

# The Individual Chapter 11 Study's Findings, Conclusions and Possible Recommendations

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# National Study of Individual Chapter 11 Bankruptcies

*Funded by Anthony H.N. Schnelling  
Endowment Fund of the American  
Bankruptcy Institute*

# Executive Summary

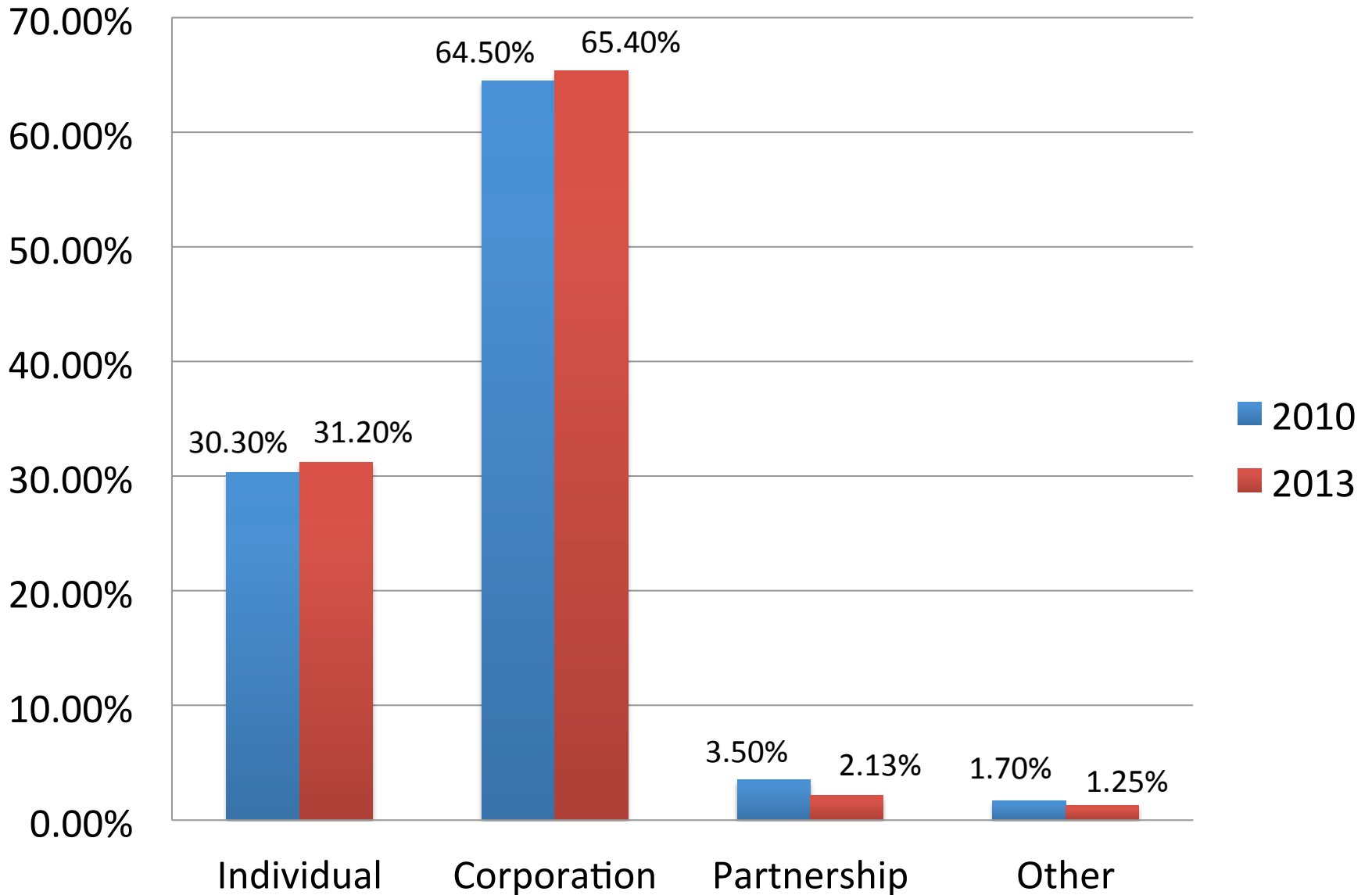
- Is Chapter 11 a good fit for these individuals?
- Differences between individual Chapter 11 and entity Chapter 11 cases
- Differences between individuals in Chapter 11 and Chapter 13
- Do these debtors look like Chapter 13 “consumers” or SMEs?
- How effectively is Chapter 11 operating?

# The Data

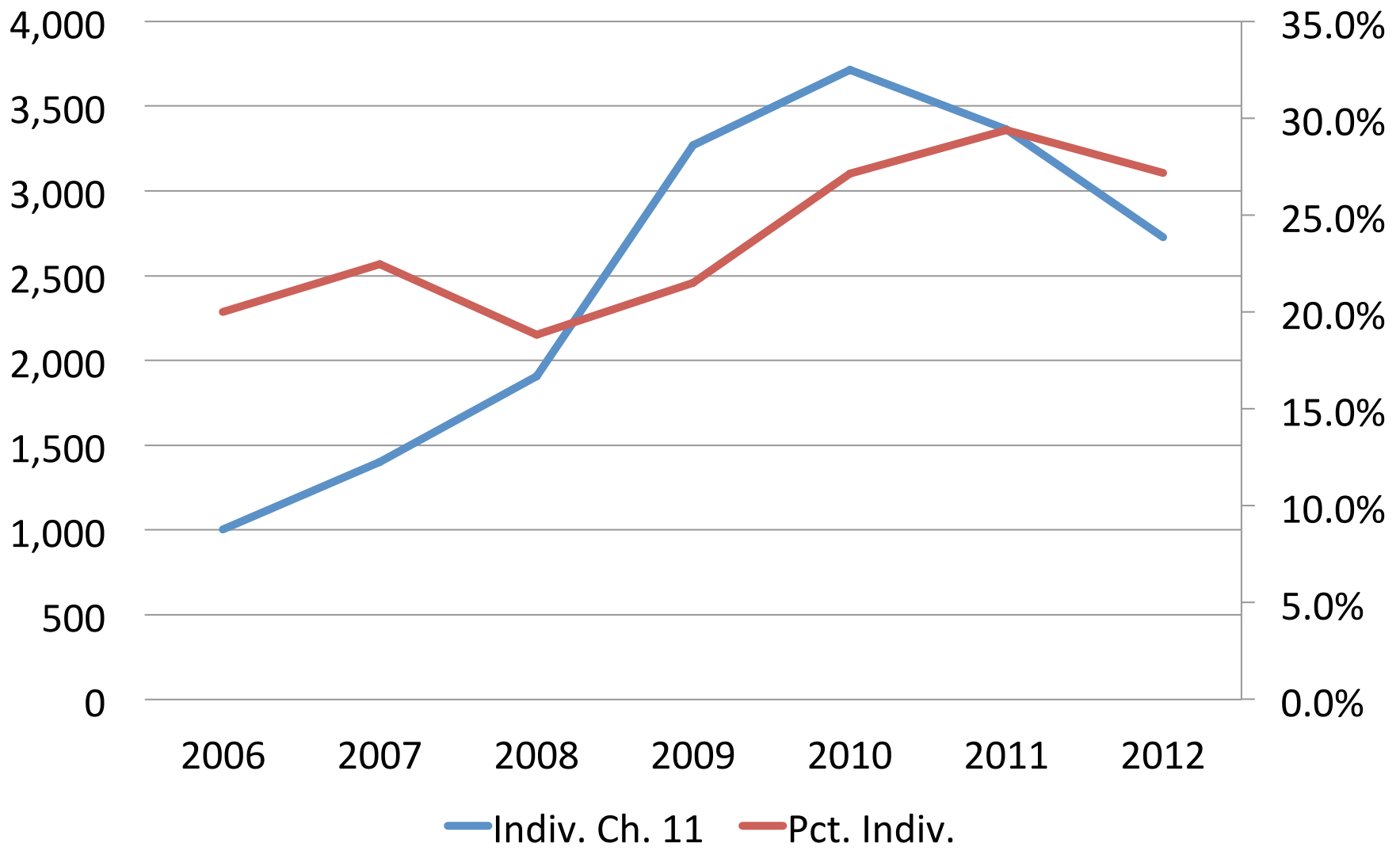
- Sample
  - Filed in 2010 and 2013
  - 78 of 94 judicial districts accounting for more than 90% of all Chapter 11 filings
- PACER Case Reports
- Hand coded data of approximately 100 cases per year
  - 2010: 109 cases
  - 2013: 114 cases

# Lessons from PACER Case Reports

# Debtor Type in Chapter 11 Cases



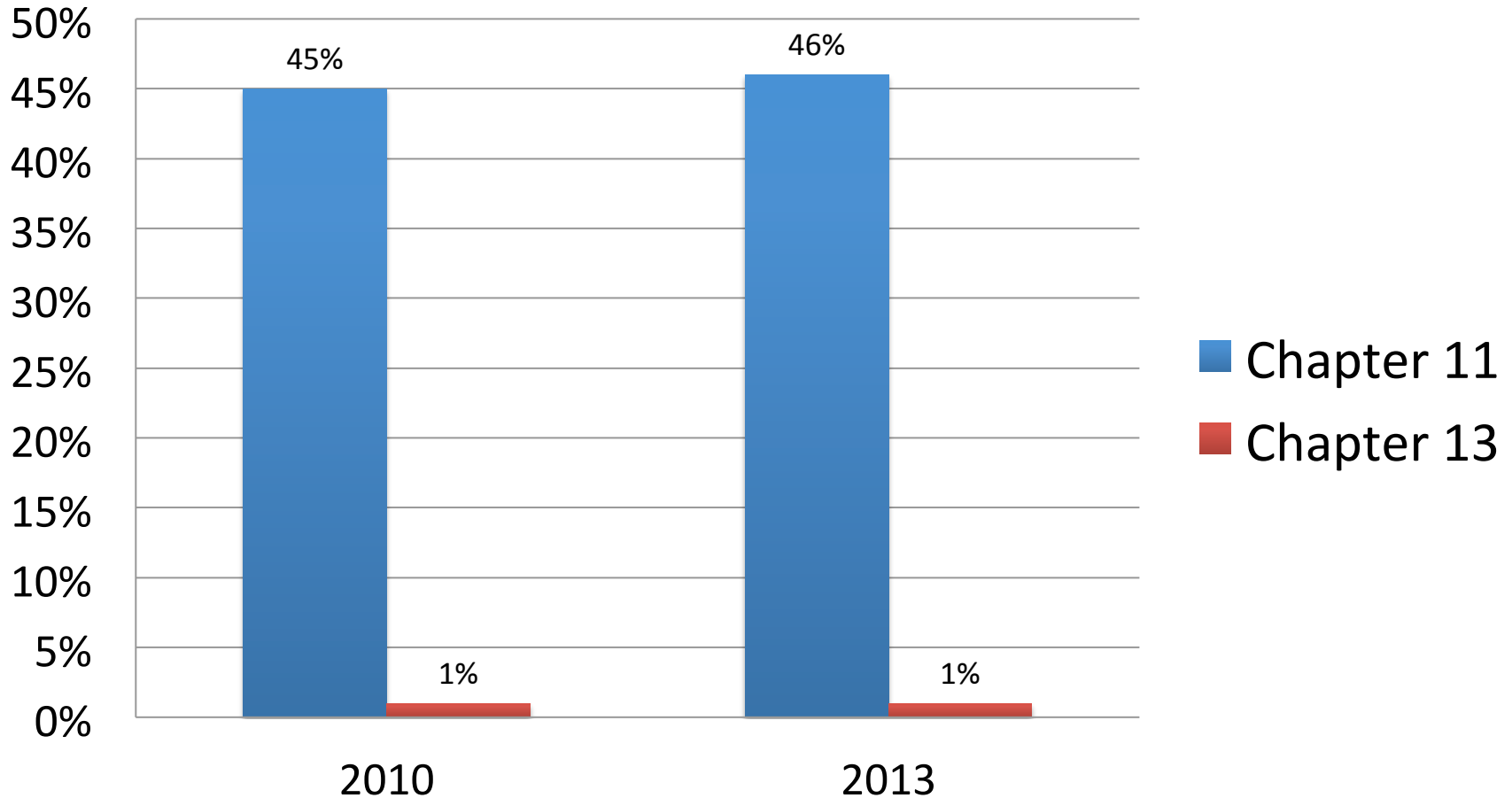
# Individual Chapter 11s in Harvard's Bankruptcy Data Project



## Top 5 and Bottom 5 Districts for Individual Chapter 11 Filings

<b>Top Five Districts</b>						
	<b>2010</b>			<b>2013</b>		
<b>District</b>	<b>Individual Ch. 11</b>	<b>% Whole Sample</b>	<b>% Individual of District Ch. 11</b>	<b>Individual Ch. 11</b>	<b>% Whole Sample</b>	<b>% Individual of District Ch. 11</b>
CACD	581	14%	47%	349	13%	47%
CAND	312	8%	65%	127	5%	61%
AZ	294	7%	42%	117	4%	41%
FLMD	232	6%	29%	146	6%	35%
NV	200	5%	40%	125	5%	47%
<b>Bottom Five Districts</b>						
	<b>2010</b>			<b>2013</b>		
<b>District</b>	<b>Individual Ch. 11</b>	<b>% Whole Sample</b>	<b>% Individual of District Ch. 11</b>	<b>Individual Ch. 11</b>	<b>% Whole Sample</b>	<b>% Individual of District Ch. 11</b>
LAMD	1	0%	6%	1	0%	10%
IAND	3	0%	43%	0	0%	0%
ND	3	0%	38%	0	0%	0%
OKND	2	0%	8%	1	0%	17%
VT	3	0%	33%	0	0%	0%

# Business Debt is Primary Nature of Debt – Comparison Chapter 11 with Chapter 13



# Involuntary Cases

- Meaning of “involuntary” and the reason for concern
- Involuntary Chapter 11 petitions
  - Handful of involuntary petitions
    - 2010
      - 11 involuntary filings
      - 2 orders for relief
        - » Neither case progressed to plan confirmation
    - 2013
      - 7 involuntary filings
      - No orders for relief

# Involuntary Conversions

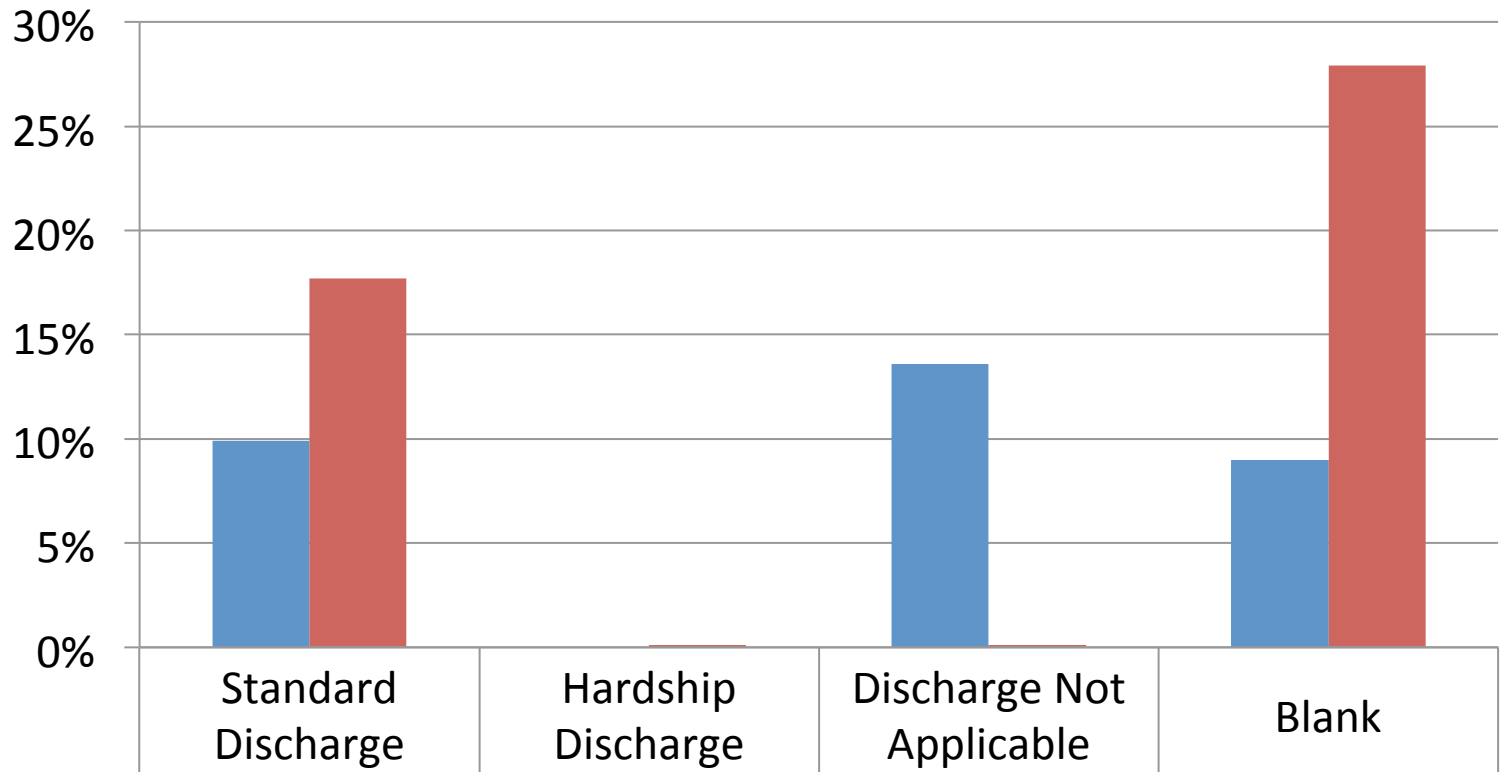
One case in each of 2010 and 2013 converted from Chapter 7 to Chapter 11 without the debtor's consent

- 2010 case
  - court granted debtor's motion to dismiss shortly after conversion
- 2013 case
  - still open, but debtor yet to file a plan

# What is Success?

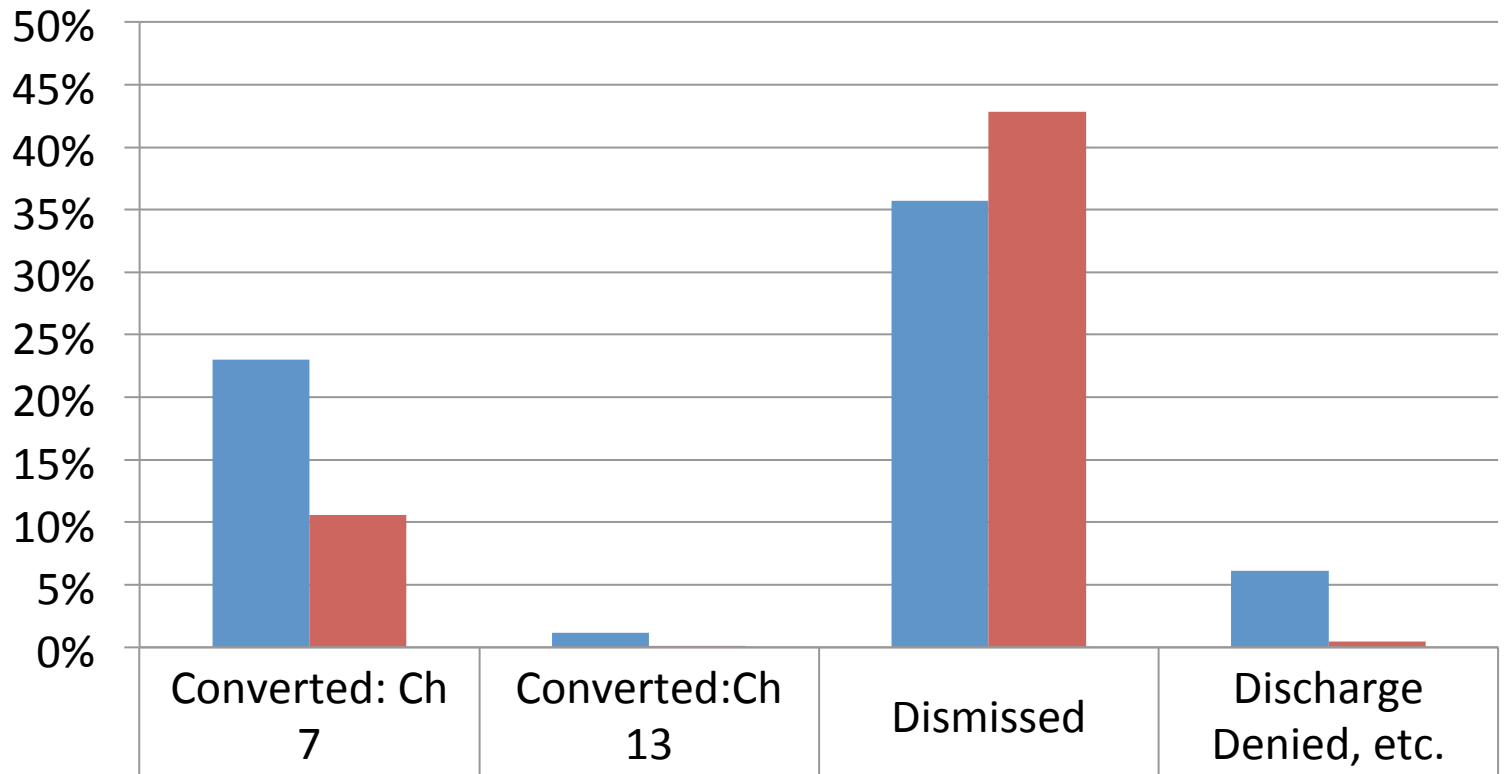
- Based on debtor's goals?
  - Discharge and the thirty-year plan
  - Absence of other information
  - “Success” as absence of “failure” – dismissal or conversion
- Timely sorting and kicking out the failures

# Success 2010: Comparison of Chapter 11 and Chapter 13



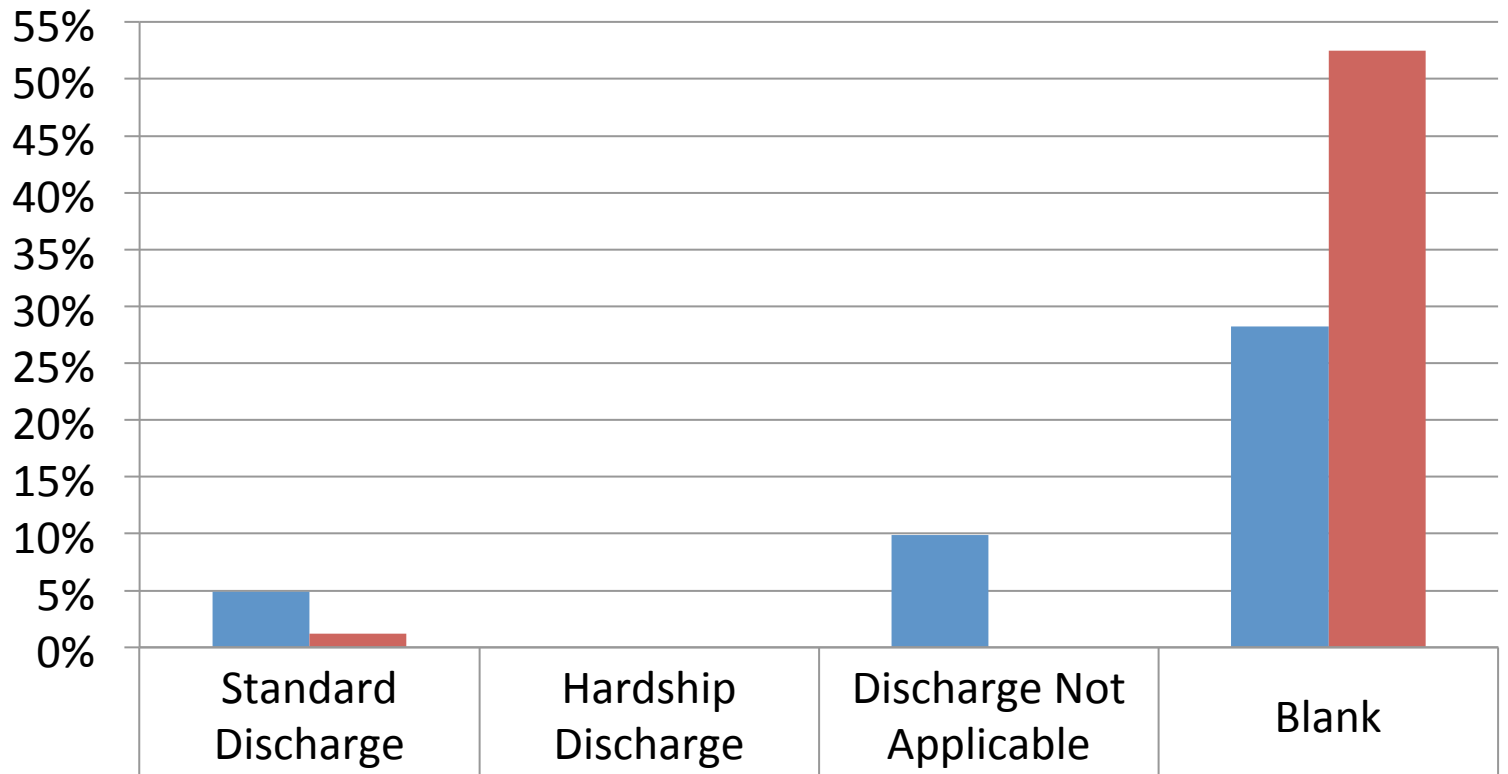
■ Chapter 11	10%	0%	14%	9%
■ Chapter 13	18%	0%	0%	28%

# Failure 2010: Comparison of Chapter 11 and Chapter 13



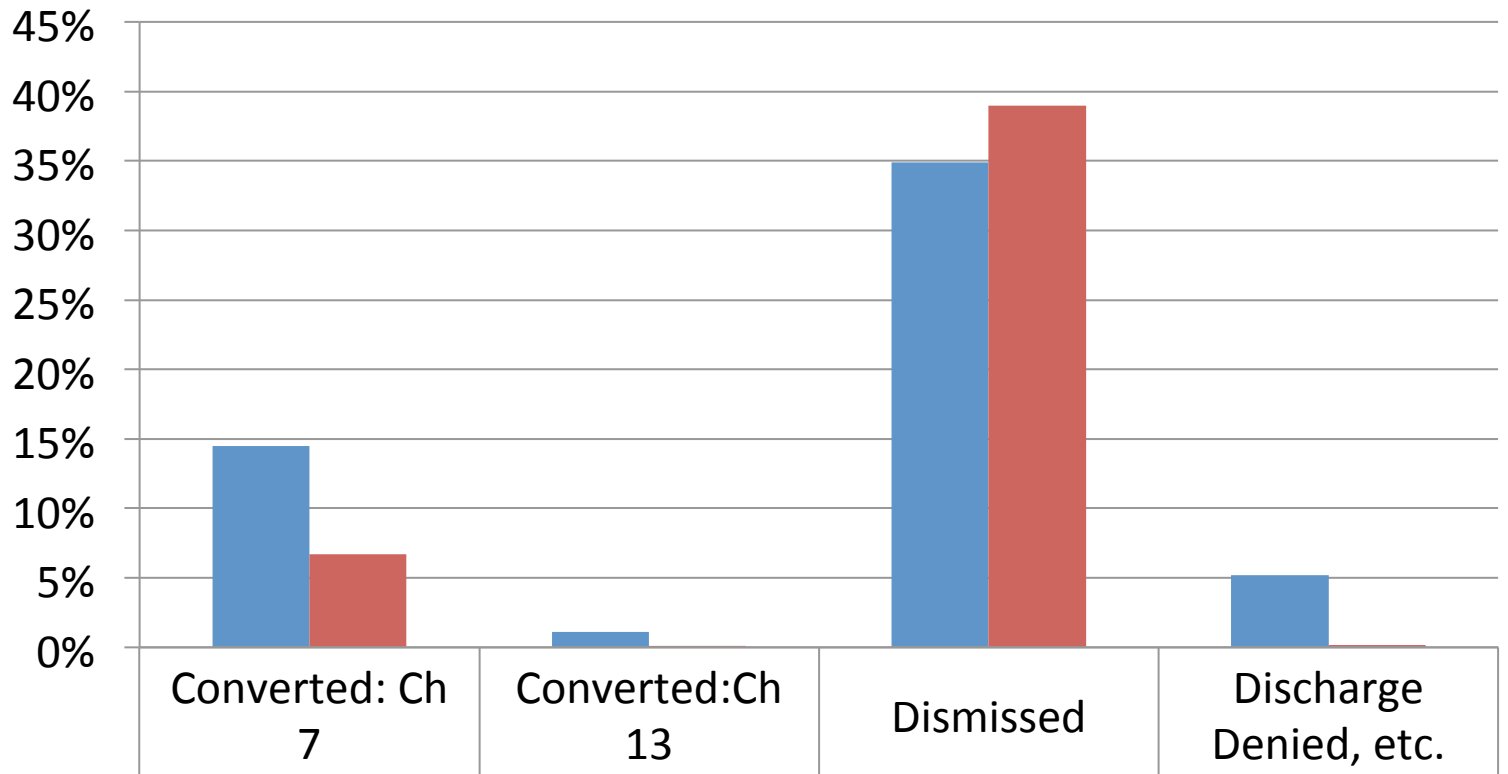
■ Chapter 11	23%	1%	36%	6%
■ Chapter 13	11%	0%	43%	1%

# Success 2013: Comparison of Chapter 11 and Chapter 13



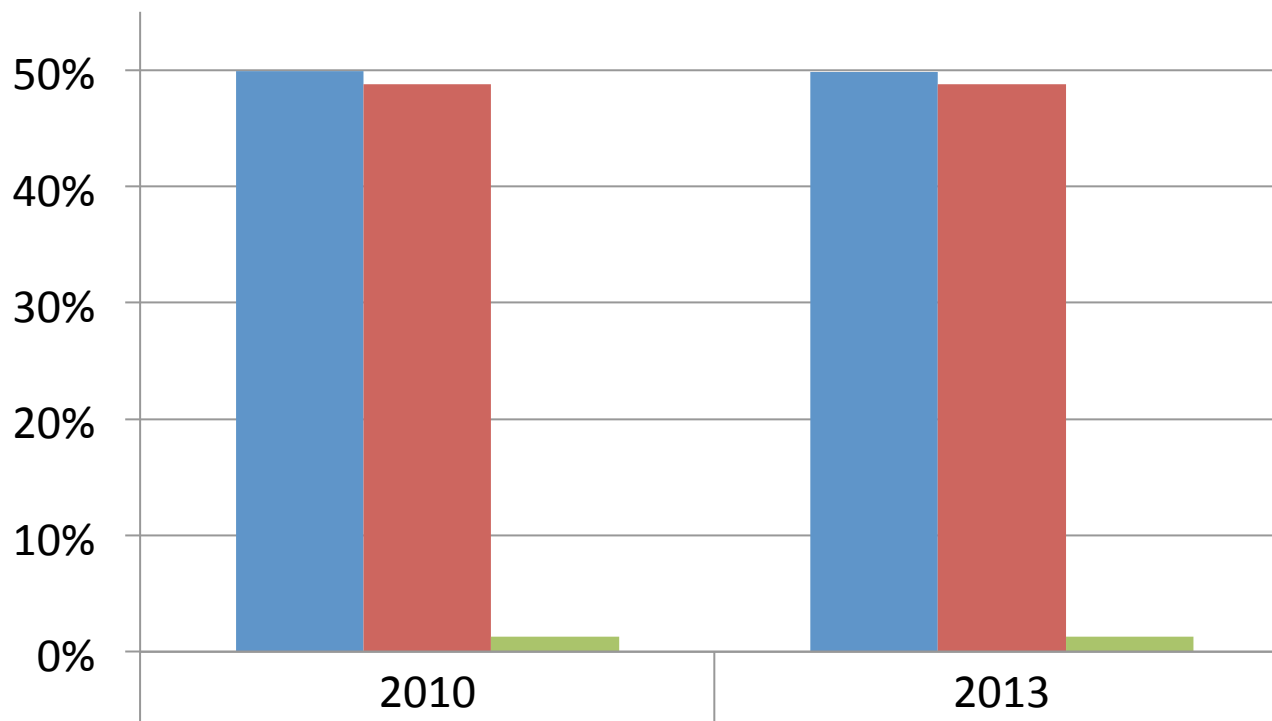
■ Chapter 11	5%	0%	10%	28%
■ Chapter 13	1%	0%	0%	53%

# Failure 2013: Comparison of Chapter 11 and Chapter 13



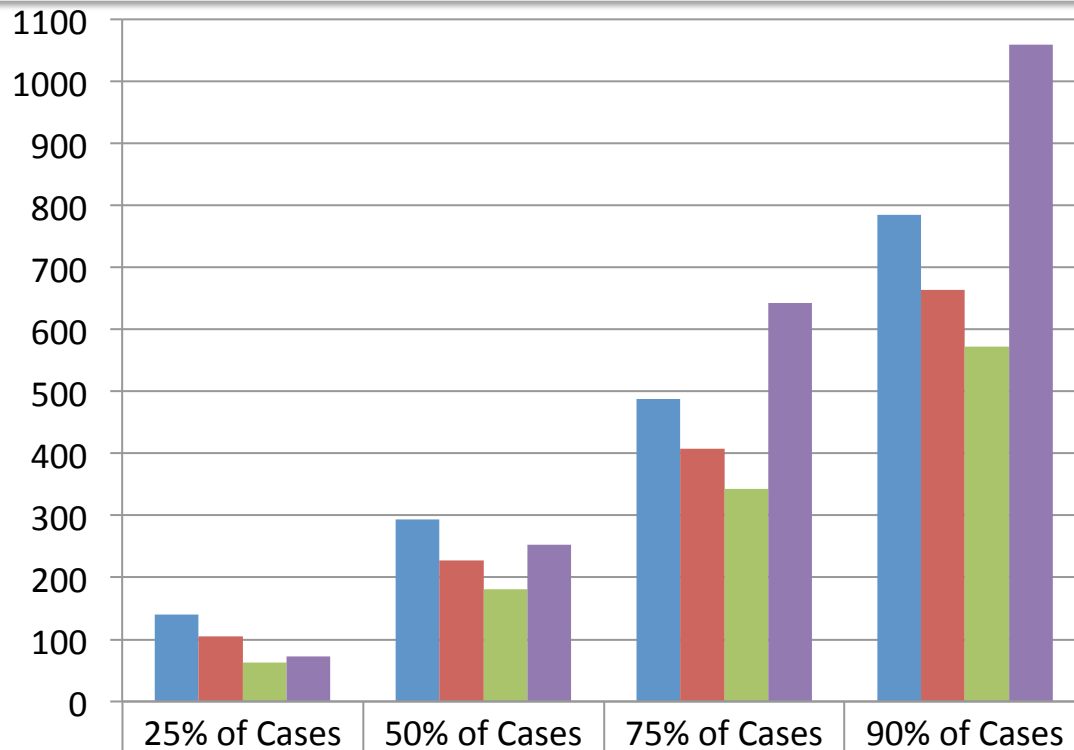
■ Chapter 11	15%	1%	35%	5%
■ Chapter 13	7%	0%	39%	0%

# Individual Chapter 11s at 545 Days



■ Success	50%	50%
■ Failure	49%	49%
■ Procedure	1%	1%

# Days to Conversion or Dismissal for “failed” cases in 2010

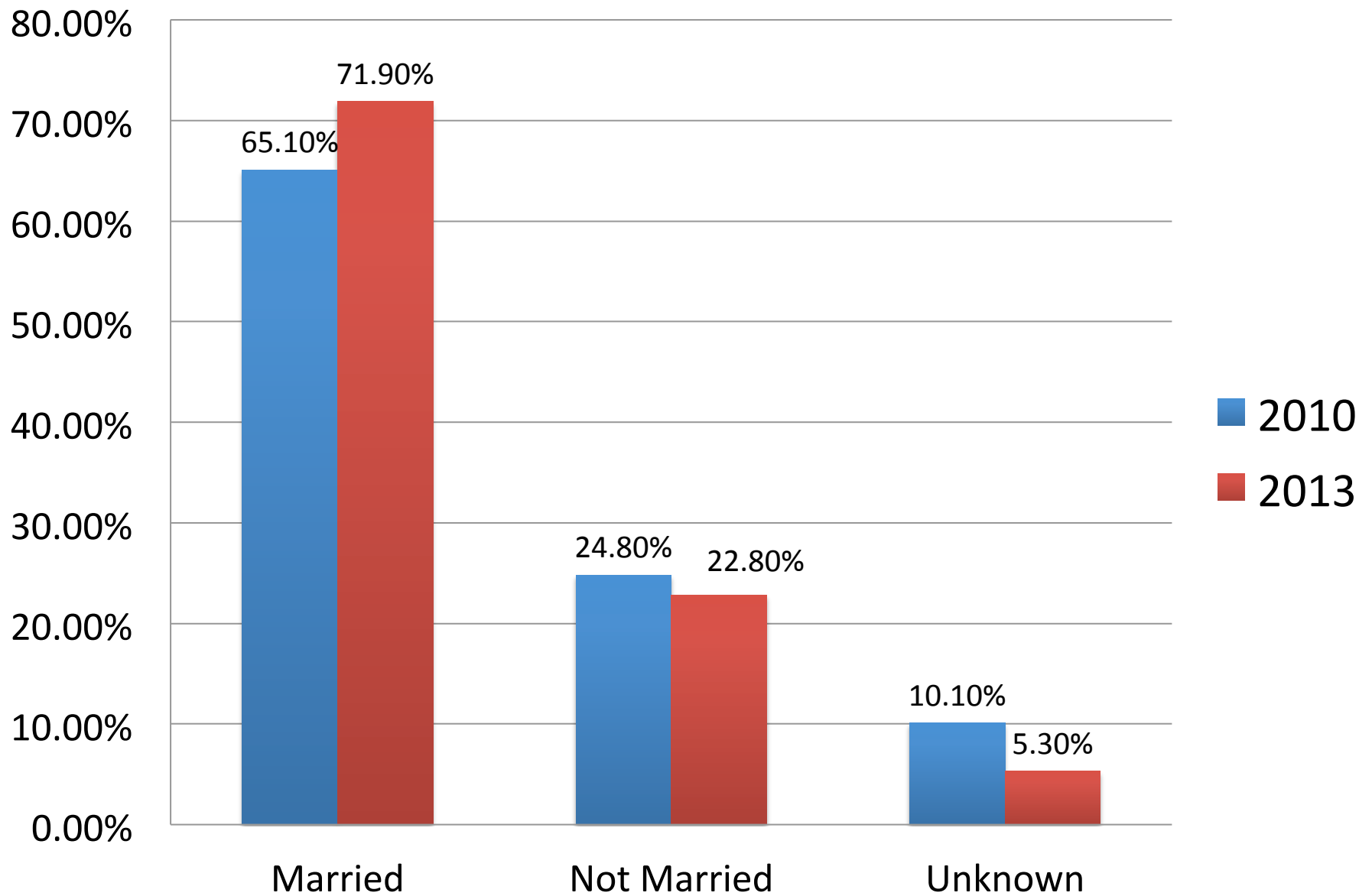


■ Individual Ch 11	140	293	487	785
■ Corporate Ch 11	105	227	407	663
■ Small Business Ch 11	63	181	343	572
■ Chapter 13	72	252	643	1059

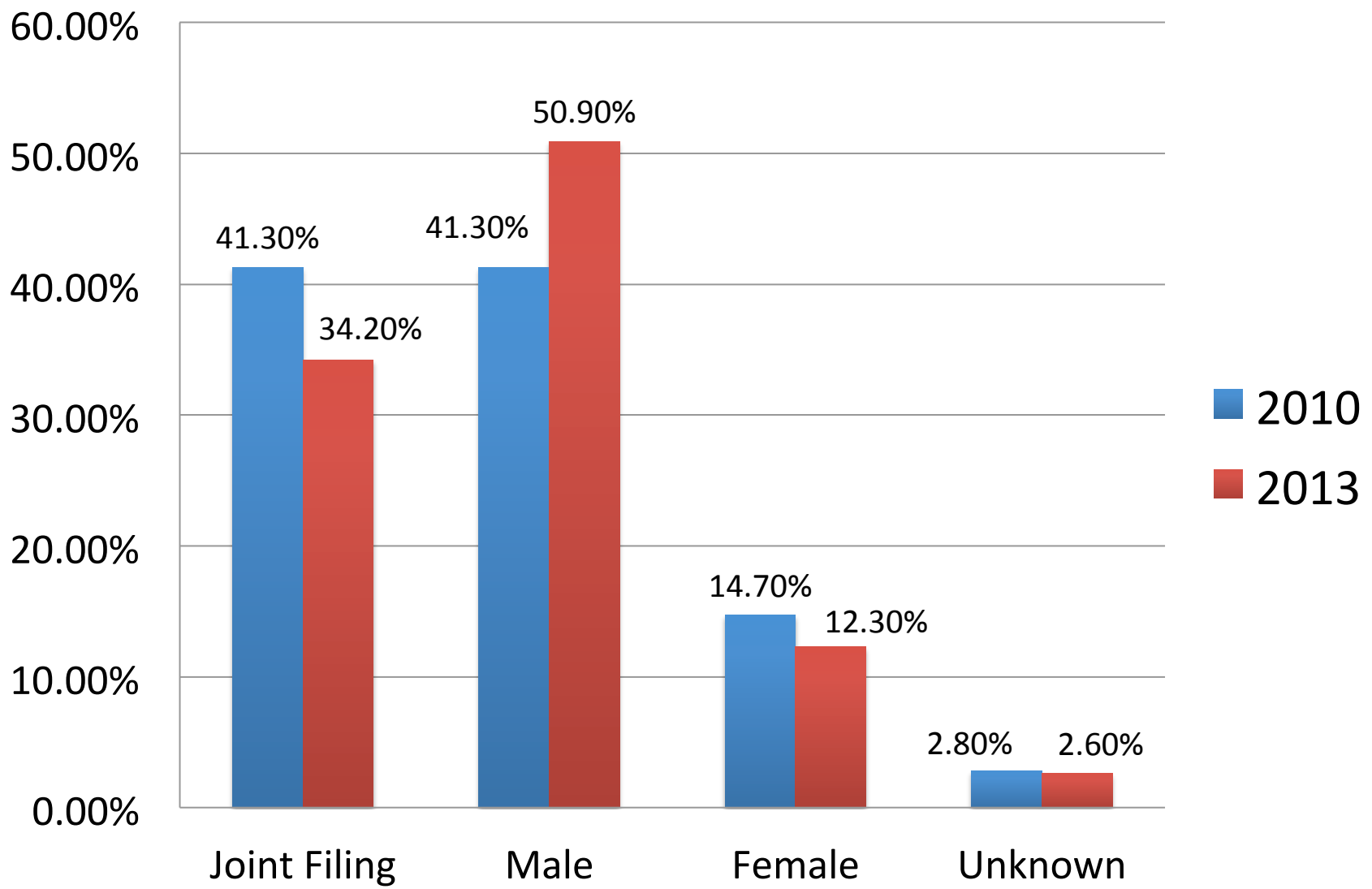
Hand Coded Cases

# Demographic Information

# Marital Status



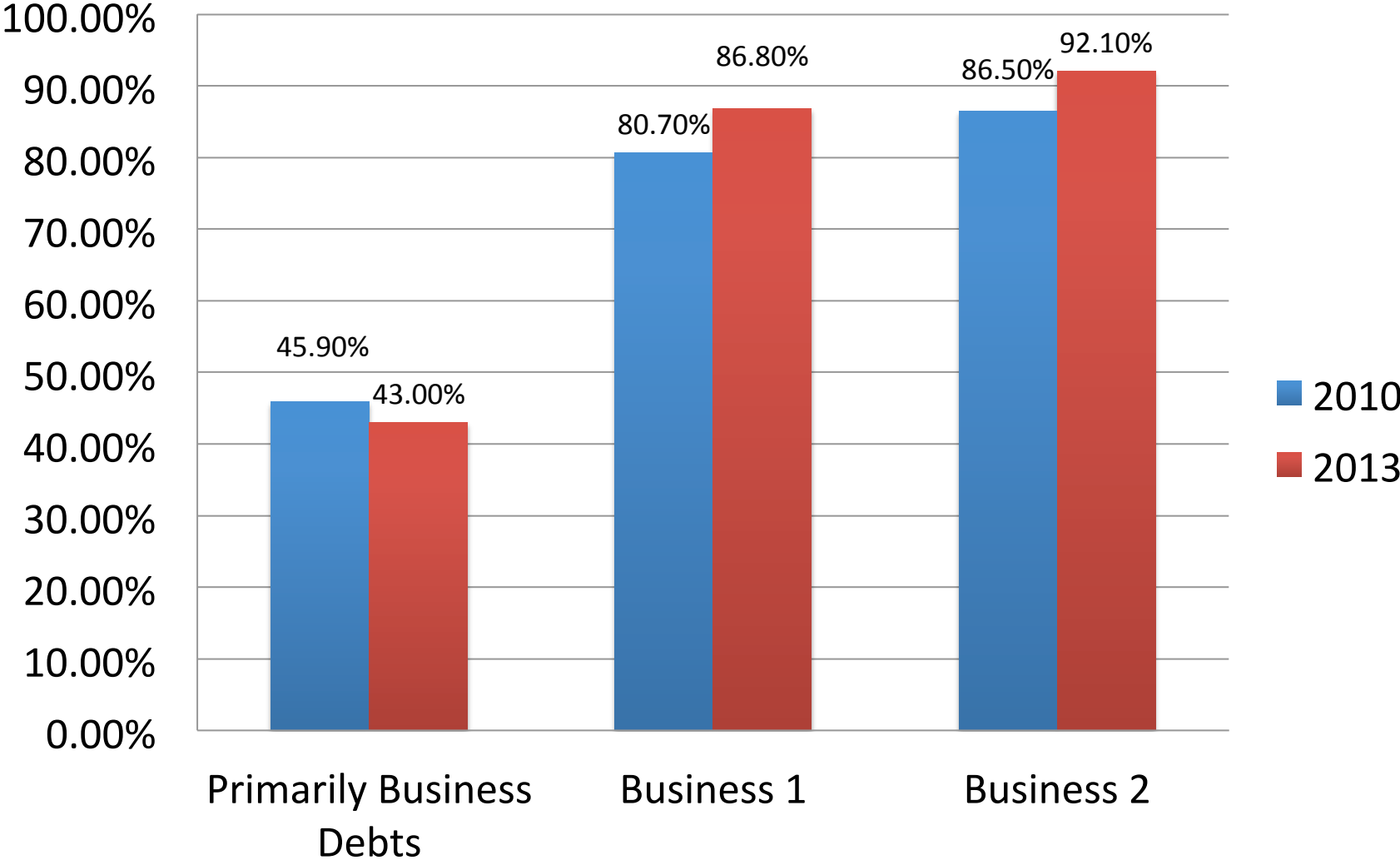
# Joint Filing and Gender



# Business Debtors

- Primarily business debts
- Business 1
  - checked the “primarily business debts” box on the petition
  - disclosed any business assets on Schedule B
    - Examples: inventory, equipment, accounts, intellectual property
  - disclosed a currently operating business on the Statement of Financial Affairs *or*
  - disclosed business income or business expenses of at least \$1,000 per month on Schedule I
- Business 2
  - Business 1 = *yes or*
  - debtor had at least \$1,000 in real estate income

# "Business" Chapter 11



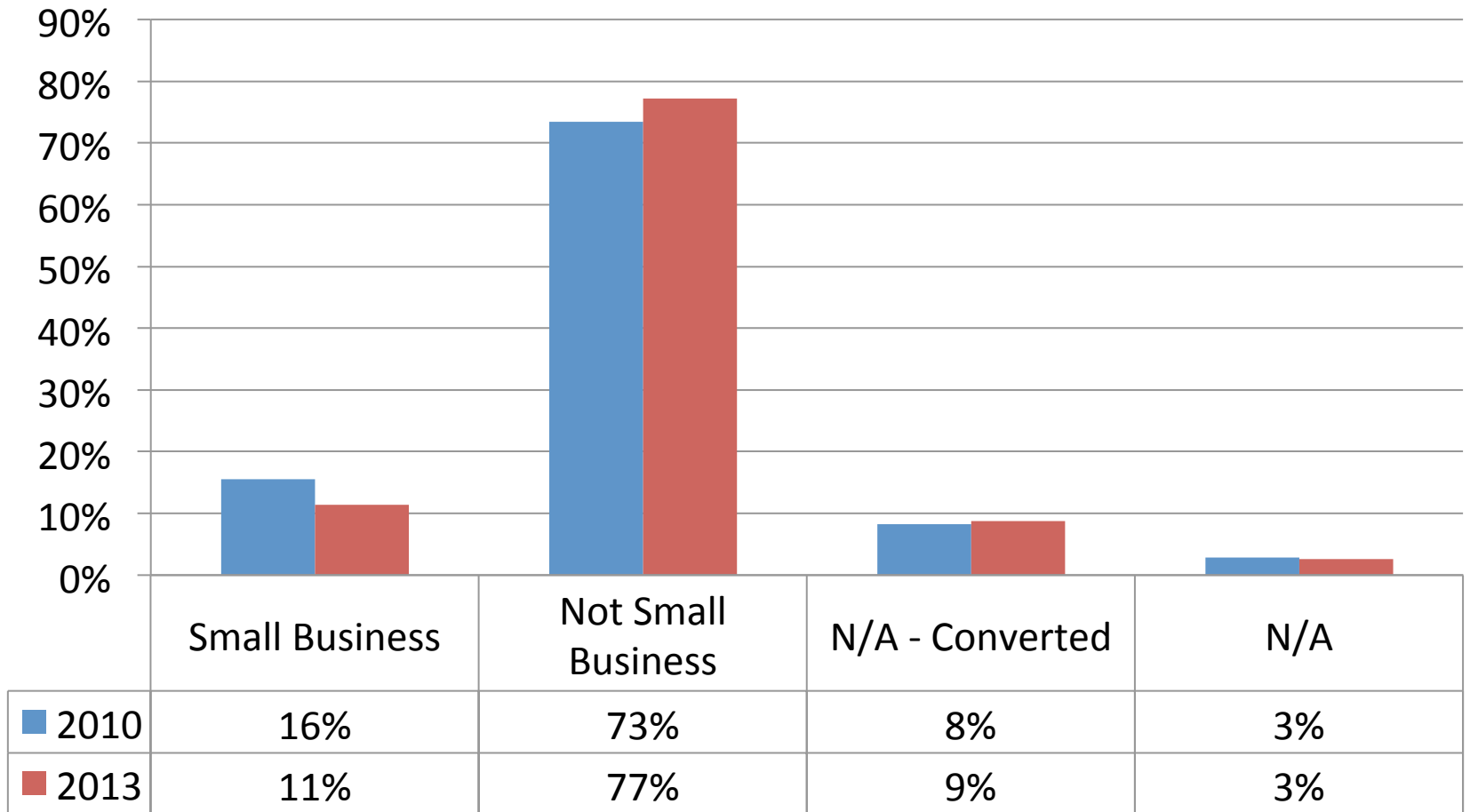
**Table 14: Engaged in Business**

	<b>Primarily Business Debts</b>		<b>Business1</b>		<b>Business2</b>	
	<b>2010</b>	<b>2013</b>	<b>2010</b>	<b>2013</b>	<b>2010</b>	<b>2013</b>
<b>Yes</b>	45.9%	43.0%	80.7%	86.8%	86.5%	92.1%
<b>No</b>	53.2%	56.1%	12.8%	8.8%	5.4%	3.5%
<b>Unknown</b>	0.9%	0.9%	6.4%	4.4%	6.3%	4.4%

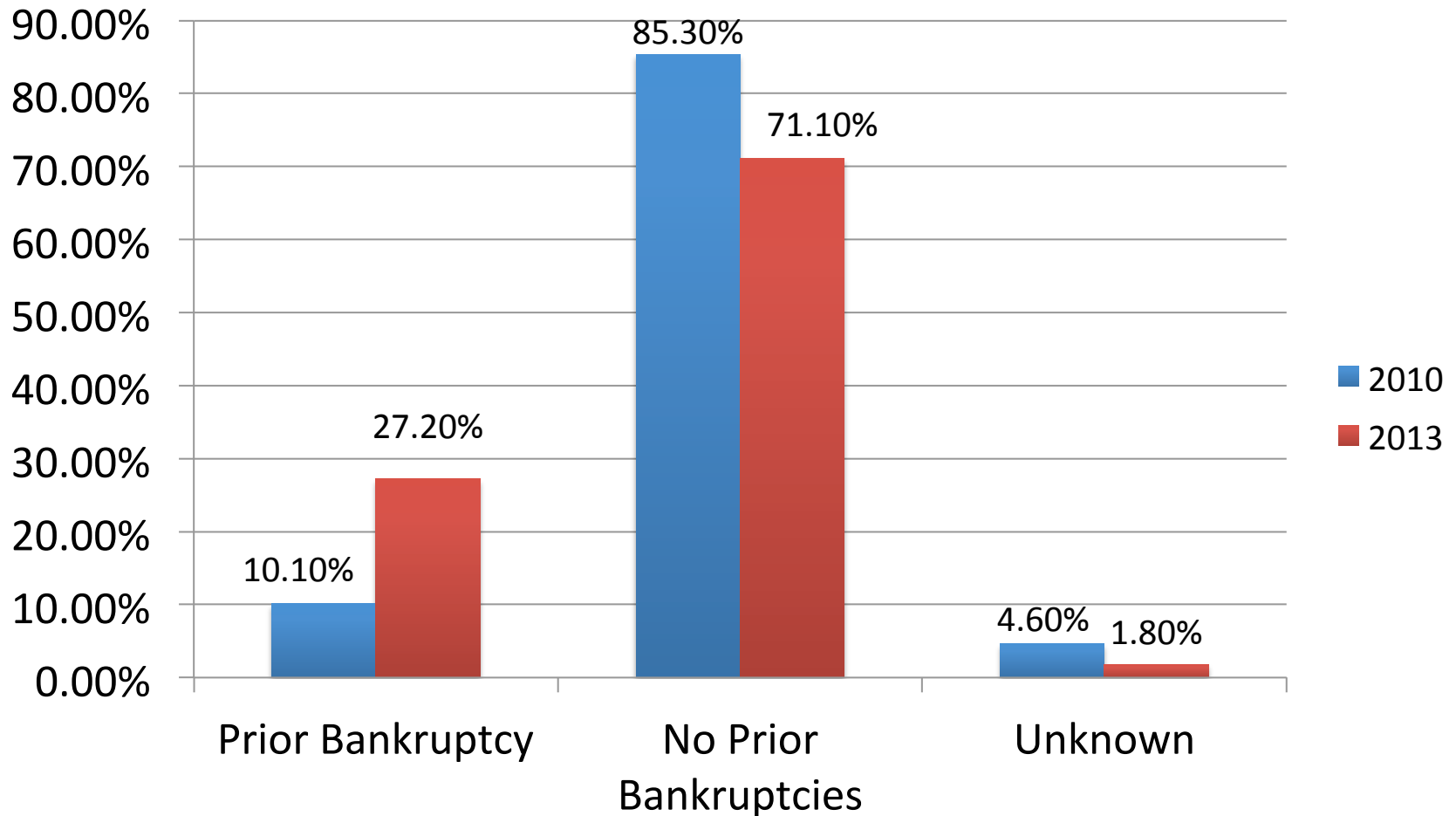
# Related Bankruptcy Cases

	Affiliate Bankruptcy		Administrative Consolidation		Substantive Consolidation	
	2010	2013	2010	2013	2010	2013
Yes	4.6%	12.3%	7.3%	3.5%	0%	0%
No	89.9%	85.1%	92.7%	96.5%	100%	100%
Unknown	5.5%	2.6%	9%	0%	0%	0%

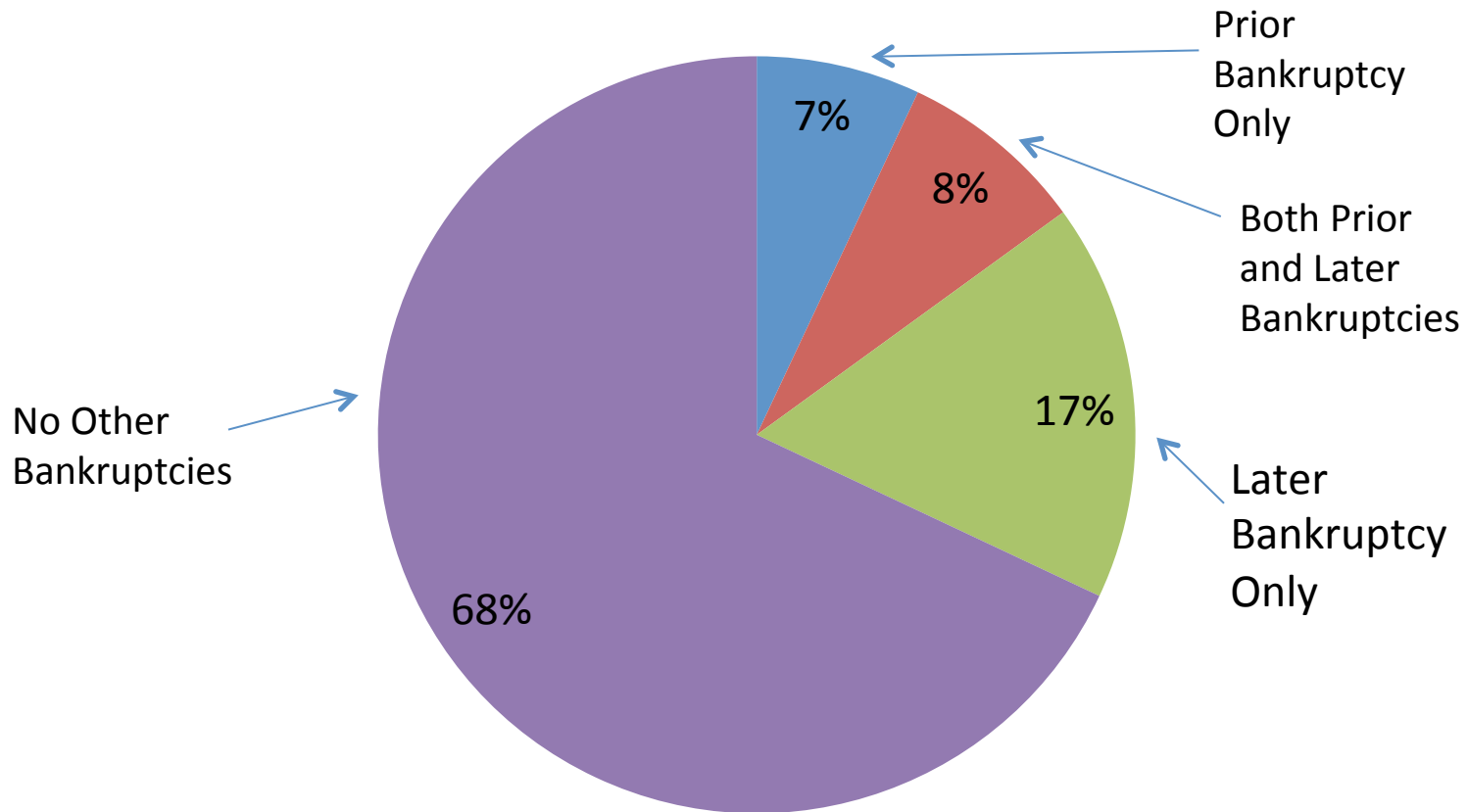
# Small Business Debtors



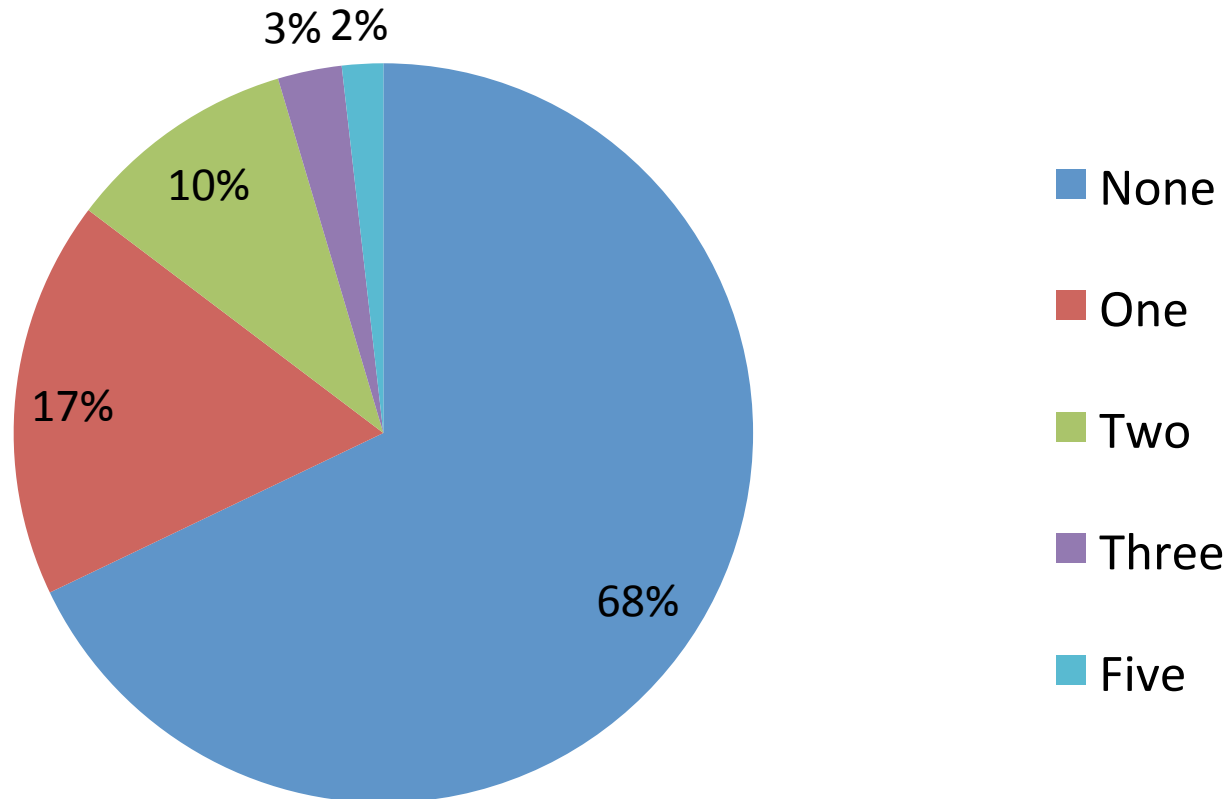
# Prior Bankruptcies Based on Debtor Disclosure



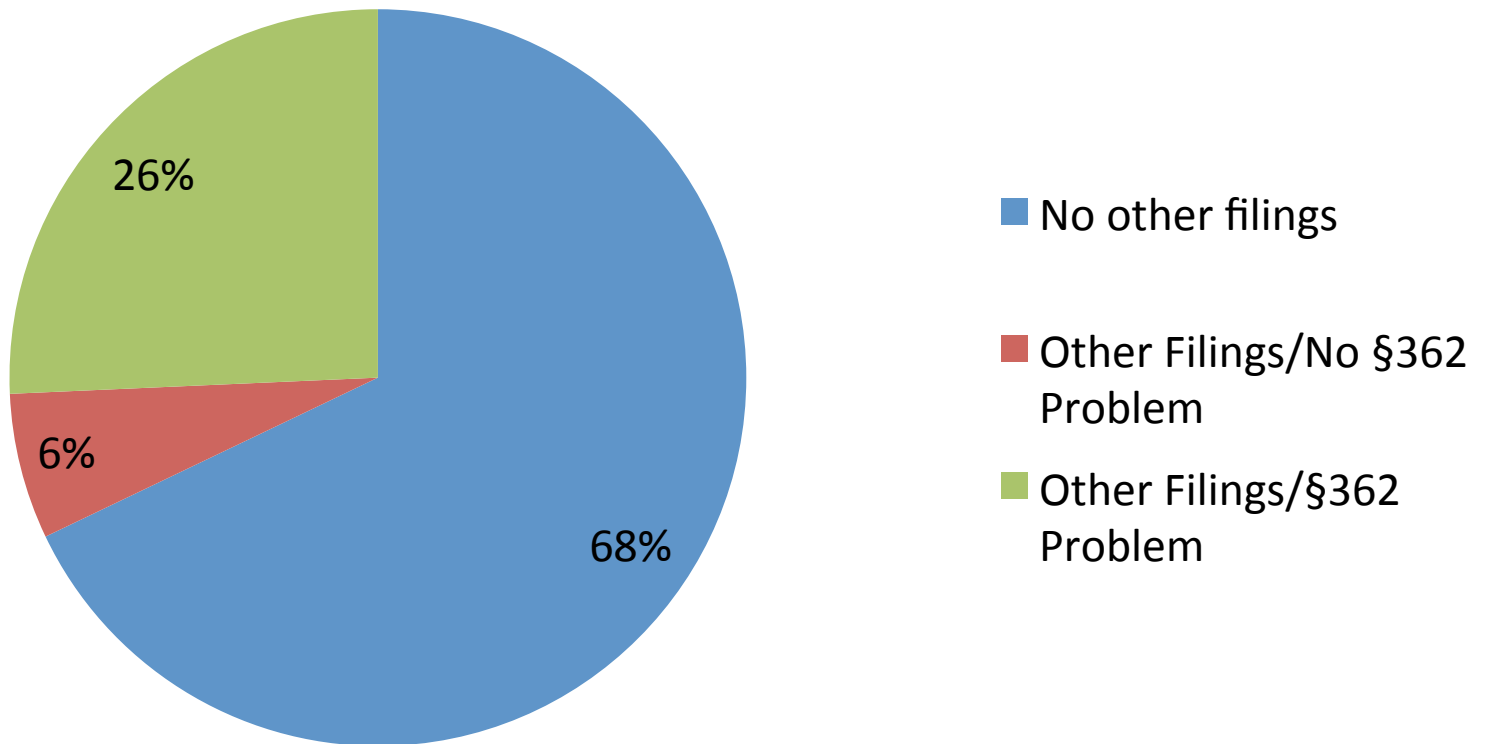
# Prior and Later Bankruptcies: 2010



## Number of Other Bankruptcy Filings by 2010 Debtors



# The §362(c)(3) Problem



# Occupation and Income

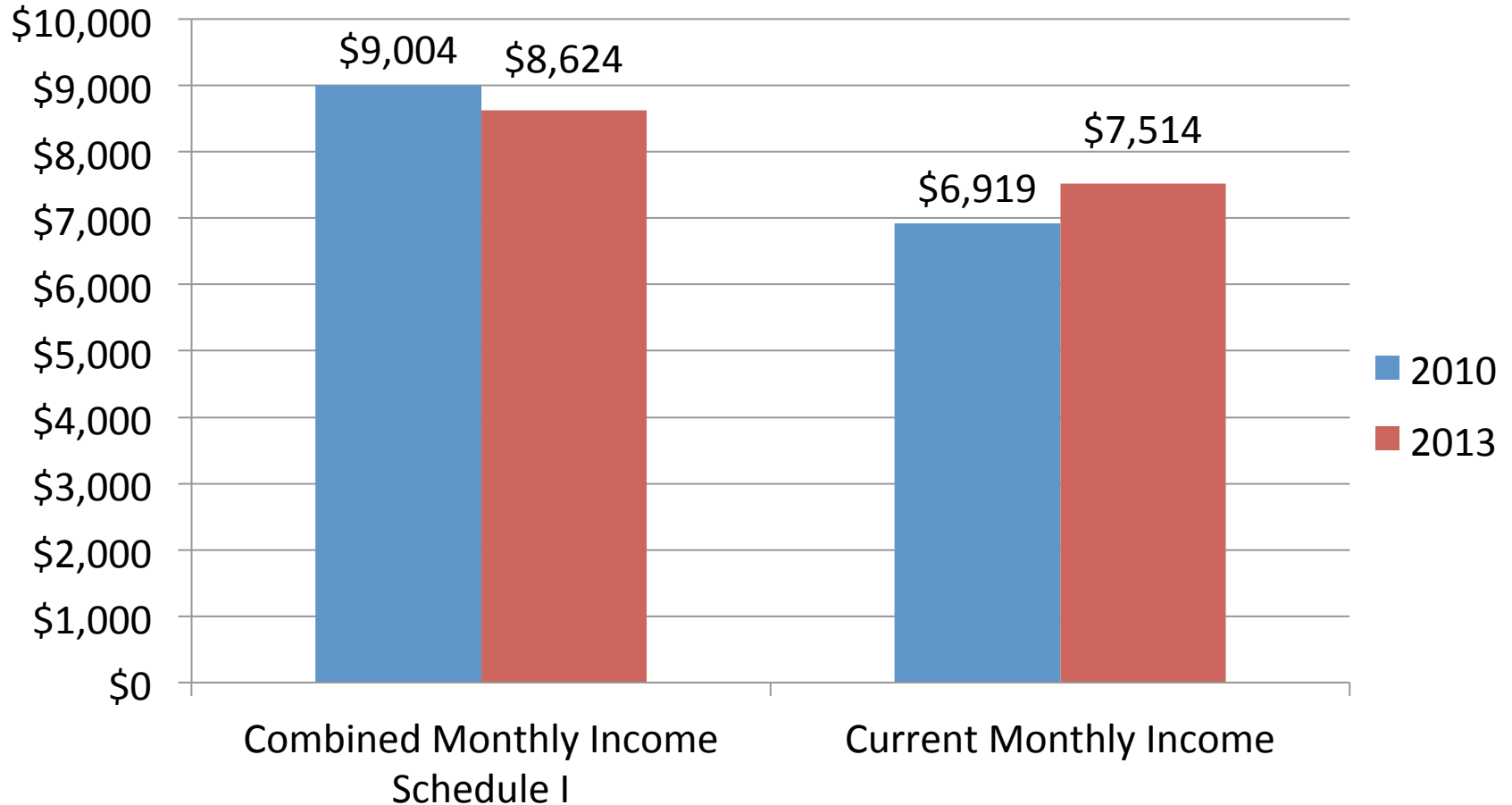
# Occupation

	2010	2013
Real Estate	8%	10%
Professional	9%	13%
Owner, Manager, Executive	24%	24%
Self-Employed	17%	13%
Other	18%	24%
Retired	4%	1%
Unemployed	1%	3%
Unknown	19%	13%

# Employment Duration in Years

	2010	2013
>25 Years	7.3%	12.3%
10 to 25 Years	17.4%	18.4%
5 to 10 Years	18.3%	15.8%
2 to 5 Years	9.2%	10.5%
1 to 2 Years	2.8%	11.4%
6 months to 1 Year	2.8%	3.5%
3 to 6 months	3.7%	0%
Fewer than 3 months	4.6%	2.6%
N/A	33.9%	25.4%
Longest time employed	40	55
Average Duration	10.75	12.85
Median Duration	7.5	9

# Monthly Income: Median Figures

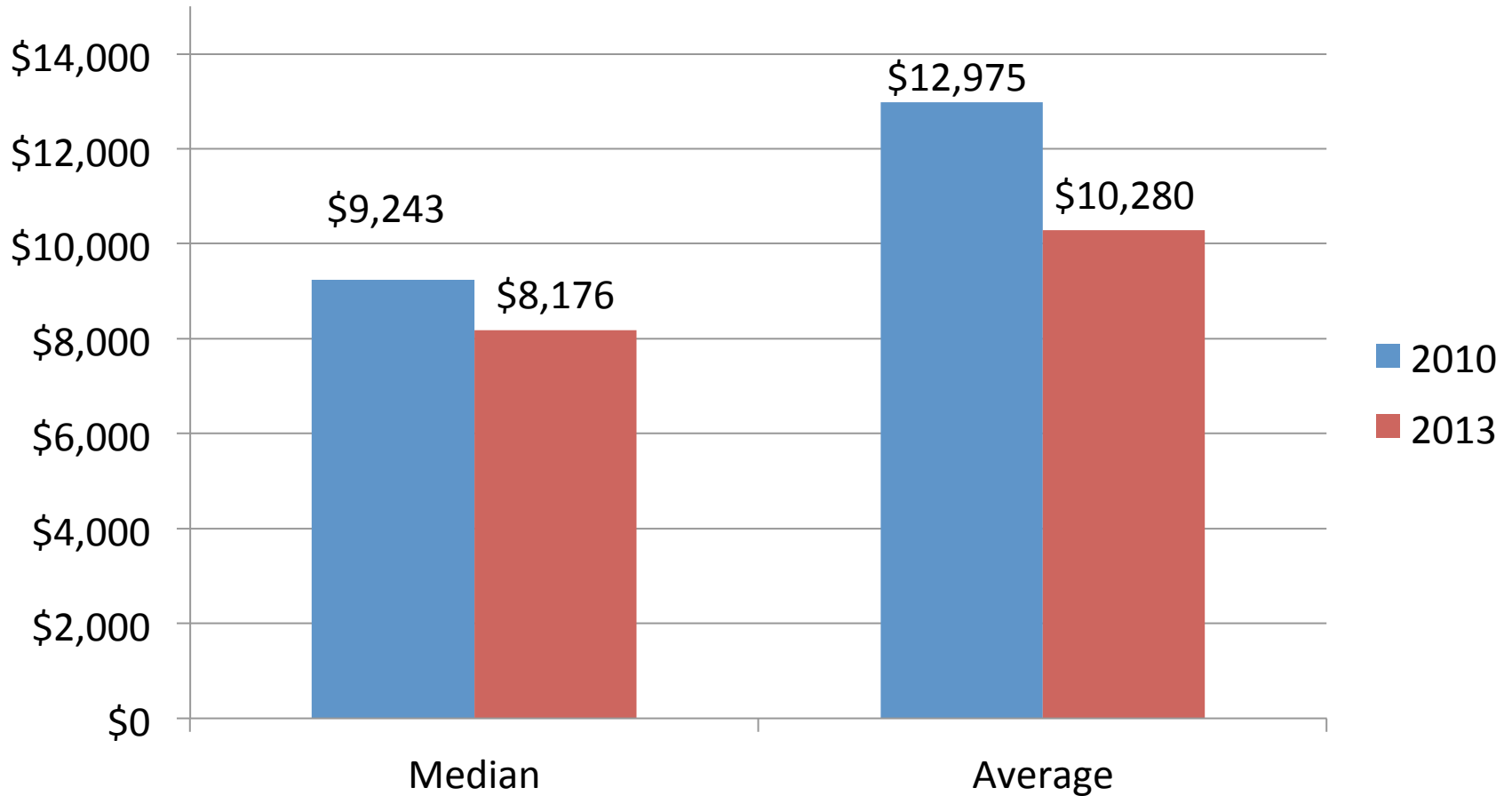


# More Detail on Monthly Income

	Combined Monthly Income – Schedule I		Currently Monthly Income	
	2010	2013	2010	2013
Top 5%	13.8%	14%	13.8%	14%
5 <sup>th</sup> Quintile (includes top 5%)	36.7%	36%	35.8%	36%
4 <sup>th</sup> Quintile	29.4%	26.3%	11%	22.8%
3 <sup>rd</sup> Quintile	7.3%	19.3%	13.8%	21.9%
2 <sup>nd</sup> Quintile	11%	6.1%	11.9%	5.3%
1 <sup>st</sup> Quintile (includes 0)	7.3%	6.1%	15.6%	6.1%
0	1.8%	3.5%	9.2%	3.5%
Unknown	8.3%	6.1%	10.1%	7.9%
Maximum	53,383	68,200	55,916	61,000
Average	11,858	11,669	10,043	10,416
Median	9,004	8,624	6,919	7,514

Expenses

# Monthly Expenses: Summary



# Monthly Expenses: More Detail

	Schedule J	
Over \$25,000	11%	7.9%
\$10,000 to \$25,000	28.4%	25.4%
\$5,000 to \$10,000	36.7%	40.4%
\$2,500 to \$5,000	11%	16.7%
\$1,000 to \$2,500	4.6%	4.4%
0	.9%	.9%
N/A	7.3%	4.4%
Maximum	114,940	64,780
Average	12,975	10,280
Median	9,243	8,176

# Monthly Expenses: Medical Summary

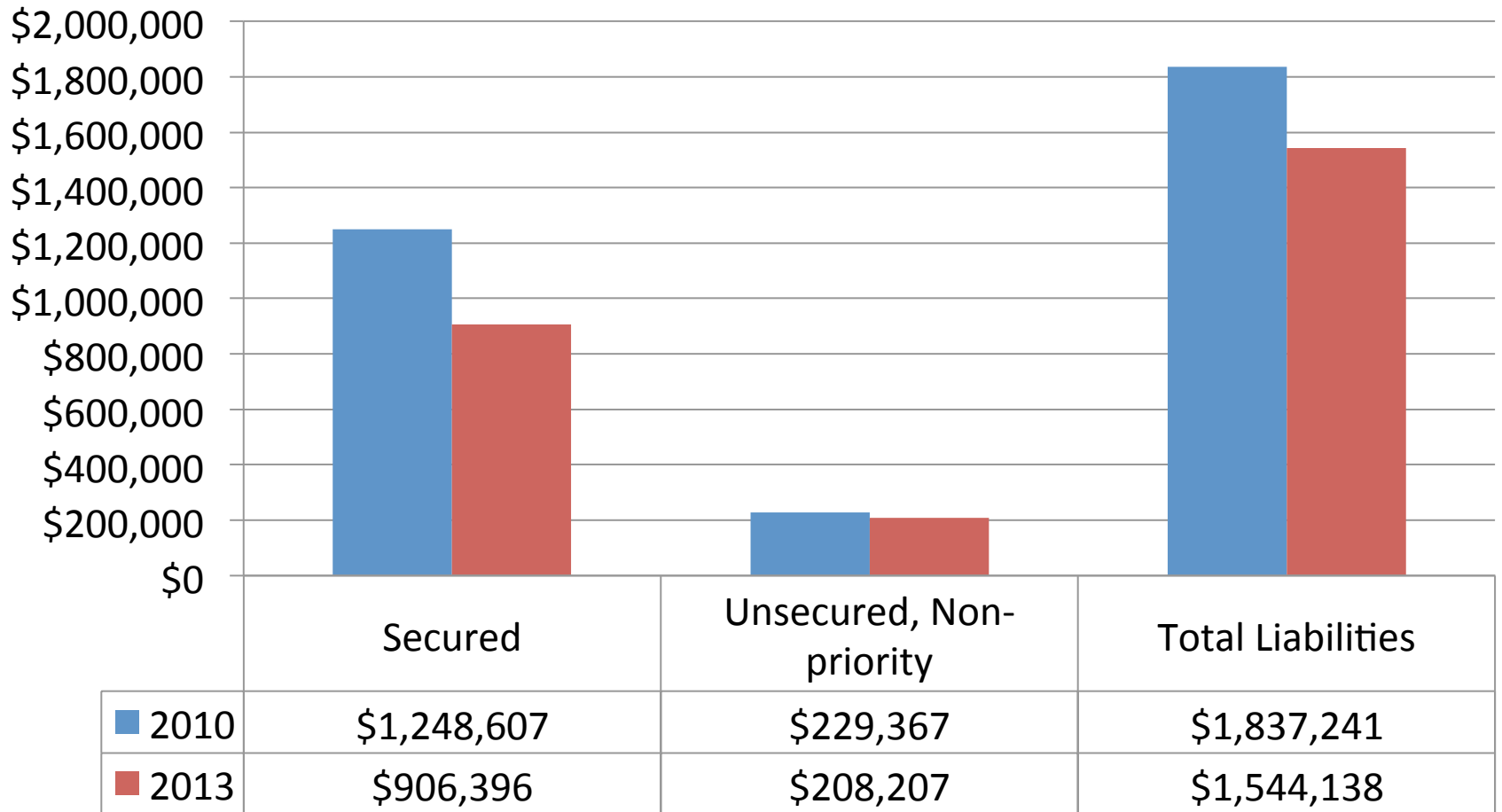
- Median
  - \$100 in both 2010 and 2013
- Average
  - 2010: \$193
  - 2013: \$268
- More than two-thirds of debtors had \$200 or less in monthly medical expenses
  - 2010: 69%
  - 2013: 71%

**Table 28: Medical Expenses**

	2010	2013
More than 500	7.3%	3.5%
400 to 500	5.5%	5.3%
300 to 400	3.7%	7.0%
200 to 300	4.6%	8.8%
100 to 200	22.0%	18.4%
1 to 100	31.2%	38.6%
0	15.6%	14.0%
N/A	10.1%	4.4%
Maximum	1,800	10,514
Average	193	268
Median	100	100

Debts

# Distribution of Indebtedness: Median Figures



# Distribution of Indebtedness: Summary of Schedules

- More than three-quarters of debtors had \$5M or less in total liabilities in 2010 and 2013
  - 2010: 78%
  - 2013: 79%
- More than 70% had secured claims of \$2.5M or less
  - 2010: 71.5%
  - 2013: 77.2%
- More than two-thirds had unsecured non-priority debt of \$1M or less
  - 2010: 71.6%
  - 2013: 67.5%

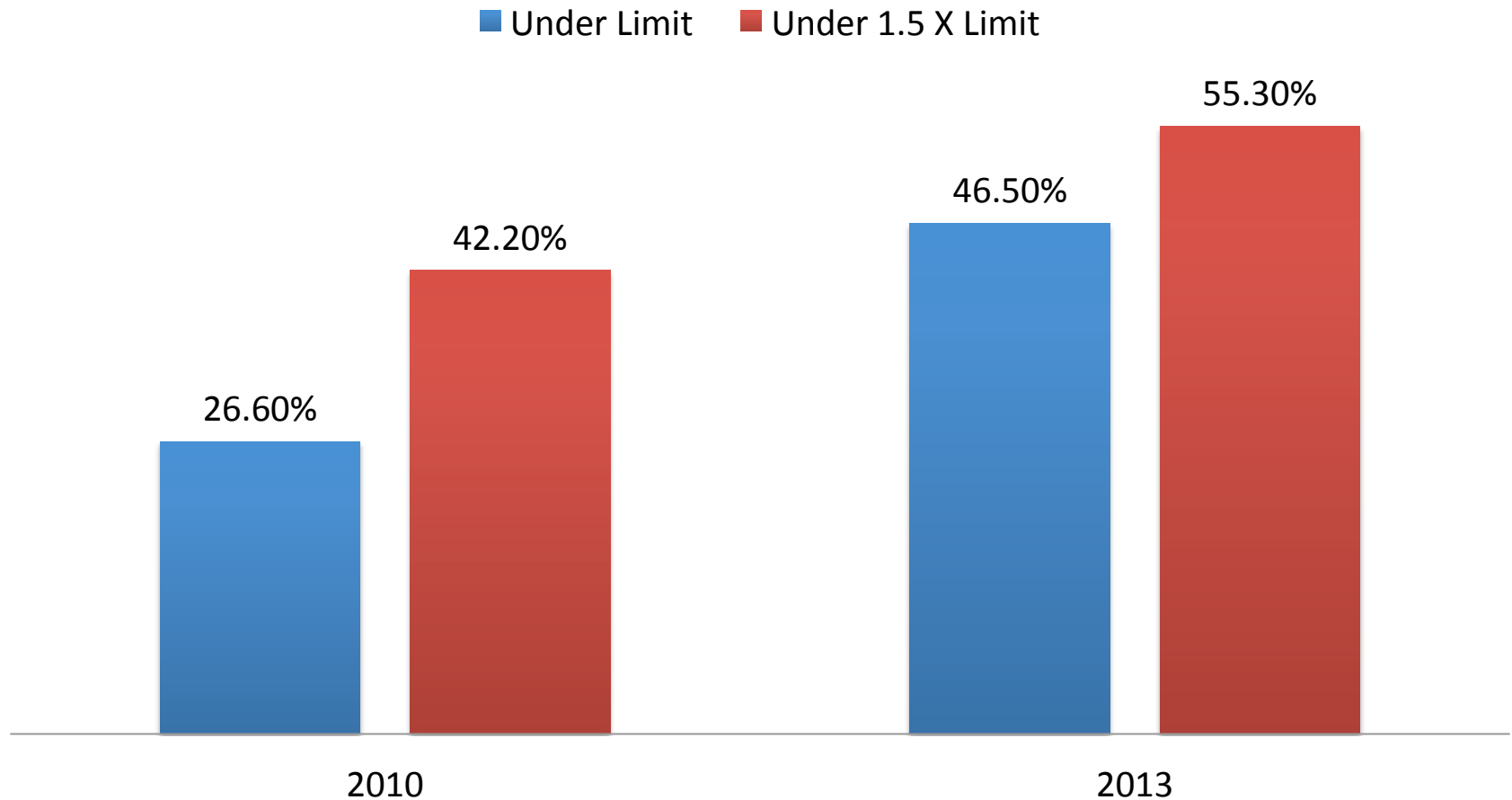
**Table 29: Distribution of Indebtedness – Liabilities from Summary of Schedules**

	Secured Claims		Unsecured Non-Priority Claims		Total Liabilities	
	2010	2013	2010	2013	2010	2013
<b>Over \$10M</b>	2.8%	2.6%	4.6%	5.3%	7.3%	9.6%
<b>\$5M to \$10M</b>	7.3%	4.4%	2.8%	3.5%	8.3%	5.3%
<b>\$2.5M to \$5M</b>	11.9%	9.6%	3.7%	4.4%	19.3%	15.8%
<b>\$1M to \$2.5M</b>	33.9%	23.7%	10.1%	13.2%	41.3%	30.7%
<b>\$500K to \$1M</b>	16.5%	30.7%	16.5%	8.8%	11.0%	21.9%
<b>\$1 to \$500K</b>	16.5%	20.2%	52.3%	56.1%	5.5%	10.5%
<b>0</b>	4.6%	2.6%	2.8%	2.6%	0.9%	0.0%
<b>n/a</b>	6.4%	6.1%	7.3%	6.1%	6.4%	6.1%
<b>Maximum</b>	56,634,114	23,440,918	153,710,706	43,399,184	161,757,352	43,439,884
<b>Average</b>	2,454,233	1,925,596	3,409,150	2,085,418	5,859,607	3,685,636
<b>Median</b>	1,248,607	906,396	229,367	208,207	1,837,241	1,544,138

# Debt-to-Income Ratios

- Measured using Summary of Schedules figures
- Debt-to-income ratios dropped between 2010 and 2013
  - 75 times more debt than income
    - 11% of debtors in 2010
    - 2% of debtors in 2013
  - 5 times or less more debt than income
    - 6% of debtors in 2010
    - 25% of debtors in 2013
  - Median debt-to-income ratios
    - 2010: 16 times more debt than income
    - 2013: 8 times more debt than income

# Impact of Actual and Hypothetical Chapter 13 Debt Limits



# Chapter 13 Debt Limits

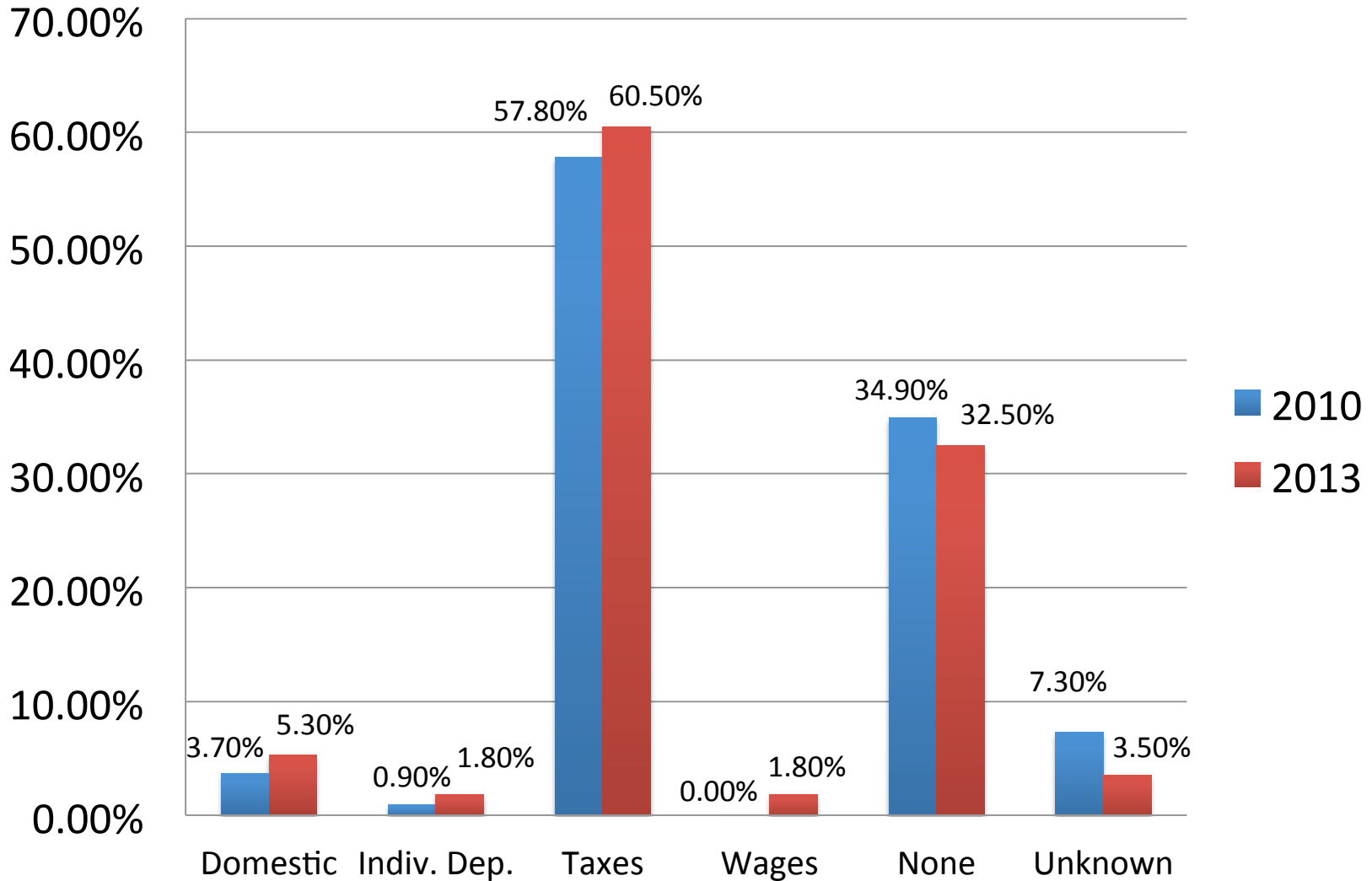
	Full Schedules		Full Schedules x 1.5	
	2010	2013	2010	2013
Over debt limits	67.0%	50.0%	51.4%	41.2%
Under debt limits	26.6%	46.5%	42.2%	55.3%
N/A	6.4%	3.5%	6.4%	3.5%

# The Code's Chapter 13 Debt Limits

- 109(e): “Noncontingent, liquidated”

Era	Secured	Unsecured
Current	\$1,184,200	\$394,725
4/1/13 to 3/30/16	\$1,149,525	\$383,175
4/1/10 to 3/30/13	\$1,081,400	\$360,475
4/1/07 to 3/30/10	\$1,010,650	\$336,900

## Type of Priority Debt



# Amount of Priority Debt by Category

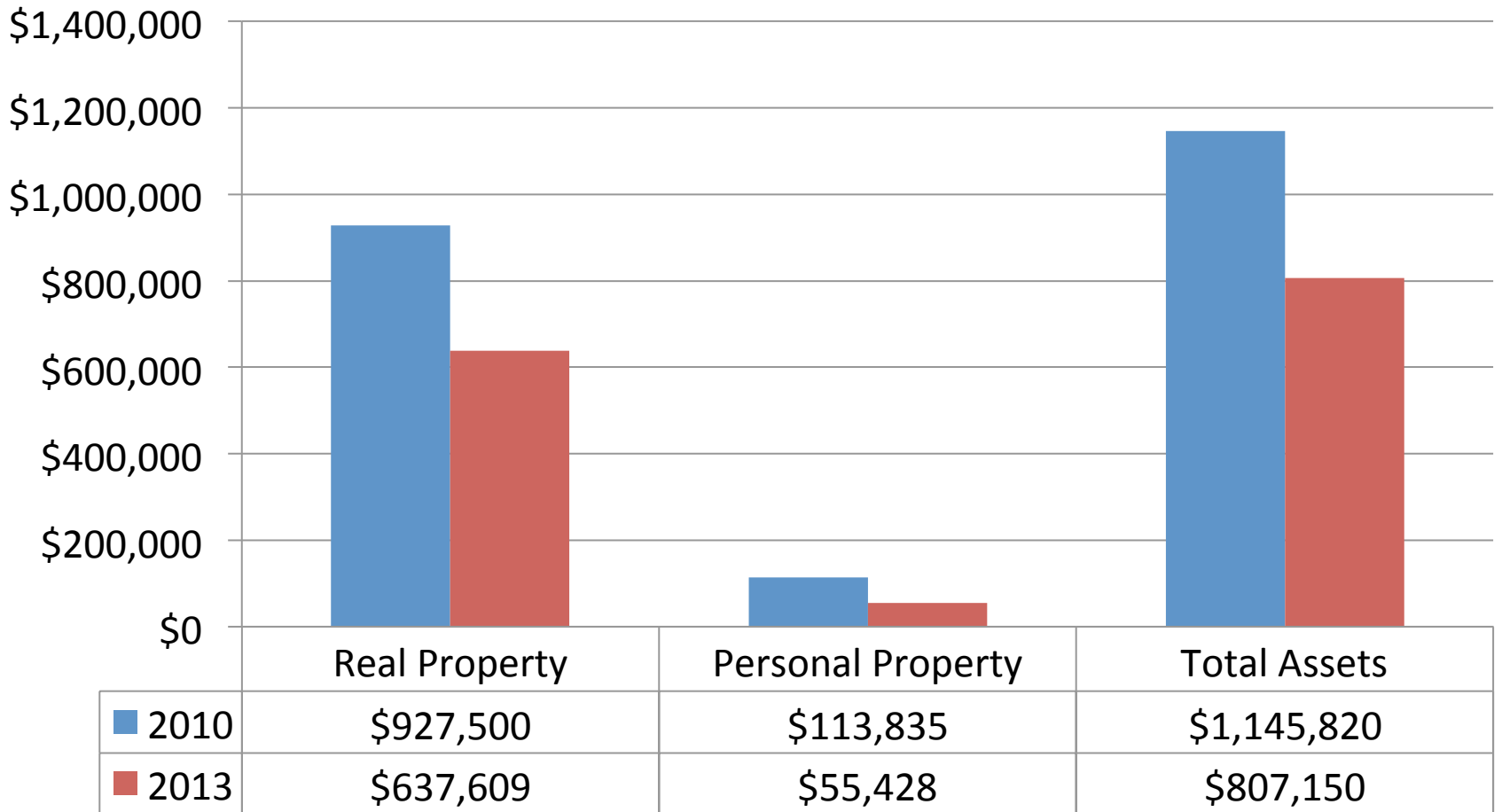
- Priority debt was small for most debtors
- In fact, more than 40% of debtors in 2010 and 2013 scheduled no priority debt
  - 2010: 49%
  - 2013: 43%
- Most common form of priority debt – taxes
  - Nonetheless, close to half (48-49%) the debtors in 2010 and 2013 reported no tax liability
- Only 10% of debtors scheduled a domestic support obligation

**Table 33: Amount of Priority Debt by Category**

	<b>Taxes</b>		<b>Domestic Support</b>		<b>All Priority</b>	
	<b>2010</b>	<b>2013</b>	<b>2010</b>	<b>2013</b>	<b>2010</b>	<b>2013</b>
<b>Over 500K</b>	0.9%	5.3%	0.0%	0.0%	1.8%	5.3%
<b>250K to 500K</b>	2.8%	3.5%	0.0%	0.9%	1.8%	4.4%
<b>100K to 250K</b>	3.7%	7.9%	0.9%	0.0%	3.7%	7.9%
<b>50K to 100K</b>	9.2%	4.4%	0.0%	0.0%	10.1%	6.1%
<b>25K to 50K</b>	11.0%	7.9%	0.9%	0.9%	10.1%	8.8%
<b>1 to 25K</b>	16.5%	18.4%	0.9%	2.6%	16.5%	20.2%
<b>0</b>	48.6%	48.2%	89.9%	91.2%	48.6%	43.0%
<b>N/A</b>	7.3%	4.4%	7.3%	4.4%	9.2%	4.4%
<b>Maximum</b>	1,063,692	5,654,393	139,500	498,260	1,063,692	5,654,393
<b>Average</b>	41,872	143,432	1,796	5,230	44,897	150,079
<b>Median</b>	0	0	0	0	0	2,500

Assets

# Median Asset Figures: Summary of Schedules



# Assets: Summary

- Big drop in asset totals between 2010 and 2013
  - Median total asset figure fell by 30% from 2010 to 2013
- Despite the drop, however, 80% or more of debtors in both 2010 and 2013 had total assets of \$5M or less
  - 2010: 81%
  - 2013: 89%
- More than three-quarters had real property of \$2.5M or less
  - 2010: 77%
  - 2013: 87%
- Three-quarters or more had personal property valued between \$0 and \$500,000
  - 2010: 76%
  - 2013: 82%

**Table 34: Assets from Summary of Schedules**

	Real Property		Personal Property		Total Assets	
	2010	2013	2010	2013	2010	2013
<b>Over \$10M</b>	1.8%	0.9%	3.7%	0.9%	5.5%	1.8%
<b>\$5M to \$10M</b>	6.4%	2.6%	0.9%	0.0%	7.3%	3.5%
<b>\$2.5M to \$5M</b>	8.3%	3.5%	0.9%	1.8%	11.0%	3.5%
<b>\$1M to \$2.5M</b>	26.6%	19.3%	5.5%	5.3%	28.4%	28.1%
<b>\$500K to \$1M</b>	20.2%	31.6%	6.4%	4.4%	20.2%	30.7%
<b>\$1 to \$500K</b>	22.0%	29.8%	75.2%	81.6%	19.3%	26.3%
<b>0</b>	8.3%	6.1%	0.9%	0.0%	1.8%	0.0%
<b>N/A</b>	6.4%	6.1%	6.4%	6.1%	6.4%	6.1%
<b>Maximum</b>	66,647,000	11,250,000	43,246,837	10,555,535	66,671,585	18,740,635
<b>Average</b>	2,226,314	1,097,198	1,147,352	361,666	3,368,750	1,436,724
<b>Median</b>	927,500	637,609	113,835	55,428	1,145,820	807,150

# Real Property

- The vast majority of the debtors in 2010 and 2013 reported owning some real property
- Home ownership
  - 2010: 84%
    - Median home value: \$450,000
  - 2013: 89%
    - Median home value: \$320,000
- Other real property ownership
  - 2010: 63%
    - Median value: \$826,850
  - 2013: 66%
    - Median value: \$322,000

**Table 35: Home Ownership**

	Home Value		Home Mortgage	
	2010	2013	2010	2013
<b>Over \$5M</b>	0.0%	0.9%	0.0%	0.9%
<b>\$2.5M to \$5M</b>	4.6%	2.6%	5.5%	2.6%
<b>\$1M to \$2.5M</b>	11.9%	7.0%	10.1%	13.2%
<b>\$500K to \$1M</b>	20.2%	14.9%	21.1%	13.2%
<b>\$250K to \$500K</b>	25.7%	29.8%	22.9%	21.1%
<b>\$1 to \$250K</b>	16.5%	28.1%	15.6%	27.2%
<b>Unknown Value</b>	4.6%	1.8%	4.5%	5.3%
<b>Home But No Mortgage</b>			2.8%	1.8%
<b>No Home</b>	6.4%	7.9%	6.4%	7.9%
<b>N/A</b>	10.1%	3.5%	11.0%	7.0%
<b>Maximum</b>	4,500,000	9,200,000	3,557,890	10,200,000
<b>Average</b>	739,191	624,764	742,362	692,424
<b>Median</b>	450,000	320,000	473,562	341,260

**Table 36: Other Real Property**

	<b>Other Real Property</b>		<b>Other Mortgage Total</b>	
	<b>2010</b>	<b>2013</b>	<b>2010</b>	<b>2013</b>
<b>More than \$10M</b>	0.9%	0.0%	1.8%	0.0%
<b>\$5 to \$10M</b>	2.8%	1.8%	2.8%	0.0%
<b>\$2.5M to \$5M</b>	10.1%	3.5%	7.3%	7.0%
<b>\$1M to \$2.5M</b>	12.8%	9.6%	19.3%	16.7%
<b>\$500K to \$1M</b>	13.8%	18.4%	14.7%	17.5%
<b>\$250K to \$500K</b>	11.9%	18.4%	11.9%	9.6%
<b>\$1 to \$250K</b>	11.0%	14.0%	3.7%	11.4%
<b>0</b>			0.9%	3.5%
<b>No Other Real Property</b>	20.2%	28.1%	20.2%	28.1%
<b>N/A</b>	16.5%	6.1%	17.4%	6.1%
<b>Maximum</b>	65,382,500	6,013,150	40,727,735	4,947,902
<b>Average</b>	2,316,483	617,228	2,170,030	1,033,302
<b>Median</b>	826,850	322,000	1,006,633	720,912

# Real Property: Net Equity

- Half the debtors had no or negative equity in their homes and other real property
- Home Median Equity:
  - 2010: \$0
  - 2013: -\$7,069
- Other Real Property Median Equity:
  - 2010: -\$44,116
  - 2013: -\$40,004

**Table 38: Debtor Equity in Real Property**

	Home Equity		Other Real Property Equity (Net)	
	2010	2013	2010	2013
<b>Over \$1,000,000</b>	0.9%	1.8%	6.4%	2.6%
<b>\$500,001 to \$1,000,000</b>	8.3%	2.6%	3.7%	2.6%
<b>\$250,001 to \$500,000</b>	4.6%	5.3%	0.9%	1.8%
<b>\$50,001 to \$250,000</b>	13.8%	15.8%	10.1%	11.4%
<b>\$1 to \$50,000</b>	7.3%	7.9%	1.8%	7.0%
<b>0 to -\$50,000</b>	15.6%	14.0%	9.2%	8.8%
<b>-\$50,001 to -\$250,000</b>	18.3%	20.2%	12.8%	10.5%
<b>-\$250,001 to -\$500,000</b>	3.7%	5.3%	1.8%	9.6%
<b>-\$500,001 to -\$1,000,000</b>	1.8%	7.0%	9.2%	7.9%
<b>Less than - \$1,000,000</b>	2.8%	3.5%	6.4%	4.4%
<b>Unknown</b>	6.4%	1.8%	0.0%	0.0%
<b>N/A</b>	10.1%	7.0%	17.4%	5.3%
<b>No home or other real property</b>	6.4%	7.9%	20.2%	28.1%
<b>Average</b>	3,383	-67,660	234,972	-136,715
<b>Median</b>	0	-7,069	-44,116	-40,004
<b>Maximum</b>	1,743,520	1,784,149	24,654,765	3,263,515
<b>Minimum</b>	-2,196,000	-2,393,432	-6,828,510	-2,202,000

# Real Property: Number of Parcels



Timing

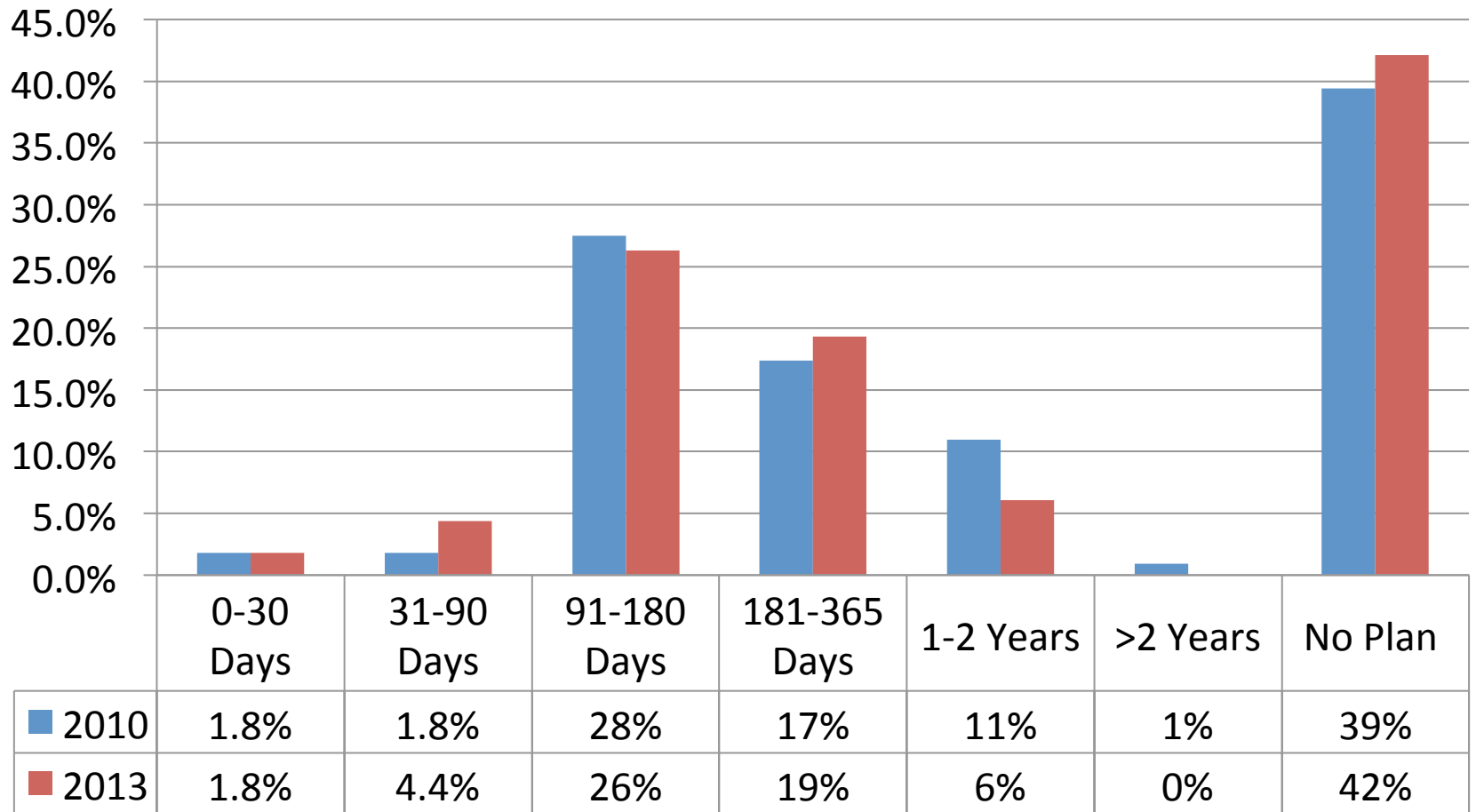
**Table 40: Filing of Schedules – Time in Days**

	<b>First Summary of Schedules</b>		<b>Last Schedule</b>	
	<b>2010</b>	<b>2013</b>	<b>2010</b>	<b>2013</b>
<b>More than 2 years</b>	0.0%	0.0%	2.8%	0.0%
<b>366 days to 2 years</b>	0.0%	0.0%	6.4%	2.6%
<b>181 to 365 days</b>	0.0%	0.0%	4.6%	7.9%
<b>91 to 180 days</b>	0.0%	0.9%	9.2%	9.6%
<b>61 to 90 days</b>	0.0%	0.9%	9.2%	8.8%
<b>31 to 60 days</b>	4.6%	3.5%	12.8%	14.9%
<b>1 to 30 days</b>	44.0%	43.9%	22.0%	25.4%
<b>0</b>	33.9%	36.8%	15.6%	18.4%
<b>No Schedule Filed</b>	5.5%	5.3%	5.5%	3.5%
<b>Conversion</b>	11.9%	8.8%	11.9%	8.8%
<b>Maximum Days</b>	48	128	1,362	490
<b>Average Days</b>	12	13	120	68
<b>Median Days</b>	14	13	36	30

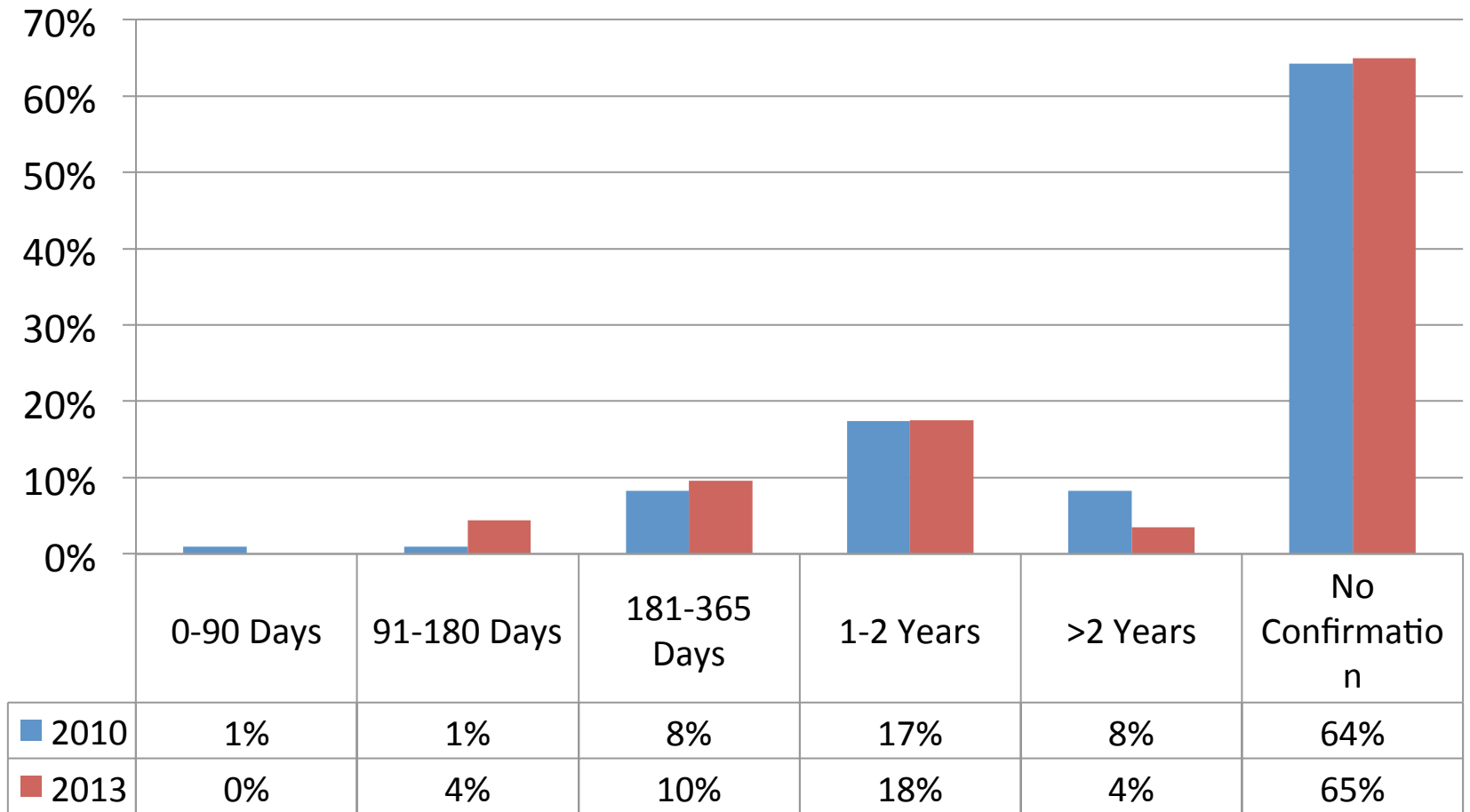
# Plan Proposal and Confirmation

- Approximately 60% of the debtors in 2010 and 2013 proposed a plan
- Initial confirmation rate
  - 2010: 36%
  - 2013: 40%
  - If take account of post-confirmation conversion/dismissal, confirmation rate drops to 31% (2010) and 38% (2013).
- Half the debtors in 2010 and 2013 proposed a plan within 6 months of the start of the Chapter 11 case
- Plan confirmation took longer
  - Half the debtors obtained confirmation within 15 to 16 months from start of Chapter 11 case

# Time to First Plan Proposal



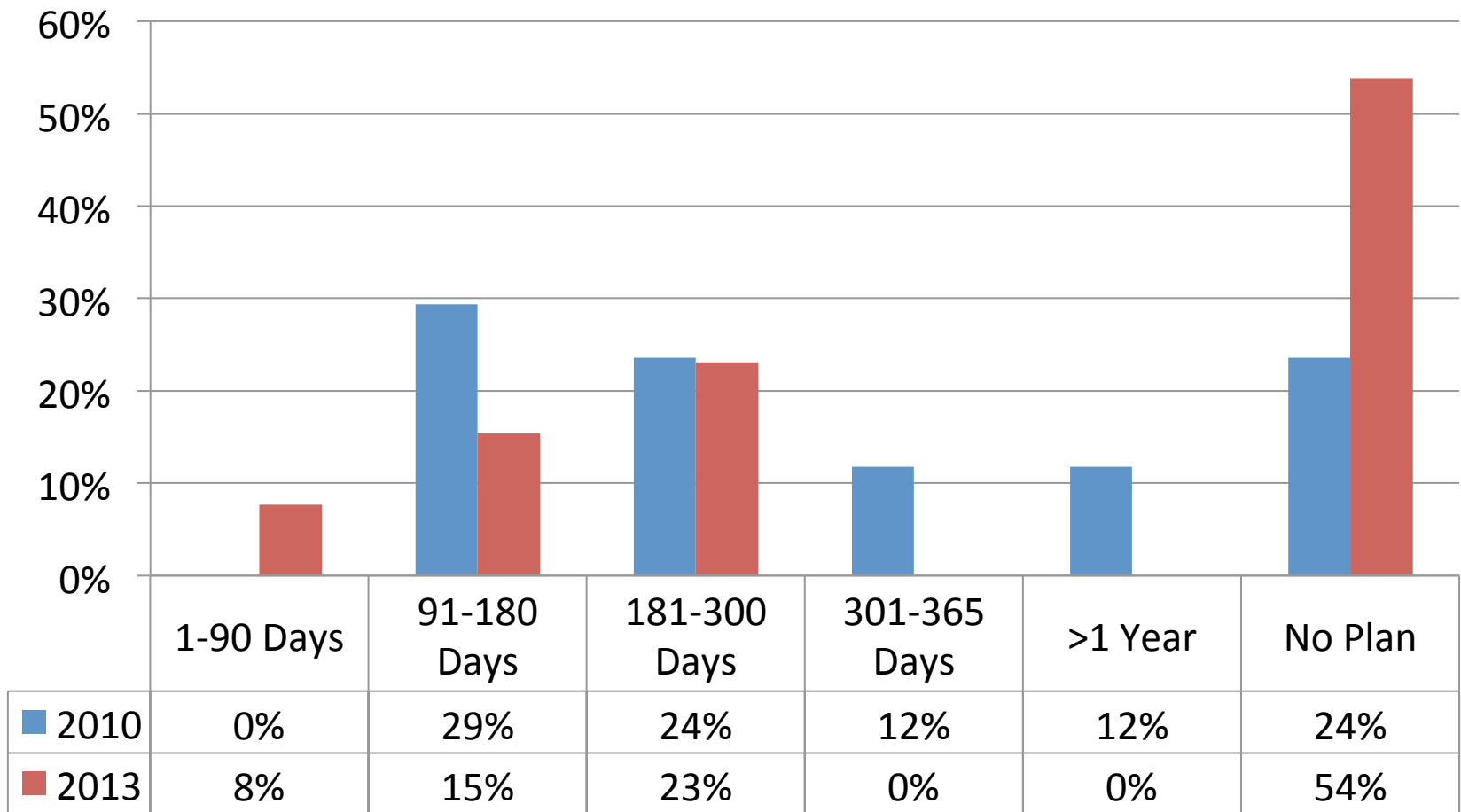
# Time to Plan Confirmation



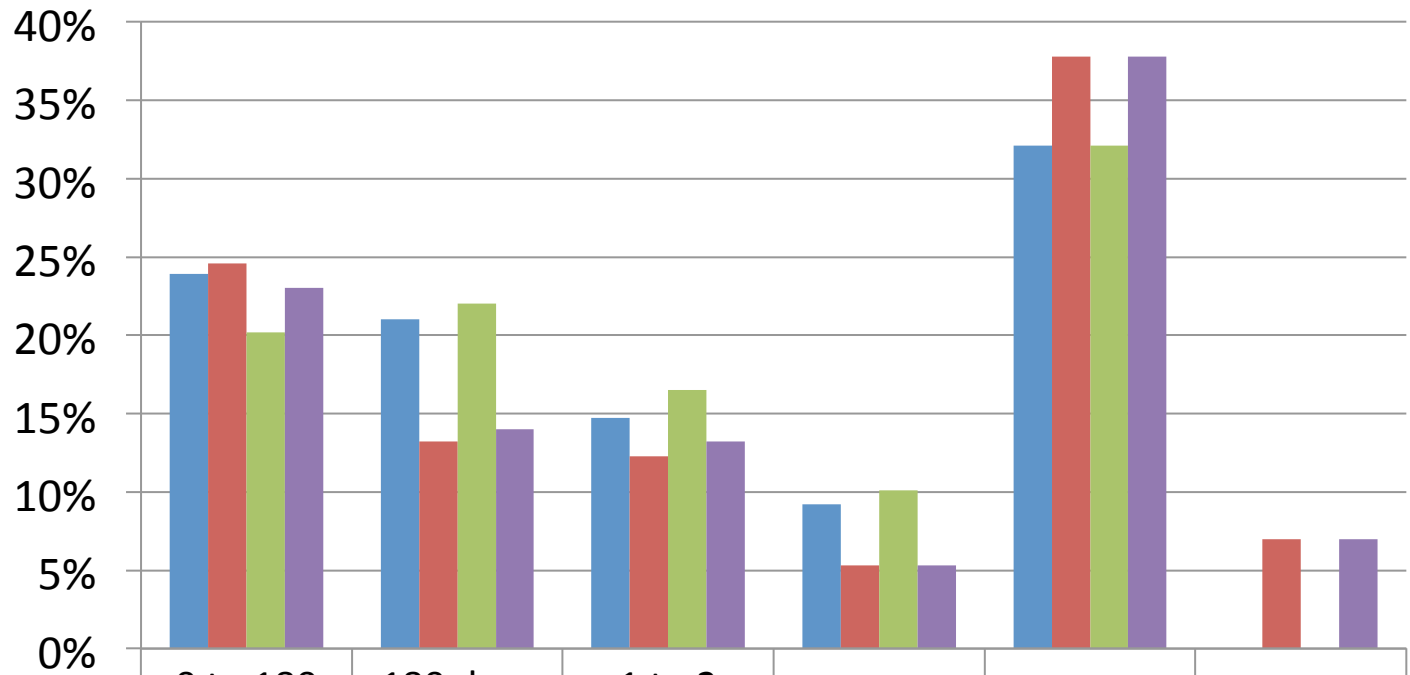
# Small Business Debtors: Time to First Plan Proposal

- §1121(e)(2): 300-day deadline
- Very few debtors checked box on petition stating they were small business debtor so dealing with very small number of cases
  - 2010: 17 cases
  - 2013: 13 cases
- Sharp drop in plan proposal between 2010 and 2013
  - 2010: 76% proposed a plan
  - 2013: 46% proposed a plan

# Small Business Debtors: Time to First Plan Proposal



# Time in Days to Conversion or Dismissal (includes cases with confirmed plans that later were converted/dismisssed)

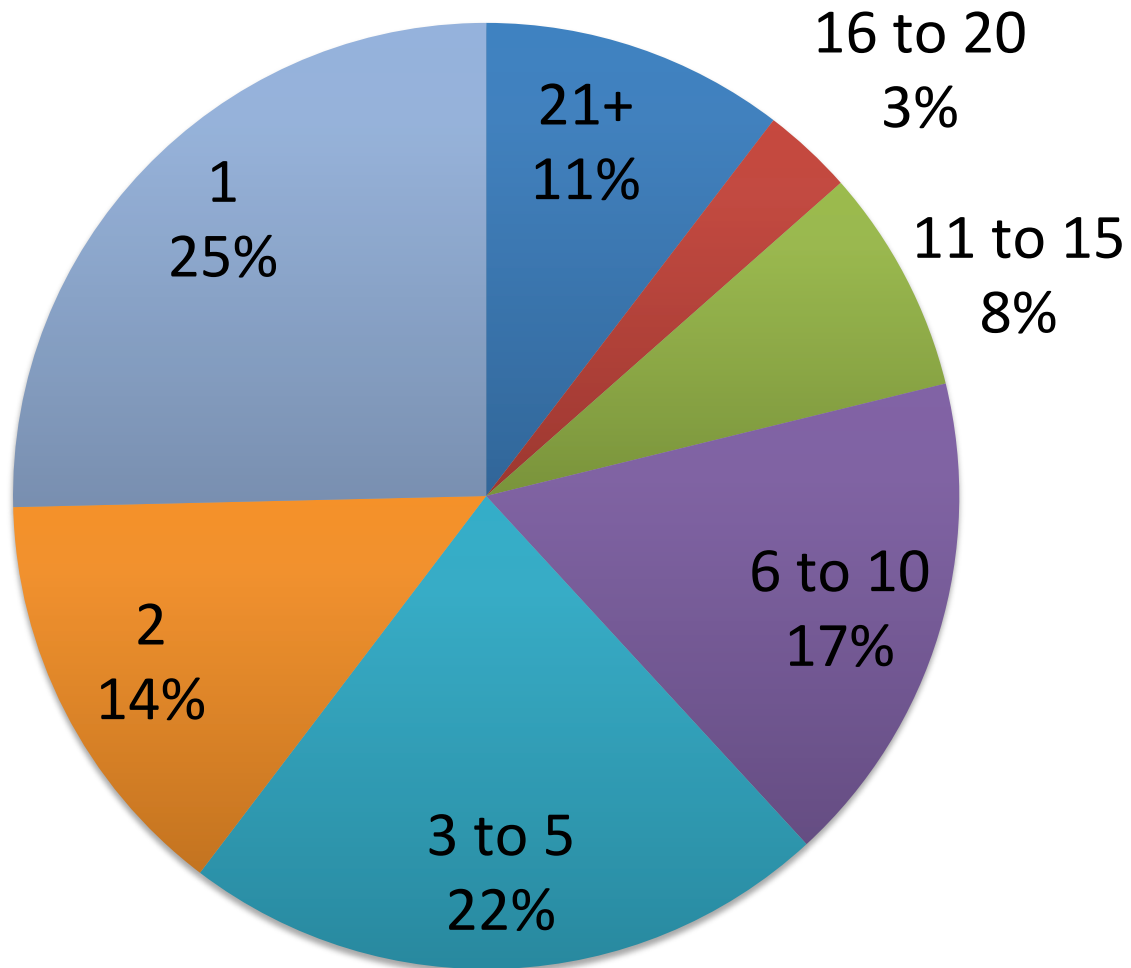


	0 to 180 days	180 days to 1 year	1 to 2 years	>2 years	N/A	Open
2010: Start of Ch 11	24%	21%	15%	9%	32%	0%
2013: Start Ch 11	25%	13%	12%	5%	38%	7%
2010: Bky Filing	20%	22%	17%	10%	32%	0%
2013: Bky Filing	23%	14%	13%	5%	38%	7%

# Attorneys

- Process
  - Identify name that follows phrases “attorney for debtor,” “attorney for debtor in possession”, “attorney for joint debtor” or “attorney for alleged debtor.”
  - Tabulate number of petitions in entire sample (2010 and 2013) by name using STATA and research assistant manual checking
- Question asked
  - How much individual Chapter 11 experience do attorneys have, as measured by the number of Chapter 11 filings they had made in the two years?

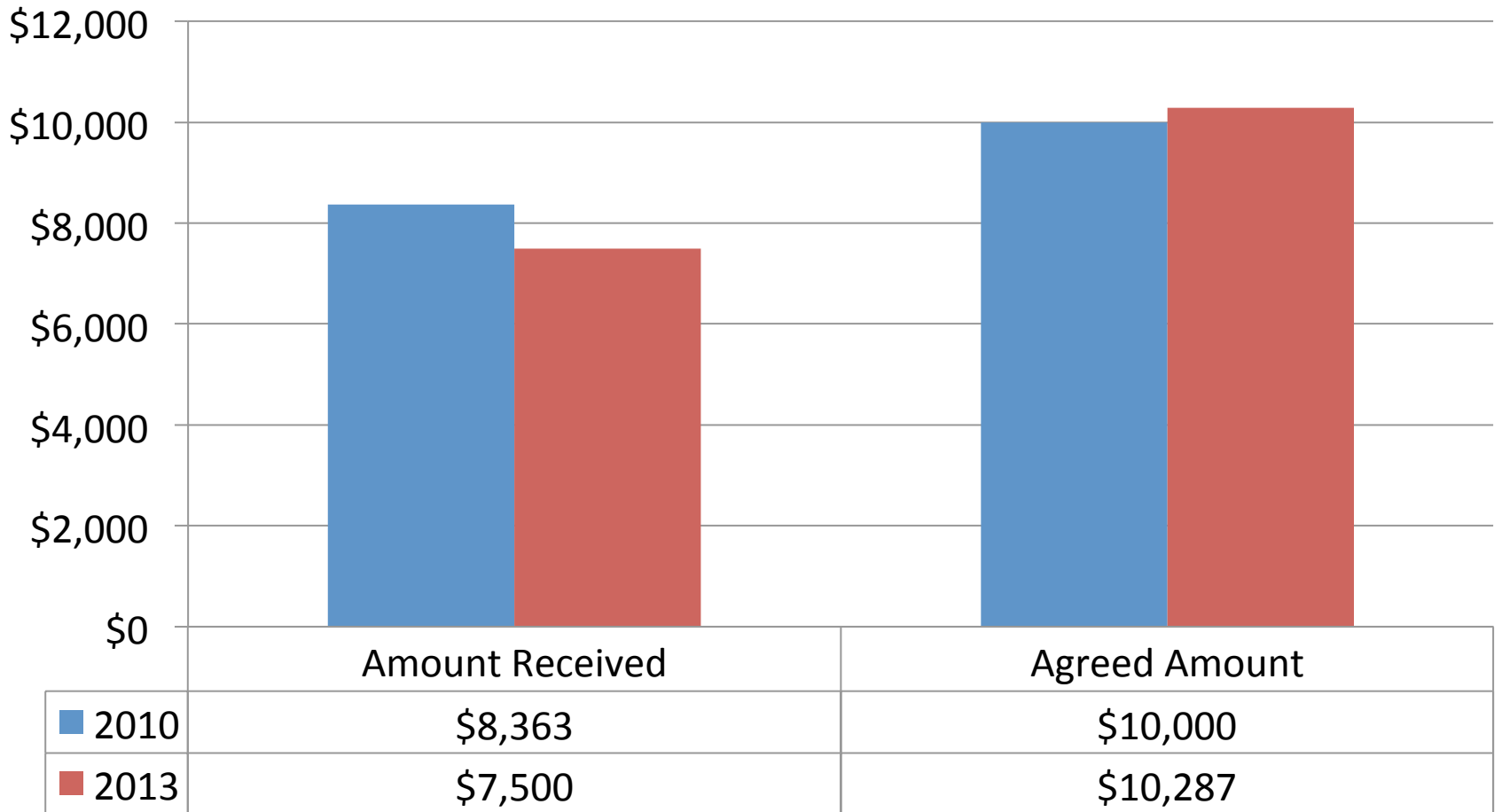
# Percent of Total Filings by Attorney Experience



# Attorney Experience & Pro Se Filings

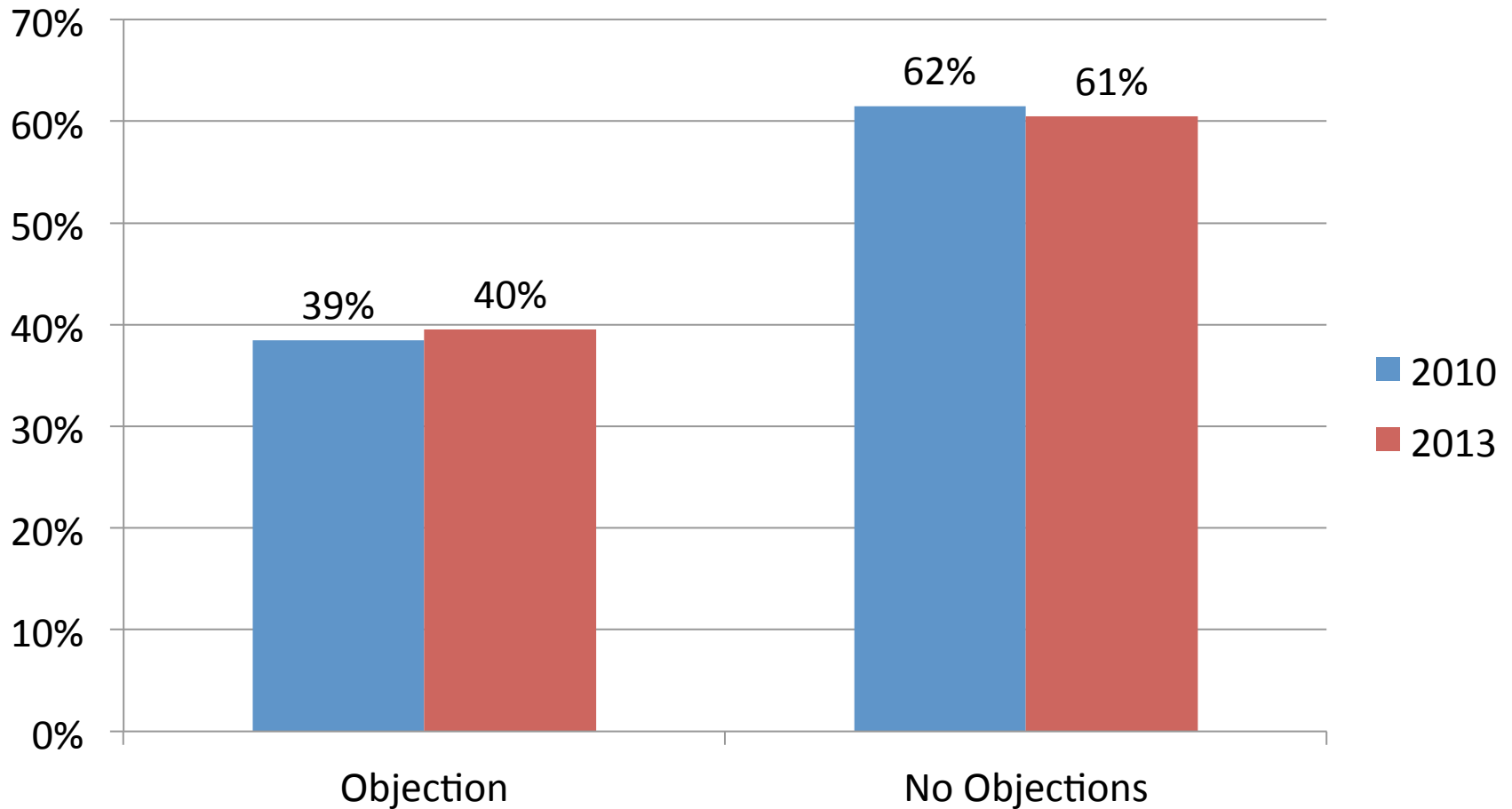
- 39% of cases had an attorney who had handled only 1 or 2 bankruptcy cases.
- Pro se filers
  - 8.1%: No name listed after phrases mentioned above – 8.1%
  - 8.2% - identified as “Pro se”

# Median Attorney Compensation



# Unusual Motions

# Objection by Unsecured Creditor



# Plan Proposed by Non-Debtor

	2010	2013
Yes	.9%	2.6%
No	99.1%	97.4%

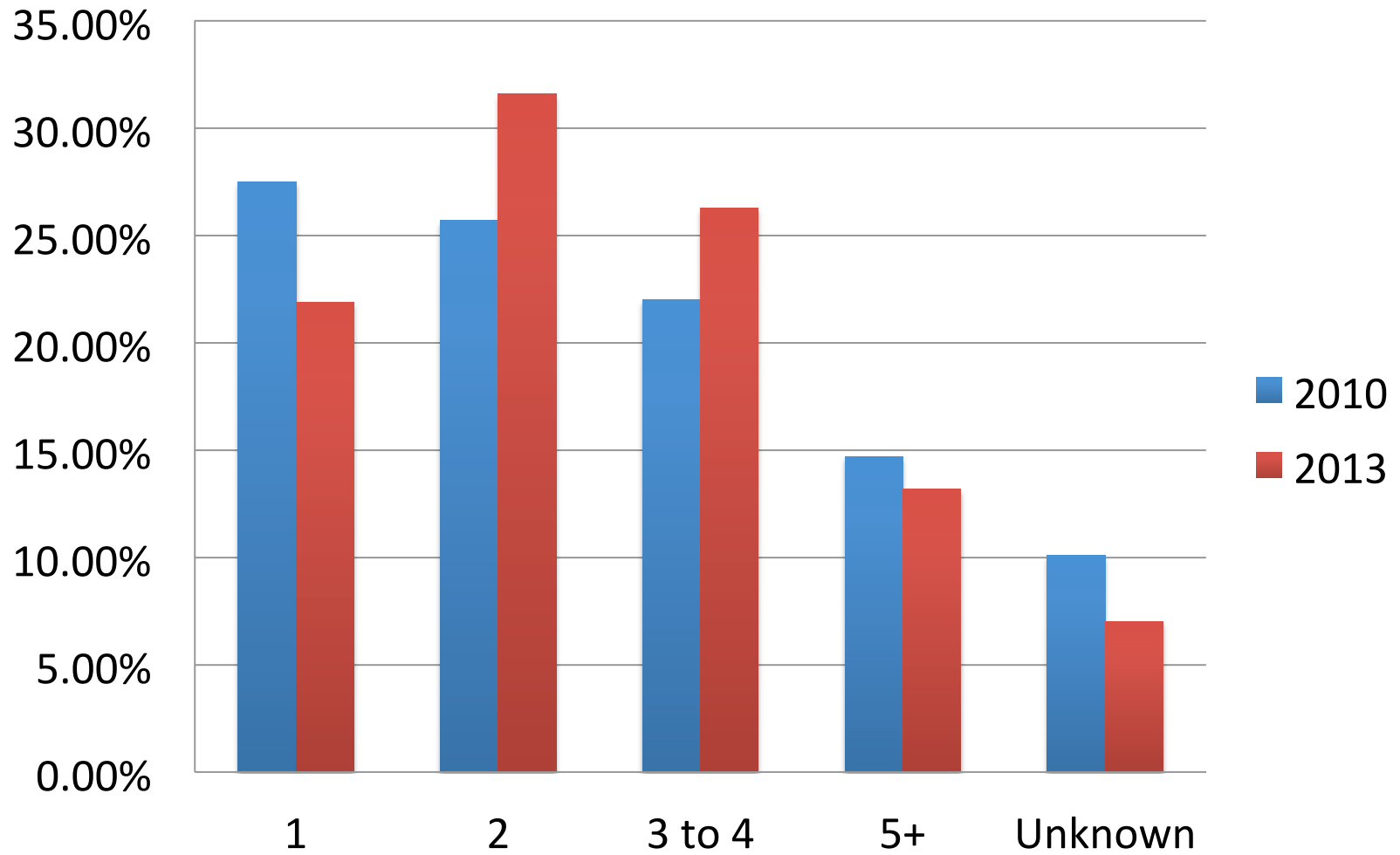
# Objection to Attorney

	2010	2013
Objection	9%	5%
No Objection	91%	95%

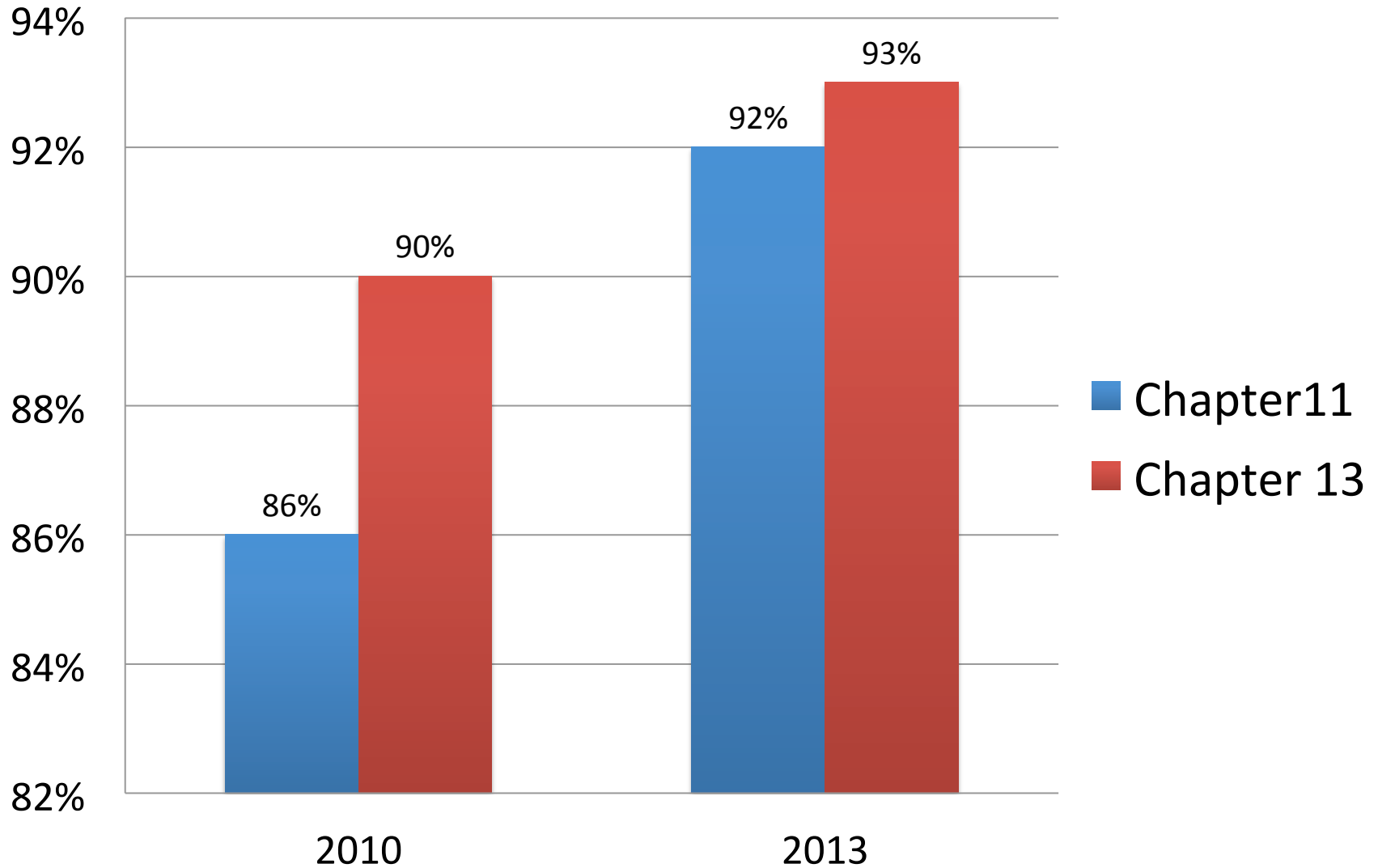
# Appointment of Chapter 11 Trustee or Examiner

	Trustee		Examiner	
	2010	2013	2010	2013
Motion withdrawn	1%	1%	1%	0%
Motion denied	5%	3%	0%	1%
Motion granted	4%	2%	1%	0%
No motion	93%	95%	100%	99%

# Household Size



## Percent "Asset" Cases



# Guaranties or Co-Debtors

	Guaranty or Co-Debtor	
	2010	2013
Co-debtor or guarantor of both legal entity and individual	17.4%	20.2%
Legal entity only	15.6%	17.5%
Individual only	12.8%	14.0%
Unknown entity	0%	0.9%
None	39.4%	29.8%
Unknown	14.7%	17.5%

# Conclusion

- Individuals now account for somewhere between a quarter and a third of all Chapter 11 filings
- Cases in which individuals are forced into Chapter 11 plans are rare or nonexistent
- Do these debtors belong in Chapter 13?
  - Many debtors are already under the existing debt limits, and raising the debt limits may have a limited effect
  - Individuals in Chapter 11 are different than the “typical” Chapter 13 debtor

## **Preliminary Report of ABI Task Force on Individual Chapter 11**

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## Individuals in Chapter 11 of the Bankruptcy Code

### I. Introduction

Prior empirical research has taught us a great deal about individuals who file under Chapters 7 and 13 of the Bankruptcy Code<sup>1</sup> and corporations that file under Chapter 11,<sup>2</sup> but we know relatively little about individuals who file under Chapter 11.<sup>3</sup> This study is intended to fill this gap in our knowledge.

Individual Chapter 11 cases inhabit a borderland between corporate bankruptcies and standard consumer bankruptcies. The debtors are individuals, but they are much

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<sup>1</sup> See, e.g., D. STANLEY & M. GIRTH, *BANKRUPTCY: PROBLEM, PROCESS, REFORM* 94 (1971); TERESA SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *AS WE FORGIVE OUR DEBTORS* (1989) [hereinafter “AS WE FORGIVE”]; TERESA SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (2000) [hereinafter “FRAGILE MIDDLE CLASS”]; Robert Lawless, et al, *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349 (2008) [hereinafter “*Did Bankruptcy Reform Fail?*”]; Scott F. Norberg & Andrew J. Velkey, *Debtor Discharge and Creditor Repayment in Chapter 13*, 39 CREIGHTON L. REV. 473 (2006); 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. See Robert M. Lawless & Elizabeth Warren, *The Myth of the Disappearing Business Bankruptcy*, 93 CAL. L. REV. 743 (2005) [hereinafter “*Disappearing Business Bankruptcy?*”].

<sup>2</sup> Arturo Bris, et al., *The Costs of Bankruptcy: Chapter 7 Liquidation versus Chapter 11 Reorganization*, 61 J. FIN. 1253 (2006); LYNN LOPUCKI, *COURTING FAILURE* (2006). See, e.g., Edward R. Morrison, *Bankruptcy Decision Making: An Empirical Study of Continuation Bias in Small-Business Bankruptcies*, 50 J.L & ECON. 381 (2007) [hereinafter, “*Bankruptcy Decision-Making?*”]; Edward R. Morrison, *Bargaining Around Bankruptcy: Small Business Workouts and State Law*, 38 J. LEGAL STUD. 255 (2009) [hereinafter, “*Small Business Workouts?*”]; See Elizabeth Warren & Jay Lawrence Westbrook, *The Success of Chapter 11: A Challenge to the Critics*, 107 MICH. L. REV. 603 (2009) [hereinafter “*Success of Chapter 11?*”].

<sup>3</sup> Professors Warren and Westbrook had reported some facts about individuals in Chapter 11 in two of their prior studies, but their focus was on business bankruptcy more generally. See *Success of Chapter 11*, supra note 2; Elizabeth Warren & Jay Lawrence Westbrook, *Financial Characteristics of Businesses in Bankruptcy*, 73 AM. BANKR. L. J. 499 (1999) [hereinafter “*Financial Characteristics?*”]. After we began our project, Professor Lawton completed two studies based on random samples that she drew from all Chapter 11 cases filed in 2004 and 2007. See Anne Lawton, *Musings on BAPCPA and the Individual Chapter 11 Debtor*, \_\_\_ AM. BANKR. L.J. \_\_\_ (forthcoming spring 2016) [hereinafter “*Musings?*”]; Anne Lawton, *The Individual Chapter 11 Debtor Pre- and Post-BAPCPA*, 89 AM. BANKR. L.J. 455 (2015) [hereinafter “*Individual Chapter 11 Debtors?*”].

more likely to operate a business than are individuals in Chapters 7 and 13,<sup>4</sup> and they have substantially greater assets and debts.<sup>5</sup> Even the rules governing an individual Chapter 11 case are a blend of those applicable to more standard consumer and business bankruptcy cases. For example, there is no absolute priority rule in the more common form of individual reorganization—Chapter 13—but most courts have held the absolute priority rule applicable in Chapter 11 whether the debtor is a corporation or an individual.<sup>6</sup> On the other hand, corporations in Chapter 11 receive a discharge upon confirmation of their plan of reorganization,<sup>7</sup> but individuals in Chapters 11 and 13 do not receive a discharge until they have made the payments required by their plans.<sup>8</sup> Because individual Chapter 11 cases inhabit this borderland, we look to the corporate and personal bankruptcy literature for informative comparisons.

The rich literature on personal bankruptcy provides many details about bankrupt debtors, and we summarize some of the main empirical findings. First, many bankrupt debtors are repeat filers, and this is especially true of those who file under Chapter 13.<sup>9</sup> Second, a bankruptcy case can cost several thousand dollars to file; nationally, the

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<sup>4</sup> See *infra* Section II.A.4.

<sup>5</sup> See *infra* Section III.B.

<sup>6</sup> See, e.g., *Ice House Am., LLC v. Cardin*, 751 F.3d 734 (6th Cir. 2014); *In re Lively*, 717 F.3d 406 (5th Cir. 2013); *Dill Oil Co. v. Stephens (In re Stephens)*, 704 F.3d 1279 (10th Cir. 2013); *Maharaj v. Stubbs & Perdue, P.A. (In re Maharaj)*, 681 F.3d 558 (4th Cir. 2012). But see, e.g., *Friedman v. P+P, LLC (In re Friedman)*, 466 B.R. 471, 482 (B.A.P. 9th Cir. 2012) (“A plain reading of §§ 1129(b)(2)(B)(ii) and 1115 together mandates that the absolute priority rule is not applicable in individual chapter 11 debtor cases.”); *In re O’Neal*, 490 B.R. 837 (Bankr. W.D. Ark. 2013) (same); *In re Tucker*, 479 B.R. 873 (Bankr. D. Or. 2012) (vacating prior order denying plan confirmation, in light of *Friedman*); *SPCP Group, LLC v. Biggins*, 465 B.R. 316, 320-23 (M.D. Fla. 2011) (same); *In re Shat*, 424 B.R. 854 (Bankr. D. Nev. 2010) (reviewing legislative history to 2005 amendments and addition to Chapter 11 of provisions modeled on Chapter 13).

<sup>7</sup> 11 U.S.C. § 1141(d)(1) (2012).

<sup>8</sup> *Id.* at §§ 1141(d)(5)(A), 1328(a). Both Chapter 11 and Chapter 13 grant the court the power to order a hardship discharge. *Id.* at §§ 1141(d)(5), 1328(b). This power, however, is almost never exercised. See *infra* notes Tables 8-10, and accompanying text.

<sup>9</sup> See, e.g., *Norberg & Velkey, supra* note 1, at 497 (“Among the most remarkable findings of the Project is that at least half of all of the Chapter 13 debtors in the sample had filed one or more bankruptcy cases in addition to the sample case.”)

average attorneys' fees in Chapter 13 exceed \$2,500, and in some jurisdictions they approach \$5,000.<sup>10</sup> Third, most consumers have debts that are more than three times their yearly income.<sup>11</sup> Fourth, most bankrupt debtors are drawn from what a sociologist would characterize as the middle-class, though their incomes are much lower than those of most middle-class Americans.<sup>12</sup> Fifth, about as many women as men file for bankruptcy, and some studies find that more women than men file under Chapter 13.<sup>13</sup> Sixth, although the official statistics substantially understate the importance of business debt in personal bankruptcy,<sup>14</sup> most of the debt in personal bankruptcy was incurred for personal or household purposes. Many researchers believe that medical debt plays an especially significant role in consumer bankruptcy.<sup>15</sup>

We do not try to replicate the surveys and massive case searches conducted in some prior projects, but our results do allow some comparisons. Many individuals in Chapter 11 are, like other bankrupt debtors, frequent users of the bankruptcy courts.<sup>16</sup> As we expected, individual Chapter 11 cases appear to be much more expensive than other individual bankruptcies. The median amount that Chapter 11 debtors paid to their attorneys at the outset of the case was at least \$7,500<sup>17</sup>—many times higher than the

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<sup>10</sup> See Lois R. Lupica, *The Consumer Bankruptcy Fee Study: Final Report*, 20 AM. BANKR. INST. L. REV. 17 (2012).

<sup>11</sup> See, e.g., AS WE FORGIVE, *supra* note 1; FRAGILE MIDDLE CLASS, *supra* note 1; *Did Bankruptcy Reform Fail?*, *supra* note 1. The self-employed have debts that are more than five times their yearly income. See ROBERT M. LAWLESS, *Striking Out on Their Own: The Self-Employed in Bankruptcy*, in KATHERINE PORTER, *BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS* (2012).

<sup>12</sup> See, e.g., FRAGILE MIDDLE CLASS, *supra* note 1.

<sup>13</sup> See, e.g., Norberg & Velkey, *supra* note 1; Hulya Eraslan, et al, *The Anatomy of U.S. Personal Bankruptcy Under Chapter 13*, Working Paper 07-31 (September 2007).

<sup>14</sup> See *Disappearing Business Bankruptcy*, *supra* note 1.

<sup>15</sup> See, e.g., RONALD MANN, *CHARGING AHEAD* (2007); Melissa Jacoby, et al, *Rethinking the Debates Over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375 (2001).

<sup>16</sup> See *infra* Section III.A.3.

<sup>17</sup> See *infra* Table 39.

roughly \$2,500 national average for total fees in Chapter 13.<sup>18</sup> Individuals in Chapter 11 also have dramatically higher debt-to-income ratios than other consumer debtors; in our sample the median ratio was 16 in 2010 and 8 in 2013.<sup>19</sup> As one would expect, individuals in Chapter 11 have much higher household incomes than individuals in Chapters 7 or 13,<sup>20</sup> but their debt burdens are much larger, and more of their debt derives from some form of business or investment. Real estate debt plays a particularly prominent role; unsurprisingly this is especially true of the filings made in the earlier year of our study, 2010. Finally, we find that women account for a much smaller proportion of Chapter 11 filings—about fifteen percent, rather than the one-third other studies have found in Chapter 13 filings.<sup>21</sup>

Most or all of these differences are likely due to the higher cost of filing under Chapter 11, but they are still relevant for policy. If individuals in Chapter 11 look just like those in Chapter 13 but with slightly larger debts, it would be very hard to justify the application of different legal rules. And the rules are very different. Chapter 13 provides more rigid rules (e.g. the debtor must propose a plan within fourteen days of filing,<sup>22</sup> and plan payments cannot extend past five years),<sup>23</sup> active oversight by a bankruptcy trustee, and (relatively) low cost. Chapter 11, on the other hand, provides much greater flexibility, relies on the initiative of the debtor-in-possession and the participation of creditors, and costs substantially more. Of course, some believe that Chapter 13 (or a version thereof) is more appropriate for nearly all debtors who want to reorganize, and

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<sup>18</sup> See Lupica, *supra* note 10.

<sup>19</sup> See *infra* Table 31, and accompanying text.

<sup>20</sup> See *infra* Table 26, and accompanying text.

<sup>21</sup> See *infra* Table 13, and accompanying text.

<sup>22</sup> FED. R. BANKR. PROC. 3015(b).

<sup>23</sup> 11 U.S.C. § 1322(d) (2012).

others favor something more like Chapter 11. Still others may prefer a very different resolution mechanism.

Much of the prior empirical bankruptcy literature tries to determine whether bankruptcy's reorganization chapters are successfully serving the interests of debtors and creditors. The most common definition of success focuses on the goals of the debtor and asks whether individuals receive a discharge in Chapter 13 or whether corporations confirm a plan of reorganization in Chapter 11.<sup>24</sup> Neither definition is appropriate for our undertaking because, unlike corporations, individuals do not receive their discharge until their plan is completed,<sup>25</sup> and few debtors will complete their plans within the three-to-six-year window in which we observed the cases.<sup>26</sup> We instead adopt a broader definition of success to include any case in which the debtor receives a discharge or avoids conversion and dismissal for four years. Based on this definition, we find a success rate of roughly one-third or about the same success rate found in the Chapter 13 literature.<sup>27</sup> Once again, however, we are using a much broader definition of success.

While discharge or confirmation may be the best definition of success that can be implemented, the literature recites a host of problems. Chief among these is the fact that many debtors do not belong in a reorganization chapter; an efficient bankruptcy system would quickly dismiss these cases or convert them so that the estates can be liquidated.<sup>28</sup>

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<sup>24</sup> See, e.g., Norberg & Velkey, *supra* note 1; *Success of Chapter 11*, *supra* note 2.

<sup>25</sup> See 11 U.S.C. § 1141(d)(5)(A) (2012).

<sup>26</sup> Many of the plans that our sample debtors proposed are scheduled to last thirty years.

<sup>27</sup> See, e.g., AS WE FORGIVE, *supra* note 1, at 339; Michael Bork & Susan D. Tuck, *Bankruptcy Statistical Trends: Chapter 13 Dispositions* 4 graph 1 (Admin. Office of the U.S. Courts, Working Paper No. 2, 1994); Gordon Bermant & Ed Flynn, *Measuring Projected Performance in Chapter 13: Comparisons Across the States*, AM. BANKR. INST. J., July-Aug. 2000, at 22, 22; Henry E. Hildebrand III, *Administering Chapter 13- At What Price?*, AM. BANKR. INST. J., July-Aug. 1994, at 16; Norberg & Velkey, *supra* note 1, at 505; Eraslan, et al, *supra* note 13.

<sup>28</sup> See, e.g., *Bankruptcy Decision Making*, *supra* note 2; *Small Business Workouts*, *supra* note 2; *Success of Chapter 11*, *supra* note 2.

If we follow prior studies by measuring how long it takes bankruptcy courts to dispose of the “failed” reorganizations,<sup>29</sup> the individual Chapter 11s fare a little less well. More concretely, we find that it takes courts longer to dismiss the “obvious” individual Chapter 11 failures than to dismiss Chapter 13 cases.<sup>30</sup> We suspect that the reason is the combination of a lack of rigid timing rules, the absence of a bankruptcy trustee, and fairly low stakes that limit creditor participation.

We bring our analysis in Section II with data that we pulled and analyzed from PACER case reports (“PACER data”) for all bankruptcy cases filed in 2010 or 2013. We chose to look at cases filed in 2010 because these cases are sufficiently mature to observe at least some outcomes. We chose to look at 2013 because we were concerned about the impact of the financial collapse on the 2010 results. The PACER spreadsheets allowed us to gather and analyze information on a massive number of cases. The disadvantage of the PACER data is that we were limited to the variables that the courts chose to code. In order to provide a richer and more nuanced look at individual Chapter 11 cases, we drew two smaller random samples from the individual Chapter 11 cases identified in the courts’ PACER spreadsheets for 2010 and 2013. We then coded for a host of variables that the PACER data did not provide. Section III examines and analyzes the results of the small-sample coding. In Section IV, we discuss how the data results inform our conclusions about the need for reform.

## **II. PACER Case Report Data**

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<sup>29</sup> See, e.g., *Bankruptcy Decision Making*, *supra* note 2; *Success of Chapter 11*, *supra* note 2.

<sup>30</sup> See *infra* Section II.D.2.

We begin our empirical analysis with the PACER data.<sup>31</sup> We collected PACER case reports for all bankruptcy cases filed in 78 of the 94 judicial districts in the United States.<sup>32</sup> According to the Administrative Office of the U.S. Courts, these jurisdictions accounted for 91% of all United States bankruptcy filings, and approximately 93% of all Chapter 11 filings in the United States in 2010 and 2013.<sup>33</sup> We are confident that our failure to obtain waivers from the remaining jurisdictions did not materially affect our results.<sup>34</sup>

Deciding on the period to study involved a difficult trade-off. We wanted to choose a set of cases filed sufficiently long ago that the debtors had time to receive plan approval and then make payments for a number of years. Unlike Chapter 13 plans,<sup>35</sup> however, Chapter 11 plans can, and do, extend well beyond five years. Thus, we expected that few of our debtors would have completed a plan of reorganization unless we examined cases filed far in the past. If we drew a sample of cases filed too long ago, on the other hand, our results would be skewed by the financial crisis and possibly even by BAPCPA. We settled on 2010 and 2013. The financial crisis and the real estate collapse played a significant role in individual Chapter 11s filed in 2010. To ensure that

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<sup>31</sup> PACER provides a link to present reports in spreadsheet form. We began by downloading all bankruptcy cases filed in each jurisdiction of our study during 2010 and 2013. Because this data set was so massive, we dropped cases in which neither the current nor previous chapter was Chapter 11 or 13.

<sup>32</sup> We did not receive waivers from the following jurisdictions: (1) Southern District of Alabama; (2) Connecticut (waiver for only 2010); (3) District of Columbia; (4) Guam; (5) Hawaii; (6) Southern District of Illinois; (7) Northern District of Indiana; (8) Maine; (9) Eastern District of Missouri; (10) Western District of New York; (11) Northern Mariana Islands; (12) Western District of Oklahoma; (13) Southern District of Texas; (14) the Virgin Islands; (15) Southern District of West Virginia; and (16) Eastern District of Wisconsin.

<sup>33</sup> See <http://www.uscourts.gov/Statistics/BankruptcyStatistics.aspx>.

<sup>34</sup> Harvard's Bankruptcy Data Project provides an independent estimate of the number of individual Chapter 11s, and these jurisdictions collectively accounted for less than five percent of the total in 2010. The Harvard Bankruptcy Data Project does not have data available for 2013.

<sup>35</sup> 11 U.S.C. § 1322(d) (2012).

our results were not simply an artifact of the period studied, we expanded our final study to include cases filed in 2013 as well.

Part A provides some basic facts about individual Chapter 11s and compares these cases to Chapter 13s and to corporate Chapter 11s. Part B provides information about debtors' attorneys in chapter 11. Part C asks whether creditors are forcing individuals into Chapter 11 involuntarily. Part D examines whether Chapter 11 is "successfully" serving the interests of individuals and their creditors.

## **A. Some Basic Facts about Individuals in Chapter 11**

### *1. Chapter 11 Debtor Type*

The PACER case reports include a field that lists the bankruptcy chapter the case is in at the time that the case is pulled, regardless of whether the case is open or closed. For converted cases, the case reports also include a field that lists the pre-conversion bankruptcy chapter. Using these two fields, we identified any case that had been in Chapter 11.<sup>36</sup> We then narrowed the cases to those filed by an individual.

Table 1 lists the type of debtor for these PACER case reports for 2010 and 2013. In both years, corporate chapter 11 cases predominated in the PACER data sample, with the debtor checking the "corporation" box on the voluntary petition in 64-65% of the cases. *See* Columns A & B, Row (2) of Table 1. Surprisingly, individual debtors comprised a sizable portion of the PACER data sample: in both 2010 and 2013, at least 3 in 10 chapter 11 debtors indicated on the petition that they were individuals. *See* Columns A & B, Row (2) of Table 1. Chapter 11 cases, however, do not account for a

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<sup>36</sup> This approach may miss some cases that were once in Chapter 11, if they were later converted to two other chapters. For example, we would miss a case that was filed in Chapter 11, converted to Chapter 13 and then converted to Chapter 7. We suspect that such cases are extremely rare.

significant share of individual filings. In both 2010 and 2013, individual Chapter 11 filings accounted for less than 0.3% of all individual bankruptcy cases. Another 3-5% of debtors checked the “partnership” or “other” boxes on the petition.<sup>37</sup> See Columns A & B, Rows (3) & (4) of Table 1.

**Table 1: Debtor Type for Chapter 11 Cases**

Debtor Type	(A) 2010		(B) 2013	
	No.	%	No.	%
(1) Individual	4,049	30.3%	2,617	31.2%
(2) Corporation	8,617	64.5%	5,487	65.4%
(3) Partnership	466	3.5%	179	2.13%
(4) Other	227	1.7%	105	1.25%

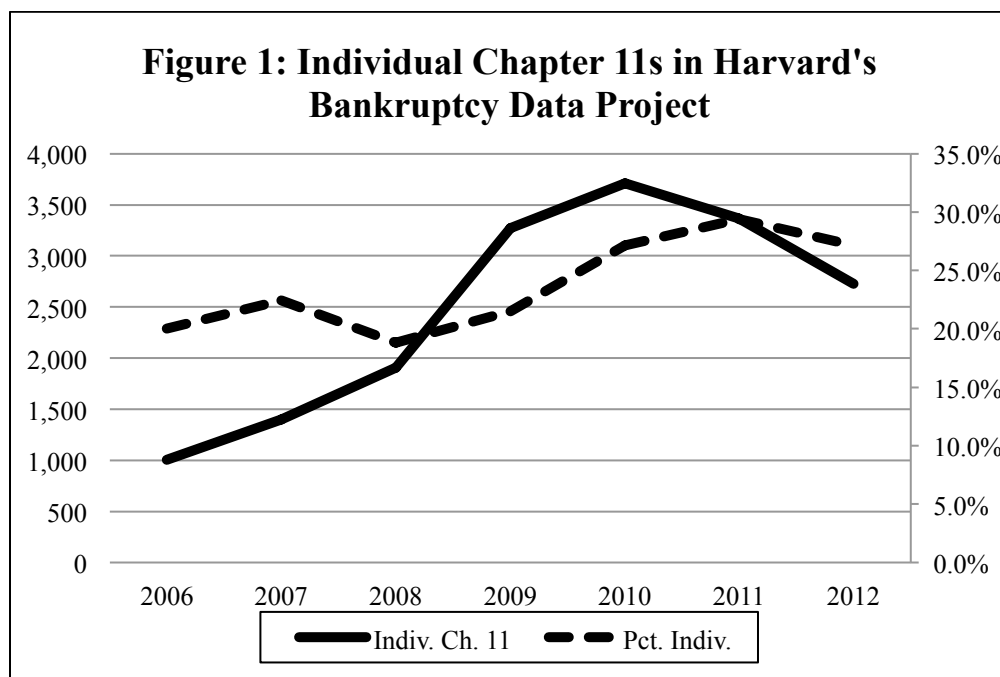
Our estimate of individual Chapter 11s is a little higher than that found by Harvard’s Bankruptcy Data Project for 2010. (The project didn’t gather data for 2013).<sup>38</sup> Figure 1 shows its estimate of the number of individual Chapter 11s across time (the solid bold line) as well as the percentage of Chapter 11s filed by individuals (the dashed bold line).<sup>39</sup> The difference in number of individual Chapter 11s between our findings and those of the Harvard Bankruptcy Data Project is probably due to the fact that we include a case as an individual Chapter 11 if either its current or previous chapter was Chapter 11 while Harvard’s Bankruptcy Data Project looks only at the initial chapter.

<sup>37</sup> See *infra* Part III.

<sup>38</sup> Coincidentally, Sullivan, Warren and Westbrook also found that thirty-one percent of the Chapter 11 cases in their 1994 sample were filed by individuals. See *Financial Characteristics*, *supra* note 3, at 534. Lawton found a smaller percentage in her study of individual Chapter 11s in 2004 (23%) and 2007 (27%). See *Individual Chapter 11 Debtors*, *supra* note 3, at 466, Table 1.

<sup>39</sup> This data source is now archived:

<https://web.archive.org/web/20150905052318/http://bdp.law.harvard.edu/>.



## 2. *Conversions*

The data in Table 1 includes converted cases – cases begun in Chapter 11 and then converted to Chapter 7 or 13, and cases begun in Chapter 7 or 13 and converted to chapter 11. Tables 2A and 2B provide information about between-chapter conversions for individuals in the PACER data sample who filed for relief under the Bankruptcy Code in 2010 and 2013.

We frequently compare Chapter 11 to Chapter 13, and so we constructed a similar set of all cases that are currently or have been in Chapter 13. There is a small amount of overlap between the Chapter and Chapter 13 set of cases, because of conversion between the two chapters. We return to the issue of conversion in Part D, [come back] but Tables 2A and 2B provide some summary statistics. In reading Tables 2A and 2B, note that we dropped all cases that have never been in Chapter 11 or 13 from the table.

**Table 2A: Conversion Between Chapters for Individual Bankruptcy - 2010**

	Initial Chapter				
		7	11	12	13
Converted Chapter	7	n/a	937	n/a	42,293
	11	90	n/a	7	310
	12	n/a	1	n/a	17
	13	5,486	48	8	n/a
	No Conversion	n/a	2,656	n/a	358,333

**Table 2B: Conversion Between Chapters for Individual Bankruptcy - 2013**

	Initial Chapter				
		7	11	12	13
Converted Chapter	7	n/a	379	n/a	20,124
	11	55	n/a	7	255
	12	n/a	1	n/a	5
	13	3,339	30	8	n/a
	No Conversion	n/a	1,890	n/a	274,490

Tables 2A and 2B reveal that debtors sometimes convert from Chapter 11 to Chapter 13 and vice versa, but conversion from each chapter to Chapter 7 is far more common. Of the 3,642 cases initially filed in Chapter 11 in 2010,<sup>40</sup> just 48 (1.3%) were converted to Chapter 13 while 937 (25.7%) were converted to Chapter 7. Similarly, of the 400,953 cases initially filed in Chapter 13, only 310 (0.08%) were converted to Chapter 11 while 42,293 (10.55%) were converted to Chapter 7. This means that Chapter 11 cases are converted to Chapter 7 at roughly twice the rate that Chapter 13 cases are converted to Chapter 7. We return to this fact when we discuss the “success” rate of Chapter 11 below.

<sup>40</sup> We counted a case as initially filed in Chapter 11 if the previous chapter was listed as Chapter 11 or if the previous chapter was blank and the chapter was listed as Chapter 11. For 2010, we had 3,642 cases “initiated” in Chapter 11. If we add the 407 cases converted into Chapter 11, this gives us the 4,049 cases disclosed in (A)(1) of Table 1.

3. *Where Are the Debtors Filing?*

As the data in Table 3 show, there is wide variation among districts in terms of individual Chapter 11 filings. Table 3 provides data from the five districts with the highest and lowest number of individual Chapter 11 filings in 2010 and 2013. For data on all 78 judicial districts, *see* Appendix A, Table 3A. Both Tables 3 and 3A provide four pieces of information: (1) the jurisdiction in which the case was filed; (2) the number of cases in that jurisdiction; (3) that jurisdiction’s share of our PACER total sample; and (4) the percentage of Chapter 11 cases in that jurisdiction in which the debtor is an individual.

**Table 3: Top 5 and Bottom 5 Districts for Individual Chapter 11 Filings**

<b>Top Five Districts</b>						
	<b>2010</b>			<b>2013</b>		
<b>District</b>	<b>Individual Ch. 11</b>	<b>% Whole Sample</b>	<b>% Individual of District Ch. 11</b>	<b>Individual Ch. 11</b>	<b>% Whole Sample</b>	<b>% Individual of District Ch. 11</b>
CACD	581	14%	47%	349	13%	47%
CAND	312	8%	65%	127	5%	61%
AZ	294	7%	42%	117	4%	41%
FLMD	232	6%	29%	146	6%	35%
NV	200	5%	40%	125	5%	47%
<b>Bottom Five Districts</b>						
	<b>2010</b>			<b>2013</b>		
<b>District</b>	<b>Individual Ch. 11</b>	<b>% Whole Sample</b>	<b>% Individual of District Ch. 11</b>	<b>Individual Ch. 11</b>	<b>% Whole Sample</b>	<b>% Individual of District Ch. 11</b>
LAMD	1	0%	6%	1	0%	10%
IAND	3	0%	43%	0	0%	0%
ND	3	0%	38%	0	0%	0%
OKND	2	0%	8%	1	0%	17%
VT	3	0%	33%	0	0%	0%

As the data in Tables 3 and 3A demonstrate, the number of individual chapter 11 filings varies greatly by district: from a low of 1 case each in 2010 and 2013, respectively, for the Middle District of Louisiana to a high of 581 and 349 for 2010 and 2013,

respectively, for the Central District of California. Three western districts (Central District of California, Northern District of California, and District of Arizona) account for 29% and 22% of our sample in 2010 and 2013, respectively, but there are significant numbers of individual Chapter 11 filings in other areas of the country, such as the Middle District of Florida and Nevada. There also is dramatic variation in the share of Chapter 11 filings in which the debtor is an individual, from a low of less than one percent in Delaware (see Table 3A) to more than 60% in the Northern District of California.<sup>41</sup>

#### 4. *Primary Nature of Debt and Small Business Status*

Bankruptcy petitions ask the filer to disclose whether her debts are “primarily business debts” or “primarily consumer debts,” and the Administrative Office reports bankruptcy statistics by the debtor’s choice. According to the Administrative Office, about 86% of all Chapter 11 cases filed in 2010 (11,774 of 13,713) were business filings while less than 1% of Chapter 13 filings (4,174 of 438,913) were business filings.<sup>42</sup> These commonly reported statistics cause most people to think of Chapter 11 as business bankruptcy and Chapter 13 as consumer or non-business bankruptcy. The Administrative Office’s statistics are for all Chapter 11 filings, however, not just those made by individuals.

Roughly 45% of the individuals in our PACER data sample report that their debts are primarily business-related. *See* Table 4. While this is less than the overall proportion of business filings in Chapter 11, it is still dramatically higher than the percentage of Chapter 13 filers who claim that their debts are primarily business-related; both the Administrative Office and our sample give this fraction as less than one percent. It is

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<sup>41</sup> The existence of substantial variation is consistent with the findings of *Success of Chapter 11*, *supra* note 2, at 573.

<sup>42</sup> <http://www.uscourts.gov/Statistics/BankruptcyStatistics/12-month-period-ending-december.aspx>

worth noting that the proportion claiming that their debts are primarily business related is remarkably stable between 2010 and 2013 despite the fairly dramatic drop in the total number of individual Chapter 11s during that time period.<sup>43</sup>

**Table 4: Primary Nature of Debt**

	Individual Chapter 11				Chapter 13			
	2010		2013		2010		2013	
	No.	%	No.	%	No.	%	No.	%
<b>Business</b>	1,809	45%	1,197	46%	3,904	1%	2,461	1%
<b>Consumer/Non-business</b>	2,240	55%	1,420	54%	402,591	99%	295,790	99%
<b>Total Number</b>	<b>4,409</b>		<b>2,617</b>		<b>406,495</b>		<b>298,251</b>	

Prior research has shown that consumers will check the box claiming primarily non-business debts with little or no thought, and that almost 20% of Chapter 13 filings may be business-related if one adopts a broad definition.<sup>44</sup> Even if we adopt this higher estimate for Chapter 13 and make no adjustments to the self-reporting of Chapter 11 debt,<sup>45</sup> however, it is still true that an individual Chapter 11 case is more than twice as likely to be business-related than is a Chapter 13 case. Because there are so many more Chapter 13 filings than Chapter 11 filings, however, there are still significantly more business Chapter 13 filings, in absolute numbers, than business individual Chapter 11 filings.

Some special procedural rules apply to small business debtors,<sup>46</sup> defined as someone engaged in business and who owes less than roughly two and a half million

<sup>43</sup> The business/non-business divide may not have always been so stable. In her prior study, Lawton found 41.8% business individual Chapter 11s in 2004 and 55.9% in 2007. *See Individual Chapter 11 Debtors*, *supra* note 3. Her data, however, is drawn from a period of massive disruption in bankruptcy law caused by the BAPCPA.

<sup>44</sup> *See Disappearing Business Bankruptcy*, *supra* note 1.

<sup>45</sup> In Section III we show that the overwhelming majority of the individuals in Chapter 11 are operating a business. *See infra* Section III.A.2.

<sup>46</sup> *See, e.g.*, 11 U.S.C. §§ 362(n), 1121(e) (2012).

dollars in non-contingent liquidated debts.<sup>47</sup> Bankruptcy petitions contain a box indicating whether the debtor is a small business debtor,<sup>48</sup> and the PACER Reports record the debtor’s answer. Table 5 presents the results broken down by debtor type. A small percentage of the debtors in our PACER data sample—about 7 to 8%—did state that they were small businesses, but the more striking fact is that PACER did not report responses for most of the individuals who filed under Chapter 11. Given the number of blank entries in the PACER sample, we will spend more time discussing the issue when we discuss the very different results in the small random samples in Section III of this report.

**Table 5: Small Business Debtors**

	(A) Individual				(B) Corporation				(C) All			
	2010		2013		2010		2013		2010		2013	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
<b>(1) Small Business</b>	299	7%	232	9%	1,839	21%	1,285	23%	2,252	17%	1,566	19%
<b>(2) Not Small Business</b>	1,138	28%	798	30%	4,533	53%	3,507	64%	7,163	54%	4,516	54%
<b>(3) Blank</b>	2,612	65%	1,587	61%	1,245	14%	695	13%	3,944	30%	2,306	27%
<b>Total Number</b>	<b>4,049</b>		<b>2,617</b>		<b>8,617</b>		<b>5,487</b>		<b>13,359</b>		<b>8,388</b>	

5. *Are Assets Available for Distribution?*

Bankruptcy petitions also contain a box that the debtor checks if he or she believes that “after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.” The Administrative Office records such filings as “No Asset” cases, and the PACER case reports contain a field for these cases. Prior studies have found that more than 90% of

<sup>47</sup> 11 U.S.C. § 101(51D) (2012). The current dollar limit, which re-set on April 1, 2016, is \$2,566,050.

<sup>48</sup> In 2010, the voluntary petition asked the debtor to check either “Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D)” or “Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).”

Chapter 7 filings are no asset cases.<sup>49</sup> By comparison, both individual Chapter 11 debtors and Chapter 13 debtors appear to be very optimistic about their ability to pay at least something to unsecured creditors, and their optimism seems to be growing. In 2010, about 86% of individual Chapter 11 debtors and 90% of Chapter 13 debtors indicated that there would be assets available for general creditors. In 2013, these numbers rose to 92% and 94%, respectively.<sup>50</sup> Whether this optimism was warranted is something we cannot tell from this data, but there are good reasons to be skeptical. At least two prior studies have found that most Chapter 13 debtors pay nothing to unsecured creditors.<sup>51</sup>

**Table 6: Assets Available for General Creditors**

	Chapter 11				Chapter 13			
	2010		2013		2010		2013	
	No.	%	No.	%	No.	%	No.	%
<b>No Asset</b>	538	13%	198	8%	40,015	10%	19,304	6%
<b>Assets</b>	3,488	86%	2,406	92%	366,268	90%	278,852	93%
<b>Unknown or blank</b>	23	.6%	13	.05%	212	.05%	95	.03%
<b>Total Number</b>	<b>4,049</b>		<b>2,617</b>		<b>406,495</b>		<b>298,521</b>	

## B. Attorneys

The PACER case reports contain a field that identifies the attorney for the debtor. We use this field to try to answer two questions: 1) do the attorneys who file individual Chapter 11s specialize in this work? and 2) how often do individuals file Chapter 11 pro se? Unfortunately, this field often contains multiple pieces of information, such as the attorney of the debtor, the attorney for a co-debtor, and (occasionally) an attorney for a bankruptcy administrator.

<sup>49</sup> Ed Flynn, *Chapter 7 Asset Cases and Trustee Compensation*, ABI Journal, June 2014.

<sup>50</sup> In Section III, we note that we get a lower estimate in our small sample and that this difference is likely due to differences in coding. However, we still found a fairly high percentage of cases in which debtors expected that assets would be available for general creditors. See *infra* Table 23, and the accompanying text.

<sup>51</sup> See Eraslan, *supra* note 13 (studying Chapter 13 cases filed in Delaware); Norberg & Velkey, *supra* note 1, at 543.

To identify the attorneys who file individual Chapter 11s, we used our statistical package to identify the names that followed the phrases “attorney for debtor,” “attorney for debtor in possession”, “attorney for joint debtor” or “attorney for alleged debtor.” We then used the statistical package to tabulate the number of petitions in our combined sample (both 2010 and 2013) for each attorney name. Finally, we asked a research assistant to read through the table to identify names that were likely duplicates, such as Richard M. Hynes, Rich M. Hynes, and Richard M. Hynes, disbarred. Table 7 presents the results. Column A presents the number of attorneys who have handled a given number of individual Chapter 11 cases while Column B shows this number as a percentage of all attorneys in our sample. Column (C) shows the number of individual Chapter 11 cases handled by attorneys with a given level of experience, and Column (D) presents that number as a percentage of all individual Chapter 11 cases in our sample except those filed pro se.

**Table 7: Attorneys**

<b>Petitions Filed</b>	<b>Attorney Experience</b>		<b>Cases by Attorney Experience</b>	
	<b>(A) Number</b>	<b>(B) % of Total</b>	<b>(C) Number</b>	<b>(D) % of Total</b>
<b>21+</b>	17	0.7%	609	10.4%
<b>16 to 20</b>	10	0.4%	181	3.1%
<b>11 to 15</b>	35	1.4%	453	7.7%
<b>6 to 10</b>	135	5.5%	998	17.0%
<b>3 to 5</b>	352	14.3%	1304	22.2%
<b>2</b>	422	17.1%	844	14.3%
<b>1</b>	1493	60.6%	1493	25.4%

The data in Table 7 suggest that few attorneys specialize in individual Chapter 11s. Only 62 attorneys handled eleven or more individual Chapter 11 cases over the two years covered by the data (2010 and 2013). See Column (A) of Table 7. Over 60% of the

individual Chapter 11s in our PACER data sample were filed by attorneys who had filed five or fewer petitions in 2010 and 2013 combined. By contrast, only around 21% of our cases were handled by attorneys who worked on eleven or more cases in 2010 and 2013 combined. *See* Column (D) of Table 7.

We used two methods to identify pro se filings. First, we looked for the text “pro se” following “debtor:” or “possession:”. Using the first method, we estimate that in our combined sample of 2010 and 2013 filings, about 8.2% (548 petitions of 6,666) of the filings were made pro se. Second, we looked for cases in which we could not identify an attorney name using the technique we described for obtaining the data in Table 7. This second method suggests that about 8.1% (537 of 6,666) of the filings were made pro se. The two measures give the same answer in almost all cases.

### **C. Involuntary Chapter 11 Cases**

Bankruptcy courts are like hospitals in that nearly everyone who uses their services would rather that their health (financial or otherwise) made these services unnecessary. Our focus in this section is not on those debtors who wish that they had a better alternative than Chapter 11, but rather on those individuals who were in some sense involuntarily committed to Chapter 11’s care. A debtor may arrive in Chapter 11 against her will if her creditors file an involuntary petition in Chapter 11.<sup>52</sup> By contrast, creditors cannot commence an involuntary Chapter 13 case.<sup>53</sup> The standard justification for this limitation is that creditors should not be able to force an individual into a bankruptcy regime that requires her to pay with future income.<sup>54</sup> But Chapter 11 also

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<sup>52</sup> 11 U.S.C. § 303(a) (2012).

<sup>53</sup> *Id.*

<sup>54</sup> *See, e.g.,* Margaret Howard, *Bankruptcy Bondage*, 2009 U. ILL. L. REV. 191 (2009).

requires the individual to devote future income to a plan,<sup>55</sup> and this fact has generated a substantial amount of criticism from scholars, including one of us.<sup>56</sup> We do not revisit this debate here. Rather, we show that the ability of a creditor to file an involuntary Chapter 11 petition against an individual likely has little or no practical significance.

According to the PACER Reports, just 28 of the 6,666<sup>57</sup> individual Chapter 11 bankruptcies in our sample (0.4%) were started with an involuntary Chapter 11 petition. Because there were so few involuntary petitions, we examined each one.

In 2010, only fourteen individual cases began with an involuntary petition in Chapter 11. Two of these fourteen cases, however, were mistakenly filed as involuntary petitions,<sup>58</sup> while a third case was transferred intra-district and PACER counted it as two, rather than one, involuntary filing.<sup>59</sup> Thus, there were really only eleven involuntary Chapter 11 petitions filed in 2010. Another three cases began as involuntary Chapter 7 cases that converted to Chapter 11.<sup>60</sup> Of these fourteen cases, however, the bankruptcy court entered an order for relief in four cases, only two of which started with the filing of an involuntary Chapter 11 petition.<sup>61</sup> Of these two involuntary Chapter 11 cases,

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<sup>55</sup> 11 U.S.C. § 1129(a)(15) (2012).

<sup>56</sup> See Howard, *supra* note 54.

<sup>57</sup> The total number of filings in our sample varies from question to question due to some cases with omitted fields.

<sup>58</sup> See Ex Parte Motion to Dismiss for Filing by Mistake, *In re Jimenez*, No. 10-18064, at ¶1 (Bankr. Cal. S.D. Oct. 14, 2010) (Dkt. #3) (stating that involuntary petition was filed by mistake and that debtor “intended to file a Voluntary Petition”); Sua Sponte Order Dismissing Petition, *In re Pease*, No. 10-50799, at 2-3 (Bankr. W.D. Tex. March 2, 2010) (Dkt. #2) (explaining that case was “not truly an involuntary case at all” with debtor as the “only petitioning creditor”).

<sup>59</sup> See *In re Weinberg*, No. 10-12836 (Bankr. C.D. Cal. Feb. 22, 2010) (this case transferred intra-district; original case number 10-16229 filed in the Los Angeles division).

<sup>60</sup> Five of the six involuntary individual Chapter 7 cases filed in 2010 and 2013 were converted to Chapter 11 on the debtor’s motion. In the sixth, the bankruptcy court ordered substantive consolidation with the individual debtor’s voluntary Chapter 11 case and, on its own motion, converted the case to Chapter 11. See *infra* note 68.

<sup>61</sup> See Order Entering Relief under Chapter 11 on Involuntary Petition and Directing Filing of Required Documents, *In re Ramos*, No. 10-29568 (Bankr. D. Md. Sept. 20, 2010) (Dkt. #8); Order for Relief under Chapter 11 of the Bankruptcy Code, *In re Pettit*, No. 10-20901 (Bankr. D. Utah Apr. 9, 2010) (Dkt. #9).

however, neither progressed to plan confirmation. In one case, the bankruptcy court dismissed the case less than four months after entering the order for relief.<sup>62</sup> In the other, the bankruptcy court ordered the joint administration of the debtor wife's involuntary case with her debtor husband's voluntary Chapter 11 case<sup>63</sup> and later granted the married debtors' motion to convert to Chapter 7.<sup>64</sup> Thus, in none of the cases in 2010 was the debtor forced into proposing and confirming a Chapter 11 plan.

In 2013, only seven cases began with the filing of an involuntary Chapter 11 petition. Another four cases started with an involuntary Chapter 7 petition followed by conversion to Chapter 11, but PACER coded one of these cases as an individual filing when it was an involuntary corporate filing.<sup>65</sup> The bankruptcy court entered an order for relief in only three of these ten cases, but these three were the involuntary Chapter 7 filings. An order for relief was not entered in any of the involuntary Chapter 11 cases.

A debtor may also arrive in Chapter 11 against her will if she files a voluntary petition in another chapter and her creditors or the bankruptcy trustee move to convert the case to Chapter 11.<sup>66</sup> We focused on debtors who initially filed in Chapter 7 because a Chapter 7 debtor's post-petition earnings are not available to her creditors.

Of the 6,666 individual cases filed in 2010 and 2013 in the 78 judicial districts covered by this Report, only 145, or 2.2%, ended up in chapter 11 after conversion from an initial filing under chapter 7 of the Code. But, this number is misleading, because in

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<sup>62</sup> Order Dismissing Case, *In re Pettit*, No. 10-20901 (Bankr. D. Utah July 26, 2010) (Dkt. #31).

<sup>63</sup> Order Providing for Joint Administration of Cases, No. 10-29070 (Bankr. D. Md. Oct. 14, 2010 (Dkt. #42) (order docketed in lead case).

<sup>64</sup> Order Converting Case to Chapter 7, *In re Ramos*, No. 10-29070 (Bankr. D. Md. Feb. 1, 2011) (Dkt. #117) (order docketed in husband's lead case).

<sup>65</sup> See *In re Dynatemp, Inc.*, No. 13-21960 (Bankr. D. Md. July 12, 2013) (involuntary petition filed under Chapter 7, case converted to Chapter 11, and then re-converted back to Chapter 7).

<sup>66</sup> 11 U.S.C. §§ 706(b), 1307(d) (2012).

almost all of these 145 cases the debtor alone filed the motion to convert to chapter 11 from chapter 7.<sup>67</sup> Of these 145 cases, only two (one filed in each of 2010 and 2013) were converted to Chapter 11 without the debtor's consent.<sup>68</sup> In one of these two cases, the bankruptcy court granted the married debtors' motion to dismiss the case shortly after conversion to Chapter 11.<sup>69</sup> The other case is still pending as of this writing, the debtor has not yet filed a Chapter 11 plan, and the United States and a bank creditor have filed a joint motion to dismiss the case with prejudice.<sup>70</sup>

Regardless of how we count involuntary cases, they are exceedingly rare. The broadest plausible definition would include involuntary Chapter 11 petitions that were not filed by mistake and add cases that were converted from Chapter 7 without the

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<sup>67</sup> In several cases in 2010 and 2013, the debtor and the United States trustee stipulated to conversion, typically after the United States trustee had moved to dismiss for abuse under § 707(b)(2) and (3). *See, e.g.,* Stipulated Order Converting Case, *In re Sharpe*, No. 13-11896 (Bankr. D. N.M. Sept. 24, 2013) (Dkt. #22) (stating that matter was before the court on the U.S. trustee's dismissal motion, and that the debtor and U.S. trustee had stipulated to conversion to Chapter 11); Order Approving Stipulation for Voluntary Conversion of Underlying Case to Chapter 11 under 11 U.S.C. §§ 348 and 706(a) and (c) and §707 (b)(1) In Lieu of Case Dismissal, *In re Peled*, No. 10-37905 (Bankr. C.D. Cal. Nov. 17, 2010) (Dkt. #28) (stating that married debtors and United States trustee had stipulated to a voluntary conversion to Chapter 11 "in Lieu of Case Dismissal under 11 U.S.C. § 707(b)").

<sup>68</sup> *See* Civil Minute Order, *In re Moya*, No. 10-53532 ((Bankr. E.D. Cal. May 4, 2011) (Dkt. #42) (converting case upon motion of United States trustee to dismiss or, in the alternative, convert debtors' chapter 7 case over debtors' objection to dismissal). *See* Order on Florida Bank's Motion to Convert to Chapter 11 Pursuant to 11 U.S.C. § 706(b), *In re Baker*, No. 13-00296 (Bankr. M.D. Fla. Dec. 10, 2013) (Dkt. #83) (stating that conversion to Chapter 11 would benefit both the debtor and her creditors, even though debtor opposed conversion and was eligible for relief under Chapter 7). Two cases in 2010 that appeared, at first, to be involuntary conversions turned out, upon closer examination, not to be involuntary conversions at all. One case was a mistaken Chapter 7 filing; the debtor had intended to file for relief under Chapter 11. *See* Stipulation and Order Consenting to Conversion of this Chapter 7 Case to One under Chapter 11 of the Bankruptcy Code, *In re Cresci*, No. 10-15107 (Bankr. S.D. N.Y. Oct. 1, 2010) (Dkt. #6) (stating that debtor had "intended to file a voluntary individual Chapter 11 petition"). In the other case, the debtor's creditors filed an involuntary Chapter 7 petition against him in October of 2010. *See* Involuntary Chapter 7 Petition, *In re Munson*, No. 10-39795 (Bankr. D. Ore. Oct. 14, 2010) (Dkt. #1). In early January of 2011, the debtor filed his own voluntary Chapter 11 petition. *See* Chapter 11 Voluntary Petition, *In re Munson*, No. 11-30811 (Bankr. D. Ore. Jan. 20, 2011) (Dkt. #1). On January 26, 2011, the bankruptcy court (1) granted an order for relief in the involuntary Chapter 7 case; (2) substantively consolidated the two cases, deeming the involuntary Chapter 7 petition date as the start of the bankruptcy case; and (3) appointed an examiner. *See* Order for Relief; Order Consolidating Cases; Order Directing Appointment of Examiner, *In re Munson*, No. 10-39795 (Bankr. D. Ore. Jan. 26, 2011) (Dkt. #85).

<sup>69</sup> *See* Civil Minute Order, *In re Moya*, No. 10-53532 (Bankr. E.D. Cal. July 6, 2011) (Dkt. #57) (entered two months after order converting case from Chapter 7 to 11).

<sup>70</sup> United States of America's and Iberiabank's Joint Motion for Dismissal with Prejudice, *In re Baker*, No. 13-00296 (Bankr. M.D. Fla. Feb. 18, 2016 (Dkt. #228).

debtors consent. By this measure seventeen of our 6,666 individual Chapter 11 cases (0.26%) are involuntary. The next broadest measure would focus only on those cases in which the court entered an order for relief. By this measure just four of our 6,666 cases (0.06%) are involuntary. Finally, because the concern is that individuals may be forced to pay out of their future income, one could restrict the definition to those cases in which a plan of reorganization has been confirmed. This has not occurred in any of the cases in our sample, though one case is still pending. Thus, while BAPCPA's amendments to chapter 11 created the possibility of Thirteenth Amendment involuntary servitude problems for individual debtors, in practice there are virtually no involuntary individual Chapter 11 cases.

#### **D. Is Chapter 11 Succeeding?**

We now turn to a central question that motivates much of the empirical bankruptcy literature—whether bankruptcy successfully serves the interests of individual debtors and their creditors. Many scholars begin with a debtor-centric definition of success, such as whether the debtor receives a discharge or confirms a plan of reorganization.<sup>71</sup> In Part 1, we use a modified version of this definition and ask whether individuals receive a discharge or at least avoid dismissal for a significant period of time.

This definition may be the best we can implement with the PACER case reports, but it does have some fairly serious problems. First, this may not be the right measure, even from a debtor-centric viewpoint, because it may not capture the debtor's primary goals. For example, Chapter 13 is often criticized for seldom leading to a discharge,<sup>72</sup> but relatively few Chapter 13 debtors list the receipt of a discharge as their primary goal;

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<sup>71</sup> See, e.g., *Success of Chapter 11*, *supra* note 2; Norberg & Velkey, *supra* note 1.

<sup>72</sup> See, e.g., Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 TEX. L. REV. 103 (2011).

most commonly, the primary goal is to save the debtor’s home.<sup>73</sup> Therefore, some scholars argue that bankruptcy can successfully serve the debtor’s interests without leading to a discharge, but others strongly disagree.<sup>74</sup>

Second, a successful bankruptcy process should provide relief appropriate to a particular debtor, and this is particularly true of the reorganization chapters. An optimal bankruptcy process would quickly and accurately identify those debtors who will not be able to successfully reorganize and either dismiss or convert the case to a Chapter 7 liquidation. As a result, some scholars have measured bankruptcy’s success by the length of time it takes courts to dismiss or convert failed reorganizations.<sup>75</sup> In Part 2, we apply a version of this length-of-time definition to the individual Chapter 11 cases in our PACER data sample.

1. *Do Individuals Receive a Discharge or At Least Avoid Dismissal?*

The data used in this section provide only the case disposition, not whether the court confirmed a Chapter 11 plan. Because there may be more than one debtor, the reports contain a field for the first debtor and another field for the second debtor, if any. Table 8 summarizes the disposition for the first debtor only, and gives the raw number of cases and percentage of total cases.

**Table 8: Outcomes of Individual Chapter 11 Cases**

	All Individual Chapter 11		Business		Non-Business	
	2010	2013	2010	2013	2010	2013

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> See *Bankruptcy Decision Making*, *supra* note 2; *Success of Chapter 11*, *supra* note 2.

	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Standard Discharge	402	9.9%	127	4.9%	219	12.1%	59	4.9%	183	8.2%	68	4.8%
Hardship Discharge	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Blank	363	9%	737	28.2%	180	10%	327	27.3%	183	8.2%	410	28.9%
Discharge Not Applicable	552	13.6%	260	9.9%	262	14.5%	138	11.5%	290	12.9%	122	8.6%
<b>Total "Success"</b>	<b>1,317</b>	<b>32.5%</b>	<b>1,124</b>	<b>42.9%</b>	<b>661</b>	<b>36.5%</b>	<b>524</b>	<b>43.8%</b>	<b>656</b>	<b>29.3%</b>	<b>600</b>	<b>42.3%</b>
Converted to Ch. 7	937	23.1%	379	14.5%	410	22.7%	180	15%	527	23.5%	199	14%
Converted to Ch. 13	48	1.2%	30	1.1%	11	.6%	12	1%	37	1.7%	18	1.3%
Dismissed	1445	35.7%	914	34.9%	602	33.3%	413	34.5%	843	37.6%	501	35.3%
Discharge Denied, Revoked, Waived or Withheld	249	6.1%	135	5.2%	100	5.5%	53	4.4%	149	6.7%	82	5.8%
<b>Total "Failure"</b>	<b>2,679</b>	<b>66.2%</b>	<b>1,458</b>	<b>55.7%</b>	<b>1123</b>	<b>62.1%</b>	<b>658</b>	<b>55%</b>	<b>1,556</b>	<b>69.5%</b>	<b>800</b>	<b>56.3%</b>
Case Transferred	47	1.2%	31	1.2%	23	1.3%	12	1%	24	1.1%	19	1.3%
Other	6	.1%	4	.2%	2	.1%	3	.3%	4	.2%	1	.1%
<b>Total "Procedure"</b>	<b>53</b>	<b>1.3%</b>	<b>35</b>	<b>1.3%</b>	<b>25</b>	<b>1.4%</b>	<b>15</b>	<b>1.3%</b>	<b>28</b>	<b>1.3%</b>	<b>20</b>	<b>1.4%</b>
<b>Total Number</b>	<b>4,049</b>		<b>2,617</b>		<b>1,809</b>		<b>1,197</b>		<b>2,240</b>		<b>1,420</b>	

Using a debtor-centric definition of success, we count as failures any case that was dismissed or any case in which discharge was withheld, denied or waived.<sup>76</sup> We also count as failures those cases that were converted to Chapters 7 and 13 under the theory that the debtor should have begun in those Chapters.

We count cases as a “success” if the debtor received a discharge, or if the result field was left blank or coded as “Discharge Not Applicable.” Corporations receive a discharge upon confirmation of a Chapter 11 plan of reorganization, unless they are using

<sup>76</sup> It is not worth debating whether a waived discharge is really a failure because these waivers account for a negligible percentage of the cases.

Chapter 11 to liquidate.<sup>77</sup> By contrast, individuals do not receive a discharge in Chapter 11 until they complete their plan<sup>78</sup> unless the court orders a discharge earlier for cause (a hardship discharge).<sup>79</sup> The PACER data do not reveal any hardship discharges in Chapter 11, suggesting that debtors who are unable to complete or modify their plans of reorganization face conversion to Chapter 7 or dismissal of their cases.

Because we examined the cases during the summers of 2014 and 2015, many cases were not yet completed, particularly those filed in 2013. We counted open cases as successes because the debtor had avoided conversion or dismissal for approximately four years for the 2010 cases. Some of these debtors could still be trying to approve a plan, but our search of the individual records suggests that in most of the open cases the debtor is still making the payments required by a confirmed plan.<sup>80</sup> We suspect that cases in which the disposition code was blank were likely to be open cases, and during our pilot project we checked fifty randomly selected individual Chapter 11 cases with a blank disposition field. Forty-seven of the fifty were indeed live cases as of June 1, 2014. We could not determine the status of one of the remaining three because the docket was not available electronically. The last two cases had been administratively closed. A debtor in Chapter 11 must continue to pay U.S. trustee fees while the case is still open.<sup>81</sup> In an effort to save the individual from having to pay these fees, many courts will temporarily or administratively close the case after the confirmation of the plan and then reopen the case upon completion of the plan so that the debtor can receive a discharge.<sup>82</sup> Courts

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<sup>77</sup> 11 U.S.C. § 1141(d)(1), (3) (2012).

<sup>78</sup> 11 U.S.C. § 1141(d)(5) (2012).

<sup>79</sup> *Id.* The hardship discharge requires that unsecured creditors receive at least as much as they would in Chapter 7.

<sup>80</sup> See *infra* Table 43, and the accompanying text.

<sup>81</sup> 28 U.S.C. § 1930(a)(6) (2012).

<sup>82</sup> See *supra* Section I.

that administratively close a case more typically code the disposition as “discharge not applicable,”<sup>83</sup> and we count this disposition as a success as well.

Table 8 also provides the outcomes for business and non-business individual Chapter 11s separately. Given our current definitions, the data suggest that business cases succeed at a higher rate than non-business cases.

One of the most striking statistics from Table 8 is that almost a third of all individual Chapter 11 cases from 2010 appear to be “successes.” The rate is even higher for cases filed in 2013, but we explain below that this figure is misleading. In addition, the one-third “success” rate is not directly comparable to the roughly one-third success rate typically found in studies of Chapter 13<sup>84</sup> because we are using a different definition of success. We are counting cases as successes even if the debtor has not yet received a discharge. To see the consequence of this definition, we apply it to the Chapter 13 cases in our sample as well. Like individuals in Chapter 11, debtors in Chapter 13 do not receive a discharge until they have completed all plan payments (unless the court gives a hardship discharge),<sup>85</sup> and debtors may propose plans that last up to five years.<sup>86</sup>

Table 9 applies our definition of success to Chapter 13 cases and finds a success rate of over 40% in 2010—higher than the estimates of prior scholars.<sup>87</sup> Note, however, that cases in which the debtor has actually received a discharge account for just 18% of

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<sup>83</sup> Judge Collins of the Bankruptcy District of Arizona first explained this coding system to us, and Nancy Dickerson, Chief Deputy Clerk of the Bankruptcy District of Arizona, confirmed this to be true. *See* e-mail exchange among the Honorable Daniel Collins, Nancy B. Dickerson, Margaret Howard and Richard Hynes, Aug. 14, 2014 (on file with authors). To check the plausibility of this assumption, we searched twenty randomly selected individual Chapter 11 cases in which the disposition was coded as “discharge not applicable” and found just one with a disposition inconsistent with this explanation. That case was voluntarily dismissed prior to plan approval.

<sup>84</sup> *See supra* note 27.

<sup>85</sup> 11 U.S.C. § 1328 (2012).

<sup>86</sup> 11 U.S.C. § 1322(d) (2012).

<sup>87</sup> *See supra* note 27.

our cases; most of our “successes” are cases for which the PACER case reports left the disposition field blank. During our pilot study we used Bloomberg Law to check fifty randomly selected Chapter 13 cases in which the disposition code was “blank.” We could not find any cases that were clearly closed by June 1, 2014, although we could not locate three of the cases.

**Table 9: Chapter 13 Outcomes**

	2010		2013	
	Number	%	Number	%
Standard Discharge	71,840	17.7%	3,713	1.2%
Hardship Discharge	601	0.1%	76	0.0%
Blank	113,488	27.9%	156,559	52.5%
Discharge Not Applicable	395	0.1%	112	0.0%
<b>Total "Success"</b>	<b>186,324</b>	<b>45.8%</b>	<b>160,460</b>	<b>53.8%</b>
Converted to Chapter 7	42,934	10.6%	20,126	6.7%
Dismissed	174,077	42.8%	116,428	39.0%
Discharge Denied, Revoked or Withheld	2,235	0.5%	657	0.2%
<b>Total "Failure"</b>	<b>219,246</b>	<b>53.9%</b>	<b>137,211</b>	<b>46.0%</b>
Case Transferred	552	0.1%	407	0.1%
Other (Filed in Error, Split or Closed in Error)	373	0.1%	173	0.1%
<b>Total "Procedure"</b>	<b>925</b>	<b>0.2%</b>	<b>580</b>	<b>0.2%</b>
<b>Total Number of Cases</b>	<b>406,495</b>		<b>298,251</b>	

One should not use Tables 8 or 9 to directly compare the outcomes of the 2010 and the 2013 cases, because we define “success” as the absence of failure, and the 2010 cases have had much more time to fail. We, therefore, made use of the PACER fields that record the date of conversion or dismissal to estimate the status of each case 545 days after filing – roughly the time between a case filed on December 31, 2013 and when we first started gathering PACER case reports for 2013 cases. Table 10 presents the results. With this adjustment, the outcomes of the 2010 and 2013 cases look remarkably similar with about half of each year’s cases qualifying as a “success” at that point in time.

**Table 10: Outcomes Measured at 545 Days**

	2010		2013	
	Number	%	Number	%
Standard Discharge	45	1.1%	57	2.2%
Hardship Discharge	0	0.0%	0	0.0%
Blank	1,806	44.6%	1,089	41.6%
Discharge Not Applicable	169	4.2%	158	6.0%
<b>Total "Success"</b>	<b>2,020</b>	<b>49.9%</b>	<b>1,304</b>	<b>49.8%</b>
Converted to Ch. 7	757	18.7%	329	12.6%
Converted to Ch. 13	48	1.2%	30	1.1%
Dismissed	1,110	27.4%	834	31.9%
Discharge Denied, Revoked, Waived or Withheld	61	1.5%	85	3.2%
<b>Total "Failure"</b>	<b>1,976</b>	<b>48.8%</b>	<b>1,278</b>	<b>48.8%</b>
Case Transferred	47	1.2%	31	1.2%
Other	6	0.1%	4	0.2%
<b>Total "Procedure"</b>	<b>53</b>	<b>1.3%</b>	<b>35</b>	<b>1.3%</b>
<b>Total Number of Cases</b>	<b>4,049</b>		<b>2,617</b>	

2. *How Long Does it Take Courts to Kick Out "Failed" Cases?*

Scholars have pointed out that a good bankruptcy system will sort between cases that should be reorganized and those that should not, dismissing the latter set quickly.<sup>88</sup> Morrison examined ninety-one cases filed in 1998 in the Northern District of Illinois by corporations that: i) were not single-asset real estate cases, ii) were not using Chapter 11 to sell assets or settle a dispute with a particular creditor, iii) were not "dead on arrival," iv) were not publicly traded, v) did not lack sufficient information, and vi) were not pushed into bankruptcy involuntarily.<sup>89</sup> He found that 62% of the businesses in his

<sup>88</sup> See *Bankruptcy Decision Making*, *supra* note 2; *Success of Chapter 11*, *supra* note 2.

<sup>89</sup> See *Small Business Workouts*, *supra* note 2 at 385-86. Morrison also consolidated affiliate filings and dropped repeat filings.

sample were shut down or forced to exit Chapter 11.<sup>90</sup> Of these cases, half of the firms were shut down within three months and 70% within five months.<sup>91</sup>

Warren and Westbrook looked at 437 “business”<sup>92</sup> cases filed under Chapter 11 in 2002. They found that “of all the cases that were eventually pushed out of Chapter 11 without a plan having been filed, more than half were gone in less than six months, 70% were gone by nine months, and more than 80% were gone within a year. By eighteen months, more than 90% of all the cases that will exit Chapter 11 without a plan on file had already.”<sup>93</sup>

We do not claim to update the Morrison or Warren and Westbrook results for 2010. Their samples were hand-coded, allowing them to focus on particular subsets of cases such as those not operating in particular industries or those for which no plan was proposed. We instead used much cruder measures, but with a much larger and more recent data set.

Table 11 presents the number of days to conversion or dismissal for those 2010 cases for which PACER provided the relevant dates. We present the time to “failure” (that is, conversion or dismissal) for individual Chapter 11 cases. To provide some frame of reference, we include this same time-to-failure measure for corporate Chapter 11s, small business Chapter 11s, and Chapter 13 cases.

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<sup>90</sup> *Id.* at 389.

<sup>91</sup> *Id.* at 382.

<sup>92</sup> Warren and Westbrook defined business to include: i) all cases in which the debtor checked “business”, ii) all cases organized as a corporation, partnership or LLC, and iii) all cases in which there was a business name in the title. *Success of Chapter 11, supra* note 2, at 609.

<sup>93</sup> *Id.* at 630.

**Table 11: Days to conversion or dismissal for "failed" cases in 2010**

<b>Percent of Failures Converted or Dismissed</b>	<b>Individual Chapter 11</b>	<b>Corporate Chapter 11</b>	<b>Small Business Chapter 11</b>	<b>Chapter 13</b>
10%	58	42	27	25
25%	140	105	63	72
50%	293	226.5	181	252
75%	487	407	343	643
90%	785	663	572	1,059
Average	363	302	251	407
Standard Deviation.	303	272	260	412
Number of Cases	2,389	4,778	1,424	217,253

The median time to conversion or dismissal for individual Chapter 11 cases is 293 days, or between nine and ten months. At about sixteen months, 75% of the individual Chapter 11 failures had been kicked out of the system. It took 140 days—between four and five months—to kick out just 25% of the individual Chapter 11 failures. This time to dismissal is substantially longer than the times estimated by Morrison and Warren and Westbrook, but, as noted above, measurements are not directly comparable given the differences in samples.

A comparison between individual and corporate Chapter 11 cases is made more difficult because of the different rules for discharge. Once a corporate Chapter 11 debtor confirms a plan, it receives a discharge in short order.<sup>94</sup> If it later cannot pay the obligations set forth in its plan, it may re-enter bankruptcy, but its initial bankruptcy will not be dismissed. By contrast, an individual debtor does not receive her discharge until plan payments are complete.<sup>95</sup> We should, therefore, expect individual Chapter 11 cases to last longer before dismissal, and this is indeed what we find. The median time to

<sup>94</sup> 11 U.S.C. § 1141(d)(1) (2012).

<sup>95</sup> 11 U.S.C. § 1141(d)(5) (2012).

dismissal for corporate Chapter 11 cases is 226 days, about two months shorter than the median time for individual Chapter 11 cases. The difference between the timing of small business bankruptcies and individual Chapter 11 bankruptcies is especially pronounced, and this is probably due to the deadlines imposed on these debtors.

A trustee monitors Chapter 13 cases,<sup>96</sup> and the debtor must meet strict deadlines. For example, a Chapter 13 debtor must propose a plan of reorganization within fourteen days of filing,<sup>97</sup> and the debtor must begin making payments within thirty days of filing.<sup>98</sup> Therefore, one should expect failed Chapter 13 cases to be kicked out more quickly, especially at the beginning of the process. This is indeed what we find. It takes just 71 days to kick out 25% of the Chapter 13 failures (more than a month less than it takes in individual Chapter 11 cases). However, the difference becomes less pronounced as one moves out the distribution. It takes almost as long (239 days as opposed to 252) to kick out half of the Chapter 13 debtors, and it actually takes longer (1,051 versus 707) to kick out three-quarters of the Chapter 13 debtors. Perhaps this should not be surprising. The cases that last the longest before failure will be cases in which the debtor fails to comply with a confirmed plan, and there is little reason to think that Chapter 13 will identify and kick out these cases more quickly. In fact, we find that courts dismiss 75% of the failed individual Chapter 11 cases more quickly than they dismiss 75% of the failed Chapter 13 cases (405 versus 494 days). We revisit the timing issue in our hand-coded sample.

### **III. Coding Individual Cases**

In Part II we worked with an extremely large data set, but we were limited to the variables that PACER chose to code. This section makes use of a much smaller set of

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<sup>96</sup> 11 U.S.C. § 1302 (2012).

<sup>97</sup> FED. R. BANKR. PROC. 3015(b).

<sup>98</sup> 11 U.S.C. § 1326 (2012).

cases, but examines them in much greater detail. We constructed a data set using court records to code approximately 100 individual Chapter 11 cases from each of 2010 and 2013. We used a random number generator to choose relevant cases from the PACER data discussed in Section II. Because we received our PACER waivers over the course of many months, we estimated probabilities of inclusion that would yield approximately 100 cases in each year and we applied these same probabilities as we received additional waivers. The final samples contain 109 cases from 2010 and 114 from 2013 (the “random sample data”).

Initially we selected only those cases for which PACER listed the debtor type as an individual. Searches of partnership and corporation Chapter 11 bankruptcies suggested that few, if any, of these cases involved individual debtors. For cases in which PACER listed the debtor type as “other,” however, we found a few individual Chapter 11 filings. We included these miscoded cases at the same probability that we used for the cases coded as individual.

We coded for the debtor’s financial information using the last-filed schedules in the Chapter 11 case. There were some cases in which the debtor converted to Chapter 11 from another Chapter of the Code, or converted from Chapter 11 to another Chapter without ever filing schedules inside the Chapter 11 case. In these cases, we used the schedules filed closest in time to the beginning or end of the Chapter 11 case. For example, if the debtor initially filed for relief under Chapter 7 and filed schedules during the pendency of the Chapter 7 case, but did not re-file schedules when the case converted to Chapter 11, we coded the case using the last schedules filed in the Chapter 7 case prior to conversion to Chapter 11. If the debtor initially filed for relief under Chapter 11 and

the case converted to Chapter 7 without the debtor filing schedule during the Chapter 11 case, we used the first schedules filed after conversion to Chapter 7. We were unable to code some information because of missing, incomplete or incomprehensible schedules. We denote these records as “unknown” and present the percentage of such cases in each table because it varies from question to question (e.g. some debtors complete some schedules but not others). We also note that some debtors listed assets or liabilities without declaring an itemized value and with an implicit valuation of zero in the totals. These entries, therefore, almost certainly understate the true values.

Our main goals are to determine whether Chapter 11 debtors look more like Chapter 13 debtors or small and medium-sized enterprises,<sup>99</sup> whether debtors appear to make good use of the flexibility afforded by Chapter 11, whether creditors are actively participating in the process, and whether Chapter 11 seems to effectively serve the interests of debtors and creditors.

**A. Do Individuals In Chapter 11 Look Like Those in Chapter 13?**

We use this section to begin to sketch a portrait of the individual debtors who file under Chapter 11. One of the motivating questions for this project is whether the individual Chapter 11 bankruptcies would be better resolved in Chapter 13 or some hybrid subchapter tailored to the specific needs of these cases. This is a difficult question as it is not at all clear that Chapter 13 effectively provides a fresh start to consumers or that Chapter 11 effectively reorganizes the small and medium-sized enterprises that dominate its docket. Still, it’s worth asking whether the individual Chapter 11 debtors

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<sup>99</sup> The American Bankruptcy Institute Commission to Study the Reform of Chapter 11 recommended a number of amendments to Chapter 11 for cases involving debtors that qualify as small and medium-sized enterprises (“SME”). *See* Final Report and Recommendations, American Bankruptcy Institute Commission to Study the Reform of Chapter 11 275-302 (2014) [hereinafter ABI Commission Report].

look more like Chapter 13 consumers with just a little more debt or small and medium-sized enterprises

1. *Demographic Information*

Tables 12 and 13 present some basic demographic information. A little over half of the debtors reported a household size of one or two individuals; another thirty-seven (2010) to thirty-nine (2013) reported household sizes of three or more. A large majority of the debtors (at least 65% in 2010 and 72% in 2013) are married. A significant number of married debtors chose not to file jointly with their spouses, suggesting that they had somewhat separate financial affairs. Only 41.3% of filings were joint filings in 2010; in 2013 this number fell to 34.2%.

Table 13 also reports the gender of the Chapter 11 filers and the results of prior studies of the gender of Chapter 13 filers.<sup>100</sup> We determined the gender of our filers by inserting their first name into a web page that states whether the name is primarily used by men or women<sup>101</sup>. If the debtor's first name is commonly used by both men and women or is not in the database, we checked the middle name. If that name was also ambiguous or was unavailable, we coded the debtor's gender as unknown. While other studies have found that more than a third of Chapter 13 filers are women filing alone, such debtors make up less than 15% of our sample.

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<sup>100</sup> See Norberg & Velkey, *supra* note 1; Eraslan, *supra* note 13.

<sup>101</sup> <http://genderchecker.com/search.aspx>

**Table 12: Household Size and Marital Status**

Household Size	2010	2013
<b>1</b>	27.5%	21.9%
<b>2</b>	25.7%	31.6%
<b>3 to 4</b>	22.0%	26.3%
<b>5+</b>	14.7%	13.2%
<b>Unknown</b>	10.1%	7.0%

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Marital Status	2010	2013
<b>Married</b>	65.1%	71.9%
<b>Not Married</b>	24.8%	22.8%
<b>Unknown</b>	10.1%	5.3%

**Table 13: Joint Filers and Gender**

	Chapter 11 Random Samples		Chapter 13	
	2010	2013	Eraslan, Li & Sarte Data	Norberg & Velkey Data
<b>Joint Filing</b>	41.3%	34.2%	35.1%	25.5%
<b>Male</b>	41.3%	50.9%	29.8%	34.8%
<b>Female</b>	14.7%	12.3%	35.1%	34.3%
<b>Unknown</b>	2.8%	2.6%		5.3%

We do not know why so few women file for relief under Chapter 11. Putting aside joint filings, there are approximately three to four times as many male to female debtors in our 2010 and 2013 samples (41.3% to 14.7% in 2010, and 50.9% to 12.3% in 2013). Perhaps female entrepreneurs are more likely than male entrepreneurs to mingle their affairs with those of their spouse so that joint filings are necessary. Perhaps women are more likely to file under Chapter 13 because they are more willing to let a trustee have some control over their businesses or they are less willing to pay the greater costs of Chapter 11. All of this is speculation, but the result does stand in sharp contrast to the existing literature on Chapter 13 filers.

2. *Business Operations*

In Section II.A.4, we noted that individual Chapter 11 debtors are far more likely to check the “primarily business debts” box on the petition than are Chapter 13 debtors. We also noted that debtors may not give much thought to whether their debts are primarily consumer or business in nature, and so the PACER data results may underestimate the rate at which debtors are actually engaging in “business.” We return to these issues now.

**Table 14: Engaged in Business**

	Primarily Business Debts		Business1		Business2	
	2010	2013	2010	2013	2010	2013
<b>Yes</b>	45.9%	43.0%	80.7%	86.8%	86.5%	92.1%
<b>No</b>	53.2%	56.1%	12.8%	8.8%	5.4%	3.5%
<b>Unknown</b>	0.9%	0.9%	6.4%	4.4%	6.3%	4.4%

Table 14 demonstrates that the rate at which our small sample debtors checked the “primarily business debts” box on the petition is similar to the rate reported by PACER, as expected given that the small samples were randomly drawn from the PACER case reports. Table 14 also presents two alternative measures of business activity. We coded “Business1” as “yes” if the debtor: i) checked the “primarily business debts” box on the petition, ii) disclosed any business assets on Schedule B,<sup>102</sup> iii) disclosed a currently operating business on the Statement of Financial Affairs, or iv) disclosed business income or business expenses of at least \$1,000 per month on Schedule

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<sup>102</sup> We used the following instruction to guide the research assistants in their coding efforts: “Are there items listed in items 13, 14, 16, 22-24, 29-30, and/or 32-34 of Schedule B indicating that debtor is operating a business? Answer Y or N, the item numbers from Sch. B, and a short description. Example: debtor lists three firms in item 13, accounts receivable in Item 16, and a patent in Item 22, enter "Y, 13(3B), 16, & 22(P)." No need to identify in parentheses for items with a single category, like accounts receivable. Please use abbreviations that sufficiently identify the item in parentheses.”

I. Using this measure, at least 81% of the 2010 debtors and 87% of the 2013 debtors operated a business.

Owning and leasing real estate is a form of business. We, therefore, created another measure, Business 2, to add those debtors with substantial real estate income. We coded a case as Business 2 if the debtor: (i) satisfied any of the requirements for Business 1, or (ii) had at least \$1,000 per month in real estate income. Using this measure, the business rate rose to 86% in 2010 and 92% in 2013. Only 4-5% of debtors in each year were not engaged in business under this measure.

Some of these debtors may be able to use Chapter 13 to reorganize their affairs. However, as the data in Table 13 indicate, the sharply higher rate at which Chapter 11 debtors are conducting business is some indication that a different set of procedures may be appropriate.

We also checked to see the extent to which our debtors' financial affairs were entangled with those of legal entities or individuals other than their spouses. Table 15 presents that data. The rate at which our debtors disclosed affiliate bankruptcies on their petitions rose sharply from about 4% in 2010 to about 12% in 2013. By contrast, the rate of administrative consolidation fell from about 7% in 2010 to about 4% in 2013. Finally, we found no substantive consolidations in our sample.

The main lesson from these results is that affiliate filings and consolidation (procedural or substantive) seem to be somewhat rare. We do not want to overemphasize the differences between the years. Our sample sizes are relatively small and so there is a significant amount of uncertainty as to the true means for the full population. The

difference in the rate of affiliate bankruptcies may actually be smaller (or larger), and the difference in the rate of administrative consolidation is not statistically significant.

**Table 15: Related Bankruptcy Cases**

	Affiliate Bankruptcy		Administrative Consolidation		Substantive Consolidation	
	2010	2013	2010	2013	2010	2013
<b>Yes</b>	4.6%	12.3%	7.3%	3.5%	0.0%	0.0%
<b>No</b>	89.9%	85.1%	92.7%	96.5%	100.0%	100.0%
<b>Unknown</b>	5.5%	2.6%	0.0%	0.0%	0.0%	0.0%

To check for further entanglements between the debtor’s financial affairs and those of another individual or legal entity, we looked to see if the debtor disclosed guaranteeing the debt of another or serving as a co-debtor for someone other than the debtor’s spouse. We not only coded for the existence of a guaranty or co-debtor, but also whether the co-debtor or the obligor on the guaranteed debt was an individual or non-human legal entity. Table 16 presents the results. Perhaps the most striking result is that more than thirty percent of the debtors in each year were somehow liable for debt owed by a legal entity, suggesting substantial entanglement in some business enterprise.

**Table 16: Guaranties or Co-Debtors**

	Guaranty or Co-Debtor	
	2010	2013
<b>Co-debtor or guarantor of both legal entity and individual</b>	17.4%	20.2%
<b>Legal Entity only</b>	15.6%	17.5%
<b>Individual only</b>	12.8%	14.0%
<b>Unknown Entity</b>	0.0%	0.9%
<b>None</b>	39.4%	29.8%
<b>Unknown</b>	14.7%	17.5%

Given the evidence that a large number of the individual debtors in the 2010 and 2013 random samples were engaged in some form of business activity, we expected a

substantial cohort to check the small business debtor box on the voluntary petition. The small business debtor definition in the Code applies to individual debtors and contains no requirement that the debtor be primarily engaged in business or commercial activity.<sup>103</sup> Yet, as the data in Table 17 demonstrate, the vast majority of individual Chapter 11 debtors in 2010 and 2013 did not identify as small business debtors on the voluntary petition. In 2010, only 15.3% of individual Chapter 11 debtors checked the small business debtor box on their voluntary petitions; that figure dropped to 11.4% in the 2013 random sample.

In approximately 11% of the cases in the 2010 and 2013 samples, the debtor did not identify its status as a small or non-small business debtor on the petition. These cases are shown in Table 17 as “N/A” or “N/A-converted.” Of that 11%, a small number of debtors (less than 3% each year) either failed to check one of the small business status boxes on their Chapter 11 petition or checked both boxes; we coded these cases as “N/A.” Another 8% to 9% of the individual debtors in the 2010 and 2013 random sample who failed to identify as a small business debtor began bankruptcy in a chapter other than Chapter 11. Only Chapter 11 debtors must complete the small business portion of the voluntary petition.<sup>104</sup> Upon conversion to Chapter 11, many debtors in the 2010 and 2013 random samples did not re-file the voluntary petition and, hence, these debtors did not designate their status as a small or non-small business debtor.

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<sup>103</sup> The small business debtor definition applies to persons, which includes individuals, *see* 11 U.S.C. § 101(41), “engaged in commercial or business activities.” 11 U.S.C. § 101(51D) (A) (2012).

<sup>104</sup> *See* <http://www.uscourts.gov/forms/bankruptcy-forms/voluntary-petition>. Form B1 has been superseded by Form B101 for individual debtors, but Question 13 still limits the small business questions to those debtors filing for relief under Chapter 11. *See* <http://www.uscourts.gov/forms/individual-debtors/voluntary-petition-individuals-filing-bankruptcy>

**Table 17: Small Business Debtors 2010 and 2013**

	2010		2013	
	Number	Percentage	Number	Percentage
<b>Small Business</b>	17	15.6%	13	11.4%
<b>Not Small Business</b>	80	73.4%	88	77.2%
<b>N/A - converted</b>	9	8.3%	10	8.8%
<b>N/A</b>	3	2.8%	3	2.6%

It is unclear whether the figures in Table 17 accurately reflect the percentage of small business debtors among the individual Chapter 11 debtors in the two random samples. With BAPCPA, Congress eliminated the small business election, adopted in 1994, and required debtors to identify as small business debtors if they satisfied the Code’s new definition.<sup>105</sup> Yet, some commentators, including one of us, have questioned whether Chapter 11 “small business debtors are not self-reporting and may not be proceeding as small business cases.”<sup>106</sup>

An individual debtor qualifies as a small business debtor if: (1) she is engaged in business or commercial activities; (2) her liabilities fall below the statutory debt limit then in place for small businesses;<sup>107</sup> (3) an official unsecured creditors’ committee does not form; and (4) her primary activity is not the business of owning or operating real

<sup>105</sup> See ABI Commission Report, *supra* note 99, at 389 (stating that “the current small business provisions are mandatory and self-executing”); see also *Individual Chapter 11 Debtors*, *supra* note 3, at 462-63.

<sup>106</sup> ABI Commission Report, *supra* note 99, at 289-90 (citing study by Professor Robert Lawless, which found that close to two-thirds of debtors that should have designated as a small business failed to do so on the petition); see also *Musings*, *supra* note 3 (finding that even though Congress made small business designation mandatory with BAPCPA that the percentage of debtors checking the small business box on the petition increased only slightly among her 2007 sample from her 2004 sample of individual Chapter 11 debtors).

<sup>107</sup> The debt ceiling in § 101(51D) for a small business debtor changes every three years on April 1. See 11 U.S.C. § 104(a) (2012). From January 1, 2010 through March 31, 2010, the small business debt limit was \$2,190,000. For cases filed between April 1, 2010 and March 31, 2013, the debt limit was \$2,343,000. The latter figure increased to \$2,490,925 on April 1, 2013, and recently re-set, in April 1, 2016, to 2,566,050.

property.<sup>108</sup> As the data in Table 14 show, the vast majority of the debtors in the 2010 and 2013 samples were engaged in some form of business or commercial enterprise. Half the debtors in 2010 had total liabilities reported on their summary of schedules, without deducting for contingent and unliquidated debt, of \$1,837,241 or less. In 2013, that median figure fell to \$1,544,138. Thus, at least half the debtors in the 2010 and 2013 samples had liabilities substantially below the then-current small business liability cutoff. An official committee of unsecured creditors did not form in any of the cases in our 2010 or 2013 samples. Therefore, unless the primary activity of a substantial number of the debtors in our 2010 and 2013 was the business of owning or operating real property, the data in Table 17 suggest that many individual debtors who qualify as small business debtors are designating as non-small business debtors on the petition.

As the discussion in Section III.B.3 makes clear, the real estate crisis did play an important role in a number of the cases in the random samples, especially those from 2010. Filing for relief under Chapter 11 because of a foreclosure action against a residence, however, does not mean that the debtor's primary activity was the business of owning or operating real property. Determining which Chapter 11 debtors qualify for the "real property" exclusion and, thus, are not small business debtors is difficult, because Congress failed to define what constitutes a debtor's primary activity. Nonetheless, our data suggests that a not-insignificant number of debtors in both 2010 and 2013 qualified as small business debtors but failed to check the small business debtor box on the voluntary petition.<sup>109</sup>

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<sup>108</sup> See 11 U.S.C. § 101(51D) (2012).

<sup>109</sup> These figures includes debtors who (1) checked neither small business box on their chapter 11 petition; (2) checked neither box on the petition because they initially filed under chapter 7 or 13; and (3) checked that they were not a small business on their chapter 11 voluntary petitions.

Congress created the small business reforms in order to provide better monitoring of small business entities, which perform poorly in Chapter 11.<sup>110</sup> For the non-small business individual filers, there is little oversight in Chapter 11: official creditors' committees rarely form,<sup>111</sup> Chapter 11 trustees are rarely appointed<sup>112</sup>, and the United States trustee's heightened oversight obligations do not apply.<sup>113</sup> As discussed more fully *infra* in Section III.C.2, confirmation rates for individual Chapter 11 debtors are low. Are the low rates attributable to a lack of effective oversight and, if so, does it make sense to raise the debt limits in Chapter 13 in order to send these debtors to Chapter 13 with its more structured process? The difficulty lies in the differences between the stereotypical Chapter 13 debtor and the typical individual debtor in our samples. The individual Chapter 11 debtors have significantly higher incomes, they own more real property, and their cases are more complex than those of the typical Chapter 13 debtor. Therefore, if individual filers do not fit in Chapter 13 but do not perform well in Chapter 11, the solution may lie with a special subchapter tailored to the needs of small business and individual debtors.

### 3. *Prior and Subsequent Bankruptcy Filings*

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<sup>110</sup> See Anne Lawton, *An Argument for Simplifying the Code's "Small Business Debtor" Definition*, 21 ABI L. REV. 55, 90 (2013) [hereinafter *Simple Definition*].

<sup>111</sup> See Anne Lawton, *Chapter 11 Triage: Diagnosing A Debtor's Prospects for Success*, 54 ARIZ. L. REV. 985, 1005-1009 (2012) [hereinafter *Chapter 11 Triage*] (finding that official creditors' committees formed in only 18% of the 798 cases in a national random sample of Chapter 11 debtors who filed for relief in 2004).

<sup>112</sup> See *infra* Table 45.

<sup>113</sup> See 11 U.S.C. § 1116 (2012); 28 U.S.C. § 586(a)(7) (2012).

In 2005, Congress amended § 362(c) of the Bankruptcy Code to discourage bad faith repeat filings by individual debtors filing under Chapter 7, 11 or 13.<sup>114</sup> Congress also added a serial filer provision, found at § 362(n), that applies to small business debtors.<sup>115</sup> The basic argument for these provisions was that debtors were filing and dismissing bankruptcy cases solely to disrupt the foreclosure process. The current literature offers some evidence of serial filing, especially in Chapter 13.<sup>116</sup> However, repeat filing does not necessarily mean bad faith repeat filing. For example, the debtor may have experienced an entirely new financial shock that prevented her from completing her reorganization plan.<sup>117</sup>

We measured serial filing in Chapter 11 by looking at both prior and subsequent bankruptcy cases. For prior filings, we used the debtor's disclosure on the voluntary petition for both 2010 and 2013. To find subsequent cases, we also searched nationally on Bloomberg Law for both prior and subsequent bankruptcy cases using each debtor's name and the last four digits of the debtor's social security number; our searches included *dba*'s used by the debtor and identified on the voluntary petition.<sup>118</sup> We did so in order to check the reliability of the debtors' disclosures. We did not conduct national searches on Bloomberg Law for prior or subsequent bankruptcy filings for the cases in the 2013

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<sup>114</sup> See Hon. William Houston Brown and Lawrence R. Ahern III, 2005 BANKRUPTCY REFORM LEGISLATION WITH ANALYSIS 2D 297 (2006) [hereinafter 2005 REFORM ANALYSIS].

<sup>115</sup> See *id.* at 298.

<sup>116</sup> See, e.g., Norberg & Velkey, *supra* note 1, at 497 ("Among the most remarkable findings of the Project is that at least half of all of the Chapter 13 debtors in the sample had filed one or more bankruptcy cases in addition to the sample case.")

<sup>117</sup> Although Chapter 13 allows debtors to modify their plans, the Administrative Office reports that these modifications are somewhat rare. Of the Chapter 13 plans actually completed in 2014, just 22% had any modifications, and just 2% had more than two. See Table 6 at <http://www.uscourts.gov/statistics-reports/analysis-reports/bankruptcy-abuse-prevention-and-consumer-protection-act-report>.

<sup>118</sup> See <https://www.bloomberglaw.com/start>

random sample. Too little time has elapsed since the 2013 case filings to provide us with a meaningful comparison to the 2010 data.<sup>119</sup>

Table 18 provides data on prior bankruptcy filings, based on the debtor’s disclosures on the petition, for both 2010 and 2013. Notice that there is a substantial increase in prior bankruptcy filings between 2010 and 2013. In 2010, approximately 10% of the debtors had previously filed for bankruptcy;<sup>120</sup> that number more than doubled to 27% in 2013.

**Table 18: Prior Bankruptcies based on Debtor Disclosure**

	<b>2010</b>	<b>2013</b>
<b>Prior Bankruptcy</b>	10.1%	27.2%
<b>No Prior Bankruptcies</b>	85.3%	71.1%
<b>Unknown</b>	4.6%	1.8%

Table 19 shows the results of the national Bloomberg Law searches for 2010. The data provides a more nuanced picture of the 2010 individual debtors, because it shows all bankruptcy filings by the same debtor over the span of approximately twenty years.

**Table 19: Prior and Later Bankruptcies 2010**

	<b>Number</b>	<b>Percent</b>
<b>Prior Bankruptcy Only</b>	8	7.3%
<b>Later Bankruptcy Only</b>	18	16.5%
<b>Both Prior and Later Bankruptcies</b>	9	8.3%
<b>No Other Bankruptcies</b>	74	67.9%

As the data results in Table 19 show, approximately one-third of the debtors in the 2010 sample filed at least one other bankruptcy case. Later filings were more than twice as

<sup>119</sup> While we could have done national searches for prior filings for the 2013 random sample, doing so would have required us to search the same cases twice – for prior filings and then later for subsequent filings. Instead, we decided to wait to conduct both searches until more time has elapsed.

<sup>120</sup> In 2010, twelve debtors disclosed a prior filing on their petitions, but in one case the filing was not by either of the married debtors but rather by a related entity. *See In re Lewis*, No. 10-14965 (Bankr. D. Ariz. May 14, 2010) (disclosing prior filing by Lewis Investment Properties, LLC).

common as prior filings for the 2010 sample. Note that this finding is somewhat consistent with Table 18's data showing that the 2013 debtors were twice as likely to report a prior bankruptcy filing as the 2010 debtors. The data in Table 19 tells us that the period between 2010 and 2013 (and extending to 2015) saw more bankruptcy filings than the period between 2005 and 2010. *See supra* Figure 1. These findings may be the result of economic conditions or the changes brought by BAPCPA.

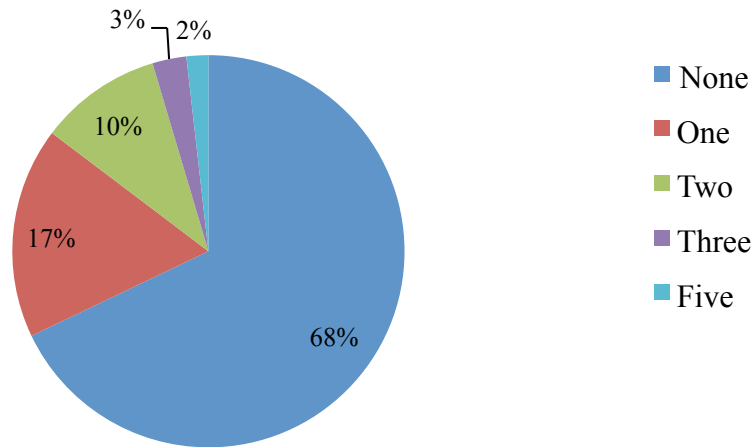
The number of repeat filings is clearly relevant for determining whether the debtor's repeat filings are in bad faith. A second or even a third bankruptcy filing may simply be attempts to successfully rehabilitate the debtor's financial affairs.<sup>121</sup> Reorganization takes time, and successful reorganization may require more than a single bankruptcy filing. However, it is harder to tell a positive story when the debtor files five times in rapid succession.<sup>122</sup> As Figure 2 shows, a handful of the 2010 debtors are in the latter category, though most debtors filed just one or two other bankruptcy cases.

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<sup>121</sup> *See, e.g., In re Langdon*, No. 10-07211 (Bankr. E.D. N.C. Sept. 3, 2010) (married debtors' Chapter 11 plan apparently failed, as they re-filed for relief under Chapter 13 a little over three years after the bankruptcy court confirmed their plan of reorganization).

<sup>122</sup> *See, e.g., In re Anderson*, No. 10-39309 (Bankr. E.D. Cal. July 22, 2010) (chapter 11 case dismissed, after debtor had filed and had dismissed four chapter 13 cases in the prior two years in the Northern District of California; debtor then re-filed for relief under chapter 7, only to have the court dismiss that case within a month of filing); *In re Wiryadimejo*, No. 10-17032 (Bankr. C.D. Cal. May 25, 2010) (chapter 11 case dismissed, after which debtor filed five more bankruptcy cases – four under chapter 7 and one under chapter 11 – over the next 19 months).

**Figure 2: Number of Other Bankruptcy Filings by 2010 Debtors**



BAPCPA’s amendments to § 362 of the Code, however, complicate matters for debtors whose first bankruptcy case fails. Section 362(c)(3) limits the operation of the automatic stay to 30 days from filing in any individual case in which the debtor had a case “pending within the preceding 1-year period [that was] dismissed.”<sup>123</sup> Section 362(c)(3) only applies if certain conditions are met. First, § 362(c)(3) applies *only* if the earlier bankruptcy case was dismissed, unless the dismissal resulted from application of the means test in Chapter 7. Thus, the 30-day stay-termination rule of § 362 (c)(3) does not apply to a second bankruptcy case if the debtor obtained a discharge in the earlier-filed case or confirmed a plan that later failed, even if those earlier cases were pending during the year preceding the debtor’s second bankruptcy case.<sup>124</sup> Second, the time period between filings does not run from petition date to petition date. The Code uses the

<sup>123</sup> 11 U.S.C. § 362(c)(3) (2012).

<sup>124</sup> See, e.g., *In re Inglis*, No. 10-35781 (Bankr. E.D. Va. Aug. 19, 2010) (debtor obtained confirmation of Chapter 11 plan, but re-filed for relief under Chapter 13 nine months later); *In re Dietz*, No. 10-10574 (Bankr. C.D. CA Jan. 8, 2010) (debtor received Chapter 7 discharge in case filed in same district 11 months earlier).

word “pending.” Therefore, if a debtor files a Chapter 13 case in January of 2008, but the case is not dismissed until January of 2010, that Chapter 13 case is pending within one year of any other bankruptcy case filed by the debtor in 2010.<sup>125</sup>

The Code does not define the term “pending,” so it is unclear whether the time period runs from the date of the order of dismissal or the date that the bankruptcy case closes. We used the date of the order of dismissal for the results presented in Table 20.

**Table 20: Other Filings 2010 and §362(c)(3)**

	<b>Number</b>	<b>Percent</b>
<b>No other filings</b>	74	67.9%
<b>Other Filings/No § 362 Problem</b>	7	6.4%
<b>Other Filings/ § 362 Problem</b>	28	25.7%

It is important to realize that the 2010 case may not be the case posing a § 362 problem for the debtor. The data in Table 20 track the 2010 debtors over the span of approximately twenty years. Therefore, if a debtor filed for relief in November of 2010, had her case dismissed in June of 2011, and then filed for relief under Chapter 13 in November of 2011, § 362(c)(3) would apply to the 2011 Chapter 13 filing, not the 2010 Chapter 11 filing. Regardless, what the data in Table 20 show is that § 362(c)(3) posed a problem, at some point in time, for approximately one in four of the debtors in the 2010 random sample.

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<sup>125</sup> See *In re Drabin*, No. 10-16315 (Bankr. M.D. Fla. Dec. 16, 2010) (married debtors initially filed for bankruptcy in December of 2010, about 11 months after the bankruptcy court dismissed their 2008 Chapter 13 case).

#### 4. *Size and Complexity*

We close out this part of the report with some statistics bearing on the complexity of the bankruptcy cases. Complexity is important for two reasons. First, complexity makes it much more difficult to code the cases and increases the chance of an error. For example, many debtors amend their schedules several times over the course of their bankruptcy case, and we tried to use the most recent schedules available.<sup>126</sup> We may have missed some revisions, however, or interpreted some amended schedules as replacements when they were really meant to supplement prior disclosures (or vice versa).<sup>127</sup> Second, complexity makes it harder to argue that these cases belong in Chapter 13. An analogy to tax law might help. Many Americans use forms 1040A or 1040EZ to file their taxes. These simple forms are designed for individuals with very simple financial affairs. Arguably, the same is true of Chapter 13. To the extent that individuals in Chapter 11 do not have simple affairs and have more active creditors, Chapter 13 may serve less well. Size can serve as a proxy for complexity, and here we make use of a few boxes that the debtor checks on the petition. The data in table 21 demonstrate that the overwhelming majority (around 86%) of debtors at filing estimated that they had fewer than 50 creditors, and only around 3% estimated that they had at least 100.

**Table 21: Estimated Number of Creditors**

	<b>2010</b>	<b>2013</b>
<b>1 to 49</b>	86.2%	86.0%
<b>50 to 99</b>	10.1%	10.5%
<b>100 to 199</b>	1.8%	1.8%
<b>200 to 299</b>	0.9%	0.9%
<b>Unknown</b>	0.9%	0.9%

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<sup>126</sup> See *supra* Part III.

<sup>127</sup> Place holder – would like to provide an example here – come back

The data in table 22 demonstrate that the majority of debtors at filing estimated that they had between \$1 and \$5 million of liabilities; the next largest category was between \$500,000 and \$1 million. Fewer than 10% of debtors (6% in 2010 and 8% in 2013) estimated their liabilities as in excess of \$5 million. Even fewer debtors – less than 5% in both 2010 and 2013 - estimated their assets as exceeding \$5 million.

**Table 22: Estimated Assets and Liabilities**

	Assets		Liabilities	
	2010	2013	2010	2013
<b>0 to 50K</b>	17.4%	14.9%	2.8%	1.8%
<b>50K to 100K</b>	0.9%	0.0%	1.8%	1.8%
<b>100K to 500K</b>	14.7%	18.4%	4.6%	10.5%
<b>500K to 1M</b>	11.9%	31.6%	14.7%	21.9%
<b>1M to 5M</b>	48.6%	30.7%	67.0%	55.3%
<b>5M to 10M</b>	0.0%	0.0%	0.0%	0.0%
<b>10M to 50M</b>	3.7%	2.6%	5.5%	7.9%
<b>50M and above</b>	0.0%	0.0%	0.9%	0.0%
<b>n/a</b>	2.8%	1.8%	2.8%	0.9%

One final note is in order before we move on to a more in-depth examination of debtors’ financial information in Part B *infra*. Table 23 provides the debtors’ responses to the question on the petition as to whether assets will be available to pay general unsecured creditors a dividend in the case. As the data in Table 23 reveal, debtors are quite optimistic about their ability to pay an unsecured creditor dividend; approximately 77% of debtors in both 2010 and 2013 checked the box on the petition indicating that funds would be available to pay unsecured creditors.<sup>128</sup> We cannot determine whether this optimism at filing bears out in the ultimate payout made to unsecured creditors.

<sup>128</sup> While this 77% figure is optimistic, it is not as optimistic as the roughly 90% rate that we found in our PACER data sample. The rate difference between the small samples and the PACER data at first raised concern about a possible mistake in the randomization process. A check of several cases, however, revealed that the rate difference resulted from coding differences. More specifically, we checked three entries from the Central District of California that our research assistants had marked “No Asset” and one that our research assistant had marked “unknown” and found that the research assistants answers differed

**Table 23: Assets Available for General Creditors**

	<b>2010</b>	<b>2013</b>
<b>Asset</b>	77.1%	77.2%
<b>No Asset</b>	17.4%	21.1%
<b>Unknown</b>	5.5%	1.8%

**B. The Debtor’s Financial Condition**

In this portion of the report, we summarize financial information obtained from the debtors’ schedules. The debtors in our small samples are wealthier than the average American. They are more likely to own real property and their incomes are much higher than that of the typical American household.

*1. Occupation, Income and Expenses*

Sullivan, Warren and Westbrook famously argued that most consumers in bankruptcy are “middle class,” though with lower incomes.<sup>129</sup> Much of their supporting data was drawn from surveys that we did not try to replicate. However, we can get some sense as to characteristics of individual Chapter 11 filers by examining their occupation, income, and expenses.

**Table 24: Occupation**

	<b>2010</b>	<b>2013</b>
Real Estate	8%	10%
Professional	9%	13%
Owner, Manager, Executive	24%	24%
Self-Employed	17%	13%
Other	18%	24%
Retired	4%	1%
Unemployed	1%	3%
Unknown	19%	13%

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from those of PACER on three of the four cases. We then checked the petition on Bloomberg Law and verified that our research assistants had correctly coded the box that the debtor checked (or, in the case of the “unknown” response that the debtor failed to check either box). We do not know why PACER coded these cases as it did.

<sup>129</sup> See FRAGILE MIDDLE CLASS, *supra* note 1.

We coded how the debtor (or the first debtor in a jointly filed case) characterized his or her occupation on Schedule I. This coding is admittedly imprecise. For example, some debtors listed their occupation as “Owner” while others stated that they were “Self-Employed.” While the two categories may overlap, the debtor who is an owner may have employees while the self-employed debtor may operate a business for which she alone works. Some debtors listed the company where they worked (or perhaps that they owned) but failed to list a position. We saw little benefit in distinguishing between positions such as “elementary school teacher,” “farmer,” “bartender,” “pilot,” and “IT specialist,” so we created an “Other” category for these kinds of positions. Categorizing the wide variety of occupational responses provided on Schedule I is difficult and requires judgment calls. Others researchers may draw the lines in different places. Nonetheless, we think that our results are instructive. Approximately half of the debtors in our random samples (1) are professionals in fields that are often highly-compensated (attorney, chiropractor, dentist, engineer, pharmacist, physician, and psychiatrist), (2) ran a business (President, CEO or Owner), or (3) were self-employed. We suspect that some of the other debtors (such as realtors and mortgage brokers, as well as some of the debtors in the “other” category—farmer, investment advisor, photo journalist, professional truck driver) were also self-employed.

This data on debtor occupation is important for two reasons. First, it suggests that a very large proportion of individual Chapter 11 debtors are operating businesses as their primary occupations. Second, the data may say something about whether bankrupt debtors in Chapter 11 are “middle-class,” though this term can have an extremely expansive meaning. Neither self-employment nor even the ownership of a small business

necessarily indicates what one might call high-living. We, therefore, turn to the debtors' income and expenses in a moment.

Before doing so, however, we pause briefly to note the very long job tenure claimed by the individual Chapter 11 debtors in our samples. The data in Table 25 are based on the responses of one debtor; thus, for joint cases, we used the time period provided for the first debtor listed on Schedule I. Several of our debtors did not respond to Schedule I's inquiry "How long employed." Those that did, however, reported a median employment tenure of seven-and-a-half years and nine years in 2010 and 2013, respectively. By contrast, in their study of debtors who filed for relief under Chapters 7 or 13 in the early 1980s, Sullivan, Warren and Westbrook found that the median job tenure was just eighteen months.<sup>130</sup> We suspect that the difference in findings may be due to the fact that many of our debtors are self-employed and are simply reporting how long they have been in that line of work.

**Table 25: Employment Duration in Years**

	<b>2010</b>	<b>2013</b>
<b>Over 25 Years</b>	7.3%	12.3%
<b>10 to 25 Years</b>	17.4%	18.4%
<b>5 to 10 Years</b>	18.3%	15.8%
<b>2 to 5 Years</b>	9.2%	10.5%
<b>1 to 2 Years</b>	2.8%	11.4%
<b>0.5 to 1 Year</b>	2.8%	3.5%
<b>3 to 6 Months</b>	3.7%	0.0%
<b>Fewer than 3 Months</b>	4.6%	2.6%
<b>N/A</b>	33.9%	25.4%
<b>Longest Time Employed</b>	40.00	55.00
<b>Average Duration</b>	10.75	12.85
<b>Median Duration</b>	7.50	9.00

<sup>130</sup> See AS WE FORGIVE, *supra* note 1, at 96.

In their study of consumers who filed for bankruptcy in 2007, Lawless et al. found a median income for Chapter 13 filers of \$35,688 per year, or about \$37,532 in 2010 dollars.<sup>131</sup> The income of the individual Chapter 11 debtors in our small samples is dramatically higher.

Table 26 presents data on debtors' current monthly income, as disclosed on the Statement of Current Monthly Income and debtors' combined average monthly income from Line 16 of Schedule I. Half the debtors in our 2013 random sample reported combined monthly income of \$8,624 or more, which annualizes to a figure in excess of \$100,000. Our findings are roughly consistent with those in the BAPCPA reports prepared by the Administrative Office of the U.S. Courts, which show median current and average monthly income of \$7,935 and \$9,212, respectively, in 2010 and \$7,518 and \$9,481, respectively, in 2013.<sup>132</sup> Note that these numbers are not directly comparable to our figures, because we coded for all individual Chapter 11 bankruptcies while the AO focused only on those Chapter 11 debtors with primarily non-business debts.

The data in Table 26 also show that the debtors in our sample are over-represented among the top income categories nationally. More than 35% of our debtors had monthly incomes that placed them in the top 20% of household incomes nationally.<sup>133</sup> Approximately 14% had annual incomes in excess of \$200,200 in 2010 and \$225,333 in 2013, which placed them among the top 5% of American households nationally. Not all the debtors in our samples were high earners. Between 12% and 18% of the debtors had incomes that placed them in the bottom 40% of household incomes

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<sup>131</sup> See *Did Bankruptcy Reform Fail*, *supra* note 1, at [ ].

<sup>132</sup> <http://www.uscourts.gov/statistics-reports/analysis-reports/bankruptcy-abuse-prevention-and-consumer-protection-act-report>.

<sup>133</sup> The data on the national income distribution is taken from <https://www.census.gov/hhes/www/income/data/historical/families/>.

nationally. As the data demonstrate, however, lower-income debtors comprised a smaller percentage of our samples compared with their representation in the American population at large.

**Table 26: Debtors' Monthly Income**

	Combined Monthly Income – Schedule I		Current Monthly Income	
	2010	2013	2010	2013
<b>Top 5%</b>	13.8%	14.0%	13.8%	14.0%
<b>5th Quintile (includes top 5%)</b>	36.7%	36.0%	35.8%	36.0%
<b>4th Quintile</b>	29.4%	26.3%	11.0%	22.8%
<b>3rd Quintile</b>	7.3%	19.3%	13.8%	21.9%
<b>2nd Quintile</b>	11.0%	6.1%	11.9%	5.3%
<b>1st Quintile (includes 0)</b>	7.3%	6.1%	15.6%	6.1%
<b>0</b>	1.8%	3.5%	9.2%	3.5%
<b>Unknown</b>	8.3%	6.1%	10.1%	7.9%
<b>Maximum</b>	53,383	68,200	55,916	61,000
<b>Average</b>	11,858	11,669	10,043	10,416
<b>Median</b>	9,004	8,624	6,919	7,514

It may seem surprising that someone with a six-figure income would need bankruptcy. As the data in Table 27 demonstrate, however, these debtors had expenses comparable in size to their incomes. While the debtors' median monthly incomes ranged between \$8,600 and \$9,300, their median monthly expenses were approximately \$9,000.

**Table 27: Debtors' Monthly Expenses**

	Schedule J	
	2010	2013
<b>Over 25K</b>	11.0%	7.9%
<b>10K to 25K</b>	28.4%	25.4%
<b>5K to 10K</b>	36.7%	40.4%
<b>2.5K to 5K</b>	11.0%	16.7%
<b>1 to 2.5K</b>	4.6%	4.4%
<b>0</b>	0.9%	0.9%
<b>N/A</b>	7.3%	4.4%
<b>Maximum</b>	114,940	64,780
<b>Average</b>	12,975	10,280
<b>Median</b>	9,243	8,176

Elizabeth Warren and her co-authors have claimed that medical expenses and medical debts are a major cause of consumer bankruptcy.<sup>134</sup> By contrast, our debtors did not generally claim major medical expenses, at least relative to their incomes. We did not try to assess the value of their medical debts.

**Table 28: Medical Expenses**

	2010	2013
More than 500	7.3%	3.5%
400 to 500	5.5%	5.3%
300 to 400	3.7%	7.0%
200 to 300	4.6%	8.8%
100 to 200	22.0%	18.4%
1 to 100	31.2%	38.6%
0	15.6%	14.0%
N/A	10.1%	4.4%
Maximum	1,800	10,514
Average	193	268
Median	100	100

We were curious whether debtors were filing for Chapter 11 in an attempt to avoid a trustee's scrutiny of their expenses. Most of these debtors almost certainly have some expenses that would appear luxurious to the average American. Our median debtor claims monthly expenses around eight to nine thousand dollars a month (\$96,000 to \$108,000 per year) while median household income in the United States was just \$49,276 in 2010 and \$53,595 in 2013.<sup>135</sup> But that comparison may be inapt. First, some of these expenses are business expenses. Second, one of us has argued that it may be appropriate

<sup>134</sup> See, e.g., David U. Himmelstein, et al, Medical Bankruptcy in the United States, 2007: Results of a National Study, 20 J. Amer. Med. 1 (2009).

<sup>135</sup> <https://research.stlouisfed.org/fred2/series/MEHOINUSA646N>

to allow higher-income debtors to claim greater expenses in bankruptcy.<sup>136</sup> Because it is hard to specify items that are likely to raise concerns, we instructed our research assistants to look for “unusual and large expenses that some might think are indicative of a luxurious lifestyle” and told them to be sure to include tuition for private school or any college. Because there were several research assistants, the standard likely varied from case to case just as the identity of the trustee or bankruptcy judge will cause the standard to vary. Some of the research assistants’ entries showed large expenses for real property (utilities, mortgage, etc.) or business and medical expenses that perhaps should have been included elsewhere on the form. However, we did find at least 12 (11%) of the 2010 and 16 (14%) of the 2013 cases with expenses that might draw the scrutiny of a trustee. These expenses included (1) tuition of at least \$1,000 a month (9 cases with a high of \$4,525 per month), (2) food of at least \$1,000 per month (5 cases with a high of \$3,000 per month for a household of three), and (3) a large number of miscellaneous entries for such things as entertainment or recreation (\$1,720 per month, \$2,000 per month, \$3,487 per month), gardeners, pool service, golf club fees, boats and recreational vehicles, and \$4,237 for a life insurance policy on a business associate.

## 2. *Debt*

Table 29 provides data on debtors’ total liabilities on the summary of schedules, as well as a breakdown by secured and non-priority unsecured debt. The information in the summary of schedules often differed from the information in the full schedules because debtors amended some or all of their schedules without amending the summary of schedules. There are good arguments for using liability figures from the summary and schedules or from debtors’ individual schedules. The totals on the individual schedules

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<sup>136</sup> See, Richard M. Hynes, *Non-Procrustean Bankruptcy*, 2004 U. ILL. L. REV. 301.

often reflect the last estimates given by the debtor and, therefore, may be more accurate. On the other hand, debtors at times were unclear as to whether their amended schedules supplemented or replaced prior schedules, which made it difficult for our research assistants to determine schedule totals in some cases. The results are not usually materially different, so we present the information from the Summary of Schedules unless there is a good reason not to do so.

**Table 29: Distribution of Indebtedness – Liabilities from Summary of Schedules**

	Secured Claims		Unsecured Non-Priority Claims		Total Liabilities	
	2010	2013	2010	2013	2010	2013
<b>Over \$10M</b>	2.8%	2.6%	4.6%	5.3%	7.3%	9.6%
<b>\$5M to \$10M</b>	7.3%	4.4%	2.8%	3.5%	8.3%	5.3%
<b>\$2.5M to \$5M</b>	11.9%	9.6%	3.7%	4.4%	19.3%	15.8%
<b>\$1M to \$2.5M</b>	33.9%	23.7%	10.1%	13.2%	41.3%	30.7%
<b>\$500K to \$1M</b>	16.5%	30.7%	16.5%	8.8%	11.0%	21.9%
<b>\$1 to \$500K</b>	16.5%	20.2%	52.3%	56.1%	5.5%	10.5%
<b>0</b>	4.6%	2.6%	2.8%	2.6%	0.9%	0.0%
<b>n/a</b>	6.4%	6.1%	7.3%	6.1%	6.4%	6.1%
<b>Maximum</b>	56,634,114	23,440,918	153,710,706	43,399,184	161,757,352	43,439,884
<b>Average</b>	2,454,233	1,925,596	3,409,150	2,085,418	5,859,607	3,685,636
<b>Median</b>	1,248,607	906,396	229,367	208,207	1,837,241	1,544,138

As the data in Table 29 show, the median debtor in 2010 had over \$1.8 million in total debt of which \$1.25 million was secured debt and approximately \$229,000 was non-priority unsecured debt. In 2013, these figures were a little lower: \$1.5 million in total debt of which \$900,000 was secured debt and \$208,000 was non-priority unsecured debt. As shown in Table 22 above, most of the debtors in 2010 and 2013 had total debt between \$500,000 and \$2,500,000.

One concern is that many debtors file for Chapter 11 because their debts make them ineligible for Chapter 13. To examine more carefully the impact of Chapter 13's current debt limits, we compared each debtor's liabilities against the (1) debt limits in

effect at the time of bankruptcy filing<sup>137</sup> (Column (A) of Table 30) and (2) the debt limits if Congress were to increase those limits by 50% (Column (B) of Table 30). We also used two different measures of debt: i) the amount of debt listed on the summary of schedules and ii) the amount of debt listed on the individual schedules themselves. Each measure has its disadvantages. The summary of schedules does not distinguish between debts that are both non-contingent and liquidated and those that are not, and only the former count toward the debt limits. The full schedules do denote these debts, but it is not always clear whether amended schedules replace or supplement an original schedule, and so the total amount of debt is sometimes uncertain. Moreover, the debtor may check the boxes for contingent or unliquidated debt for strategic reasons.

As the data in Table 30 demonstrate, a significant number of the debtors in 2010 and 2013 had liabilities below the secured and unsecured debt ceilings for Chapter 13. Our lowest estimate of Chapter 13 eligible debtors is 19.3%, which is the figure for 2010 debtors using the summary of schedules data; this figure ignores the difference between contingent and non-contingent debt. If we instead focus on the full schedules and 2013, this 13-eligible figure rises from 19 to 45%.

Contrary to conventional wisdom, raising the debt limit by 50% may not significantly increase the percentage of 13-eligible debtors. The most dramatic impact is for the full-schedule analysis of debtors who filed in 2010. Raising the debt limits by

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<sup>137</sup> Since April 1, 2013, those limits have been \$1,149,525 for secured debt and \$383,175 for unsecured debt. *See* Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed under Section 104(b) of the Code, 78 Fed. Reg. 12089 (Feb. 21, 2013). Between April 1, 2010 and March 31, 2013, the limits were \$1,081,400 for secured debt and \$360,475 for unsecured debt. *See* Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed under Section 104(b) of the Code, 75 Fed. Reg. 8747 (Feb. 24, 2010). Until April 1, 2010, these limits were \$1,010,650 for secured debt and \$336,900 for unsecured debt. *See* Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed under Section 104(b) of the Code, 72 Fed. Reg. 7082 (Feb. 14, 2007). As of April 1, 2016 the debt limits are now \$1,184,200 for secured debts and \$394,725 for unsecured debts. *See* Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed under Section 104(b) of the Code, 81 Fed. Reg. 8748 (Feb. 22, 2016).

50% would increase by 16% -- from 27% to 42% -- the number of 13-eligible debtors. By contrast, for 2013, the debt-limit change would increase by only 9% -- from 46.5% to 55.3% -- the number of 13-eligible debtors. Of course, a more dramatic change in the debt limit would have a greater impact.

**Table 30: Impact of Chapter 13 Actual and Hypothetical Debt Limits**

	(A)		(B)	
	Full Schedules		Full Schedules x 1.5	
	2010	2013	2010	2013
Over	67.0%	50.0%	51.4%	41.2%
Under	26.6%	46.5%	42.2%	55.3%
N/A	6.4%	3.5%	6.4%	3.5%
	Summary of Schedules		Summary of Schedules x 1.5	
	2010	2013	2010	2013
	Over	73.4%	57.9%	58.7%
Under	19.3%	36.0%	33.9%	50.0%
N/A	7.3%	6.1%	7.3%	6.1%

As we discussed earlier in Section III.B.1, our debtors had very high incomes and expenses. They also had enormous debt-to-income ratios. While Lawless, et al., found a median debt-to-income ratio of 3.3 in their sample of bankrupt debtors filing in 2007,<sup>138</sup> the median debt-to-income ratio in our sample was 8 in 2013 and 16 in 2010. Table 31 presents the results from the summary of schedules.<sup>139</sup>

<sup>138</sup> See *Did Bankruptcy Reform Fail*, *supra* note 1.

<sup>139</sup> The results are substantially similar if we use the income figure from Line 16 of Schedule I.

**Table 31: Debt-to-Income Ratios**

	<b>Summary of Schedules Debt: Summary of Schedules Income</b>	
	<b>2010</b>	<b>2013</b>
<b>Over 75</b>	11%	2%
<b>51 to 75</b>	6%	3%
<b>25 to 50</b>	10%	5%
<b>10 to 25</b>	37%	17%
<b>6 to 10</b>	18%	37%
<b>5 or less</b>	6%	25%
<b>Undefined: Zero or Negative Income</b>	6%	4%
<b>N/A</b>	6%	8%
<b>Median</b>	16	8

The Code provides different rules for payment of priority debt in Chapter 13 versus Chapter 11 plans. A Chapter 13 debtor’s plan must provide for payment in full, in deferred cash payments, of all priority claims.<sup>140</sup> The rules for the Chapter 11 debtor are more complicated and for an individual debtor may make plan confirmation more difficult, because deferred cash payments are not an option for all types of priority debt. The Chapter 11 plan must provide for payment in cash, on the plan’s effective date, of all administrative claims,<sup>141</sup> and if any class of priority claimants other than tax claimants votes not to accept the plan, then the holders of claims in that class, too, must be paid the amount of their claims in cash on the plan’s effective date.<sup>142</sup> Finally, the Chapter 11 plan must provide for payment of the value, as of the effective date, of all priority tax claims over a period of time not to exceed five years from the filing of the petition in a voluntary case.<sup>143</sup> In other words, the longer it takes the debtor to confirm a plan, the less time she has under the terms of that plan to pay off the debts of her priority tax claimants. But, if

<sup>140</sup> 11 U.S.C. § 1322(a)(2) (2012).

<sup>141</sup> 11 U.S.C. § 1129(a)(9)(A) (2012).

<sup>142</sup> 11 U.S.C. § 1129(a)(9)(B) (2012).

<sup>143</sup> 11 U.S.C. § 1129(a)(9)(C) (2012).

individual Chapter 11 debtors hold little priority debt, then the differences in priority debt treatment for Chapter 13 versus Chapter 11 plans are inconsequential.

In order to determine the extent of priority debt among our Chapter 11 debtors, we first coded for the various types of priority debt listed on Schedule E. Table 32 presents those results. As the data in Table 32 reveal, about 6 in 10 of the individual debtors in the 2010 and 2013 small samples disclosed priority tax liabilities on their schedules. Approximately a third of debtors, however, reported no priority debt at all.

**Table 32: Types of Priority Debt**

	2010	2013
<b>Domestic</b>	3.7%	5.3%
<b>Deposits by Individuals</b>	0.9%	1.8%
<b>Taxes</b>	57.8%	60.5%
<b>Wages</b>	0.0%	1.8%
<b>None</b>	34.9%	32.5%
<b>Unknown</b>	7.3%	3.5%

We also coded for the amount of priority debt by type of priority debt. Table 33 presents those results. Because some debtors listed multiple types of priority debt, the rows do not add to 100%.

**Table 33: Amount of Priority Debt by Category**

	Taxes		Domestic Support		All Priority	
	2010	2013	2010	2013	2010	2013
<b>Over 500K</b>	0.9%	5.3%	0.0%	0.0%	1.8%	5.3%
<b>250K to 500K</b>	2.8%	3.5%	0.0%	0.9%	1.8%	4.4%
<b>100K to 250K</b>	3.7%	7.9%	0.9%	0.0%	3.7%	7.9%
<b>50K to 100K</b>	9.2%	4.4%	0.0%	0.0%	10.1%	6.1%
<b>25K to 50K</b>	11.0%	7.9%	0.9%	0.9%	10.1%	8.8%
<b>1 to 25K</b>	16.5%	18.4%	0.9%	2.6%	16.5%	20.2%
<b>0</b>	48.6%	48.2%	89.9%	91.2%	48.6%	43.0%
<b>N/A</b>	7.3%	4.4%	7.3%	4.4%	9.2%	4.4%
<b>Maximum</b>	1,063,692	5,654,393	139,500	498,260	1,063,692	5,654,393
<b>Average</b>	41,872	143,432	1,796	5,230	44,897	150,079
<b>Median</b>	0	0	0	0	0	2,500

The results are striking. While most categories of priority debt appear to play little role in individual Chapter 11s, over half of the debtors listed tax obligations. Some of these debtors listed their tax obligations as “notice only” or with a value of “unknown” or “0.” However, about 28% of the debtors in each year disclosed total priority tax debts in excess of \$25,000, and in 2013 more than 20% disclosed tax debts in excess of \$50,000.

### 3. *Assets*

The data in Table 34 are taken from the last-filed summary of schedules in the debtor’s Chapter 11 case, and show that the debtors in our sample hold very substantial assets. The median value of assets in 2010 was \$1,145,820; in 2013, the median total asset figure fell by almost a third to \$807,150. These medians hide a great deal of variance. One debtor in our sample disclosed more than \$66 million of assets while between 19% (2010) and 26% (2013) of our debtors disclosed less than \$500,000 in total assets.

**Table 34: Assets from Summary of Schedules**

	Real Property		Personal Property		Total Assets	
	2010	2013	2010	2013	2010	2013
<b>Over \$10M</b>	1.8%	0.9%	3.7%	0.9%	5.5%	1.8%
<b>\$5M to \$10M</b>	6.4%	2.6%	0.9%	0.0%	7.3%	3.5%
<b>\$2.5M to \$5M</b>	8.3%	3.5%	0.9%	1.8%	11.0%	3.5%
<b>\$1M to \$2.5M</b>	26.6%	19.3%	5.5%	5.3%	28.4%	28.1%
<b>\$500K to \$1M</b>	20.2%	31.6%	6.4%	4.4%	20.2%	30.7%
<b>\$1 to \$500K</b>	22.0%	29.8%	75.2%	81.6%	19.3%	26.3%
<b>0</b>	8.3%	6.1%	0.9%	0.0%	1.8%	0.0%
<b>N/A</b>	6.4%	6.1%	6.4%	6.1%	6.4%	6.1%
<b>Maximum</b>	66,647,000	11,250,000	43,246,837	10,555,535	66,671,585	18,740,635
<b>Average</b>	2,226,314	1,097,198	1,147,352	361,666	3,368,750	1,436,724
<b>Median</b>	927,500	637,609	113,835	55,428	1,145,820	807,150

Most of the debtors' assets were in the form of real property. Real property plays a greater role on the balance sheet of the individual Chapter 11 debtor than does personal property. In 2010, the median value for real property was \$927,500; the median for personal property was \$113,835. In 2013, the median real property value was 637,609, while for personal property it was \$55,428. Thus, for 2010, real property comprised 89% of our debtors' assets, while in 2013 that figure rose to 92% of debtor assets. These results are consistent with the findings of the Administrative Office as it reports that in 2014 real property comprised 84% of the assets of individuals who filed non-business Chapter 11 bankruptcy petitions.<sup>144</sup>

We used the full schedules to dig a little deeper into the debtor's holdings. We start with homeownership. The overwhelming majority of our debtors own a home; only 6% in 2010 and 8% in 2013 clearly had no home. We also coded the debtor's estimate of the value of the home and the value of the home mortgage, and present that data in Table 35. We were not able to determine home ownership for a number of debtors because the debtor did not complete the schedule or we could not tell if the property listed was the debtor's principal residence.

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<sup>144</sup> <http://www.uscourts.gov/statistics-reports/analysis-reports/bankruptcy-abuse-prevention-and-consumer-protection-act-report>

**Table 35: Home Ownership**

	Home Value		Home Mortgage	
	2010	2013	2010	2013
<b>Over \$5M</b>	0.0%	0.9%	0.0%	0.9%
<b>\$2.5M to \$5M</b>	4.6%	2.6%	5.5%	2.6%
<b>\$1M to \$2.5M</b>	11.9%	7.0%	10.1%	13.2%
<b>\$500K to \$1M</b>	20.2%	14.9%	21.1%	13.2%
<b>\$250K to \$500K</b>	25.7%	29.8%	22.9%	21.1%
<b>\$1 to \$250K</b>	16.5%	28.1%	15.6%	27.2%
<b>Unknown Value</b>	4.6%	1.8%	4.5%	5.3%
<b>Home But No Mortgage</b>			2.8%	1.8%
<b>No Home</b>	6.4%	7.9%	6.4%	7.9%
<b>N/A</b>	10.1%	3.5%	11.0%	7.0%
<b>Maximum</b>	4,500,000	9,200,000	3,557,890	10,200,000
<b>Average</b>	739,191	624,764	742,362	692,424
<b>Median</b>	450,000	320,000	473,562	341,260

The value of the debtor's home is another indication of the debtor's socio-economic status. Given the reports of celebrities in Chapter 11, one might expect to find a large number of very expensive homes. We did find a few such homes; the most valuable home in our sample exceeded nine million dollars. However, the median home value was just \$450,000 in 2010 and \$320,000 in 2013. Still, these values are substantially greater than median home values in the United States. The median sales price for a new home ranged (by month) between 204,000 and 241,000 in 2010 and between \$251,000 and \$279,000 in 2013.<sup>145</sup> According to the National Association of Realtors, the median sales price of an existing family home was \$197,400 in 2013.<sup>146</sup> Of the 2010 debtors, just 16.5% percent claimed homes worth more than \$1,000,000, the same number as those who claimed homes worth less than \$250,000. In 2013, substantially more debtors claimed homes worth less than \$250,000 (28.1%) than

<sup>145</sup> <https://www.census.gov/construction/nrs/pdf/uspricemon.pdf>

<sup>146</sup> <http://www.realtor.org/topics/existing-home-sales>

claimed homes worth more than \$1,000,000 (11%). Thus, we see a fairly wide distribution of home values. Not all of our debtors are “ultra-wealthy,” but most have a home worth substantially more than that of the median American homeowner.

The debtor’s estimate of the home value could be erroneous, but the data in Table 35 for home mortgage values indicate that debtor estimates of home value are not wildly inaccurate. For example, in 2010, 16.5% of debtors listed their home value in the \$1-to-\$250,000 range; 15.6% listed the amount of their home mortgage as falling within that same dollar range. The pattern is similar for 2013 and across most dollar ranges in Table 35. If debtors had listed inflated or depressed values for their homes, we would expect to find a larger difference between the percentage of debtors in each home value dollar category compared to the percentage in the same dollar category for home mortgage values.

We also looked for other real estate holdings. Table 36 provides the value of other real property owned by the debtor as well as the mortgages owed against this property. Perhaps the most striking fact is that of those debtors for whom we have data, over 70% owned other real property. This data provide more evidence that the individual Chapter 11 debtors in our sample own substantially greater assets than the average American.

**Table 36: Other Real Property**

	Other Real Property		Other Mortgage Total	
	2010	2013	2010	2013
<b>More than \$10M</b>	0.9%	0.0%	1.8%	0.0%
<b>\$5 to \$10M</b>	2.8%	1.8%	2.8%	0.0%
<b>\$2.5M to \$5M</b>	10.1%	3.5%	7.3%	7.0%
<b>\$1M to \$2.5M</b>	12.8%	9.6%	19.3%	16.7%
<b>\$500K to \$1M</b>	13.8%	18.4%	14.7%	17.5%
<b>\$250K to \$500K</b>	11.9%	18.4%	11.9%	9.6%
<b>\$1 to \$250K</b>	11.0%	14.0%	3.7%	11.4%
<b>0</b>			0.9%	3.5%
<b>No Other Real Property</b>	20.2%	28.1%	20.2%	28.1%
<b>N/A</b>	16.5%	6.1%	17.4%	6.1%
<b>Maximum</b>	65,382,500	6,013,150	40,727,735	4,947,902
<b>Average</b>	2,316,483	617,228	2,170,030	1,033,302
<b>Median</b>	826,850	322,000	1,006,633	720,912

We also coded for the number of parcels, and this data in Table 37 are even more striking. Over 40% of the debtors (47% in 2010, 42% in 2013) listed more than two pieces of real property. In 2010, about twice as many debtors disclosed interests in at least ten parcels of land as disclosed owning no real property at all. It is hard to reconcile the number of parcels of land held with the dollar values listed in Table 36. We would expect values far in excess of those shown in Table 36 given the number of parcels of real property disclosed on the schedules. We have two theories to explain the discrepancy. First, some debtors could have disclosed parcels with little value, such as time-shares or interests in LLCs that owned real property that was underwater. Second, the dollar values in Table 36 may be understated because the debtors failed to list the value of some properties.

**Table 37: Number of Parcels**

	<b>2010</b>	<b>2013</b>
<b>10+</b>	11.0%	4.4%
<b>9</b>	1.8%	0.0%
<b>8</b>	0.9%	4.4%
<b>7</b>	3.7%	2.6%
<b>6</b>	1.8%	7.0%
<b>5</b>	1.8%	6.1%
<b>4</b>	10.1%	10.5%
<b>3</b>	15.6%	7.0%
<b>2</b>	16.5%	21.9%
<b>1</b>	24.8%	26.3%
<b>0</b>	6.4%	5.3%
<b>N/A</b>	5.5%	4.4%

Table 38 provides an estimate of the debtors' equity in their homes and their other real property. Note that the other real property measure simply subtracts the total value of the debtor's mortgages from the total value of her other real property; it does not calculate equity parcel by parcel. In light of the real estate collapse, we expected to find that a large number of debtors were using bankruptcy to try to renegotiate mortgages worth more than their homes. After all, one advantage of Chapter 11 is that a Chapter 13 plan must be completed in five years,<sup>147</sup> making it very difficult for a debtor to repay her mortgage in full under the plan.

Table 38 shows that a large portion of our debtors were under water, but about 35% (2013) to 33% (2010) reported equity in their home, and 23-25% reported equity in other real property. At a time when real estate prices were seriously depressed, in particular in 2010, this finding suggests that individual debtors in Chapter 11 hold more wealth than the typical American and are less like the stereotypical Chapter 13 debtor.

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<sup>147</sup> 11 U.S.C. § 1322 (2012).

**Table 38: Debtor Equity in Real Property**

	Home Equity		Other Real Property Equity (Net)	
	2010	2013	2010	2013
<b>Over \$1,000,000</b>	0.9%	1.8%	6.4%	2.6%
<b>\$500,001 to \$1,000,000</b>	8.3%	2.6%	3.7%	2.6%
<b>\$250,001 to \$500,000</b>	4.6%	5.3%	0.9%	1.8%
<b>\$50,001 to \$250,000</b>	13.8%	15.8%	10.1%	11.4%
<b>\$1 to \$50,000</b>	7.3%	7.9%	1.8%	7.0%
<b>0 to -\$50,000</b>	15.6%	14.0%	9.2%	8.8%
<b>-\$50,001 to -\$250,000</b>	18.3%	20.2%	12.8%	10.5%
<b>-\$250,001 to -\$500,000</b>	3.7%	5.3%	1.8%	9.6%
<b>-\$500,001 to -\$1,000,000</b>	1.8%	7.0%	9.2%	7.9%
<b>Less than - \$1,000,000</b>	2.8%	3.5%	6.4%	4.4%
<b>Unknown</b>	6.4%	1.8%	0.0%	0.0%
<b>N/A</b>	10.1%	7.0%	17.4%	5.3%
<b>No home or other real property</b>	6.4%	7.9%	20.2%	28.1%
<b>Average</b>	3,383	-67,660	234,972	-136,715
<b>Median</b>	0	-7,069	-44,116	-40,004
<b>Maximum</b>	1,743,520	1,784,149	24,654,765	3,263,515
<b>Minimum</b>	-2,196,000	-2,393,432	-6,828,510	-2,202,000

**C. Is Chapter 11 Working as Intended?**

As noted in the introduction, Chapter 11 provides the debtor with much more discretion and relies on the creditors to police the debtor's decisions; there is no bankruptcy trustee. In this section, we ask whether the debtor is using this discretion wisely and whether creditors are indeed engaged in the process..

*1. How Much Does Chapter 11 Cost?*

We did not try to gather the total attorneys' fees expended in our individual Chapter 11 cases, but we did code some information provided on the attorneys' disclosures of compensation form filed at the outset of the case. These disclosures list the amount that the attorney has agreed to accept for legal services as well as the amount already received. Some attorneys agreed to receive an amount contingent on some other

factor such as the number of hours that they worked; we coded these disclosures as “unknown” or “not available”. Of those records that we were able to use, the median agreed amount was around \$10,000 in each year, and the median amount already received was \$7,500 in 2013 and \$8,363 in 2010. Again, these are not the total fees for the case. By way of comparison, the median value for total fees in Chapter 13 cases is around \$2,500, though in some jurisdictions they approach \$5,000.<sup>148</sup>

**Table 39: Attorney Compensation**

	Amount Received		Agreed Amount	
	2010	2013	2010	2013
\$100K to \$200K	1.8%	0.0%	1.8%	0.9%
\$25K to \$100K	8.3%	2.6%	4.6%	5.3%
\$10K to \$25K	20.2%	26.3%	21.1%	21.1%
\$5K to \$10K	20.2%	23.7%	18.3%	15.8%
\$2K to \$5K	19.3%	15.8%	16.5%	7.9%
\$1 to \$2K	6.4%	6.1%	2.8%	0.9%
0	4.6%	5.3%	0.9%	1.8%
n/a or Pro Se	19.3%	20.2%	33.9%	46.5%
Maximum	\$180,000	\$50,000	\$180,000	\$101,424
Average	\$15,801	\$9,855	\$16,588	\$14,653
Median	\$8,363	\$7,500	\$10,000	\$10,287

2. *Does the Case Progress in a Timely Manner?*

Unlike Chapter 13, Chapter 11 – with the exception of small business cases - does not provide individuals with strict deadlines. To ascertain how quickly they push their cases through bankruptcy we began by measuring how long it took debtors to file their schedules. Table 40 provides the data.

**Table 40: Filing of Schedules – Time in Days**

<sup>148</sup> See Lupica, *supra* note 10.

	First Summary of Schedules		Last Schedule	
	2010	2013	2010	2013
<b>More than 2 years</b>	0.0%	0.0%	2.8%	0.0%
<b>366 days to 2 years</b>	0.0%	0.0%	6.4%	2.6%
<b>181 to 365 days</b>	0.0%	0.0%	4.6%	7.9%
<b>91 to 180 days</b>	0.0%	0.9%	9.2%	9.6%
<b>61 to 90 days</b>	0.0%	0.9%	9.2%	8.8%
<b>31 to 60 days</b>	4.6%	3.5%	12.8%	14.9%
<b>1 to 30 days</b>	44.0%	43.9%	22.0%	25.4%
<b>0</b>	33.9%	36.8%	15.6%	18.4%
<b>No Schedule Filed</b>	5.5%	5.3%	5.5%	3.5%
<b>Conversion</b>	11.9%	8.8%	11.9%	8.8%
<b>Maximum Days</b>	48	128	1,362	490
<b>Average Days</b>	12	13	120	68
<b>Median Days</b>	14	13	36	30

A few debtors never filed any schedules. Of those who did, the median time until the debtor filed the summary of schedules was fourteen days, and only about 5% of all debtors waited more than thirty days to file their first summary of schedules. However, many schedules were later amended or supplemented. The median time between filing of the petition and the filing of the last schedules in the Chapter 11 case was around one month (36 days in 2010 and 30 in 2013), and over 20% of all debtors were still amending their schedules more than six months after filing.

The large number of amendments may suggest that the debtors don't have a good understanding of their financial affairs at the start of the case and need time to sort them out. If that is true, then a rigid system like Chapter 13 may not work so well. On the other hand, it may mean that nobody is pressing the debtor to move forward. If that's the case, having trustee oversight, as in Chapter 13, may improve matters.

Plan proposal is another measure of case progress. About 60% of our debtors (61% in 2010 and 58% in 2013) proposed a plan.<sup>149</sup> Almost none filed their plan within the fourteen-day limit imposed on Chapter 13 debtors,<sup>150</sup> but very few took longer than the three hundred day limit imposed on small businesses.<sup>151</sup> Table 41 provides data on the time to first plan proposal and plan confirmation from the start of the Chapter 11 case. The data includes cases initiated in Chapter 11 and also converted to Chapter 11. For cases that began in Chapter 11, we ran the time period from the filing of the petition. For cases converted from another Chapter, we ran the time period from the order of conversion to Chapter 11. Eight of the 2013 cases counted as “None” in Column (B) are still open without disposition; the debtor has proposed a plan in three cases, but in none has the court confirmed a plan, or converted or dismissed the case.<sup>152</sup>

**Table 41: Plan Timing**

	(A)		(B)	
	Time to First Plan Proposal		Time to Plan Confirmation	
	2010	2013	2010	2013
<b>More than 2 years</b>	0.9%	0.0%	8.3%	3.5%
<b>1 to 2 years</b>	11.0%	6.1%	17.4%	17.5%
<b>181 to 365</b>	17.4%	19.3%	8.3%	9.6%
<b>91 to 180</b>	27.5%	26.3%	0.9%	4.4%
<b>31 to 90</b>	1.8%	4.4%	0.9%	0.0%
<b>15 to 30</b>	0.9%	0.9%	0.0%	0.0%
<b>1 to 14</b>	0.0%	0.9%	0.0%	0.0%
<b>0</b>	0.9%	0.0%	0.0%	0.0%
<b>None</b>	39.4%	42.1%	64.2%	64.9%
<b>Maximum</b>	741	696	1,120	930
<b>Average</b>	246	208	530	450
<b>Median</b>	180	175	485	440

<sup>149</sup> In a study of all Chapter 11 filings in 2004, one of us found a 49% plan proposal rate. *See Chapter 11 Triage, supra* note 111, at 1004 (2012).

<sup>150</sup> FED. R. BANKR. PROC. 3015(b).

<sup>151</sup> 11 U.S.C. § 1121(e)(2) (2012).

<sup>152</sup> *See, e.g., In re Blonder*, No. 13-76658 (Bankr. N.D. Ga. Dec. 9, 2013); *In re Chen*, No. 13-25674 (Bankr. C.D. Cal. June 14, 2013).

The figures in Column (A) of Table 41 show that just one debtor (0.9%) in each of 2010 and 2013 filed a plan within the fourteen-day limit that is imposed on Chapter 13 debtors, but half of the individual debtors who proposed plans in 2010 and 2013 did so within six months of the start of their Chapter 11 cases. Outliers do exist. But of those debtors who did propose plans, 88% in 2010 and 94% in 2013 proposed plans within one year of the beginning of their Chapter 11 cases.

The figures in Table 41 include the few individual debtors who identified as small businesses – seventeen in 2010 and thirteen in 2013. *See supra* Table 17. Congress amended the Bankruptcy Code in 2005 to require debtors in small business cases to file a plan “not later than 300 days after the date of the order for relief.”<sup>153</sup> Of the debtors who identified as small businesses, the vast majority satisfied the Code’s 300-day plan-proposal requirement.<sup>154</sup> As Table 42 shows, in 2010, thirteen of the seventeen small business debtors proposed plans; nine did so within 300 days of the start of their Chapter 11 cases.<sup>155</sup> All of the small business debtors who proposed plans in 2013 did so within the Code’s 300-day window. Less than a quarter of the small business debtors in 2010 failed to propose a plan; more than half failed to do so in 2013. It is important not to overemphasize these differences, however, because we are dealing with so few debtors.

While approximately 60% of our debtors proposed a plan, only about 35% had a plan approved. This confirmation rate is similar to the 30-33% confirmation rate found

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<sup>153</sup> 11 U.S.C. § 1121(e)(2) (2012).

<sup>154</sup> We counted from the start of the Chapter 11 case, not from the order for relief in cases in which the debtor first filed under another Chapter of the Bankruptcy Code because a debtor who initially files under Chapter 7 or 13 would not propose a Chapter 11 plan until the case converted to Chapter 11.

<sup>155</sup> One of the four debtors did not technically satisfy the 300-day plan-proposal requirement, having proposed his plan 301 days from filing his Chapter 11 case. *See In re Stickler*, No. 10-10080 (M.D. Ala. Jan. 19, 2010). Debtor obtained confirmation of his plan a little over 14 months from the filing of his petition for relief under Chapter 11. *See Final Order Approving Disclosure Statement and Confirming Plan, In re Stickler*, No. 10-10080 (M.D. Ala. Mar. 30, 2011) (Dkt. No. 146).

by Warren and Westbrook in their study of all Chapter 11 filings,<sup>156</sup> and the 34% confirmation rate one of us found in a study of Chapter 11 filings in 2004.<sup>157</sup> Plan confirmation took time. Column (B) of Table 41 shows that the median time to plan confirmation for the debtors in our samples was between fifteen and sixteen months from the start of the Chapter 11 case. The time from the start of the Chapter 11 case until confirmation appears to be 25-30% longer than that found by Warren and Westbrook. In their study, the median time to confirmation was about one year.<sup>158</sup>

**Table 42: Small Business Debtors and Time to First Plan Proposal**

	2010		2013	
	Number	Percentage	Number	Percentage
>1 year	2	11.8%	0	0%
301-365 days	2	11.8%	0	0%
181-300 days	4	23.6%	3	23.1%
91-180 days	5	29.4%	2	15.4%
1-90 days	0	0%	1	7.7%
No Plan	4	23.6%	7	53.8%
<b>Total Cases</b>	<b>17</b>		<b>13</b>	

We also looked at the time it took debtors to obtain confirmation once they had proposed a plan. The median time from first-plan proposal to confirmation ranged from more than seven months in 2010 to more than five months in 2013. In small business cases, § 1129(e) requires the bankruptcy court to confirm a plan “not later than 45 days after the plan is filed.”<sup>159</sup> None of the small business debtors who confirmed a plan met

<sup>156</sup> See *Success of Chapter 11*, *supra* note 2.

<sup>157</sup> See *Chapter 11 Triage*, *supra* note 111, at 1004.

<sup>158</sup> See *Success of Chapter 11*, *supra* note 2, at 632.

<sup>159</sup> 11 U.S.C. § 1129(e) (2012).

this 45-day plan-confirmation requirement.<sup>160</sup> In fact, not a single debtor in 2010 or 2013, regardless of its designation as a small or non-small business, confirmed a plan within 45 days of having first proposed a plan.

What about those cases that are kicked out of Chapter 11? In Table 43, we measure time to conversion or dismissal in several ways. Recall that an individual does not receive a Chapter 11 discharge until she completes her plan payments,<sup>161</sup> and so her case could be dismissed or converted long after her plan is approved.<sup>162</sup> In Columns (A) and (B), we do not include those cases in which the bankruptcy court initially confirmed a Chapter 11 plan but subsequently ordered the conversion or dismissal of the case. In Column (A) of Table 43, we run the time to conversion or dismissal from the start of the Chapter 11 case. Some of the individual Chapter 11 cases in our samples, however, began in Chapter 7 or Chapter 13; therefore, the data in Column (B) is based on the time from the start of the bankruptcy case, regardless of starting Chapter, to the conversion or dismissal order. In Columns (C) and (D), we include cases with failed plans, i.e., those cases, as of the date of our coding, in which the bankruptcy court converted or dismissed the case after plan confirmation. In Column (C), we run the time to conversion or dismissal from the start of the Chapter 11 case, while the data in Column (D) is based on the time from the start of the bankruptcy case, regardless of starting Chapter.

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<sup>160</sup> It is not clear whether the 45 days runs from the first-filed plan or re-sets when the debtor amends her first plan. See *In re Crossroads Ford, Inc.*, 453 B.R. 764, 769-70 (Bankr. D. Neb. 2011) (holding that debtor's failure to confirm initially filed plan within 45 days did not preclude debtor from filing an amended plan within 300 days and obtaining confirmation of that plan within 45 days of its filing); cf. *In re Save Our Springs Alliance, Inc.*, 388 B.R. 202, 225 (Bankr. W.D. Tex. 2008) (holding that the 45-day confirmation period runs from filing of the original plan, "at least when an amended plan is not substantially different from the original plan").

<sup>161</sup> 11 U.S.C. § 1141(d)(5) (2012).

<sup>162</sup> See, e.g., *In re Sorge*, No. 10-17070 (Bankr. D. N.J. Mar. 11, 2010) (bankruptcy court confirmed debtor's plan of reorganization on April 8, 2011, and seven months later granted the United States trustee's motion to convert the case to chapter 7).

**Table 43: Time in Days to Conversion or Dismissal**

	Failed Plans Not Included				Failed Plans Included			
	(A) From Start of Chapter 11 Case		(B) From Filing of Bankruptcy Petition		(C) From Start of Chapter 11 Case		(D) From Filing of Bankruptcy Petition	
	2010	2013	2010	2013	2010	2013	2010	2013
<b>2 or more years</b>	7.3%	3.5%	8.3%	3.5%	9.2%	5.3%	10.1%	5.3%
<b>1 to 2 years</b>	11.9%	11.4%	13.8%	12.3%	14.7%	12.3%	16.5%	13.2%
<b>180 days to 1 year</b>	20.2%	13.2%	21.1%	14.0%	20.2%	13.2%	21.1%	14.0%
<b>0 to 180 days</b>	23.9%	24.6%	20.2%	22.8%	23.9%	24.6%	20.2%	22.3%
<b>n/a</b>	36.7%	40.4%	36.7%	40.4%	32.1%	37.7%	32.1%	37.8%
<b>Open</b>	0%	7%	0%	7%	0%	7%	0%	7%
<b>Maximum</b>	1,850	907	1,850	907	1,850	969	1,850	969
<b>Average</b>	351	268	378	282	381	289	406	302
<b>Median</b>	223	199	288	205	256	205	301	210

If the time to conversion or dismissal for failed plans is not included, then the median time from the start of the Chapter 11 case to conversion or dismissal is about 7.5 months for 2010 and greater than 6.5 months for 2013. *See* Table 43, Column (A). If failed plans are not included and the time to conversion or dismissal is measured from the start of bankruptcy proceedings, regardless of Chapter, the median time period increases by more than two months to close to 10 months in 2010; the increase in median time is only six days for 2013. *See* Column (B) of Table 43. Of course, eight cases from 2013 are still open with no disposition,<sup>163</sup> which may account for the shorter time period to conversion or dismissal for the 2013 cases compared with those from the 2010 sample. Stated more simply, the 2013 cases have had less time to fail.

When we include the time to conversion or dismissal for failed plans, the median time increases, although perhaps by less than one might expect. This is due to the fact

<sup>163</sup> *See supra* note 152 and accompanying text.

that most of our failed cases failed before a plan was confirmed. Just five of our 2010 cases and three of our 2013 cases failed after confirming a plan. In 2010, the median time to conversion or dismissal from the start of the Chapter 11 case increased a month from 223 to 256 days. *Compare* Column (A) with Column (C) of Table 43. The impact of the failed plans is less dramatic for 2013, no doubt due to the fact that less time has elapsed between our coding and the start of the 2013 cases. As a result, not only are there fewer failed plans but plans that take longer to fail are less likely to figure in the 2013, than the 2010, figures.

### 3. *Creditor Engagement*

A trustee is always appointed in Chapter 13,<sup>164</sup> in part because Congress feared that unsecured creditors might not have enough at stake to look after their own interests. The problem of creditor disengagement is more general, however. Thus, we wanted to ascertain whether it appears that creditors are monitoring the debtor’s use of Chapter 11.

Before addressing this question generally, we first focused on the debtor’s choice of attorney. In Chapter 13, the attorney represents the debtor, but in Chapter 11 the attorney represents the estate. In 9% of our 2010 cases the U.S. trustee or a creditor objected to the debtors’ choice of attorney; in 2013, this figure was 5%. *See* Table 44.

**Table 44: Objections to Attorney**

	2010	2013
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<sup>164</sup> 11 U.S.C. § 1302 (2012).

<b>Objection</b>	9% <sup>165</sup>	5%
<b>No objection</b>	91%	95%

We also coded for appointment of a Chapter 11 trustee or an examiner. As the data in Table 45 reveal, trustees and examiners are rarely appointed in individual Chapter 11 cases. In one case each in 2010 and 2013, the bankruptcy court appointed a Chapter 11 trustee. An examiner was appointed in only one case, and that occurred in 2010. In fact, as Table 45 shows, in the overwhelming majority of individual Chapter 11 cases in our sample no party even moved for appointment of a Chapter 11 trustee or examiner.

**Table 45: Appointment of Chapter 11 Trustee or Examiner**

	Trustee		Examiner	
	2010	2013	2010	2013
<b>Motion Withdrawn</b>	1%	1%	1%	0%
<b>Motion Denied</b>	5%	3%	0%	1%
<b>Motion Granted</b>	4%	2%	1%	0%
<b>No Motion</b>	93%	95%	100%	99%

We tried various measures to determine creditor involvement. In about 35-40% of our cases an unsecured creditor made at least one objection. *See* Table 46. We found no cases in which an official unsecured creditors' committee was formed. We did find a few cases in which someone other than the debtor proposed a plan (one in 2010 and two in 2013). *See* Table 47.

<sup>165</sup> This figure includes the case of *In re Daniels*, No., 10-70078 (Bankr. N.D. Ga. Apr. 5, 2010). In *Daniels*, there was no objection to the debtor's attorney, but the court denied an attorney's application for employment as debtor's counsel. The Rountree Law Firm initially represented the debtor, and the bankruptcy court approved the firm's application to serve as attorney for debtor in the Chapter 11 case. *See* Order Approving Employment of Rountree Law Firm as Counsel for Debtor, *In re Daniels*, No., 10-70078 (Bankr. N.D. Ga. July 13, 2010) (Dkt. No. 26). About eight months later, the bankruptcy court granted the motion of Rountree Law Firm to withdraw as debtor's counsel. *See* Order Granting Counsel's Motion for Permission to Withdraw as Counsel, *In re Daniels*, No., 10-70078 (Bankr. N.D. Ga. March 2, 2011) (Dkt. No. 92). The bankruptcy court then rejected the application of Robert Chambers to serve as debtor's counsel. *See* Order Denying Application to Employ, *In re Daniels*, No., 10-70078 (Bankr. N.D. Ga. June 2, 2011) (Dkt. No. 123). Several days later, the court approved the application of Rodney Eason to represent debtor in his Chapter 11 case. *See* Order Granting Application to Retain Attorney, *In re Daniels*, No., 10-70078 (Bankr. N.D. Ga. June 6, 2011) (Dkt. No. 127).

**Table 46: Objection by Unsecured Creditors**

	<b>2010</b>	<b>2013</b>
<b>Objection</b>	38.5%	39.5%
<b>No Objections</b>	61.5%	60.5%

**Table 47: Plan Proposed by Non-Debtor**

	<b>2010</b>	<b>2013</b>
<b>Yes</b>	0.9%	2.6%
<b>No</b>	99.1%	97.4%

#### **IV. Conclusions and Next Steps**

Individuals now account for somewhere between a quarter and a third of all Chapter 11 filings nationally, and an even higher percentage in some districts.<sup>166</sup> A fundamental question that motivates this study is whether these debtors belong somewhere else.

Prior articles, including one written by one of us, express concern that debtors could be pushed into Chapter 11 and forced to make payments out of future income.<sup>167</sup> The results of our study suggest that this problem is more theoretical than actual as we did not find a single case filed in either 2010 or 2013 in which the debtor was involuntarily pushed into Chapter 11 (by filing or conversion) and in which a plan was ultimately confirmed.<sup>168</sup>

A harder question is whether these individuals belong in Chapter 13. Perhaps, but we doubt that modestly raising Chapter 13's debt limits would cause a sharp decline in the number of individual Chapter 11 bankruptcies. We found that as many 46% of the Chapter 11 debtors in the 2013 sample had liabilities below Chapter 13's debt limits and

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<sup>166</sup> See *supra* Figure 1 and Table 3A in the Appendix.

<sup>167</sup> See Howard, *supra* note 54.

<sup>168</sup> See *supra* Section II.C

that increasing the debt limits by 50% would not radically change this figure.<sup>169</sup> Chapter 13 may not be a good fit for these debtors; most individuals in Chapter 11 look very different from than the “typical” Chapter 13 debtor. The Chapter 11 debtors have much higher incomes, substantially more assets and much more debt, and they are far more likely to operate a business. As a result, they are more likely to have complicated cases and have difficulty complying with the tight deadlines imposed by Chapter 13. For example, Chapter 13 debtors must file a plan within fourteen days of filing their petition,<sup>170</sup> but the median time from petition to first plan in our sample was about six months. Chapter 11 debtors also have substantial real estate interests (and substantial mortgage debt that they need to modify), and they may, therefore, need a plan of reorganization that extends beyond five years.

This does not mean that the case for Chapter 11 is clear. The absence of a bankruptcy trustee means that creditors must do more to monitor the debtor, and it is not clear that they are adequately doing so. Reasonable minds may believe that these individual Chapter 11 cases drag on too long. We cannot resolve normative questions, such as the time debtors should spend in Chapter 11, with the results of a single study. We hope, however, that our findings will provide a framework for discussing reform efforts aimed at the individual Chapter 11 debtor.

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<sup>169</sup> See *supra* Table 30.

<sup>170</sup> FED. R. BANKR. PROC. 3015(b).

## Appendix A

**Table 3A: Individual Chapter 11 Filings by District**

District	2010			2013		
	Individual Ch. 11	% Whole Sample	% Individual of District Ch. 11	Individual Ch. 11	% Whole Sample	% Individual of District Ch. 11
AK	3	0%	27%	2	0%	33%
ALMD	17	0%	40%	5	0%	21%
ALND	38	1%	42%	20	1%	35%
ARED	12	0%	44%	7	0%	32%
ARWD	15	0%	24%	16	1%	44%
AZ	294	7%	42%	117	4%	41%
CACD	581	14%	47%	349	13%	47%
CAED	118	3%	48%	59	2%	49%
CAND	312	8%	65%	127	5%	61%
CASD	77	2%	53%	33	1%	40%
CO	59	1%	31%	34	1%	32%
DE	7	0%	1%	3	0%	0%
FLMD	232	6%	29%	146	6%	35%
FLND	12	0%	26%	19	1%	40%
FLSD	115	3%	27%	127	5%	39%
GAMD	13	0%	16%	16	1%	37%
GAND	68	2%	20%	61	2%	25%
GASD	24	1%	23%	16	1%	33%
IAND	3	0%	43%	0	0%	0%
IASD	8	0%	25%	2	0%	20%
ID	31	1%	46%	11	0%	41%
ILCD	6	0%	30%	7	0%	32%
ILND	82	2%	26%	101	4%	33%
INSD	16	0%	14%	15	1%	19%
KS	17	0%	29%	12	0%	28%
KYED	5	0%	13%	4	0%	10%
KYWD	6	0%	14%	6	0%	18%
LAED	8	0%	15%	10	0%	29%
LAMD	1	0%	6%	1	0%	10%
LAWD	20	0%	27%	17	1%	43%
MA	125	3%	47%	54	2%	44%
MD	153	4%	49%	81	3%	45%
MIED	50	1%	27%	33	1%	21%
MIWD	14	0%	27%	10	0%	26%
MN	13	0%	16%	14	1%	19%

MOWD	21	1%	31%	19	1%	37%
MSND	7	0%	24%	10	0%	38%
MSSD	10	0%	21%	12	0%	41%
MT	12	0%	34%	9	0%	56%
NCED	62	2%	38%	50	2%	40%
NCMD	4	0%	11%	4	0%	13%
NCWD	21	1%	18%	9	0%	18%
ND	3	0%	38%	0	0%	0%
NE	22	1%	28%	4	0%	14%
NH	12	0%	30%	9	0%	26%
NJ	93	2%	27%	80	3%	24%
NM	16	0%	32%	13	0%	43%
NV	200	5%	40%	125	5%	47%
NYED	43	1%	15%	34	1%	13%
NYND	8	0%	18%	7	0%	23%
NYSD	66	2%	6%	41	2%	10%
OHND	21	1%	19%	13	0%	25%
OHSD	21	1%	35%	22	1%	36%
OKED	3	0%	27%	2	0%	67%
OKND	2	0%	8%	1	0%	17%
OR	26	1%	39%	12	0%	32%
PAED	36	1%	23%	29	1%	23%
PAMD	9	0%	21%	7	0%	14%
PAWD	66	2%	37%	46	2%	43%
PR	60	1%	36%	131	5%	58%
RI	5	0%	18%	1	0%	20%
SC	40	1%	44%	27	1%	42%
SD	8	0%	53%	1	0%	20%
TNED	38	1%	37%	26	1%	40%
TNMD	94	2%	54%	47	2%	49%
TNWD	25	1%	36%	22	1%	38%
TXED	27	1%	20%	11	0%	17%
TXND	56	1%	14%	42	2%	18%
TXWD	67	2%	26%	34	1%	28%
UT	21	1%	24%	11	0%	28%
VAED	85	2%	34%	59	2%	42%
VAWD	11	0%	27%	8	0%	38%
VT	3	0%	33%	0	0%	0%
WAED	8	0%	22%	10	0%	38%
WAWD	126	3%	41%	75	3%	52%
WIWD	23	1%	53%	15	1%	45%

WVND	7	0%	25%	0	0%	0%
WY	6	0%	32%	4	0%	44%
<b>Total</b>	<b>4049</b>			<b>2617</b>		