have many similarities. Although at one time each program developed its own course materials, they now all use the same workbooks, covering "practical money skills" and "the basics of chapter 13." <sup>123</sup> For several years, production of the books was funded by a grant from VISA, U.S.A., which also supplies materials to chapter 7 trustees and nonbankruptcy programs. <sup>124</sup>

The development of the workbooks was a cooperative effort among chapter 13 trustees who had existing programs. Only parts of the workbooks can be covered in classes of two to four hours; debtors are given the books to take home. TEN now supplies the workbooks to a number of other chapter 13 trusteeships in addition to those studied.

The first debtor education program was started in Greensboro, N.C., in the early 1970s at the urging of Rufus W. Reynolds, a referee in bankruptcy. <sup>125</sup> The current instructor there has been teaching in the Greensboro program for 20 years. <sup>126</sup> The programs in San Antonio and Fort Worth began, respectively, in 1979 <sup>127</sup> and 1984. <sup>128</sup> Considerable experimentation in course design has occurred over the years in all three places. At one time, for example, Fort Worth

had a five-day program, two of the days being mandatory and three additional days being optional. <sup>129</sup> Fort Worth now has a mandatory one-day program, including the 341 meeting, but also offers an optional two-hour class on budgeting, goals and saving, taken by a small percentage of debtors. <sup>130</sup>

Debtor education is required in all three cities. Virtually all debtors attend, <sup>131</sup> although the means of accomplishing this result vary. The mandatory nature of the programs has been accepted by the local debtor bar in each city. <sup>132</sup> In San Antonio and Fort Worth, the programs are conducted on the day of the first meeting of creditors (usually an examination by the trustee or a staff person without creditors actually appearing). <sup>133</sup> This meeting is known as a 341 meeting because it is required under Section 341 of the Bankruptcy Code. <sup>134</sup> In San Antonio, the course runs for three hours in the morning, <sup>135</sup> with a 15-minute break in the middle, and then 341 meetings are conducted in the afternoon. With few exceptions, the trustee does not conduct a debtor's 341 meeting unless that debtor went to the class. <sup>136</sup>

In Fort Worth, debtors are told to come for the full day. There is a half hour opening message from the trustee in the morning, <sup>137</sup> followed by a period when debtors are called for their 341 meetings. While not in their meetings, debtors watch a half-hour video (on the chapter 13 process) <sup>138</sup> and for the rest of the time, they can either engage in self-study using the program workbook or sit quietly. The educational program continues for three and a half hours in the afternoon (for a total of four hours of educational program, including the video but not the opening message by the trustee or the self-study time). <sup>139</sup> Debtors in Fort Worth must take the course to obtain the trustee's recommendation for confirmation. <sup>140</sup>

In Greensboro, the course is not conducted on the day of the 341 meeting. It is sometimes taken before that day and sometimes after. <sup>141</sup> The class runs for two hours (condensed from two separate two-hour classes given in the past), and debtors have the option of attending in the morning or in the evening. <sup>142</sup> Referee Reynolds established the mandatory nature of the program in its early days by issuing contempt notices to debtors who did not show up. <sup>143</sup> Debtors in Greensboro all have an interview with a chapter 13 trustee staff person before their 341 meetings, and they are told then that they must go to the class. <sup>144</sup>

Although holding the class on the same day as the 341 meeting is convenient for debtors, some instructors note a tradeoff as far as debtors' ability to concentrate. <sup>145</sup> That day is a stressful one for debtors because they are called for examination about their repayment plans, <sup>146</sup> and it may not be the best time to get them to focus on learning personal financial management skills.

## B. Content of Courses

The content of the programs varies somewhat from place to place but overall is quite similar. As noted above, the programs range in length from two to four hours. <sup>147</sup> The content in all three places includes a combination of how-to skills and motivational material. <sup>148</sup>

All three programs include material on tracking expenses by writing down every expense for a month and then looking for places to cut (a standard personal financial management technique known as "tracking and trimming"). <sup>149</sup> They also all encourage participants to trim enough to start saving immediately to deal with unexpected expenses. <sup>150</sup> Instructors stress the principle that you should, "Pay yourself first," by setting aside something from every paycheck for savings. <sup>151</sup> Instructors give examples of expenses to save (Starbucks coffee, eating lunch out, video rentals). <sup>152</sup> They use stories from their own lives to establish rapport and speak of problems and strategies in the first person plural. They introduce the concept of needs as opposed to wants <sup>153</sup> and discuss advertising and sales techniques that encourage us to buy what we don't need. <sup>154</sup>

The programs also discuss setting financial goals. <sup>155</sup> One program stresses retirement planning. <sup>156</sup> Another focuses on the goal of trying to save your home in chapter 13, <sup>157</sup> and in that program, the instructor recommends a motivational technique. She urges debtors with that goal, "Make six copies of a photograph of your home and put them up in your bathroom, kitchen, car, workplace and two other places where you'll see them, to remind you why you are on a budget." <sup>158</sup>

Another topic is "money messages," which includes thinking about good and bad money lessons we learned while growing up, about ways we may use money unwisely to show love or anger or to cheer ourselves up, and about different attitudes toward money within a family that cause budget difficulties.<sup>159</sup> Part of the session is devoted to encouraging participants to think about what their values are compared to their spending habits and about whether they are spending money consistently with their values.<sup>160</sup> One instructor asked participants to imagine that they have only a year to live and to write down what they would want to do in that time; she then asked them to think about whether they are spending their money on the things they really care about.<sup>161</sup>

### C. Goals of the Programs

All of the trustees and their instructors articulate a goal of setting up good rapport between debtors and the trustee's office in order to motivate debtors to have greater commitment to staying in chapter 13.<sup>162</sup> One trusteeship calls its program a "chapter 13 orientation," an accurate description.<sup>163</sup> All of these programs emphasize explaining the chapter 13 process and what it takes to stay in chapter 13.<sup>164</sup> Consistent with the goal of good rapport, the programs avoid blaming or shaming and treat debtors sympathetically and with respect.<sup>165</sup> An instructor explained, "It's like in credit, those who are more humane get paid."<sup>166</sup> The programs also seek to teach the basics of personal financial management and do so by emphasizing both budgeting skills and getting motivated to succeed by having financial goals.<sup>167</sup> (For example, one instructor introduces the motivational theme by saying, "Let's get fired up."<sup>168</sup>) The trustees and instructors congratulate the debtors on taking responsibility by filing in chapter 13.<sup>169</sup>

### D. Instructors, Expenses and Evaluation

The backgrounds of the instructors include teaching, social work, credit counseling, and legal representation of debtors.<sup>170</sup> Some programs use trustee staff members as instructors, while others use contract workers, for example from a local nonprofit consumer credit counseling agency, and guests (such as an IRS person who spoke about tax claims and tax refunds).<sup>171</sup>

In addition to instructors, the expenses of a program include leasing space (although cheaper alternatives such as using schools, churches and the like have been tried in the past), equipment to show videos, and copying handouts. VISA, U.S.A., has donated workbooks used in these programs.<sup>172</sup> As an example of expenses, San Antonio budgeted \$40,000 in 1999, not including salaries; \$23,500 of that went for leased space, also used for 341 meetings.<sup>173</sup> San Antonio in addition has a full-time financial education director who teaches the class and runs the program. None of the three programs charges debtors a fee for the course, although of course debtors pay trustee fees in their plans.<sup>174</sup>

In keeping with the goal of establishing good rapport, all the programs have used evaluation forms to get feedback from participants, and they have adapted the programs to respond to criticisms.<sup>175</sup> All the programs report that they get very good evaluations on these forms.<sup>176</sup> Some debtors say that they wish they had had such programs earlier in life and that the programs make them feel more hopeful.<sup>177</sup> They appreciate being treated with respect and given a sense of positive purpose.<sup>178</sup>

All the trusteeships studied that have education programs have a significant commitment to financial education as part of rehabilitation in chapter 13. They have started programs without a legal mandate and maintained them in some cases in the face of US trustee resistance to approval of their education budgets although resistance has abated in the last few years.<sup>179</sup> With less commitment, it may be difficult to replicate the quality of these programs elsewhere.<sup>180</sup>

### E. Purely Voluntary Program in Columbus, Ohio

The program offered by the chapter 13 trustee in Columbus, Ohio, is voluntary and more extensive.<sup>181</sup> It is called the "consumer education seminar," with four two-hour classes spread over a period of four months. Between classes, debtors are given a chance to track expenses, prepare budgets, submit them for comments to the instructor, and then revise them. Approximately 35 to 40 debtors take the course in any four-month period, a small percentage of the chapter 13 caseload.<sup>182</sup> They have a choice of attending on Saturday mornings or Wednesday evenings. The program is offered to debtors when they are two years from the end of their chapter 13 plans. Anyone still in chapter 13 at that time is given the option to attend.

The topics are similar to those covered in the other chapter 13 programs and include the chapter 13 process, setting goals and priorities, credit reports and rebuilding credit, budgeting, saving, being a smart shopper, and wise use of credit. With more time, more detail is given and there are many more handouts and exercises. Debtors are given assignments between classes. <sup>183</sup> There are speakers at each session, including representatives of the Ohio State University extension center and the Ohio Attorney General's consumer protection division. <sup>184</sup> At the last session, three creditor representatives talk about the debtors' chances of getting credit again and how to improve them and about using credit wisely. The credit institutions represented are mortgage companies, banks and credit unions, with subprime lenders specifically excluded.

Overall, the Columbus program has a goal of teaching personal financial management to prepare debtors for credit re-establishment and wise use of credit in the future. <sup>185</sup> With its later timing, this program focuses less than the other programs on establishing a good rapport between debtors and the trustee's office. <sup>186</sup> The program does have the benefit to the chapter 13 trusteeship of giving debtors' lawyers something to tell their clients at the outset about the benefits of chapter 13—that debtors will have an opportunity to learn to rebuild their credit. <sup>187</sup> The focus on the intermediate goal of re-establishing credit is not to the exclusion of long-term debtor goals such as putting children through college and saving for retirement. <sup>188</sup>

#### V. Issues in Implementing Debtor Education in Chapter 7: The Nashville Program

Chapter 7 trustees, drawn from local panels, generally lack resources to pay for debtor education. <sup>189</sup> Unlike chapter 13 standing trustees, they do not have administrative offices and support staffs. <sup>190</sup> Most chapter 7 cases earn a panel trustee a flat fee of \$60, because there are no assets to distribute. <sup>191</sup> Chapter 7 trustees receive percentage fees from distributions in only a small number of cases. <sup>192</sup> Also, chapter 7 distributions are made from liquidation of nonexempt assets, not from future income, <sup>193</sup> so even in asset cases, chapter 7 trustees have no financial incentive to have debtors learn financial management. Chapter 13 trustees potentially have this incentive because they get their fees as a percentage of disbursements to creditors from plan payments made by debtors, but the chapter 13 trustees studied and most others nationally are able to cover the costs of their operations with fees set well below the statutory maximum. <sup>194</sup> Rather, chapter 13 trustees have experimented with debtor education in a search for practices that will increase plan success and because they believe it helps debtors.

A simple program for chapter 7 debtors has been implemented in Nashville, Tennessee, by Robert H. Waldschmidt, a chapter 7 panel trustee who is past president of the National Association of Bankruptcy Trustees (an association of chapter 7 trustees) and also a director of the Trustees Educational Network, Inc. (TEN). <sup>195</sup> In this program, begun in 1999, debtors are shown two videos at their 341 meetings, but there is no live instructor. <sup>196</sup> One video is on the chapter 7 process and is shown before the 341 meetings begin, and another on money management is shown while debtors wait to be called for their meetings. Each video is about 20 minutes long. Debtors also are given a workbook, which they can take home. The videos and workbooks have been supplied by VISA, U.S.A. <sup>197</sup> Survey responses from participating debtors have been highly positive. <sup>198</sup> The US trustee has the space to allow this program in Nashville, which involves having a second room in which to show a video while 341 meetings are in progress. Otherwise, both videos would have to be shown before the 341 meetings begin. Waldschmidt said a program like that offered to chapter 13 debtors in Fort Worth, San Antonio and Greensboro could be given to chapter 7 debtors if each one was charged about \$20 to attend. <sup>199</sup>

Because chapter 13 trustees' operations are paid for with fees taken from distributions to chapter 13 creditors, <sup>200</sup> for whom the trustees are fiduciaries, <sup>201</sup> it would not be appropriate for chapter 13 trustees to pay for education for chapter 7 debtors. Furthermore, the chapter 13 trustees who run education programs and their instructors do not think debtors who filed in chapter 7 should be in the same classes with chapter 13 debtors. In their view, a repayment plan in chapter 13 is inherently educational, while chapter 7 lacks that character. "It's like liposuction—you get a result without changing your habits or taking responsibility," explained an instructor. <sup>202</sup> Another instructor said that chapter 13 debtors would feel bad sitting in class next to a person who is getting a fresh start quickly and probably getting new credit immediately. <sup>203</sup> One instructor said it would be possible, although not ideal, to have a combined class on money management, with a separate class for each group of debtors on the process in chapter 7 or chapter 13. <sup>204</sup>

All the chapter 13 trustees and instructors interviewed in this study think chapter 7 debtors do need education, perhaps more than chapter 13 debtors, because chapter 7 debtors will get offered credit more quickly <sup>205</sup> and will not be able to file in chapter 7 again for six years. <sup>206</sup> In contrast, chapter 13 debtors who are unable to complete their plans can convert to chapter 7 or file in chapter 7 after a dismissal in chapter 13. <sup>207</sup>

The pending legislation contemplates that debtor education could be offered over the telephone or the Internet and by for-profit entities, so commercial delivery systems may arise in various formats if a legal mandate creates demand. <sup>208</sup> More non-profit organizations may begin offering debtor education. In addition to TEN, another existing nonprofit is the Coalition for Consumer Bankruptcy Debtor Education, which has been working on a pilot program for both chapter 13 and chapter 7 debtors. <sup>209</sup>

## VI. Suggestions for Further Research

A great deal of further research will be needed to gauge fully the impact of debtor education in bankruptcy. <sup>210</sup> In addition to further studies of impact on completion of chapter 13 plans, it would be desirable to have longitudinal studies of debtors in both chapters, to follow their financial situations after bankruptcy and to track their financial condition and what events trigger further financial problems. Information should be gathered on financial and other individual characteristics of debtors who receive education, to see whether education is more effective for some sorts of debtors than for others. <sup>211</sup> Also, analysis of individual characteristics of debtors who file in chapter 13 and their completion rates could be used to identify debtors likely to fail, who might be better served if counseled not to file in that chapter (although if the proposed legislation is enacted, fewer debtors would have the option to file in chapter 7). <sup>212</sup> Studies of debtors' perceptions of financial education should examine not only their immediate reactions, when they may be most hopeful, <sup>213</sup> but also their perspectives after time for them to get into financial difficulty again. <sup>214</sup>

This study made use of the Chase Bankruptcy Information System accounting records of chapter 13 trustees. <sup>215</sup> Computerized trustee records are potentially a treasure trove of information on what actually occurs in chapter 13, as opposed to what is planned and shown in court filings at the outset of cases. On the other hand, the Chase system has limits. It was designed for accounting purposes and not for empirical research. <sup>216</sup> In addition, some trustees use other systems, <sup>217</sup> and even those who use the Chase system use it differently, causing difficulties for data collection and analysis. <sup>218</sup> In order to capture repayment information for the full five years that chapter 13 cases can last, it would be necessary to avoid purges of files before that time. <sup>219</sup> It would be desirable to have trustees adopt uniform data entry protocols, to make it easier to analyze the data. Data files gathered in this study needed a great deal of preparation (involving reentry of information in uniform format) before analysis could be done. <sup>220</sup> Some information could not be gleaned. For example, reliable analysis of information on duration of cases was precluded in part because dates were entered in different ways in open fields. The Executive Office of the US Trustees or the Administrative Office of the US Courts could offer support to the chapter 13 trustees for a program of regular retrieval of data from accounting records and publication in standardized format of completion and repayment information. <sup>221</sup> Repayment information should be broken down into case-by-case disbursements to secured, priority, and unsecured creditors and for administrative expenses (attorneys fees and trustee fees), allowing correlation of these payment variables with completion and duration information. <sup>222</sup> A data retrieval program of this sort would provide a much fuller picture of chapter 13 than we now have and make it more feasible to evaluate the impact of local practices, including debtor education, on performance by debtors in making payment under their plans.

This study, by looking at trusteeships that do and do not offer debtor education, attempted to take advantage of a natural experiment due to differences in local practices, but a difficulty of this approach is the need to attempt to control for other variations in local practices. A study looking at performance of debtors in chapter 13 trusteeships that have voluntary debtor education programs could avoid that difficulty, although it would have to control for self-selection into a voluntary program. <sup>223</sup>

## Conclusion

On the basis of this study, it is not possible to conclude that a short course in financial management for chapter 13 debtors increases their rate of completion of chapter 13 plans. More studies are needed to investigate fully the impact of debtor education in bankruptcy. Without more evidence of positive impact, <sup>224</sup> it is premature to make education a

condition of discharge for all individual debtors in chapter 7 and chapter 13, as has been proposed.<sup>225</sup> Rather than a national mandate, a more prudent course would be continued experimentation and evaluation, as was unanimously recommended by the members of the National Bankruptcy Review Commission.<sup>226</sup> Effective programs are more likely to emerge through gradual development than in a sudden scramble to put in place financial management courses for more than a million individual debtors in bankruptcy a year.

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## FOOTNOTES:

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<sup>2</sup> See [infra Part III. Back To Text](#)

<sup>3</sup> See [infra Part IIIA–B. Back To Text](#)

<sup>4</sup> See [infra Part IIIC–D. Back To Text](#)

<sup>5</sup> See [infra Part IIIA–B. Back To Text](#)

<sup>6</sup> See *id.* This finding is consistent with earlier research. See William C. Whitford, The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer Protection, and Consumer Protection in [Consumer Bankruptcy](#), 68 *Am. Bankr. L. J.* 397, 411 (1994) [hereinafter Whitford] (stating that nationally, average reported rate in 1993 for closing cases as completed was 31 percent, with majority of chapter 13 plans not completed in all regions of country); see also Scott F. Norberg, Consumer Bankruptcy's New Clothes: An Empirical Study of Discharge and Debt Collection in [Chapter 13](#), 7 *Am. Bankr. Inst. L. Rev.* 415, 440 (1999) [hereinafter Norberg] (finding completion rate of one-third in one district in Mississippi); cf. Marjorie L. Girth, The Role of Empirical Data in [Developing Bankruptcy Legislation for Individuals](#), 65 *Ind. L. Rev.* 17, 40–42 (1989) (stating that in study of Buffalo, N.Y. trusteeship, 63 percent of confirmed plans were eventually completed, many after several modifications and extensions). [Back To Text](#)

<sup>7</sup> See [infra Part IIID. Back To Text](#)



<sup>8</sup> See id. (discussing fact that regression analysis merely estimates effects, so that education may have no effect). Back To Text

<sup>9</sup> Local practices are a reflection of different attitudes on the part of bankruptcy officials, including judges and chapter 13 trustees. Lawyers often acquiesce in local practices adopted by bankruptcy officials, and sometimes they share the attitudes underlying them. See Jean Braucher, Lawyers and Consumer Bankruptcy: One Code, Many Cultures, 67 Am. Bankr. L. J. 501, 556–61 (1993) [hereinafter Braucher]. See also Teresa A. Sullivan et al., The Persistence of Local Legal Culture: Twenty Years of Evidence from the Federal Bankruptcy Courts, 17 Harv. J.L. & Pub. Pol'y. 801, 801–07 (1994) [hereinafter Sullivan et al., The Persistence Of Local Legal Culture]. Back To Text

<sup>10</sup> See infra Part IIIA. The trusteeships studied were in Charlotte and Greensboro, N.C., and San Antonio and Fort Worth, Texas, and in Sacramento, California (trusteeship of Lawrence J. Loheit but not that of Jan P. Johnson). Charlotte and Sacramento did not have debtor education during the years studied (although Sacramento has since added a program), while the other three trusteeships did and continue to do so. Back To Text

<sup>11</sup> See infra Part IIIC. Back To Text

<sup>12</sup> See infra Part IIIB. Back To Text

<sup>13</sup> See infra Part IIIC. Back To Text

<sup>14</sup> See id. Back To Text

<sup>15</sup> See infra Part IIIB. Back To Text

<sup>16</sup> See infra Part IVA (concerning different ways of enforcing requirement). Back To Text

<sup>17</sup> See infra Part IIIB. Back To Text

<sup>18</sup> See generally Braucher, supra note 8; Sullivan et al., The Persistence of Local Legal Culture, supra note 8. Back To Text

<sup>19</sup> Nat'l Bankr. Rev. Comm'n, Bankruptcy: The Next Twenty Years, Final Report 114 (1997) [hereinafter NBRC Report]. Back To Text

<sup>20</sup> See NBRC Report, supra note 18, Individual Commissioner Views, Recommendations for Reform of Consumer Bankruptcy Law by Four Dissenting Commissioners at 2–3 (summarizing points of agreement and disagreement). Back To Text

<sup>21</sup> See id. at 3 (stating "The nine Commissioners agree on the need to ... promote pre–and post–bankruptcy debtor education."); see also NBRC Report, supra note 18, at 116 (stating commission focused on voluntary programs, although it contemplated that "judges could, in their discretion, require debtors to participate in educational programs in appropriate circumstances."). The commission did not recommend mandatory programs on the grounds that they may be "unduly coercive and difficult to administer" and that they may pose a hardship to debtors who might have to miss work and travel from a rural area. See id. It concluded, "Voluntary programs are the preferable course of action until various types of post–bankruptcy educational programs can be evaluated." See id. Back To Text

<sup>22</sup> See infra Part IVA. Back To Text

<sup>23</sup> See id. Back To Text

<sup>24</sup> See infra Part IVA. Back To Text

<sup>25</sup> See infra Part IVE. Back To Text

<sup>26</sup> See NBRC Report, *supra* note 18, at 115 (noting that authority of chapter 13 trustees to use funds for education programs has been challenged). [Back To Text](#)

<sup>27</sup> [11 U.S.C. § 1302\(b\)\(4\) \(1994\)](#). [Back To Text](#)

<sup>28</sup> See [NBRC Report, supra note 18, at 115](#). [Back To Text](#)

<sup>29</sup> Both chapter 13 trustees and officials of the Executive Office of the US Trustees have reported greater EOUST support for these programs. [Back To Text](#)

<sup>30</sup> See e-mail from Marion Olson, chapter 13 trustee, San Antonio, Texas, Sept. 18 and 20, 2001 (on file with author). [Back To Text](#)

<sup>31</sup> See [28 U.S.C. § 586\(a\)\(1\)](#) and (b) (1994) (providing only for panel of trustees for chapter 7 but for standing trustees in chapter 13); [Braucher, supra note 8, at 556–57](#) (describing operations of chapter 13 standing trustees and their often great influence as only fulltime bankruptcy official devoted to primarily consumer cases, in comparison to much lesser influence of chapter 7 panel trustees); see also [28 U.S.C. § 586\(e\) \(1994\)](#) (providing for chapter 13 standing trustees to receive individual compensation up to level V of Executive Schedule and to receive percentage fees for expenses of their operations); cf. [11 U.S.C. § 330\(b\) \(1994\)](#) (providing for payment of \$60 to chapter 7 trustees in no asset cases). [Back To Text](#)

<sup>32</sup> See [supra note 30](#). [Back To Text](#)

<sup>33</sup> See [infra Part V](#). [Back To Text](#)

<sup>34</sup> See Administrative Office of the US Courts, Judicial Business of the United States, 1997–2000 Annual Reports of the Director, reporting these figures, rounded to the nearest hundred thousand, for non-business filings for the 12 months ending September 30 of each of the years indicated: 1.1million (1996), 1.4 million (1997), 1.4 million (1998), 1.3 million (1999), 1.2 million (2000). For electronic versions of these reports, see [www.uscourts.gov/judbususc/judbus.htm](http://www.uscourts.gov/judbususc/judbus.htm). [Back To Text](#)

<sup>35</sup> See NFCC Fact Sheet, Wednesday, Nov. 1, 2000, available at <http://www.nfcc.org/news/showness.cfm?newsid=64> (reporting that members of National Foundation for Credit Counseling, which is organization of nonprofit consumer credit counseling agencies, counseled 1.6 million families in 1999). [Back To Text](#)

<sup>36</sup> See [supra](#) notes 18–20 and accompanying text (concerning NBRC's recommendation); see also Bankruptcy Reform Act of 2001, H.R. 333, 107th Cong. § 106(b) and (c) (2001) [hereinafter H.R. 333] (proposing to [amend 11 U.S.C. §§ 727\(a\) and 1328](#)). The last congressional action on the legislation was July, 17 2001, when the Senate passed H.R. 333 with a substitute text, so that all citations in this article are of the Senate version. [Back To Text](#)

<sup>37</sup> See [id.](#) at § 106(e) (adding § 111 to 11 U.S.C. permitting course to be offered by telephone or through Internet, in addition to in physical locations). [Back To Text](#)

<sup>38</sup> See William March, Tightening Law on Bankruptcy Draws Scrutiny, Tampa Tribune, at 1, May 21, 2000, (quoting U.S. bankruptcy judge Alexander Paskay of Tampa as calling legislation "the product of an immense, concentrated lobbying effort by credit card issuers and lenders," while then–U.S. Rep. Bill McCollum charged that bankruptcy is being abused and said legislation would bring "common sense" to law) (giving example of similar views on pending legislation); see also [Gary Klein, Balancing the Bankruptcy Laws: High Rate Credit Card Lending Leads to High Bankruptcy Filing Rates, PLI Consumer Financial Services Litigation 1999](#), Westlaw 1114 PLI/Corp 853, 861–63 (stating lenders must bear some of responsibility for increase in bankruptcy filings and proposing legislation to require better disclosures and to prohibit certain practices). [Back To Text](#)

<sup>39</sup> Interestingly, one hears this view even from chapter 13 trustees, who act as fiduciaries for creditors. However, if creditors as businesses are judged by their profitability, the consumer credit industry has been acting rationally. See

Lawrence M. Ausubel, Credit Card Defaults, Credit Card Profits, and Bankruptcy, 71 *Am. Bankr. L. J.* 249, 264 (1997) (describing cycle in which high profitability in credit card business led to relaxation of credit standards, which in turn led to higher delinquencies, and predicting that effect of legal change to reduce access to bankruptcy would be to increase social problem of overindebtedness because creditors would respond by expanding supply of consumer credit in response to prospect of less bankruptcy loss). [Back To Text](#)

<sup>40</sup> See NBRC Report, *supra* note 18, at 114. [Back To Text](#)

<sup>41</sup> The legislation provides for probationary approval of programs "designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such course of instruction" and for annual approval if the provider has been "effective in assisting a substantial number of debtors to understand personal financial management." See H.R. 333, *supra* note 35, at § 106(e), adding new § 111(d)(1)(B) and (2)(A) to Bankruptcy Code. [Back To Text](#)

<sup>42</sup> See NBRC Report, *supra* note 18, at 114–15. [Back To Text](#)

<sup>43</sup> See Melissa B. Jacoby et al., Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts, 76 *N.Y.U. L. Rev.* 375, 377 (2001) (stating nearly half of all bankruptcies involve medical problems, which may involve either unmanageable medical expenses or job disruptions triggered by medical problems, or both); Teresa A. Sullivan et al., *The Fragile Middle Class* 15–16, 19–21, 78–79, 144–45, and 172–86 (2000) [hereinafter Sullivan et al., *The Fragile Middle Class*] (stating two-thirds of surveyed debtors gave employment problems as reason for filing bankruptcies, while about one-fifth of debtors listed medical problems and one-fifth listed family problems in survey format that permitted listing more than one reason). [Back To Text](#)

<sup>44</sup> See Sullivan et al., *The Fragile Middle Class*, *supra* note 42, at 58 (estimating one-fifth of surveyed debtors were or had recently been self-employed). [Back To Text](#)

<sup>45</sup> See NBRC Report, *supra* note 18, at 116. [Back To Text](#)

<sup>46</sup> See A. Mechele Dickerson, Can Shame, Guilt, or Stigma Be Taught? Why Credit-Focused Debtor Education May Not Work, 32 *Loy. L.A. L. Rev.* 945, 958 (1999) [hereinafter Dickerson] (asserting "[D]ebtor education programs do little for debtors who become economically disabled because they lack marketable job skills, health insurance, or are not receiving timely child support payments."). [Back To Text](#)

<sup>47</sup> It became a commonplace observation in mid-2001 that consumer spending was preventing the financial slowdown of 2001 from become a full-blown recession, a situation that seemed increasingly precarious. See Robert B. Reich, Editorial, How Long Can Consumers Keep Spending, *N.Y. Times*, Sept. 2, 2001, § 4 (Week in Review), at 9. [Back To Text](#)

<sup>48</sup> See Dickerson, *supra* 45, at 958. [Back To Text](#)

<sup>49</sup> See infra Part IIIB. [Back To Text](#)

<sup>50</sup> See infra Part IIIA. [Back To Text](#)

<sup>51</sup> See 11 U.S.C. § 1328(a) (1994) (providing generally for discharge after completion of all payments under plan); id. § 1328(b)(1) (providing for discharge without completion of plan only if, inter alia, failure to complete is due to "circumstances for which the debtor should not justly be held accountable"). The term "success" could also be applied to some non-completions that do not result in chapter 13 discharge, for example when a debtor uses chapter 13 to cure an arrearages on a secured debt before converting to chapter 7 to discharge unsecured debts. See Braucher, *supra* note 8, at 535. [Back To Text](#)

<sup>52</sup> See supra note 5. [Back To Text](#)

- <sup>53</sup> See Norberg, supra note 5, at 429 (stating that 90 percent of payments to creditors in chapter 13 in one district went to secured creditors); id. at 435 (noting that of \$2.4 billion disbursed by chapter 13 trustees nationally in 1998, \$1.6 billion went to secured creditors). [Back To Text](#)
- <sup>54</sup> See H.R. 333, supra note 35, § 102(a)(1) (potentially amending § 707(b) of 11 U.S.C. to provide for dismissal from chapter 7 for "abuse," rather than "substantial abuse," and to elaborately define presumptive abuse). This new approach is referred to, popularly, as "means testing." It makes use of very strict Internal Revenue Service standards concerning monthly expenses. See id. (language to be codified in § 707(b)(2)(A)(ii)(I)). It would not permit abuse challenges against debtors whose income falls below certain median family income measures. See id. (language to be codified in § 707(b)(7)). [Back To Text](#)
- <sup>55</sup> See id. § 102(h) (potentially amending § 1325(b) of 11 U.S.C. to apply means testing to some chapter 13 debtors (those above certain median income measures)). [Back To Text](#)
- <sup>56</sup> See id. § 306(a) (potentially amending § 1325(a)(5) to provide that § 506 does not apply in case of certain purchase money secured debts (for cars if incurred within three years of filing and for other property of value if incurred within one-year before filing)). [Back To Text](#)
- <sup>57</sup> With tighter budgets, debtors are more likely to default on plan payments. With higher repayment required to secured creditors, debtors seeking to hold on to collateral will have tighter budgets. On the other hand, lack of availability of a chapter 7 discharge for some chapter 13 debtors might keep more in. [Back To Text](#)
- <sup>58</sup> See Jean Braucher, Increasing Uniformity in Consumer Bankruptcy: Means Testing as a Distraction and the National Bankruptcy Review Commission's Proposals as a Starting Point, 6 *Am. Bankr. Inst. L. Rev.* 1, 11 (1998) (noting that predictable effect of means testing would be to increase chapter 13's already high failure rate); Gary Klein, Means Tested Bankruptcy: What Would It Mean? 28 *U. Mem. L. Rev.* 711, 736 (1998) (stating that more debtors are likely to fail to complete chapter 13 plans if marginal debtors are forced to try to repay in that chapter). [Back To Text](#)
- <sup>59</sup> See infra Part IIIC–D. [Back To Text](#)
- <sup>60</sup> See Reginald W. McDuffee, The Wage Earner's Plan in Practice, 15 *Vand. L. Rev.* 173, 193 (1962) (describing chapter 13 as providing "rehabilitation device," and listing as one element necessary for successful chapter 13 operation, "[a] type of debtor who seeks out the court of bankruptcy not as a sanctuary, asylum or place of refuge, but as a means of learning (perhaps for the first time) the hard lesson of self-discipline"); see also Harry H. Haden, Chapter XIII Wage Earner Plans—Forgotten Man Bankruptcy, 55 *Ky. L. J.* 564, 594–95 (1966) (discussing idea of sanctuary as being as important as rehabilitation, particularly in light of fact that 66 percent of wage earner petitions filed in Birmingham, Ala., in one year were by repeaters, with many of those having filed three, five, seven, and in one case, 13 times before). [Back To Text](#)
- <sup>61</sup> See Jean Braucher, Counseling Consumer Debtors to Make Their Own Informed Choices—A Question of Professional Responsibility, 5 *Am. Bankr. Inst. L. Rev.* 165, 181–95 (1997) (discussing debtors' tendency to be enthusiastic about chapter 13 even when it is not feasible and explaining some warnings that should be given, such as high risk of failure); Braucher, supra note 8, at 540, 555 (stating lawyers who recommend chapter 13 may be able to counsel debtors more quickly, because debtors often say they want to repay their debts, and it can take more time to explore fully to what extent that is feasible). [Back To Text](#)
- <sup>62</sup> Also, debtors' lawyers would have to make use of this sort of information to counsel debtors against chapter 13, something that can take time and that debtors may not want to hear. See supra note 60. [Back To Text](#)
- <sup>63</sup> See Braucher, supra note 8, at 529 (keeping collateral on which debtor has arrearages was reason attorneys in Ohio and Texas cited most frequently for using chapter 13). [Back To Text](#)

<sup>64</sup> See Lois A. Vitt et al., *Personal Finance and the Rush to Competence: Financial Literacy Education in the U.S.* xii (2000) [hereinafter Vitt] (national field study commissioned and supported by Fannie Mae Foundation and conducted by Institute for Socio-Financial Studies) (discussing growth of programs in response to rising perceived need for financial literacy education to increase savings for retirement due to concern about adequacy of Social Security and new emphasis on financial independence). [Back To Text](#)

<sup>65</sup> See *id.* at xiii–xiv (noting most financial education programs in national survey were started recently and without formal needs assessment because organizers said "need was obvious"); see also Education Effort Needed to Offset Increased Credit Risk, 10 Credit Risk Management, No. 19 (Oct. 16, 2000) (describing industry analyst's view that credit card companies should be helping their customers learn to manage debt, rather than encouraging risky borrowing). [Back To Text](#)

<sup>66</sup> See H.R. 333, *supra* note 35, at § 106(a) (potentially adding new subsection (h) to § 109 of 11 U.S.C., making individual ineligible to be debtor in bankruptcy unless that individual had received briefing from approved nonprofit credit counseling agency). The briefing could be by telephone or on the Internet, and it would have to have "outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis." *Id.* [Back To Text](#)

<sup>67</sup> See *id.* A reason for this restriction is that many states prohibit "for profit" credit counseling. See Howard B. Hoffman, *Consumer Bankruptcy Filers and Pre-petition Consumer Credit Counseling: Is Congress Trying to Place the Fox in Charge of the Henhouse?*, 54 Bus. Lawyer 1629, 1630 (1999) [hereinafter Hoffman]. Although run on a nonprofit basis, consumer credit counseling agencies ordinarily receive funding from creditors, and that funding is based on a percentage of money recovered. *Id.* at 1632. [Back To Text](#)

<sup>68</sup> See Gordon Bermant, *Planning for Change: Credit Counseling at the Threshold of Bankruptcy*, 20 Am. Bankr. Inst. J. 20, 21 (2001) [hereinafter Bermant] (stating in one district comparison, credit counseling budgets used expense allowances that were generally smaller than those permitted under IRS allowances); Hoffman, *supra* note 66, at 1632, 1634–1740 (stating debt management plans proposed by credit counselors are criticized as frequently "unrealistic or unduly burdensome," because creditors demand all debt be repaid); David A. Lander, *Essay: A Snapshot of Two Systems that are Trying to Help People in Financial Trouble*, 7 Am. Bankr. Inst. L. Rev. 161, 178–81 (noting debt management plans typically require full payout of debt, although interest is sometimes forgiven, and that, as of 1998, in 48 percent of plans, debtor stopped paying within first six months, sometimes in response to continued collection efforts by some creditors); Richard I. Stehl, *The Failings of the Credit Counseling and Debtor Education Requirements of the Proposed Consumer Bankruptcy Reform Legislation of 1998*, 7 Am. Bankr. Inst. L. Rev. 133, 148–49 (1999) (stating there are not enough credit counselors to handle increased volume that would result from requirement, so that poor service and backlogs would likely result). [Back To Text](#)

<sup>69</sup> See H.R. 333, *supra* note 35, at § 102(h) (potentially amending § 1325(b) of 11 U.S.C. to provide that reasonable expenses must be determined according to means test for chapter 7 if chapter 13 debtor has current monthly income in excess of certain measures of median family income); see Gary Klein, *Impact of Pending Bankruptcy Legislation on Low-Income Debtors*, 19 Am. Bankr. Inst. J. 34, 35 (2000) (noting that IRS developed its standards as guidelines for its own debt collectors, subject to latitude for discretion and exception, making them inappropriate for rigid application by operation of law, since they force proof of higher-than-average expenses, proof that low-income debtors may not be able to afford). [Back To Text](#)

<sup>70</sup> See Hoffman, *supra* note 66, at 1636–44 (noting that most debt management plans are not completed and comparing these plans unfavorably to chapter 13 plans); see also Bermant, *supra* note 67, at 21. [Back To Text](#)

<sup>71</sup> See Braucher, *supra* note 8, at 554–80 (describing lawyers' approaches to counseling consumer debtors). [Back To Text](#)

<sup>72</sup> The survey project was conducted by the Trustees Educational Network, Inc. (TEN), a nonprofit organization that promotes debtor education and that has developed a curriculum and materials that it supplies to other chapter 13 trusteeships that offer education. The Greenboro, San Antonio and Fort Worth trusteeships all belong to TEN. [Back](#)

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<sup>73</sup> See Pamela P. Stokes, Business Credit, Vol. 97, No. 6 (June 1, 1995). A survey of 400 debtors was conducted at the end of financial management classes in one district. Debtors were asked to rate particular aspects of the program on a 5 point scale with 5 as "excellent." The mean ratings were 4.6 and above. A follow-up survey 12-18 months later, using different questions, indicated that responses were still positive but not to the same degree. Id. [Back To Text](#)

<sup>74</sup> All of the chapter 13 trusteeships in this study reported asking for evaluations from attendees and getting highly positive responses. See infra notes 175-77 and accompanying text. [Back To Text](#)

<sup>75</sup> See H.R. 333, supra note 35, at § 106(e) (adding § 111(d)(1)(D) to 11 U.S.C. and calling for records of "evaluation of satisfaction of course of instruction or program requirements for each debtor attending."). [Back To Text](#)

<sup>76</sup> Debtors may have different attitudes about courses after they have had time to get in trouble again. See Susan L. DeJarnatt, Once Is Not Enough: Preserving Consumers Rights to Bankruptcy Protection (exploring phenomenon of repeat filing in chapter 13 and finding, based on survey of chapter 13 trustees, that most repeaters, who comprise anywhere from six to 40 percent of chapter 13 filers, depending on trusteeship, need second filing due to changes in circumstances, such as layoff, marital breakup or unanticipated expenses). [Back To Text](#)

<sup>77</sup> See Karen Gross, Testimony before the House Subcommittee on Commercial and Administrative Law, n. 11 (March 12, 1998), available at [www.house.gov/judiciary/5351.htm](http://www.house.gov/judiciary/5351.htm) (stating "[w]hat constitutes success is not a simple question either. From my perspective, success need not be as lofty as some might anticipate. If debtors feel better about themselves, if they believe they are handling money and finances better than they did before, that is success."). [Back To Text](#)

<sup>78</sup> See supra Part IVA (noting that all programs are mandatory and this has been accepted by local debtor bar in each area); see also Henry Hildebrand III, Education: Requirement for Bankruptcy Relief?, 16 Am. Bankr. Inst. L. Rev. 16, 16-17 (1997), 1997 A.B.I. Jnl. Lexis 143, at 2-5 [hereinafter Hildebrand] (discussing longstanding programs in North Carolina, Ohio and Texas). [Back To Text](#)

<sup>79</sup> See 11 U.S.C. § 1322(d) (1994) (providing that plans may not exceed five years); id. at § 1325(b)(1)(B) (providing that upon objection by trustee or unsecured claimant, court may not confirm plan for less than full payment unless it commits disposable income for three years). [Back To Text](#)

<sup>80</sup> The Metropolitan population figures are from 1990 and the MSA per capita incomes from 1989, both according to the US Census. See <http://www.census.gov/population/www/cen/2000/phc-t3.html> (Table 1 Metropolitan Areas and Geographical Components in Alphabetical Sort, 1990 and 2000 Population and Numeric and Percent Change, 1990 to 2000); <http://www.census.gov/s97is.vts> (Table MSA3 Per Capita Income by Metropolitan Statistical Areas (MSA)). [Back To Text](#)

<sup>81</sup> This information was provided by the two chapter 13 trustees in Sacramento, Lawrence J. Loheit and Jan P. Johnson. Some indication of the impact of debtor education might be given by examining completion rates in Sacramento for changes in a few years. However, if there are also changes in other practices or in debtor characteristics, it may be difficult to isolate the impact of debtor education. [Back To Text](#)

<sup>82</sup> Purges are used to reduce the amount of information carried in active files and make those files more manageable. [Back To Text](#)

<sup>83</sup> In addition to data from the five trusteeships included in the analysis, data were gathered from trusteeships in Nashville, Tenn., Phoenix, Ariz., and from another trusteeship in Sacramento (the trusteeship in the study is that of chapter 13 Trustee Lawrence J. Loheit). After receiving the files, it was determined that the data from Phoenix and one Sacramento trusteeship were corrupted and could not be used. It was also determined that Nashville had not provided information about all cases filed during the specified time periods (purged cases were not provided); as a result Nashville was also excluded from the analyses. [Back To Text](#)

<sup>84</sup> See infra Part IVA (concerning how programs are made mandatory in Greensboro, Fort Worth and San Antonio). [Back To Text](#)

<sup>85</sup> See infra Part IV. [Back To Text](#)

<sup>86</sup> See infra Part IVA. [Back To Text](#)

<sup>87</sup> See infra notes 87–89 and accompanying text. [Back To Text](#)

<sup>88</sup> According to the US Dept. of Justice, the total bankruptcy filings in the US in 1994 were 832,829, of which 249,877 were in chapter 13. See <http://www.usdoj.gov/ust/statistics/stats-new/statistics.htm>. [Back To Text](#)

<sup>89</sup> These statistics are reported by the US Dept. of Justice. See id. [Back To Text](#)

<sup>90</sup> See Whitford, supra note 5, at 411. [Back To Text](#)

<sup>91</sup> See Norberg, supra note 5, at 427 n. 53 (sampling cases closed in 1998); id. at 441 n. 85 (discussing distortions caused by basing completion rates on sample of closed cases but noting that taking sample from initial filings and following them over their pendency means data are not as recent). [Back To Text](#)

<sup>92</sup> When filings are rising, reporting completion rates as a percentage of cases closed in a given year understates completion for the earlier years represented. When rates of filing fall, completion rates given in this way overstate completion. See Norberg, supra note 5, at 441 n. 85. [Back To Text](#)

<sup>93</sup> Attorneys fees for more than the "reasonable value" of the services may be cancelled by the court. See 11 U.S.C. § 329(b). Judges, advised by chapter 13 trustees, typically permit fees of a certain amount without special application. See Braucher, supra note 8, at 546–47. [Back To Text](#)

<sup>94</sup> Timing of payment of attorneys fees is not dealt with explicitly in the Code. Attorneys must report the amount of fees "paid or agreed to be paid," and the court may cancel fees it considers to exceed the reasonable value of the services. See 11 U.S.C. § 329(a) and (b). [Back To Text](#)

<sup>95</sup> The amount that a debtor must pay is determined by a number of tests, each of which must be met. Under 11 U.S.C. § 1325(a)(4), the debtor must pay at least each creditor's liquidation share, but usually this would be zero or at any rate less than the debtor has to pay under other tests, particularly the disposable income test. To avoid a challenge by the chapter 13 trustee or an unsecured creditor, the debtor must pay in the plan disposable income in excess of reasonable expenses for three years. See 11 U.S.C. § 1325(b) (1994). In addition, the plan must meet a "good faith" test, 11 U.S.C. § 1325(a)(3), and this gives judges and trustees discretion to challenge low percentage plans. Local practices may include rules of thumb about the amount that must be paid to avoid a good faith challenge. See Braucher, supra note 8, at 532. [Back To Text](#)

<sup>96</sup> The statutory maximum length of the plan is five years. See 11 U.S.C. § 1322(d) (1994). [Back To Text](#)

<sup>97</sup> The Bankruptcy Code provides for dismissal or conversion to chapter 7 when a debtor materially defaults upon a term of a confirmed plan. See 11 U.S.C. § 1307(c)(6). It also provides for modification of plans. See 11 U.S.C. § 1329 (1994). A moratorium is a more informal practice, in which a plan is not dismissed, converted, or modified even though there might be grounds to do so, in order to allow a debtor a chance to resume making plan payments. [Back To Text](#)

<sup>98</sup> The Bankruptcy Code has no explicit provision for wage orders, but bankruptcy courts have general power to issue orders necessary and appropriate to carry out the provisions of title 11. See 11 U.S.C. § 105(a) (1994). [Back To Text](#)

<sup>99</sup> A plan may provide for curing reasonable defaults and for payments on secured claims on which the last payment is due after the final payment under the plan. See 11 U.S.C. § 1322(b)(5) (1994). Debtors in chapter 13 are often

permitted to make regular mortgage payments outside the plan. [Back To Text](#)

<sup>100</sup> Interviews were conducted between December 1999 and July 2001, in several cases on more than one occasion. The trustees interviewed were Marion Olson, San Antonio, Tim Truman, Fort Worth, Anita Troxler, Greensboro, Warren L. Tadlock, Charlotte, and Lawrence J. Loheit, Sacramento. [Back To Text](#)

<sup>101</sup> See [supra note 92](#). [Back To Text](#)

<sup>102</sup> See [Braucher, supra note 8, at 545–51](#) (concerning local fee practices that influence debtors' lawyers). [Back To Text](#)

<sup>103</sup> See [id.](#); see also [Whitford, supra note 5, at 412–16](#) (concerning attorneys who steer clients into chapter 13 rather than serving their interests). [Back To Text](#)

<sup>104</sup> See [supra note 94](#) (concerning judges' and trustees' discretion under "good faith" test for plan confirmation). [Back To Text](#)

<sup>105</sup> See [supra note 96](#). [Back To Text](#)

<sup>106</sup> See [infra notes 118–19](#) and accompanying text. [Back To Text](#)

<sup>107</sup> This has long been a concern with court-ordered garnishment of wages, leading to both federal and state laws prohibiting discharge for garnishment. See [Consumer Credit Protection Act, 15 U.S.C. § 1671](#) et seq.; William C. Whitford, The Appropriate Role of Security Interests in [Consumer Transactions](#), 7 *Cardozo L. Rev.* 959, 967–71 (1986) (discussing fear of impact on debtor's job as longstanding concern with wage garnishment, and discussing transaction costs to employer as possible explanation for adverse job consequences); See also [11 U.S.C. § 525\(b\)](#) (1994) (prohibiting discrimination by employers on basis of bankruptcy). [Back To Text](#)

<sup>108</sup> Chapter 13 can be seen as educational in itself, in that a debtor must live on a budget and make plan payments to succeed. See [supra note 59](#). Payroll deduction of the entire plan payment means the debtor never gets that money and thus has less chance to learn self-discipline. [Back To Text](#)

<sup>109</sup> See [infra Part IVD](#) concerning costs of debtor education. [Back To Text](#)

<sup>110</sup> See [NBRC Report, supra note 18, at 84](#) (noting consumer debt grew nearly 700 % from 1977 to 1997); [id. at 83, n. 124](#) (reviewing empirical evidence concerning debt-income ratios and concluding debtors in 1990s were in as much or more financial trouble as debtors in early 1980s). [Back To Text](#)

<sup>111</sup> See [supra note 94](#) (concerning highly discretionary "good faith" test for plan confirmation). [Back To Text](#)

<sup>112</sup> See [11 U.S.C. § 1325\(a\)\(4\)](#) (1994). [Back To Text](#)

<sup>113</sup> See [id. § 1325\(b\)](#). [Back To Text](#)

<sup>114</sup> For an example of a case showing judicial resistance to very low percentage plans, see [In re Davis](#), 68 *B.R.* 205, 216 (Bankr. S.D. Ohio 1986) (stating that "intensified" review of the debtor's budget is appropriate for zero or single-digit percentage plans). See [Braucher, supra note 8, at 532–33](#) (concerning local variations in payment expectations). [Back To Text](#)

<sup>115</sup> This is contrary to the data reported by [Whitford, supra note 5, at 411](#) (noting in data gathered in survey of chapter 13 trustees, "there seems to be an inverse correlation between proposed payout to unsecureds and likelihood of completion of the plan....") [Back To Text](#)



<sup>116</sup> A multiple regression using Type 1 sums of squares was run using PROC REG in SAS. The specific model tested was also run in a logistic model (PROC LOGISTIC) and a categorical modeling procedure (PROC CATMOD) in SAS. All results were almost identical so we chose to report the multiple regression due to the complexity of explaining the other models to a non-technical audience. Contact the author for further details about the statistical analysis. [Back To Text](#)

<sup>117</sup> See [infra](#) Part IVA (concerning how educational program is effectively made mandatory in three cities that offered it). [Back To Text](#)

<sup>118</sup> See [infra](#) Part IVA–B. [Back To Text](#)

<sup>119</sup> See [supra](#) note 105 and accompanying text and chart concerning local practices. [Back To Text](#)

<sup>120</sup> See [Whitford, supra note 5, at 405–14](#) (explaining great variations in how bankruptcy is used around country indicate attorneys are steering clients into choices rather than serving their best interests). [Back To Text](#)

<sup>121</sup> Obviously, such a program would be more expensive and put more demands on debtors' time. If Congress mandates education without funding it, at least some debtors will end up footing the bill themselves, which could be a reason to continue with a relatively inexpensive program that can be completed in one sitting of two to four hours. The Columbus, Ohio, program is an example of an extended format. See [infra](#) Part IVE. Fort Worth, which now has a short program, at one time had a five-day program. See [infra](#) Part IVA. [Back To Text](#)

<sup>122</sup> According to a 1999 TEN publication, the board of directors included, among others, Anita (Jody) Troxler, Marion (Al) Olson and Tim Truman, the chapter 13 trustees in, respectively, Greensboro, San Antonio and Fort Worth. See Network News (1999) (on file with author). TEN was organized with the support of the National Association of Chapter Thirteen Trustees and has developed a curriculum and a system to expedite delivery of debtor education programs, whether initiated by trustees or ultimately mandated by Congress. See [id.](#) [Back To Text](#)

<sup>123</sup> At the time that the author visited classes in San Antonio and Fort Worth, the programs there were using student workbooks printed and donated by VISA, USA. See Personal Financial Choices—Setting a New Course. This workbook was based on the curriculum being used in these existing programs and thus reflected the views of the instructors in the trusteeships. In 2001, TEN, see [supra](#) note 121, took over responsibility for producing the materials and for distributing them to chapter 13 trustees. There are now two workbooks, Personal Financial Choices—Practical Money Skills and the Basics of Chapter 13. See e-mails from Marion Olson, Sept. 18 and 20, 2001, on file with author. [Back To Text](#)

<sup>124</sup> See [id.](#) [Back To Text](#)

<sup>125</sup> This information was provided by Anita Troxler, chapter 13 trustee, Greensboro, N.C., and also by Molly Miller, who has taught the budgeting and money management course there for many years. See [infra](#) note 125. See also [Haden, supra note 59, at 600](#), (noting that Rufus W. Reynolds, as referee in Greensboro, N.C., developed a form and instructions sheet for wage-earner plans under chapter XIII of the Bankruptcy Act). The form and instruction sheet are reproduced at the end of Haden's article. [Id.](#) at 616–617. Evidently, Reynolds made a project of promoting the use of chapter XIII. See [infra](#) note 142. [Back To Text](#)

<sup>126</sup> Telephone Interview (March 22, 2000) with Molly Miller [hereinafter Miller Interview], who teaches the debtor education course in Greensboro and also in several other North Carolina cities. She said she began teaching the course in Greensboro in 1981 or 1982. See [infra](#) note 169 (concerning background of Molly Miller). [Back To Text](#)

<sup>127</sup> In-person interview (Dec. 15, 1999) with Sandi Martin [hereinafter Martin Interview], director of financial education, San Antonio chapter 13 trusteeship. See [infra](#) note 169 (concerning background of Sandi Martin). [Back To Text](#)

<sup>128</sup> In-person interview (Dec. 13 and 14, 1999) with Joan Truman [hereinafter J. Truman Interview], coordinator for debtor education, Fort Worth chapter 13 trusteeship [Back To Text](#)

<sup>129</sup> [Id.](#) (relating history of Fort Worth program: It began as voluntary one, in evenings. It was 36 hours initially, over several evenings and several Saturdays. Then it was turned into five-day program, with two days mandatory and three optional. Three-day optional program was eliminated in fall 1992, and since 1993, required program has been one day). [Back To Text](#)

<sup>130</sup> [Id.](#) (noting while 37 percent of debtors sign up for optional program, only about 5 percent attend, so classes are usually only 6–10 people; instructor is employee of local consumer credit counseling service). [Back To Text](#)

<sup>131</sup> Occasionally, permission is given not to attend. For example, in Fort Worth and San Antonio, debtors who have already attended the class recently as part of an earlier chapter 13 are not required to attend. See [id.](#); [Martin Interview, supra note 126](#). (noting that debtors might also be excused for serious problems, such as terminally ill spouse). [Back To Text](#)

<sup>132</sup> See [Braucher, supra note 8, at 558](#) (noting no lawyer has challenged "school" requirement in San Antonio); [id. at 556–61](#) (concerning lawyers' tendencies are fit in with local legal culture). [Back To Text](#)

<sup>133</sup> See [Martin Interview, supra note 126](#); [J. Truman Interview, supra note 127](#). [Back To Text](#)

<sup>134</sup> [11 U.S.C. § 341\(a\) \(1994\)](#) (requiring meeting of creditors). [Back To Text](#)

<sup>135</sup> The author attended the San Antonio class on December 15, 1999. Marion "Al" Olson, the San Antonio chapter 13 trustee, opened the program with an introduction in which he said, "I want this to be a positive experience. We will give you some ideas on ways to change some things so you won't have to go through this again." The rest of the program was conducted by two members of his staff. Sandi Martin, director of financial education, led most of the class. [Back To Text](#)

<sup>136</sup> [Martin Interview, supra note 126](#). See [supra note 130](#) concerning excuses. The trustee's office is more likely to reschedule the debtor for another day than to excuse class attendance entirely. [Martin Interview, supra note 126](#). [Back To Text](#)

<sup>137</sup> The author attended the Fort Worth class on December 14, 1999. In addition to discussing what would happen in their 341 meetings (review of petitions and schedules, with hearing officer also asking about causes of bankruptcy), chapter 13 trustee Tim Truman advised debtors to open a savings account immediately and to start saving something from every pay check. He told them they would need savings to deal with an inevitable setback in the form of an unexpected expense. He also advised them to adjust their spending so that income exceeds expenses, and he discussed tracking and trimming expenses to achieve this. See [infra note 148](#). He urged the debtors to attend the optional class on budgeting. Finally, he recommended that debtors sign up for a wage order, or, if self-employed or worried about their employers' reactions to a wage order, to sign up at least for an automatic electronic payment from their banks. [Back To Text](#)

<sup>138</sup> The video, produced by VISA, U.S.A., gave an overview of the chapter 13 legal and administrative process. The video presented a vast amount of detail. My judgment as a teacher of law students is that the content was ambitious even for a post-graduate level. According to Joan Truman, the average debtor in Fort Worth is a high school graduate with some college, so that is the targeted educational level. [J. Truman Interview, supra note 127](#). In the video, there was probably much more information than most debtors could take in or could make use of at that point. The most important points, included in a summary at the end, were the need to make plan payments to avoid dismissal and renewed collection efforts, the need to make direct payments to creditors on debts such as mortgages that are not included in the plan, and the need to keep the trustee informed of any changes of address. Also useful was the repetition of the point made by [Trustee Truman, supra note 136](#), concerning the need to save for unexpected expenses. Information given about the types of bankruptcy, differences between secured, unsecured and priority debts, bar dates for claims, and about confirmation tests for chapter 13 seemed too complex for the audience and also of little

importance to a debtor already in chapter 13. The explanation about chapter 7 was not sufficient for a debtor to make a decision to investigate voluntarily converting (a possibility that was not mentioned). [Back To Text](#)

<sup>139</sup> During the Fort Worth class the author attended, the afternoon program was primarily taught by instructor [Jane Jolley](#). See [supra note 136](#) (describing Fort Worth Class); [infra note 169](#) (concerning background of Jane Jolley). There were also short presentations by a representative of the IRS concerning tax claims and by the local consumer credit counseling service instructor who was the teacher for the optional additional two-hour program. See [supra note 129](#). Several short video clips (one on identifying leaks in your budget and another on the power of thinking positively about your future) were also used. [Back To Text](#)

<sup>140</sup> See [J. Truman Interview, supra note 127](#). [Back To Text](#)

<sup>141</sup> See [Miller Interview, supra note 125](#). [Back To Text](#)

<sup>142</sup> [Id.](#) [Back To Text](#)

<sup>143</sup> [Id.](#) See also [supra note 124](#) (concerning Referee Reynolds' efforts to promote chapter 13). According to Molly Miller, Referee Reynolds scrutinized debtors' budgets carefully and disapproved expenditures for items he considered unnecessary luxuries such as televisions, microwave ovens and motorbikes. See [Miller Interview, supra note 125](#). [Back To Text](#)

<sup>144</sup> [Id.](#) [Back To Text](#)

<sup>145</sup> [Id.](#) At the time of the interview, the Greensboro trusteeship was considering moving the class to the morning before the 341 meetings to make it more convenient for debtors, although Ms. Miller noted that debtors are tense when they come to class even without that extra pressure of a pending meeting to review their petitions and schedules. [Back To Text](#)

<sup>146</sup> Although a 341 meeting is called a first meetings of creditors usually no creditor appears and the examination is conducted by the chapter 13 trustee or a hearing officer appointed by the trustee. See [11 U.S.C. § 341](#). [Back To Text](#)

<sup>147</sup> The approximate lengths of the programs are: San Antonio, three hours; Fort Worth, four hours; and Greensboro, 2 hours. See text [supra](#) at notes 133, 138 and 141. [Back To Text](#)

<sup>148</sup> See [infra note 148](#) (noting example of skill is tracking and trimming); See [infra](#) notes 154–57 (noting motivation is developed by encouraging goal-setting). [Back To Text](#)

<sup>149</sup> [Miller Interview, supra note 125](#) (one hour of two-hour program is on budgeting); [Martin Interview, supra note 126](#); [J. Truman Interview, supra note 127](#). See also [Personal Financial Choices—Setting A New Course, supra note 122, at 4–10 to 4–25](#) (discussing importance of writing down every expense, including cash expenditures, and looking for places to trim). See, e.g., Marian B. Latzko, I Can Do It! A Micropedia of Living on Your Own, 3–6 (1996) (concerning budgeting techniques, including tracking and trimming). At the San Antonio class the author attended, [supra note 134](#), financial education director Sandi Martin noted that by tracking, sometimes you can identify expenses that are easy to cut—for example, \$60 a month in Cokes bought at work, which one might be able to trim by bringing a case from home. [Back To Text](#)

<sup>150</sup> See [supra note 136](#) (concerning Trustee Truman's introductory comments stressing this point). [Back To Text](#)

<sup>151</sup> See [Personal Financial Choices—Setting A New Course, supra note 122, at 4–26](#) (saving is called "paying yourself.") [Back To Text](#)

<sup>152</sup> These examples were used in class by Jane Jolley, instructor in [Fort Worth](#). See [supra](#) notes 136, 138. [Back To Text](#)

<sup>153</sup> See Personal Financial Choices—Setting A New Course, *supra* note 122, at 2–8. In the San Antonio class the author attended, Sandi Martin listed as needs food, clothing, shelter and transportation, but then noted that sometimes we cross a line to wants in these areas, with meals out, designer clothing, housing in "the right neighborhood," or cars that are status symbols. See *supra* note 134. Back To Text

<sup>154</sup> See Personal Financial Choices—Setting a New Course, *supra* note 122, at 5–5 to 5–11. Back To Text

<sup>155</sup> See *id.* at 2–4 to 2–18. Back To Text

<sup>156</sup> Miller Interview, *supra* note 125. Back To Text

<sup>157</sup> Fort Worth instructor Jane Jolley used this focus in the class the author attended, noting that half of chapter 13 debtors in that trusteeship file to avoid foreclosure. See *supra* notes 136, 138. Back To Text

<sup>158</sup> See *id.* Back To Text

<sup>159</sup> See Personal Financial Choices—Setting a New Course, *supra* note 122, at 3–10. Back To Text

<sup>160</sup> The author observed discussion of this theme in both San Antonio and Fort Worth. See *supra* notes 134 and 136; see also *infra* note 160 and accompanying text. For example, San Antonio instructor Sandi Martin noted that our core values are not material but are about relationships, career and health and that spending on cars and clothes does not serve those values. Back To Text

<sup>161</sup> Fort Worth instructor Jane Jolley used this exercise in class author attended. See *supra* notes 136, 138. Back To Text

<sup>162</sup> Miller Interview, *supra* note 125 (listing goals as promoting cooperation between trustee and debtors and motivating debtors); Martin Interview, *supra* note 126 (noting program communicates trustee is human, and staff is caring; rapport leads debtors to want to stay in program); J. Truman Interview, *supra* note 127 (stating "we try to make them feel comfortable and that they can do this, to give them motivation"). Back To Text

<sup>163</sup> This was the wording on a sign used at the program in Fort Worth to direct students to the right room. See *supra* note 136. Back To Text

<sup>164</sup> The programs in Fort Worth and San Antonio do this in part using the video described in note 137 *supra*. Back To Text

<sup>165</sup> See *supra* note 134 (concerning opening comments of San Antonio trustee Marion Olson, who also said during same introduction, "You are not alone. Millions of people have gone through this."); see also *supra* note 161. Back To Text

<sup>166</sup> Martin Interview, *supra* note 26. Back To Text

<sup>167</sup> See *supra* notes 147–60 and accompanying text. Back To Text

<sup>168</sup> Fort Worth instructor Jane Jolley said this during the class the author attended. See *supra* note 134. Back To Text

<sup>169</sup> In the VISA video, *supra* note 137, used in San Antonio and Fort Worth, an announcer states, "The trustee personally commends you for choosing chapter 13." Back To Text

<sup>170</sup> Molly Miller in Greensboro has worked as a teacher and counselor and has a bachelor's degree in administration of justice; Sandi Martin in San Antonio has a background in consumer credit counseling and has a bachelor's degree in vocational home economics; Jane Jolley in Fort Worth is a former school teacher and a lawyer who has represented debtors in bankruptcy and who serves as a hearing officer in chapter 13 in Dallas. Back To Text

<sup>171</sup> See supra notes 134 and 138 (concerning presenters at classes the author attended). Back To Text

<sup>172</sup> See Olson e-mails, supra note 122. Back To Text

<sup>173</sup> Martin Interview, supra note 126. The same year the budget for education in Fort Worth was \$50,000, \$25,000 for space used for the mandatory and optional classes and for 341 meetings. Back To Text

<sup>174</sup> See 28 U.S.C. § 586(e) (1994) (authorizing fees); see also infra note 193. The proposed legislation requiring education, supra note 35, does not provide funding for it, so debtors might end up paying a fee for it, at least in some areas. Back To Text

<sup>175</sup> For example, in Fort Worth, in response to complaints about the waiting time for 341 meetings, the program began suggesting self-study from the workbooks that are handed out. J. Truman Interview, supra note 127. Back To Text

<sup>176</sup> Miller Interview, supra note 125 (stating evaluations were "quite good," "people say, 'I dreaded it, but I enjoyed it'"); Martin Interview, supra note 126 (explaining with about 40 attending per week, "once a month we get someone who is really negative about the whole thing"); J. Truman Interview, supra note 127 (noting overall reaction is "very favorable"). The day the author attended the class in San Antonio, supra note 134, about 40 persons were present; they filled out surveys with these overall ratings of the class: great—12, good—9, ok—4, and not ok—0. There were at least 12 couples present, who filled out only one survey for the two of them, and there apparently were several persons who did not fill out a survey. Survey forms on file with the author. Back To Text

<sup>177</sup> See survey forms, supra note 175 (in which one debtor who rated program "great" wrote, "I've never looked on how to manage money and budget until your lesson today," while debtor who rated program "OK" said, "I was already aware of most of the stuff that was covered. My financial problems arose because of an ex-husband that refused to spend wisely."). Back To Text

<sup>178</sup> J. Truman Interview, supra note 127 (noting debtors say they feel "encouraged instead of humiliated"). Back To Text

<sup>179</sup> See Hildebrand, supra note 77 at 6 n. 2 (May 1997) (noting some US trustees, exercising their statutory responsibility under 11 U.S.C. § 586(a)(3) to supervise chapter 13 trustees, have questioned whether trustee fee funds collected for administration of cases should be applied to educational programs); see also supra notes 25–28 and accompanying text. Back To Text

<sup>180</sup> The programs studied are all participants in TEN, which demonstrates a commitment to spreading debtor education in bankruptcy more widely. See supra note 121. Back To Text

<sup>181</sup> Interview with Lillian Macer, March 24, 2000 [hereinafter Macer Interview]. Ms. Macer is the coordinator of the Columbus trusteeship's consumer education seminar and also the office's liaison with creditors for its credit reestablishment program, discussed infra at 184–86 and accompanying text. She leads the classes. She was previously a school counselor and a high school teacher and said she teaches the course at about high school level. The Columbus chapter 13 trustee, Frank Pees, was also a high school teacher and he is strongly committed to the educational program. Ms. Macer said the advantage of a voluntary program is that the people are interested and motivated and that because it is smaller, she can do additional individual sessions with participants. Back To Text

<sup>182</sup> Id. There is minimal drop-off in attendance over the course of the four-session program. Because the classes are offered either Wednesday evening or Saturday morning, students who miss a class can make it up by attending the other class offered that week or with an individual session with Ms. Macer. Although not a requirement for participation in the trusteeship's credit reestablishment program, the office encourages attendance at the class as a way to prepare for that program. Those who complete the course have that noted in their files and also get a participant form that they can take to a meeting with a creditor when applying for credit. Back To Text

<sup>183</sup> For example, at the first class, the students are given a budget form to fill out and bring back to the second class. Ms. Macer reviews and comments on budgets that students turn in. She also gives them tracking and trimming worksheets. See supra notes 148–51 and accompanying text. [Back To Text](#)

<sup>184</sup> The author attended the class on March 25, 2000, focusing on credit reporting and on being a savvy consumer. Two representatives from the Ohio Attorney General's consumer education program talked about resisting high–pressure sales techniques and new credit solicitations. [Back To Text](#)

<sup>185</sup> Ms. Macer said she has no doubts about focusing on credit reestablishment because the debtors are going to use credit again and need to learn how to distinguish a good from a bad deal and to shop for the best deal. She urges them to pay off credit cards monthly, and if that is impossible, to have a written plan about when they will pay them off. See Macer Interview, supra note 180. [Back To Text](#)

<sup>186</sup> Setting up good relations with debtors at the outset is a clear goal of the education programs in San Antonio, Fort Worth and Greensboro. See supra notes 161–65 and accompanying text. [Back To Text](#)

<sup>187</sup> See Braucher, supra note 8, at 539. [Back To Text](#)

<sup>188</sup> One of the topics in the course is setting immediate, intermediate and long–term financial goals, and retirement planning is discussed as part of long–term goal setting. Macer Interview, supra note 180. [Back To Text](#)

<sup>189</sup> See supra note 30. [Back To Text](#)

<sup>190</sup> See id.; Braucher, supra note 8, at 556–57 (noting chapter 7 panel trustees receive little income from doing consumer cases). Chapter 7 panel trustees are often lawyers with law offices, but they do not have administrative operations associated with their trustee work in the way that standing chapter 13 trustees do. [Back To Text](#)

<sup>191</sup> See 11 U.S.C. § 330(b) (1994) (providing for payment of \$60 to trustees in no asset chapter 7 cases). [Back To Text](#)

<sup>192</sup> See id. at § 326(a) (providing for "reasonable compensation" to trustees, capped at certain percentages of amounts disbursed or turned over to creditors and other parties in interest). [Back To Text](#)

<sup>193</sup> See id. at § 726 (providing for distribution of property of estate); cf. id. at § 1306(a)(2) (providing for post–petition income to be part of the estate in chapter 13); id. at § 1325(b) (providing for challenges to confirmation of plan if disposal income is not paid for three years, unless claims are paid in full). [Back To Text](#)

<sup>194</sup> Although chapter 13 trustee fees are capped at 10 percent of plan disbursements under 28 U.S.C. § 586(e), most trustees, including those in this study, charge less because they can fund necessary expenses of their operations with less. The individual compensation to chapter 13 trustees is also capped by the same provision, so the trustees do not receive more personal income by collecting more fees. [Back To Text](#)

<sup>195</sup> See E–mail correspondence with Robert H. Waldschmidt, April 9, 2001 (on file with author). [Back To Text](#)

<sup>196</sup> See id. [Back To Text](#)

<sup>197</sup> See id. [Back To Text](#)

<sup>198</sup> See id. (noting survey responses were gathered for six months and were overwhelmingly positive). [Back To Text](#)

<sup>199</sup> See id. [Back To Text](#)

<sup>200</sup> See 28 U.S.C. § 586(e) (1994) (providing for chapter 13 fees based on percentages of plan payments made). [Back To Text](#)

<sup>201</sup> See id. at § 323 (providing trustee is representative of estate with capacity to sue and be sued). [Back To Text](#)

<sup>202</sup> [Martin Interview](#), supra note 126. [Back To Text](#)

<sup>203</sup> [Miller Interview](#), supra note 125. [Back To Text](#)

<sup>204</sup> [Martin Interview](#), supra note 126. [Back To Text](#)

<sup>205</sup> See [Jean Braucher, Counseling Consumer Debtors to Make Their Own Informed Choices—A Question of Professional Responsibility](#), 5 *Am. Bankr. Inst. L. Rev.* 165, 187–90 (discussing reasons credit is generally available more quickly to chapter 7 debtors than to chapter 13 debtors, such as that chapter 7 debtors are not eligible for another discharge for six years and chapter 13 debtors while in their plans are at high risk to convert to chapter 7 and get discharge). [Back To Text](#)

<sup>206</sup> See 11 U.S.C. § 727(a)(8) (1994) (imposing six-year bar on another discharge). [Back To Text](#)

<sup>207</sup> See id. § 1307 (concerning conversion and dismissal). [Back To Text](#)

<sup>208</sup> See [NBRC Report](#), supra note 18, at 22 (while supporting voluntary education, noting existence of private, not-for-profit and chapter 13 financial education programs and the likelihood that increased filings should encourage more initiatives). [Back To Text](#)

<sup>209</sup> See [Gross](#), supra note 76; 52 *Consumer Fin L. Q. Rept.* 180, at 181, n. 12 (concerning plans of nonprofit organization Coalition for Consumer Bankruptcy Debtor Education for pilot program); E-mail from Susan Block-Lieb, October 10, 2001, on file with author (describing plans to provide 1,200 debtors in chapter 7 and chapter 13, from Eastern District of New York, in Brooklyn, Long Island, Queens, and Staten Island, free, voluntary, three-hour course, and to have debtors fill out surveys both before class and three months later, for comparison with surveys filled out by three control groups—debtors who volunteer for course but do not take it, debtors who do not volunteer, and persons who have not filed for bankruptcy). [Back To Text](#)

<sup>210</sup> The need for information about debtor education and its impact is part of a larger problem of lack of reliable information about bankruptcy. See [NBRC Report](#), supra note 18, at 919–41 (generally urging more data collection in uniform form and greater access to data). [Back To Text](#)

<sup>211</sup> A national study of financial literacy programs noted as a challenge for programs "inexperience in socio-cultural aspects of program design" and stated, "A curriculum must meet the needs of learners. It must be geared to their level of general literacy, written in understandable language—even native language when appropriate or necessary—responsive to their present socio-economic situation and sensitive to their cultural background." See [Vitt](#), supra note 63, at xv, xvii. [Back To Text](#)

<sup>212</sup> See supra notes 53–56 and accompanying text. [Back To Text](#)

<sup>213</sup> See supra notes 175–76 (noting that immediate reactions to programs tend to be quite favorable). [Back To Text](#)

<sup>214</sup> See supra notes 5 and 51–57 (concerning the high failure rate in chapter 13 and likelihood that it would increase under proposed legislation). [Back To Text](#)

<sup>215</sup> See supra Part IIIA (describing the sample for the empirical study). [Back To Text](#)

<sup>216</sup> The emphasis of the Chase system is on keeping track of money that comes in and that goes out; there is no demographic information, which would be highly useful for empirical research purposes. [Back To Text](#)

<sup>217</sup> See [NBRC Report](#), supra note 18, at 929–930 (reporting data collection by the US trustee program depends on 200 clerks' offices using different data protocols and incompatible systems.); id. 929–930 n. 2404 (referring to data

collection by chapter 13 trustees in databases that are not publicly available, although these data are subject to review by US trustees and available with the permission of the trustees, as in this study). Chapter 13 standing trustees are appointed by US trustees and have their individual compensation capped at level V of the Executive Schedule for federal employees, but they are not government employees. [Back To Text](#)

<sup>218</sup> See [NBRC Report, supra note 18, at 927–30](#) (concerning larger problem of multiple systems for data collection in bankruptcy system). [Back To Text](#)

<sup>219</sup> See [supra](#) text at note 81 and accompanying text. (concerning purges of payment information from three of the five trusteeships studied). Alternatively, if purges are unavoidable, purged files could be changed to include summary data on repayment and duration of plans. [Back To Text](#)

<sup>220</sup> See [supra note 81](#) and accompanying text (concerning data problems in this study). [Back To Text](#)

<sup>221</sup> See [NBRC Report, supra note 18, at 921–22](#) (making numerous recommendations concerning data compilation and dissemination). [Back To Text](#)

<sup>222</sup> See Gordon Bermant & Ed Flynn, Sources of Variability in Chapter 13 Performance, Am. Bankr. Inst. J. 20, 40 April 2001 (figures on total disbursements from various bankruptcy districts, states or trusteeships show variability in chapter 13 performance but do not separate effects of administrative and judicial practices from effects of variables beyond bankruptcy system's control). [Back To Text](#)

<sup>223</sup> See [supra note 216](#) (concerning pilot program and study planned within one district, with control groups to account for self-selection; this study's focus on debtor perception may not call for control for variations in local trustee practices within district). [Back To Text](#)

<sup>224</sup> There is limited evidence that debtors perceive these programs as helpful. See [Stokes, supra note 72](#); [supra](#) notes 175–176 (concerning evaluation forms filled out in San Antonio, Dallas and Greensboro). [Back To Text](#)

<sup>225</sup> See [supra](#) notes 35–36. [Back To Text](#)

<sup>226</sup> See [supra](#) notes 18–19 and accompanying text. [Back To Text](#)