"No Money Down" Bankruptcy

Pamela Foohey,[*] Robert M. Lawless,[**] Katherine Porter,[***] & Deborah Thorne[****]

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ABSTRACT

This Article reports on a breakdown in access to justice in bankruptcy, a system in which one million Americans will seek help this year. A crucial decision for these consumers will be whether to file chapter 7 or chapter 13 bankruptcy. Nearly every aspect of their bankruptcies—both the benefits and the burdens of debt relief—will be different in chapter 7 versus chapter 13. Almost all consumers will hire a bankruptcy attorney. Because they must pay their attorneys, many consumers will file chapter 13 to finance their access to the law, rather than because they prefer the law of chapter 13 over chapter 7.

Attorneys charge about $1,200 to file a chapter 7 case, which clients must pay upfront. Almost all chapter 7 cases end with the debtor receiving a discharge of debts. Attorneys charge about $3,200 to file a chapter 13 case, which attorneys allow their clients to pay during the case. Only about one-third of chapter 13 cases results in the debtor getting a discharge.

Based on new data from the Consumer Bankruptcy Project, the leading empirical study of bankruptcy, we identify the increasingly prevalent phenomenon of debtors paying *nothing* in attorneys' fees before filing chapter 13. Our data suggests that these "no money down" consumers are similar to consumers who use chapter 7. Because they cannot afford to pay their attorneys up front, these "no money down" bankruptcy debtors suffer. They pay $2,000 more and have their cases dismissed at a rate 18 times higher than if they had filed chapter 7.

The two most significant predictors of whether a consumer files a "no money down" bankruptcy is a person's place of residence and a person's race. Attorneys' interests, and not necessarily their clients' interests, favor filing the more expensive and less successful chapter 13. "No money down" bankruptcy is a distortion in the delivery of legal help. We suggest reforms to how attorneys collect fees in bankruptcy that will improve access to justice for all.

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[*] Associate Professor of Law, Indiana University, Bloomington.

[**] Max L. Row Professor of Law, University of Illinois.

[***] Professor of Law, University of California, Irvine.

[****] Associate Professor of Sociology, University of Idaho.

The authors contributed equally and are listed in alphabetical order.

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I. INTRODUCTION

Across the legal system, attorneys serve as intermediaries, fostering or hindering people's access to justice. This relationship between attorneys and clients exists in consumer bankruptcy. Over a million people file bankruptcy every year;[1] an overwhelming majority of people files with the help of an attorney.[2] Consumers' access to and success in bankruptcy is heavily dependent on their attorneys.

One of the most important decisions a person makes about bankruptcy is whether to file under chapter 7 or chapter 13. These chapters are distinct proceedings in substance and process. Chapter 7 results in a quick discharge, relieving people from their debts soon after filing, but people must give up most of their property.[3] Chapter 13 requires debtors to complete a three-to-five year long repayment plan prior to receiving the discharge, but people keep all their property, which may be particularly important to homeowners.[4] More than 95% of people who file under chapter 7 receive a discharge.[5] In contrast, a mere one-third of chapter 13 cases ends in a completed repayment plan, and only upon completion of

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[1] In 2015, there were 819,000 bankruptcy filings. Bob Lawless, "Bankruptcy Filings Drop 10% in 2015," *Credit Slips* (Jan. 7, 2016), http://www.creditslips.org/creditslips/2016/01/bankruptcy-filings-drop-10-in-2015.html. A husband and wife may file a joint petition. 11 U.S.C. § 302) Therefore, one bankruptcy petition will represent two persons in joint cases. In our data, 24.4% of the bankruptcy cases in 2015 were joint cases, meaning the 819,000 bankruptcy petitions in 2015 were filed by just over 1 million people.

[2] Consumer Bankruptcy Project (CBP) data from 2007 and 2013-15 show that only 8.2% of chapter 7s and 6.4% of chapter 13s are filed without an attorney (although some of these cases use a bankruptcy petition preparer). The CPB is a series of empirical studies conducted in the last three decades by interdisciplinary research teams. *See infra* Part III.A for a discussion of the CBP. *See also* Lois R. Lupica, *The Consumer Bankruptcy Fee Study: Final Report* 63-64 (2011), *available at* http://papers.ssrn.com/sol3/ papers.cfm?abstract_id=2132913 (finding that in a sample of cases filed in 2007 and 2008, 5.8% of the chapter 7 cases and 2% of the chapter 13 cases were filed *pro se*). People who file *pro se* have worse outcomes than people who have an attorney. *Id.* at 64 (finding in the sample that 0.8% of chapter 13 cases filed *pro se* ended with a discharge and 28.2% of chapter 7 cases filed that ended in a dismissal were *pro se*); *see also* Angela K. Littwin, *The Affordability Paradox: How Consumer Bankruptcy's Greatest Weakness May Account for Its Surprising Success*, 52 WILLIAM & MARY L. REV. 1933, 1973 (2011) (reporting that in a sample of chapter 7 cases filed in 2007, 17.6% of *pro se* cases ended in dismissal versus 1.9% of the cases filed with the help of an attorney).

[3] People are allowed to keep some property to aid in their "fresh start," a phrase that comes from *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

[4] *See infra* Part II.A for a discussion of chapters 7 and 13.

[5] *See* Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 TEX. L. REV. 103, 453 (2011) (noting that the chapter 7 discharge rate exceeds 95%).

their plans do debtors receive a discharge.[6] Without the discharge, debtors return to their pre-bankruptcy conditions of owing all debts.

Bankruptcy attorneys play an integral role in helping people understand the benefits and drawbacks of filing under a particular chapter. However, prior research has shown that attorneys seem to guide people into chapter 7 or 13 based on considerations other than debtors' best interests; they instead are influenced by the attorneys' best interests. In some districts, most consumers file under chapter 7, while in other districts, most consumers file under chapter 13.[7] This substantial variation across judicial districts appears to be linked with how bankruptcy attorneys counsel their consumer debtor clients.[8] African Americans also are far more likely to file under chapter 13 regardless of where they live, a result that again seems related to how attorneys counsel their clients.[9]

This Article examines how money influences whether people file chapter 7 or 13. Our data analysis shows that chapter choice is powerfully shaped by when debtors must pay their attorneys and by how much money attorneys make. These financial considerations have nothing to do with the benefits or detriments of the law that governs chapter 7 and chapter 13 bankruptcies. The access to justice effect that we identify disproportionally affects people based on where they live and on their race. Most troublingly, African Americans, the exact people whose access to bankruptcy already seems to depend heavily on attorney counseling, are much more likely to file a chapter 13 bankruptcy driven by financial considerations related to attorneys' fees.

Attorneys charge, on average, $1,229 to file and represent the debtor in a chapter 7 case, and $3,217 to file and represent the debtor in a chapter 13 case.[10]

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[6] *See* Sara S. Greene, Parina Patel, & Katherine Porter, *Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Success*, 101 MINN L. REV. __, __ (forthcoming 2017) (finding that 36.5% of a sample of chapter 13 cases filed in 2007 ended in discharge after plan completion); *id.* at 107-08 (2011) (overviewing studies finding that only one-third of chapter 13 debtors receive a discharge)

[7] *See id.* at 395-96 (overviewing the variations in incidences of chapter 13 proceedings as compared to chapter 7 proceedings across the United States).

[8] *See* Jean Braucher, Dov Cohen, & Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL L. STUDIES 393, 396-97 (2012) (discussing studies finding that attorneys play a key role in chapter choice).

[9] *Id.* at 393-94 (finding that African Americans disproportionately file under chapter 13 and that consumer bankruptcy attorneys appear to be guiding African Americans into chapter 13).

[10] These figures are based on our data from 2007 and 2013-15, inflated to July 2015 dollars based on the Consumer Price Index. Because of how bankruptcy attorneys report their fees, we are unable to disaggregate attorneys' fees from bankruptcy petition filing fees. Most of the attorneys' fee data likely include the filing fee. The filing fee is $335 for a chapter 7 and $310 for a chapter 13. *See also* Lupica, *supra* note 2, at 37, 51 (reporting the mean attorneys' fee, in 2005 dollars, was $968 for a discharged

Because of the Bankruptcy Code's provisions regarding payment to professionals, attorneys require chapter 7 filers to pay all attorneys' fees prior to filing.[11] In contrast, because the Code allows attorneys' fees to be paid in installments over the course of the plan, attorneys can offer to file chapter 13 cases before debtors pay a portion or all of attorneys' fees—that is, with little money down or no money down.[12]

Thus emerges a money problem, both for bankruptcy attorneys and people seeking to file bankruptcy. Attorneys want to ensure that they are paid, but many people who want to file lack the money to pay the attorneys' fees at the time they need a bankruptcy attorneys' help.[13] When people arrive in attorneys' offices, they have struggled for years to pay back their debts, often calling on family and friends, taking out payday and other loans, and cutting back on necessary expenses to try to repay.[14] They may believe immediate bankruptcy is their only refuge. If attorneys suggest that these people file under chapter 13 now and pay attorneys' fees during the plan, attorneys will ensure they have a client, increase the likelihood of payment, and will make more money. Conversely, the anxious and desperate debtors will be able to file bankruptcy immediately. From the debtor's perspective, an attorney offering a "no money down" chapter 13 case essentially is proposing to lend the debtor the funds necessary to file, seemingly interest-free. If you were an attorney, would you offer debtors the option of "no money down"? If you were a debtor, would you accept the offer to pay nothing now while getting immediate help?

Based on data from the Consumer Bankruptcy Project (CBP) in 2007 and the 2013-15,[15] this Article identifies the phenomenon of people paying *nothing* in attorneys' fees before filing under chapter 13. We term these "no money down"

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chapter 7 no-asset case, $1,072 for a discharged chapter 7 asset case, and $2,564 for a discharged chapter 13 case).

[11] *Lamie v. U.S. Trustee*, 540 U.S. 526 (2004) (discussing these provisions and holding that a chapter 7 debtor's attorney may not be compensated from bankruptcy estate funds unless the attorney is employed by the trustee under 11 U.S.C. § 327).

[12] The disparity in timing of when attorneys' fees must be paid has led to what are termed "fee-only" chapter 13 plans. These plans provide for only for the payment of attorneys' fees over several months or years; creditor receive nothing. As overviewed in Part II.B, the legality of "fee-only" plans has been discussed in prior work. This Article's contribution is to document the prevalence and patterns of "fee-only" plans and other chapter 13 plans that permit payment of most or all attorneys' fees over time.

[13] *See* Ronald J. Mann & Katherine Porter, *Saving Up for Bankruptcy*, 98 GEORGETOWN L. J. 289, 319-24 (2010) (investigating how tax refunds and paychecks influence bankruptcy filing patterns).

[14] *See infra* Part III.C.1 for a discussion of how long people report struggling with debts before filing.

[15] *See infra* Part III.A for a description of the CPB.

bankruptcies, as the consumer begins the process of purchasing legal help without an initial payment. Our data reveal that "no money down" bankruptcies increased significantly between 2007 and 2013-15.[16]

The cost, length, and low discharge rate of chapter 13 mean that the existence and growth of "no money down" bankruptcy may be harming some consumers. Our data show that a distinct subset of debtors files "no money down" chapter 13 bankruptcy. Based on their finances, they look more like the people who file under chapter 7 than those who file under chapter 13.[17] "No money down" debtors seem better suited to filing under chapter 7, if only they had enough cash to pay attorneys' fees upfront. If they had filed under chapter 7, based on 2007 CBP data, 97% of their cases would have ended in a discharge of their debts. Instead, only 45% of "no money down" cases from the 2007 CBP resulted in a discharge. This means that 55% of "no money down" debtors exited bankruptcy still owing the same debts they did before spending time and money filing bankruptcy.[18]

"No money down" bankruptcy also is not distributed equally across the country or racial groups. Whether a debtor will file under chapter 13 with "no money down" depends on where that person lives and whether that person is African American. Debtors from judicial districts with high chapter 13 filing rates are statistically significantly more likely to file "no money down" chapter 13 cases. In addition, African Americans are more likely to file "no money down" chapter 13 cases than other similarly situated debtors. There also is a tight correlation between no money down" bankruptcy and African Americans' higher likelihood of filing under chapter 13 in general, a result linked to how attorneys counsel debtors. The phenomenon of "no money down" chapter 13 may explain much of the racial disparity in chapter 13 filing rates.[19]

"No money down" chapter 13 emerges as a sub-optimal way for cash-strapped debtors to file bankruptcy. This negative effect reduces the efficiency of bankruptcy law and produces unequal effects. We explore what may account for the incidence and increased use of "no money down" bankruptcy. Our data cannot reveal how attorneys discuss bankruptcy chapter options with their clients, or why debtors ultimately file with "no money down" despite chapter 13 costing 250% more in attorneys' fees than chapter 7.[20] But both bankruptcy attorneys and debtors

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[16] *See infra* Part III.B for details about the increasing incidence of "no money down" bankruptcy.

[17] *See infra* Part III.C.1 for additional ways in which "no money down" filers differ.

[18] *See infra* Part III.D for a full analysis of case outcomes from the 2007 and Current CBPs.

[19] *See infra* Part III.C.2 for an analysis of the regional disparities and African Americans' use of "no money down" bankruptcy.

[20] *See infra* Part III.B, Figure 2.

understandably may be motivated to propose and accept a "no money down" filing option—it solves their money problems.[21]

Regardless of what drives people to file chapter 13 when it seems that chapter 7 is the better option, "no money down" bankruptcy is an inefficiency at best, and a social harm at worst. Part II of the Article describes the salient features of chapter 7 and chapter 13, with a focus on bankruptcy attorneys' fees. Part III draws on CBP data to document "no money down" bankruptcy, to investigate which people file "no money down" chapter 13 cases, and to assess these cases' outcomes. It also puts forth some possible explanations for the increasing prevalence of "no money down" bankruptcy despite its relative demerits. Part IV situates "no money down" bankruptcy within a broader societal pattern of cash-strapped, lower income individuals paying more for good and services and discusses its implications for access to justice. It then suggests how to reform the payment of bankruptcy attorneys' fees so that all debtors can benefit equally from bankruptcy. Part V concludes.

II. BANKRUPTCY CHAPTER CHOICE AND ATTORNEYS' FEES

A. Chapter 7 vs. Chapter 13

People who cannot repay their debts have essentially two options for seeking protection from their creditors in bankruptcy: filing under chapter 7 or under chapter 13.[22] Each chapter provides for a particular "deal" between debtors and creditors. The usefulness of each deal depends on the debtor's financial circumstances and goals.

In chapter 7, the debtor receives a relatively quick discharge in exchange for turning over all non-exempt assets, which are sold for the benefit of creditors.[23] Most debtors own little property that is not exempt—property protected by state law or the Bankruptcy Code from being sold so that the debtor may begin her fresh start with some necessities, such as clothing, household goods, and some cash.[24] In addition, if the debtor has pledged an asset as collateral to secure a loan made by a

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[21] *See infra* Part III.E for a full discussion of why bankruptcy attorneys may offer and people may choose to file with "no money down."

[22] People also may file under chapter 11, which provides for reorganization of debts. However, the vast majority of consumers file under chapters 7 and 13. *See Caseload Statistics Data Tables*, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, http://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables (last visited Aug. 11, 2016). The discussion thus focuses on chapters 7 and 13.

[23] *See* Porter, *Pretend Solution*, *supra* note 5, at 116 (describing chapter 7).

[24] *See* Braucher et al., *supra* note 8, at 394 (discussing exemptions).

creditor, that encumbered piece of property is not available for liquidation.[25] In practice, more than 90% of consumer debtors' chapter 7 cases are "no-asset," meaning the debtor owns no property subject to liquidation.[26] More than 95% of people who file under chapter 7 receive a discharge, which they typically receive within four to six months of filing.[27]

Chapter 13, in contrast, is a long, complicated, and often a much less successful proceeding.[28] Unlike in chapter 7, people who file under chapter 13 keep all their assets. In exchange, they must pay their "disposable income" to their creditors over a three- to five-year repayment plan approved by the bankruptcy judge.[29] So that as much income as possible goes to creditors, the Bankruptcy Code requires debtors to live on very modest budgets.[30] In most cases, only upon completion of this repayment plan is the debtor granted the discharge.[31] Because of the ability to retain property, chapter 13 is popular with people who want to save their homes from foreclosure.[32]

For those debtors who complete their plans, their journeys from filing their bankruptcy petition through plan confirmation to their final payment under the plan may take over six years. In practice, however, only one-third of chapter 13 cases result in a discharge.[33] Most of the other two-thirds of cases ends with a dismissal, which returns the debtor to her pre-bankruptcy circumstance of

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[25] *See id.* (noting the effect of secured credit).

[26] *See* Dalié Jiménez, *The Distribution of Assets in Consumer Chapter 7 Bankruptcy Cases*, 83 AM. BANKR. L.J. 795, 797 (2009) (finding that 93% of individual chapter 7 debtors who filed bankruptcy petitions in 2007 entered bankruptcy with no distributable assets); Ed Flynn et al., *Chapter 7 Asset Cases*, AM. BANKR. INST. J., Dec.-Jan. 2002, at 22, 22 (reporting that 96% of consumer chapter 7 cases filed in 2002 were closed without any funds distributed to creditors).

[27] *See* Braucher et al., *supra* note 8, at 394 (noting the timing of discharge in chapter 7); Porter, *Pretend Solution*, *supra* note 5, at 116 (same).

[28] What constitutes a "successful" consumer bankruptcy case is debatable. For purposes of this Article, "success" is defined as a discharge of debts. *See* Greene et al., *supra* note 6, at __ (defining success in consumer bankruptcy in the same way).

[29] *See* Braucher et al., *supra* note 8, at 394 (describing chapter 13); Porter, *Pretend Solution*, *supra* note 5, at 116-17 (same).

[30] *See* Porter, *Pretend Solution*, *supra* note 5, at 117 (noting repayment plan requirements).

[31] *See* Braucher et al., *supra* note 8, at 394 (discussing the timing of discharge in chapter 13).

[32] *See id.* at 395 (discussing why the ability to save property in chapter 13); Porter, *Pretend Solution*, *supra* note 5, at 117-18 (detailing chapter 13's provisions covering home mortgage debt).

[33] *See supra* note 6.

personally owing all amounts due on debts.[34] A small portion is converted to chapter 7 for liquidation.[35]

Chapter 7 is more popular, accounting for two-thirds of consumer bankruptcy filings nationwide, a figure that has remained steady despite reforms aimed at making chapter 13 more attractive or forcing debtors to file under chapter 13.[36] Besides saving their homes from foreclosure,[37] given the apparent financial disadvantages, why would anyone file under chapter 13?

Ironically, the one explanation that has little effect on who files under chapter 13 is the Bankruptcy Code's provisions specifying who must file under chapter 13 rather than chapter 7. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)[38] added a "means test" to the Code that sorts debtors into chapter 7 or chapter 13 based on their income.[39] If a debtor's monthly income is too high relative to debts owing and monthly expenses, as set by the Code, then the debtor must file under chapter 13.[40] The reality is that 90% of debtors who file under chapter 13 have so little income that they may file under chapter 7; thus the means test is irrelevant for most debtors.[41]

B. Chapter Choice: Paying Creditors, Race, and Attorneys' Fees

There are three other major explanations for why a debtor may decide to file under chapter 13, each of which is relevant to this Article's findings. First, people

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[34] Greene et al., *supra* note 6, at __ (reporting dismissal rates of chapter 13 cases with uncompleted plans and discussing the effects of dismissal); Porter, *Pretend Solution*, *supra* note 5, at 118 (discussing the effect of discharge on a debtor's personal liability for debts).

[35] Greene et al., *supra* note 6, at __ (reporting conversion rates from chapter 13 to chapter 7).

[36] *See* Porter, *Pretend Solution*, *supra* note 5, at 116, 119 (overviewing filing statistics); Robert M. Lawless et al., *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 363 (2008) (discussing how amendments to the Code enacted in 2005 did not affect the distribution of chapter 7 versus chapter 13 filings). In the 2013-14 CBP, 34.4% of the sampled cases were chapter 13.

[37] In chapter 7, the debtor and secured creditor may enter into a reaffirmation agreement that adjusts the debt secured by personal property, such as a car. 11 U.S.C. § 524. Also, if a debtor files under chapter 7, a secured creditor often will remain satisfied with the debtor keeping the collateral as long as the debtor continues to pay the debt. As such, filing under chapter 13 is not necessary to retain encumbered property if the debtor is current on payments and can remain so.

[38] Pub. L. No. 109-8, 119 Stat. 23 (2005), which had an effective date of October 17, 2005

[39] 11 U.S.C. § 707(b)(2).

[40] *See* Porter, *Pretend Solution*, *supra* note 5, at 119 (discussing the means test); Lawless et al., *supra* note 36, at 352-53 (same). Despite evidence to the contrary, Congress enacted the means test largely based on anecdotal reports and feelings that people were abusing the bankruptcy system by running up debts and then strategically filing to escape from those debts, which they had the means to repay. *See* Katherine Porter, *Bankrupt Profits: The Credit Industry's Business Model for Postbankruptcy Lending*, 93 IOWA L. REV. 1369, 1375-78 (2008) (overviewing the debates that led to BAPCPA's passage).

[41] ELIZABETH WARREN ET AL., THE LAW OF DEBTORS AND CREDITORS __ (7th ed. 2015).

may choose chapter 13 out of a genuine desire to pay their debts to the fullest extent possible. As shown through interviews with consumer debtors conducted by two of this Article's authors, most debtors want to repay their creditors.[42] Because chapter 13 will allow them to pay their creditors more, people may decide that filing under chapter 13 is moral and "the right thing" to do.[43]

Family, friends, and bankruptcy attorneys also may influence people's view of what is "the right thing" to do. There is substantial variation by judicial district in the rate at which chapter 13 cases are filed. In some districts, mostly in the South, more than three-fourths of debtors file under chapter 13, while in other districts, mainly in the North, more than three-fourths of debtors file under chapter 7. For example, in 2015, only 6.7% of the petitions filed in the Northern District of Iowa were chapter 13s, as compared to 80.3% of the petitions filed in the Western District of Louisiana.[44]

Qualitative studies of consumer bankruptcy attorneys show that some attorneys view filing under chapter 13 as evidencing good morals, and encourage their clients to do "the right thing," even if the "right thing" is not the best financial deal for their clients.[45] Scholars have linked the variations among judicial districts in the distribution of chapter 7 and chapter 13 filings with prevailing morals among attorneys and the legal culture in different areas of the country.[46] Additionally, studies show "social spillover" in consumer bankruptcy filings: the more people

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[42] Mann & Porter, *supra* note 13, at 313-17 (describing how people come to terms with their inability to pay their debts); Porter, *Pretend Solution*, *supra* note 5, at 119 (noting that some debtors indicated that they decided to file under chapter 13 because they wanted to try to repay their debts); Deborah Thorne & Leon Anderson, *Managing the Stigma of Personal Bankruptcy*, 39 SOC. FOCUS 77, 83 (2006) (describing how people tried to pay off their debts before filing bankruptcy).

[43] *See* Brent T. White, *Underwater and Not Walking Away: Shame, Fear, and the Social Management of the Housing Crisis*, 45 WAKE FOREST L. REV. 971, 971-72 (2010) (noting that people continue to pay their mortgages "even when they are hundreds of thousands of dollars underwater and have no reasonable prospect of recouping their losses"). The phrase "the right thing" is from Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L.J. 501, 562 (1993). *See infra* note 45.

[44] We collect the chapter 13 rate for the judicial district from official statistics from the Administrative Office of U.S. Courts. *See Caseload Statistics Data Tables*, *supra* note 22. The chapter 13 rate is computed as a percentage of all bankruptcies in the district. These percentages have remained steady over time. *See* Braucher et al., *supra* note 8, at 396 (overviewing filing statistics).

[45] Braucher, *supra* note 43, at 562 (1993) (noting that attorneys who told clients to do "the right thing" emphasized "clients' need for self-esteem and desire to do what they consider morally right"). *See also generally* Gary Neustadter, *When Lawyer and Client Meet: Observations of Interviewing and Counseling Behavior in the Consumer Bankruptcy Law Office*, 35 BUFFALO L. REV. 177 (1986) (describing how attorneys' beliefs influenced their discussions of chapter choice with clients).

[46] *See id* at 396-97 (discussing what is termed "local legal culture").

who file bankruptcy in a neighborhood, the more likely their neighbors are to file in the future.[47] What is "the right thing" seemingly differs district to district.

Second, African Americans are far more likely to file under chapter 13 than other similarly situated debtors, regardless of where they live.[48] To explore why African Americans disproportionately use a chapter of bankruptcy that requires greater repayment of debts, takes longer, and as detailed below, costs more, Jean Braucher, Dov Cohen, and one of this Article's authors, designed an experiment to ascertain how attorneys guide debtors to particular chapters of bankruptcy. They sent a random sample of consumer bankruptcy attorneys from across the country one of three versions of a vignette with details about a couple thinking of filing bankruptcy, and requested that the attorneys recommend whether the couple file under chapter 7 or 13. Every vignette included the same facts, which set up a situation in which the attorney would feel equally comfortable recommending chapter 7 or chapter 13. The three versions varied the debtors' names and church affiliations to signal African American, white, or no racial information, and varied whether the debtors expressed a preference for filing under chapter 7 or chapter 13.[49]

Attorneys were statistically significantly more likely to recommend chapter 13 for the African American couple than the white couple and the couple with no racial information.[50] They also were more likely to recommend chapter 13 to their African American clients who expressed a preference for chapter 7 than to their white clients who expressed a preference for chapter 7.[51] In short, attorneys appeared to guide their hypothetical African American clients to chapter 13, sometimes despite their stated preferences. Separate from variations across districts, what is "the right thing" appears to depend on race.

The final reason that people may choose to file under chapter 13 rather than chapter 7 has to do with money, and again reflects bankruptcy attorneys' influence over chapter choice. Bankruptcy attorneys charge much less to file and represent the debtor in a chapter 7 case—on average $1,229, than to file and represent the debtor

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[47] The term "social spillover" refers to how the actions of others in people's neighborhoods can influence their decisions. Barry Scholnick, *Bankruptcy Spillovers Between Close Neighbors* 1 (Apr. 2013),http://professor.business.ualberta.ca/barryscholnick/~/media/business/FacultyAndStaff/MBELBarryScholnick/Documents/JournalArticles/BK_Neighbor_14Apr2013.pdf [http://perma.cc/NM7P-VX67]; *see also* Pamela Foohey, *When Faith Falls Short: Bankruptcy Decisions of Churches*, 76 OHIO ST. L.J. 1319, 1328-31 (2015) (overviewing studies about social spillover and the related concept of "social capital" in the context of consumer bankruptcy filings).

[48] Braucher et al., *supra* note 8, at 404-05.

[49] *Id.* at 408-09.

[50] *Id.* at 412.

[51] *Id.*

in a chapter 13 case—on average, $3,217.[52] The difference in cost generally reflects the complexity and length of the two proceedings.[53] Bankruptcy attorneys also report losing money on chapter 7 cases.[54]

To put these costs in context, based on Current CBP data, the attorney's fee for the median chapter 13 debtor was about exactly equal to one entire month's worth of income ($3,217). Although the median chapter 7 debtor had a lower monthly income ($2,493), that income was more than double the cost of the chapter 7 attorney's fee.

Despite its relative expense, people nonetheless decide to file under chapter 13 because of the timing of when bankruptcy attorneys require client to pay attorneys' fees. The Code allows people who file under chapter 13 to pay attorneys' fees during the repayment plan.[55] In contrast, almost all bankruptcy attorneys require people filing under chapter 7 to pay attorneys' fees in full before filing the case.[56] By the time people file bankruptcy, most have little to no money saved to pay attorneys' fees, potentially prompting them to choose chapter 13 over chapter 7.[57]

The reason that attorneys require debtors to pay their fees prior to filing in chapter 7 cases developed in part because of a 2004 Supreme Court decision holding that only attorneys employed by the trustee overseeing a chapter 7 case may be paid from bankruptcy estate funds.[58] If a debtor's attorney is not employed by the trustee, then any fees that the debtor owed the attorney at the time of the bankruptcy filing are considered pre-petition unsecured debts. This debt for attorneys' fees is subject to being are discharged with little to no payment in chapter 7.[59] Chapter 7 debtors' attorneys are rarely employed by the trustee, and if their clients do not pay them in full prior to filing the case, they risk not being paid.

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[52] *See supra* note 10 and accompanying text.

[53] *See* Lupica, *supra* note 2, at 109-110 (overviewing the time reported by attorneys that it takes them to prepare chapter 13 petitions and accompanying documents). Attorneys' fees also rose significantly with the enactment of BAPCPA, with mean costs increasing 24% to 48% depending on chapter and whether the debtor had any administrable assets or received a discharge. *Id.* at 36-37, 50-51.

[54] *Id.* at 92-93.

[55] 11 U.S.C. § 330.

[56] *See* Lupica, *supra* note 2, at 93 (reporting that most surveyed bankruptcy attorneys stated that they require payment in full prior to filing a chapter 7 case).

[57] *See* Mann & Porter, *supra* note 13, at 319-24 (discussing how tax refunds and paychecks affect the timing of chapter 7 filings in particular).

[58] *Lamie v. United States Trustee*, 540 U.S. 526, 529 (2004). The chapter 7 trustee is a private attorney charged with administering the case. *See also* Michelle A. Cecil, *A Reappraisal of Attorneys' Fees in Bankruptcy*, 98 KY. L.J. 67, 83-86 (2010) (discussing *Lamie*).

[59] *See, e.g.*, *Rittenhouse v. Eisen*, 404 F.3d 395, 396 (6th Cir. 2005) (joining the Second, Seventh, and Ninth Circuits in concluding that unpaid pre-petition attorney fees are dischargeable); *In re Michel*, 509

In response to *Lamie*, bankruptcy attorneys have devised several controversial strategies to help people who do not have funds to pay the full attorneys' fees up front. Certain of these strategies are more successful than others. Drawing on a practice that had developed prior to *Lamie*, some attorneys accept postdated checks from their clients as payment of attorneys' fees. The attorneys deposit the checks weeks or months after filing their clients' chapter 7 cases.[60] Courts almost universally hold that this practice creates prepetition claims because the postdated checks create a right to payment that arises before the chapter 7 petition date.[61] When attorneys deposit the postdated checks, depending on timing, they violate the automatic stay, which prohibits any act to collect on pre-petition claims, such as postdated checks,[62] or the discharge injunction, which similarly prohibits any act to collect against the debtor on discharged debts.[63] The practice also creates a conflict of interest between the bankruptcy attorney's firm and its clients.[64]

Despite the legal and ethical issues of accepting postdated checks, bankruptcy attorneys still report engaging in this and similar practices, such as requiring chapter 7 debtors to pay half of the attorneys' fees prior to filing and to enter into a post-petition fee agreement for the remainder.[65] Because post-petition fee agreements are entered into prior to filing, they create dischargeable debts and are unenforceable.[66] When asked if they receive payment from debtors post-petition based on these agreements, attorneys generally respond, "sometimes I do, and

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B.R. 99, 106-07 (Bankr. E.D. Mich. 2014) (holding that a flat or fixed attorney's fee must be paid in full prior to the commencement of the debtor's case or the unpaid portion of the fee is discharged); *In re Mansfield*, 394 B.R. 783, 784 (Bankr. E.D. Pa. 2008) (same).

[60] *See U.S. Trustee for Region 21 v. Clark & Washington, P.C. (In re Walton)*, 454 B.R. 537, 539 (Bankr. M.D. Fla. 2011) (detailing this practice).

[61] *Id.*; *In re Lawson*, 437 B.R. 609 (Bankr. E.D. Tenn. 2010); *In re Lewis*, 309 B.R. 597 (Bankr. N.D. Okla. 2004). *But see Gordon v. Hines (In re Hines)*, 147 F.3d 1185, 1187 (9th Cir. 1998) (approving the use of postdated checks based on the "doctrine of necessity").

[62] 11 U.S.C. § 362(a)(6); *In re Walton*, 454 B.R. at 544-45. Some courts hold that presentment of a post-dated check for payment while a bankruptcy case is pending does not violate the automatic stay per § 362(b)(11), but attempts to collect payment on checks that have been returned unpaid due to insufficient funds do violate the stay. *In re Waldo*, 417 B.R. 854, 889-90 (Bankr. E.D. Tenn. 2009).

[63] 11 U.S.C. § 524(a)(2); *In re Walton*, 454 B.R. at 545.

[64] *In re Walton*, 454 B.R. at 545-46 (discussing the conflict of interest); *In re Lewis*, 309 B.R. at 609 (discussing the conflict of interest inherent in accepting postdated checks from chapter 7 debtors).

[65] *See* Lupica, *supra* note 2, at 93 (reporting that some attorneys admitted to entering into post-petition fee agreements); Jeff Kelly, *Why Do You Have To Pay All Of Your Chapter 7 Fees Before a Case Is Filed?*, National Bankruptcy Forum (Oct. 23, 2013), *available at* http://www.natlbankruptcy.com/why-do-you-have-to-pay-all-of-your-chapter-7-fees-before-a-case-is-filed/ (reporting that some attorneys in the Northern District of Georgia accept postdated checks); Email to National Association of Consumer Bankruptcy Attorneys Listserve (June 30, 2016) (on file with authors) (asking about the legality and ethics of post-petition fee agreements in chapter 7).

[66] *See* Lupica, *supra* note 2, at 93 (noting that pre-petition fee agreements are unenforceable).

sometimes I don't."[67] Although attorneys apparently continue to use these two strategies, in the 2007 and Current CBP data, the vast majority of debtors who filed under chapter 7 paid their attorneys in full in advance of the filing.

Instead of trying to devise a workaround of *Lamie*, some bankruptcy attorneys have looked to chapter 13 as a way to help people who do not have the means to pay attorneys' fees in full prior to filing. There exists a widespread practice among attorneys of allowing their chapter 13 debtor clients to pay attorneys' fees through the chapter 13 plan.[68] Materials published by bankruptcy courts, attorneys, and chapter 13 trustees generally seem to assume that debtors will pay at least a portion of attorneys' fees due prior to filing, even if the bulk of the fees is paid through the plan.[69] To this end, bankruptcy courts have published standing orders that permit chapter 13 plans to pay attorneys' fees on a prescribed, often expedited schedule.[70]

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[67] *Id.*

[68] *In re Banks*, 545 B.R. 241, 244 (Bankr. N.D. Ill. 2016) ("Paying attorney fees through a [chapter 13] plan is not only permitted, it is the norm."); *infra* Part III.B.

[69] K. Michael Fitzgerald & Jason Wilson-Aguilar, *Chapter 13 Trustee's Best Practices Manual* 19 (July 21, 2015), *available at* http://www.seattlech13.com/Documents/Best%20Practices%2007-21-15.pdf (discussing the payment of attorneys' fees through the chapter 13 plan); *see also Bankruptcy Basics: The ABCs of Filing Chapter 13*, OREGON STATE BAR 2-8 (June 15, 2012), *available at* http://www.osbar.org/cle/library/2012/BKB12_Handbook.pdf (providing an example of how to draft a chapter 13 plan that assumes the debtor paid a portion of attorneys' fees prior to filing); *Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases*, United States Bankruptcy Court Eastern District of California 1 (Oct. 17, 2005), *available at* http://www.caeb.uscourts.gov/documents/forms/Guidelines/GL.Pmt_05.pdf ("Except for pre-petition retainers, all fees shall be paid through the plan unless otherwise ordered.").

[70] *See, e.g.*, *Standing Order No. 19 (Amended): Chapter 13 Attorneys Fees, Adequate Protection Payments, Annual Statements, Form Plan, and Tax Returns*, UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF FLORIDA (Sept. 30, 2014), *available at* http://www.flnb.uscourts.gov/sites/default/files/standing_orders/so19.pdf; *Standing Order: Payment of Attorney Fees in Chapter 13 Cases*, UNITED STATES BANKRUPTCY COURT NORTHERN AND SOUTHERN DISTRICTS OF MISSISSIPPI (Aug. 1, 2014), *available at* http://www.mssb.uscourts.gov/media/1052/2014-04-payment-atty-fee-ch-13-eff-08-01-2014.pdf; *Administrative Order Setting Procedures to be Followed in Chapter 13 Cases Filed On or After October 17, 2005*, United States Bankruptcy Court Western District of North Carolina (June 6, 2006), *available at* http://www.ncwb.uscourts.gov/sites/ncwb/files/ao688.pdf.

For instance, some of these orders permit "step-up payment plans" in which other creditors are paid less at the beginning in favor of paying attorneys' fees over several months to a year; once attorneys' fees are no longer owing, other creditors' monthly payments increase. *In re Erwin*, 376 B.R. 897, 901 (Bankr. C.D. Ill. 2007) (describing a step-up plan). The only statutory check on this practice seems to be a provision added to the Code by BAPCPA that requires amounts owing to creditors secured by the debtor's property to be paid in "equal monthly amounts" over the life of the chapter 13 plan. 11 U.S.C. § 1325(a)(5)(B)(iii). The handful of bankruptcy courts that have heard challenges to step-up plans are split as to whether the Code allows chapter 13 plans to pay debtor's attorneys on an expedited basis. *See In re Romero*, 539 B.R. 557, 558 (Bankr. E.D. Wis. 2015) (holding that attorneys' fees may not be paid on an expedited basis); *In re Sanchez*, 384 B.R. 574, 577-79 (Bankr. D. Or. 2008) (overviewing case law).

Standing orders also often include a presumptive "no look" fee for routine chapter 13 cases.[71] "No look" fees give attorneys assurance that if they charge their chapter 13 debtor clients no more than that amount, the bankruptcy court will approve their fees, which will guarantee them payment, provided their clients are able to keep up with plan payments. Standing orders thus may increase attorneys' incentives to suggest that clients file under chapter 13, particularly when faced with clients who are unable to pay attorneys' fees without postponing filing, even if filing under chapter 13 is a sub-optimal financial choice for some clients.

A small subset of chapter 13 cases in which bankruptcy attorneys allow their clients to pay all or a portion of fees through the plan demonstrates how sub-optimal chapter 13 may be for certain debtors. Some people who file under chapter 13 own so few unencumbered assets relative to the amount of debt outstanding that their chapter 13 plans effectively only pay attorneys' and other fees. Unsecured creditors receive no money through these "fee-only" plans.[72] If debtors who file fee-only plans had filed under chapter 7, their cases would have been categorized as "no asset,"[73] making these debtors almost certainly better suited to filing under chapter 7. This has led courts to comment that these cases are "veiled" chapter 7 cases,[74] and that "[i]t is difficult to understand how a Chapter 13 plan under these circumstances benefits anyone other than counsel,"[75] which likely comes "at the expense of debtors" and compromises attorneys' ethical standards.[76]

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[71] Lupica, *supra* note 2, at 99-100 (discussing "no look" fees); Bruce M. Price, *"No Look" Attorneys' Fees and the Attorneys Who Are Looking: An Empirical Analysis of Presumptively Approved Attorneys' Fees in Ch. 13 Bankruptcies and a Proposal for Reform*, 20 AM. BANKR. INST. L. REV. 291, 321 (2012) (finding that 87% of bankruptcy courts have adopted a "no look" fee).

[72] *Berliner v. Pappalardo (In re Puffer)*, 674 F.3d 78, 80-81 (1st Cir. 2012) (defining fee only plans). These plans provide for payment to unsecured creditors in the amount they would receive in chapter 7, but because unsecured creditors typically would receive nothing, the plan only pays the fees. *See In re Puffer*, 674 F.3d at 80 (describing a fee-only plan in which unsecured creditors were to receive 2% of their claims); *In re Doucet*, 2016 BL 140926, at *5 (Bankr. D. Kan. May 3, 2016) (discussing fee-only plans). The plans may provide for payment to secured creditors. *See In re Paley*, 390 B.R. 53, 55 (Bankr. N.D.N.Y. 2008) (describing a fee-only plan that provided for payment of attorneys' fees and a secured creditor).

[73] *See supra* note 26.

[74] *Ingram v. Burchard*, 482 B.R. 313, 319 (N.D. Cal. 2012).

[75] *In re Paley*, 390 B.R. at 60.

[76] *In re Banks*, 545 B.R. at 244. Because debtors must propose chapter 13 plans in "good faith," 11 U.S.C. § 1325(a)(3), the majority of courts that have heard challenges to fee-only plans approve them on a case by case review of the "totality of the circumstances." *In re Brown*, 742 F.3d 1309, 1319 (11th Cir. 2014); *In re Puffer*, 674 F.3d at 82-83; *Sikes v. Crager* (*In re Crager)*, 691 F.3d 671, 675-76 (5th Cir. 2012). *But see In re Doucet*, 2016 BL 140926, at *9 (holding that fee-only plans are filed in good faith); *In re Molina*, 420 B.R. 825, 830-31 (Bankr. D. N.M. 2009) (same); *In re Paley*, 390 B.R. at 59-60 (refusing to confirm fee-only plans as per say bad faith filings); *In re Arlen*, 461 B.R. 550, 554 (Bankr. W.D. Mo. 2011) (same).

The concern that bankruptcy attorneys will put their financial interests ahead of their clients' interests is particularly salient in the context of fee-only plans. But attorneys may face a similar temptation with all debtors, cash-strapped or otherwise. One recent study by Lars Lefgren, Frank McIntyre, and Michelle Miller shows that bankruptcy attorneys indeed do place their financial interests over those of their clients.[77] Using household data from California, Texas, and Utah, they found that bankruptcy attorneys played a pivotal role in whether debtors filed under chapter 7 or chapter 13: "By far, the best observable predictor of a household's decision to file under Chapter 13 is the attorney they happen to consult."[78] The authors further found that attorneys maximized their profits by steering clients to chapter 13 even when chapter 7 better matched debtors' financial profiles.[79] Being pushed into chapter 13 not only cost debtors more in legal fees, but because these debtors were poorly suited to chapter 13, their cases were more likely to be dismissed, which decreased their likelihood of sustained debt relief.[80]

The mismatch between debtors' finances and what chapter their attorneys seem to guide them into is not what Supreme Court seemingly envisioned or thought was taking place at the time of its decision in *Lamie.* During oral arguments, Justice Kennedy asked whether chapter 7 debtors were able to pay their attorneys' pre-petition flat fee, to which counsel for the United States Trustee responded, "absolutely."[81] Counsel later stated that chapter 7 debtors may use post-petition income "to pay . . . counsel to assist them in completing bankruptcy."[82] In *Lamie*, the Supreme Court noted that "[i]t appears to be routine for debtors to pay reasonable fees for legal services before filing for bankruptcy."[83]

Although the Supreme Court thought that people could and would continue to be able to afford to file under chapter 7, to the extent that people even were able to do so pre-*Lamie*, such does not seem to have occurred post-*Lamie.* Bankruptcy attorneys report that it often is difficult or forbidden to unbundle pre-petition and post-petition services in the way contemplated during the *Lamie* oral argument,[84] ostensibly leaving attorneys facing cash-strapped debtors with chapter 13 as the best bet that they will be paid. The results presented in the next part show that more

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[77] *See generally* Lars Lefgren et al., *Chapter 7 or 13: Are Client or Lawyer Interests Paramount?*, 10 B.E. J. ECON. ANAL. & POL'Y 1 (2010).

[78] *Id.* at 36.

[79] *Id.* at 35-37.

[80] *Id.* at 37.

[81] *Lamie v. U.S. Trustee*, 540 U.S. 526 (2004), Oral Argument Transcript, 2003 WL 22705280, at *31 (Nov. 10, 2003).

[82] *Id.* at *33.

[83] *Lamie*, 540 U.S at 537.

[84] *See In re Doucet*, 2016 BL 140926, at *4-5.

and more people are filing under chapter 13 without paying any attorneys' fees prior to filing, which raises questions about how attorneys are counseling debtors in light of both their and their clients' interests.

III. "NO MONEY DOWN" BANKRUPTCY

A. Methodology

The data in this Article come from the Consumer Bankruptcy Project (CBP). The CBP is a multi-researcher, long-term project designed to understand the people who file bankruptcy, why they file, and the consequences of their filings. To the best of our knowledge, the CBP has the only nationally representative and historical data about people who file bankruptcy that goes beyond court records. Past iterations of the CBP were episodic and occurred in 1981, 1991, 2001, and 2007.[85] Three of this Article's authors have been involved with the CBP since 2001. Because this Article analyzes data from the 2007 CBP and the latest iteration of the CBP, the 2013-15 CBP (Current CBP), this section confines its discussion to the methodologies for the 2007 and Current CBPs.

A detailed methodology for the 2007 CBP is available elsewhere.[86] In summary, 2007 CBP data are from a random, national sample of consumer bankruptcy cases filed under chapter 7 and chapter 13 in the fifty states and the District of Columbia beginning in the first week of February 2007 and continuing for the next four consecutive weeks. Written questionnaires were mailed to the debtors who had filed these cases.[87] These questionnaires collected demographic information not available in court records, as well as asked the debtors about their financial situations and coping mechanisms leading up to their bankruptcy filings.[88] In total, 2007 CBP data come from 2,438 bankruptcy filings and accompanying questionnaires completed by debtors.[89] Extensive telephone interviews were conducted with a randomly selected subset of over 1,000 of the debtors.[90]

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[85] *See* Katherine Porter, *Appendix: Methodology of the 2007 Consumer Bankruptcy Project*, 235, 235 *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS (Katherine Porter, ed., 2012) (discussing the methodologies for the 1981, 1991, and 2001 CBPs).

[86] *Id.* at 236-244 (detailing the 2007 CBP methodology); Lawless et al., *supra* note 36, at 391-97 (same).

[87] Lawless et al., *supra* note 36, at 391 (describing the sample).

[88] *Id.* at 392 (describing the questionnaire).

[89] This figure includes cases in which the debtor returned an incomplete questionnaire. 2,314 questionnaires were returned complete. *Id.* at 392-94 (discussing questionnaire response rates).

[90] *Id.* at 396-97 (detailing the interviews). This Article does not rely on data from these telephone interviews.

We relaunched the CBP in 2013 as an ongoing data collection effort. Rather than taking a snapshot of consumer bankruptcy filings from a short period of time, the Current CBP collects data on a continuing basis, which allows for the creation of a database that incrementally builds and which will eventually allow for comparisons over time. Like the 2007 CBP, the Current CBP is national and random. Beginning in February 2013 and every three months thereafter, a list of all individuals[91] who filed under either chapter 7 or chapter 13 in the fifty states and the District of Columbia is generated for three randomly selected business days in the two prior weeks. From this population, a sample of 200 cases is randomly selected. Approximately 100 variables on each debtor's financial characteristics, such as assets, debts, income, and expenses are coded from each debtor's bankruptcy court record. These variables include many of the same variables that were coded for the 2007 CBP, allowing for comparisons between the 2007 and Current CBP, and combination of the 2007 and Current CBP data.[92] The coding is conducted by trained law student research assistants working under the supervision of one of this Article's authors who extensively reviews the coding, including verifying individual data entries that a computer program has flagged as problematic (e.g., data outliers, logical inconsistencies). Data are generally entered exactly as listed on the court records unless there is an obvious error (e.g., an erroneous summation of individual entries).

The judicial status of each case is recorded at the time the bankruptcy files are collected. Because most cases are still pending at this time, the dispositions are recorded again at a later point approximately one year after initial data collection. Like the original coding, the dispositions data are double-checked for accuracy.

For each of the 200 randomly selected cases each quarter, we mail an introductory letter to each debtor to the address listed on the bankruptcy petition. The introductory letter explains that the debtor has been randomly selected into the project and that a written questionnaire will follow. A written questionnaire is mailed three to four business days later. Debtors may complete and return the questionnaire via mail or online. A reminder letter and replacement questionnaire are sent several weeks later if a debtor does not return the questionnaire. Subjects are offered a $50 gift card from Walmart or Amazon for completing the

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[91] We exclude cases filed by debtors that are legal entities, such as corporations or partnerships. Cases filed by individuals are included regardless of whether the bankruptcy petition indicates that the case involves primarily business or consumer debts. *See* Robert Lawless & Elizabeth Warren, *The Myth of the Disappearing Business Bankruptcy*, 92 CAL. L. REV. 743, 764-68 (2005) (explaining how popular software leads bankruptcy attorneys to miscategorize individual debtors' cases).

[92] Lawless et al., *supra* note 36, at 394-96.

questionnaire.[93] The questionnaire collects demographic (including age and race) and household information, reasons for filing, financial management practices and hardships experienced prior to filing, emotional responses to bankruptcy, and similar information.

At this time, we have complete data from people who filed bankruptcy in 2013, 2014, and 2015. This Article uses data from that three-year period for its Current CBP. Because bankruptcy court records are public documents, we have data for the 2,400 total bankruptcy cases sampled during these three years. Of the 2,400 households sent questionnaires, a total of 670 questionnaires were returned for a 27.9% response rate. In comparison, the questionnaires sent to households as part of the 2007 CBP had an approximately 50% response rate.[94]

Using court records for the full sample of 2,400 cases, we assess response bias in the questionnaire. Although we cannot rule out response bias on unobserved variables, we did not find any significant differences on the principal financial variables between debtors who responded to the questionnaire and nonrespondents. We also compared the full sample of cases to the few financial variables for which the Administrative Office of the United States Courts reports national averages, such as percentage of cases filed under chapter 13, and confirmed that the sample was nationally representative.[95] The same was true for analyses of the 2007 CBP data.[96]

Before turning to the results, one note regarding the data. All dollar-denominated data, such as attorneys' fees, asset values, and debt amounts, are inflated to July 2015 dollars based on the Consumer Price Index.[97] This allows for comparison and combination of 2007 CBP and Current CBP data. In many instances, we combine data from the 2007 CBP with data from the Current CBP. We are careful to note when we are relying on 2007 CBP data alone, Current CBP data alone, or 2007 CBP and Current CBP data combined.

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[93] For the first round of 200 cases, a $2 acknowledgment of appreciation was included with all mailed questionnaires. To increase the response rate, for the second round of 200 cases, a $20 gift card from Walmart or Amazon was offered for completing the questionnaire. To further increase the response rate, for the third round and all subsequent rounds, the gift card amount was increased to $50. Each increase in the amount of the incentive increased response rates.

[94] Lawless et al., *supra* note 36, at 393. We believe the primary difference in the response rates was the existence of research funding that allowed much greater efforts in 2007 to follow up with nonrespondents through telephone calls and other means.

[95] *See Caseload Statistics Data Tables*, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, http://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables (last visited Aug. 11, 2016).

[96] Lawless et al., *supra* note 36, at 396 (detailing testing for response bias).

[97] *Consumer Price Index*, UNITED STATES DEPARTMENT OF LABOR, http://www.bls.gov/cpi/ (last visited Aug. 11, 2016).

B. The Incidence and Characteristics of "No Money Down" Bankruptcy

The vast majority of people who file bankruptcy do so with the assistance of an attorney. Combining data from the 2007 CBP and Current CBP, 91.7% of the debtors who filed under chapter 7 and 93.6% of the debtors who filed under chapter 13 used an attorney. The small difference is almost entirely made up of chapter 7 debtors who use bankruptcy petition preparers (non-attorneys who can assist in completing the forms). Debtors who go it entirely alone – using neither attorney nor bankruptcy petition preparer – account for 5.8% our chapter 7 cases as compared to the 5.6% of our chapter 13 cases. Bankruptcy is a process where attorneys mediate the experience debtors have with the legal system.

Besides complexity, a key difference between chapter 7 and chapter 13 is the timing of when bankruptcy attorneys require that debtors pay attorneys' fees. As noted, chapter 7 debtors generally must pay attorneys' fees prior to filing, while chapter 13 debtors may pay attorneys' fees through the repayment plan, though it is assumed that debtors will pay at least a portion of the fees prior to filing.[98]

This Article challenges this conventional notion about how the "typical" debtor pays for the "typical" chapter 13. Data from the 2007 and Current CBPs show that a sizable and growing portion of people who file under chapter 13 pay *nothing* in attorneys' fees prior to filing. We label this phenomenon as "no money down" chapter 13, as distinguished from what we term "traditional" chapter 13. In a "traditional" chapter 13 filing, the debtor pays *something* towards attorneys' fees before the case is filed. In both "no money down" and "traditional" chapter 13 cases, the plan provides for payment the portion of attorneys' fees that remain due.

Table 1 reports the percentage of debtors represented by an attorney who filed under chapter 7, "no money down" chapter 13, and "traditional" chapter 13, distinguished by the 2007 CBP and Current CBP. Paying "no money down" before filing under chapter 13 not only is prevalent, but the percentage of debtors who pay their attorneys nothing prior to filing has increased during the six years between the 2007 and Current CBPs. In the Current CBP, 40.3% of people who filed under chapter 13 paid "no money down," a 25% increase from the 2007 CBP.

[98] *See supra* Part II.B.

Table 1. Incidence and Increase in "No Money Down" Chapter 13, 2007 and Current CBPs

Table 1 shows the percentages of debtors represented by an attorney who filed under chapter 7 and chapter 13 for the 2007 and Current CBPs. Chapter 13 filings are distinguished based on whether the debtor paid "no money down" on attorney's fees or whether the debtor paid some or all of the attorney's fees before filing bankruptcy, as is "traditional." The increase in "no money down" chapter 13 filings from 10.5% to 14.2% is statistically significant (chi2 = 14.01, p = .001).

	Chapter 7	"No Money Down" Chapter 13	"Traditional" Chapter 13
2007	67.1%	10.5%	22.4%
2013-15	64.7%	14.2%	21.1%

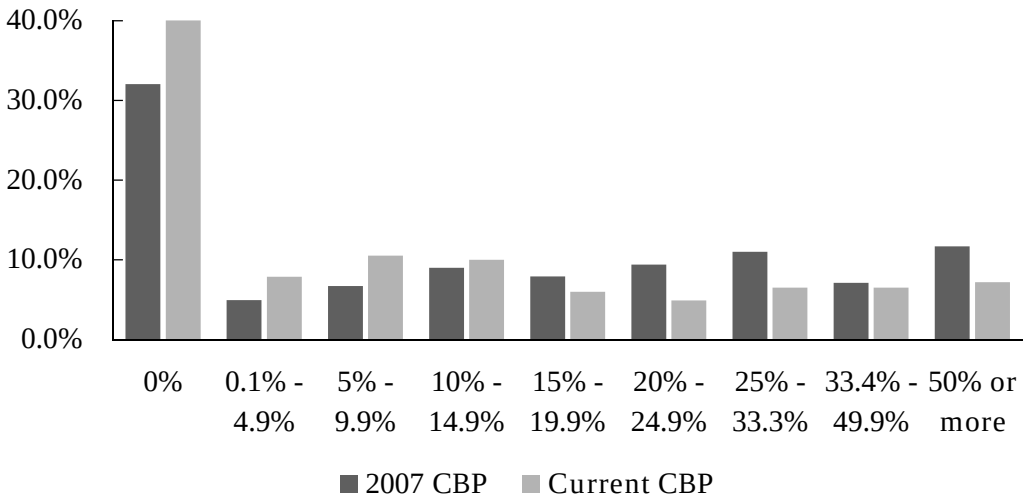
Although we term every chapter 13 case in which the attorney receives some money from the debtor in payment of attorneys' fees prior to filing as "traditional," the percentage of total attorneys' fees that these chapter 13 filers pay prior to filing is not monolithic. Of the debtors who paid their attorneys at least one dollar in fees prior to filing, few "prepaid" most of the fees. For example, from the Current CBP, less than half of the people who filed under chapter 13 and prepaid some of the attorneys' fees paid more than 50% of the fees prior to filing. We ran analyses for other cutoffs that might be considered a "near no money down" chapter 13. Our conclusions are qualitatively the same even if we use cutoffs of 5%, 10%, or 15%. We decided to use zero payment upfront as our definition for a "no money down" case as the most conservative assumption for statistical purposes. There is likely little difference between a 0%- and 1%-down case, but our analyses lump the 1%-down case with the 50%-down case thereby working against finding any differences in the data.

Figure 1 compares the percentage of attorneys' fees prepaid by debtors who filed under chapter 13 from the 2007 CBP and Current CBP. As the histogram shows, compared to debtors who filed under chapter 13 from the 2007 CBP, debtors who filed under chapter 13 from the Current CBP were more likely to pay less than 15% of attorneys' fees, at most about $500 prior to filing. Not only are more people who file under chapter 13 paying "no money down," more are paying a smaller percentage of attorneys' fees prior to filing.

Figure 1. Percent of Chapter 13 Attorneys' Fees Prepaid, 2007 CBP vs. Current CBP

Many debtors who paid attorneys' fees before filing bankruptcy, as is "traditional," paid only a portion of the attorneys' fees prior to filing. The mean percentage of attorneys' fees that debtors paid before filing ("prepaid") across all chapter 13 filings was 20.6% in 2007 and 14.4% in 2013-15. The decrease in the mean percentage prepaid is statistically significant ($t = 4.94$, $p < .001$).

Figure 1 compares the percentage of attorneys' fees prepaid by those debtors who filed under chapter 13 in the 2007 and Current CBPs.

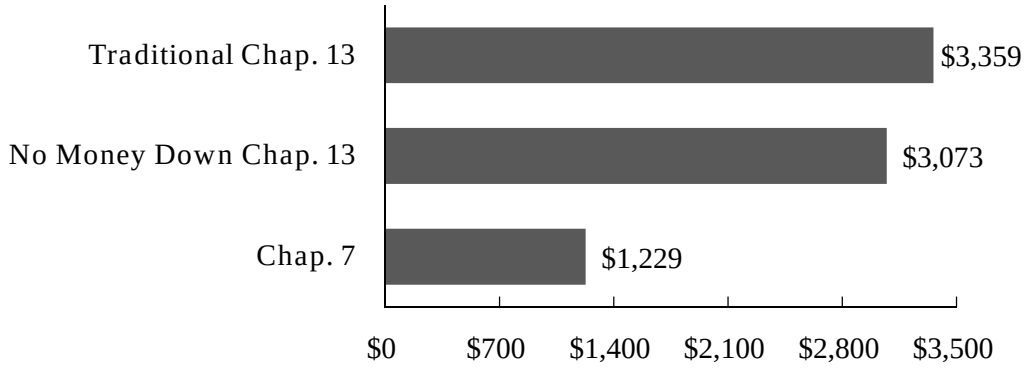


As consistent with prior research, in both the 2007 CBP and Current CBP, attorneys charged their clients more to file a chapter 13 case than a chapter 7 case.[99] But they charged their "no money down" chapter 13 clients on average $286 less than their "traditional" chapter 13 clients. Figure 2 reports the mean attorneys' fees paid by debtors from the 2007 and Current CBP combined.

[99] *See supra* note 10.

Figure 2. Mean Attorneys' Fees

Figure 2 shows the mean total attorneys' fees that debtors from the 2007 and Current CBPs combined paid for chapter 7, "no money down" chapter 13, and "traditional" chapter 13 filings. All data are inflated to July 2015 dollars based on the Consumer Price Index. These figures do not include amounts debtors paid to petition preparers. The difference in attorneys' fees, at the mean, between a chapter 7 filing and a "no money down" chapter 13 filing is $1,844. Attorneys charged, at the mean, $286 less for a "no money down" versus a "traditional" chapter 13 filing.



Although bankruptcy attorneys charge slightly less for a "no money down" than a "traditional" chapter 13, paying nothing upfront to file under chapter 13 is still vastly more expensive than paying all attorneys' fees prior to filing under chapter 7—250% more expensive. If debtors who pay "no money down" benefit from filing under chapter 13, the difference in attorneys' fees should not be worrisome. But harkening back to "fee-only" plans, which bankruptcy courts repeatedly condemn as veiled (and necessarily more expensive) chapter 7 proceedings,[100] it is worth asking whether "no money down" chapter 13 is costly to already cash-strapped and struggling debtors. The question thus becomes, who pays "no money down" for bankruptcy? As examined in the next section, people who pay *nothing* toward attorneys' fees before filing under chapter 13 are a distinct subset of bankruptcy filers.

C. Who Pays "No Money Down" for Bankruptcy?

1. Financial Characteristics

[100] *See supra* notes 72-76 and accompanying text.

People who file with "no money down" enter bankruptcy with a financial profile that makes them look more like people who file under chapter 7 than those who file "traditional" chapter 13 cases. Table 2 reports key financial data for people represented by an attorney who filed chapter 7, "no money down" chapter 13, and "traditional" chapter 13 from the 2007 and Current CBPs combined.

Table 2. Financial Characteristics of "No Money Down" Chapter 13 Filers as Compared to Chapter 7 and "Traditional" Chapter 13 Filers

Table 2 compares the median financial characteristics of "no money down" chapter 13 filers to chapter 7 filers and "traditional" chapter 13 filers for cases where persons were represented by an attorney. Data from the 2007 and Current CBPs are combined. All data are inflated to July 2015 dollars based on the Consumer Price Index. Because the means are heavily influenced by outliers, the medians generally are better indicators of central tendency, which is why medians are reported.

	Chapter 7	"No Money Down" Chapter 13	"Traditional" Chapter 13
Total assets	$29,876	$57,792	$134,889
Secured debts	$16,699	$39,902	$133,478
Unsecured debts	$42,846	$19,159	$30,751
Total debts	$87,901	$82,664	$158,738
Monthly income	$2,404	$2,854	$3,735
Total debt-to-income ratio	3.26	2.50	3.50
% homeowners	40.6%	53.5%	70.6%

People who paid "no money down" to file under chapter 13 had assets worth far less than people who paid at least a portion of attorneys' fees prior to filing under chapter 13, and owed their creditors less than those people who filed under chapter 7. They were less likely to be homeowners than the other debtors who filed under chapter 13, which explains much of the difference in asset and debt values. Over time, the financial profiles of "no money down" filers also have shifted to look more like the financial profiles of chapter 7 filers. More recent "no money down" filers had fewer assets, were less likely to be homeowners, and owed their creditors in total less than "no money down" filers from the 2007 CBP.

The financial profiles of "traditional" chapter 13 filers also varied based on what percentage of attorneys' fees they prepaid. The smaller the percentage of attorneys' fees prepaid, the less likely these filers were to own homes, and the more likely they were to look like the people who filed under chapter 7. Although we

focus on those debtors who pay nothing toward attorneys' fees before filing when discussing the merits and drawbacks of "no money down" bankruptcy, because a substantial number of other chapter 13 filers also may be more suited to chapter 7, our takeaways apply equally to these debtors.

"No money down" filers differ from other debtors in two other notable ways. First, in the 2007 and Current CBP questionnaires, we asked debtors how long they had seriously struggled with their debts prior to filing. Respondents could select from six categorical options which were converted into numerical equivalents at the mean of each category. "No money down" chapter 13 filers on average reported struggling for 2.5 years, which is comparable to the 2.4 years that "traditional" chapter 13 filers reported struggling before filing, but which is shorter than the 2.7 years that chapter 7 filers reported struggling. In addition, as with the increasing incidence of "no money down" bankruptcy and the shift in the financial profile of these filers, "no money down" debtors from the Current CBP reported struggling for 4.5 fewer months prior to filing than "no money down" debtors from the 2007 CBP, though the difference is not statistically significant ($t = 1.60$, $p = .11$).

Particularly given that these debtors financially look more and more like chapter 7 filers, the decrease in time they report struggling with their debts raises questions about how bankruptcy attorneys mediate people's decisions about when to file bankruptcy. The data cannot provide an explanation for the decrease. One hypothesis could be that attorneys increasingly offer debtors who otherwise might wait to file under chapter 7 a "no money down" chapter 13 option, and the debtors decide to file immediately because they do not have to pay any attorneys' fees up front. If so, "no money down" chapter 13 filers' debt-to-income ratios should be lower than chapter 7 filers, as is consistent with our data, because the longer people struggles prior to filing, the more time their debts have to grow. As shown in Table 2, the debt-to-income ratio of "no money down" chapter 13 filers was lower than chapter 7 filers and "traditional" chapter 13 filers.[101] Stated differently, people who paid their attorneys nothing prior to filing owed their creditors less relative to their income than all other bankruptcy filers.

The second way in which "no money down" filers differ from others also involves bankruptcy attorneys. "No money down" filers were more likely than

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[101] That "no money down" chapter 13 filers' debt-to-income ratio is similar to "traditional" chapter 13 filers may reflect the fact that a sizable portion of "traditional" chapter 13 filers also may better suited to waiting to file under chapter 7, or it simply may be a coincidence. The timing of the bankruptcy petitions of some chapter 13 filers who own homes is driven by state foreclosure laws, which may impact "traditional" chapter 13 filers' reports about how long they struggled with their debts prior to filing. *See* Mann & Porter, *supra* note 13, at 305-06 (discussing how foreclosure prompts chapter 13 filings).

other debtors to report that their attorneys did not help them with their chapter choice decision—that is, whether to file under chapter 7 or chapter 13. The Current CBP questionnaire included a question asking whether the debtor or the attorney had "more say" on the chapter in which they filed. Answers were coded on a 1-4 scale with *pro se* debtors allowed to select "not applicable." "No money down" debtors were much less likely to endorse selections at the end of the scale indicating that the attorney had more say (32.1%) than traditional chapter 13 debtors (53.2%) (chi-square = 5.71, p = .017). The same was not true when comparing "no money down" chapter 13 debtors to chapter 7 debtors, who reported that their attorneys had more say only 38.0% of the time, a difference that is not statistically significant (chi-squared = 0.68, p = .410).

Our results here are one more way "no money down" chapter 13 filers are more like chapter 7 filers than "traditional" chapter 13 filers. One conclusion that could be drawn from the data is the debtors are making the decision to file chapter 7 or "no money down" chapter 13. But for the "no money down" filers such an explanation assumes that they are preferring to pay an attorney's fee that is about two and a half times what they would pay if they filed under chapter 7. Another explanation would be that attorneys do not discuss chapter choice with people who indicate or who they assume have no (or little) money to pay attorneys' fees. Rather, the "choice" they offer these people is to file now under chapter 13 and pay all of the attorneys' fees through the plan or not to file at all. Regardless, it seems that "no money down" filers come to the bankruptcy system differently than "traditional" chapter 13 filers.

2. Judicial Districts and Race

The most striking differences between people who file with "no money down" versus other bankruptcy filers are in which judicial district they file and their race. Because there is substantial variation by judicial district in the rate at which chapter 13 bankruptcies are filed, debtors in high chapter 13 districts are obviously more likely to file chapter 13s.[102] They are also more likely to file "no money down" chapter 13s. For example, in judicial districts where the chapter 13 rate is at or below the national median, only 15.6% of chapter 13s are "no money down" as compared to 45.9% in judicial districts above the national median (chi-squared = 130.80, p < .001).

[102] In the CBP data, each observation is assigned the chapter 13 for the judicial district and year in which the case was filed. There is high year-to-year correlation in the chapter 13 district, even between 2007 and 2013-15. The correlation coefficients range from .991 to .999.

On the 2007 and Current CBP questionnaires,[103] respondents were asked to select the racial and ethnic groups with which they identify. Respondents were allowed to choose more than one group. In our analyses, a household is considered to be a particular race if either head of household self-identified as that race on the questionnaire.

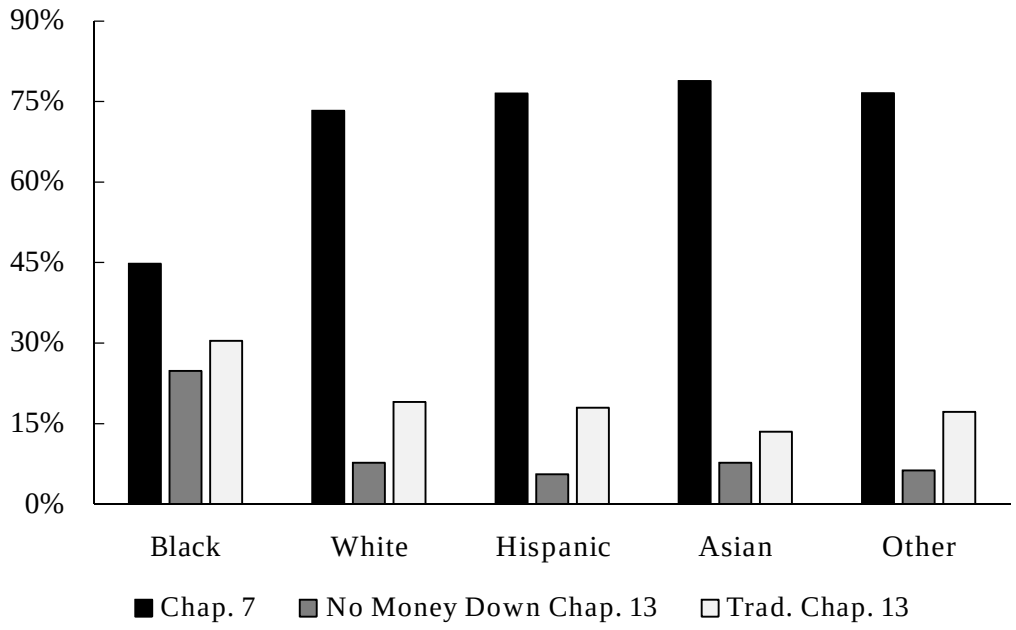
Figure 3 shows the breakdown of filing type by racial category. All races except African Americans had similar patterns of filing types. Although 23.7% of the households in our data were African American, almost half (48.9%) of the households who filed "no money down" chapter 13 cases were African American,[104] a statistically significant difference (chi-square = 187.45, $p < .001$). Approximately one-quarter of African American households filed with "no money down," as compared to less than 8% of other households. Therefore, we collapse the analysis from here forward to focus on the difference between African Americans and all other bankruptcy filers.

[103] There are slight differences in the wording for the racial categories from the 2007 questionnaire and the Current CBP questionnaire, which uses wording similar to the Census categories. Also, the Current CBP questionnaire has two racial categories that were not present in 2007: "American Indian or Alaska Native" and "Native Hawaiian or Other Pacific Islander." Only 2.8% of respondents select one of these two new categories.

[104] These figures combine data from the 2007 and Current CBPs.

Figure 3. Race of "No Money Down" Chapter 13 Filers as Compared to Chapter 7 and "Traditional" Chapter 13 Filers

Figure 3 reports the percentage at which each racial group is selected into a chapter 7, a "no money down" chapter 13, or a "traditional" chapter 13 by race. Data from the 2007 and Current CBPs are combined. A household is considered to be of a particular race if either head of household self-identified as that race on a questionnaire. Respondents could identify with more than one race.



We know from prior research that African Americans are statistically significantly more likely to file under chapter 13 than other similarly situated debtors,[105] a result which one of this Article's authors linked to attitudes of bankruptcy attorneys.[106] We now know that not only are African Americans more likely to file under chapter 13, they also are more likely to pay *nothing* towards attorneys' fees prior to filing. It could be that being African American just happens to correlate with other factors that makes one less likely to be able to pay attorneys' fees upfront. For example, well-known wealth and income gaps for African Americans may mean they have fewer financial resources to afford even the $1,200 median chapter 7 fee. Similar points may be made about the finding on judicial

[105] *See supra* note 48 and accompanying text.

[106] *See supra* notes 49-51 and accompanying text.

districts. It could be that these districts just happen to have people in them who possess characteristics making them more likely to file a "no money down" case.

Statistically, regression analysis controls for the possibility of confounding variables.[107] We ran regression analyses that suggest confounding variables are not driving the results. For those not used to reading lots of regression analyses, we will explain our tools. Readers versed in statistical analysis may want to skip to the next subheading.

A regression statistically controls for other variables in the model such that we can interpret the outcome of the regression as the effect of any particular variable while holding all other variables in the model constant. If we include, for example, a variable for race – the status of identifying as African American – in a regression with variables that include assets and income, we can interpret the outcome as if we were looking at two debtors with identical assets and identical income who only differed on race. This interpretation is true for any variable in our regression model (e.g., two debtors of the same race and income but who only differed on assets).

Regression analysis has its limits. First, it only captures the effect of the variables in the model. Although we think we have identified every variable in our model that could have effect, we have no way to prove that. Second, the regression will report the results that happen on average. The outcome of any particular case is not necessarily the same (and almost certainly not exactly the same) as the prediction of the regression. Third and related to the first point, regression at the end of the day is correlation. We have no way to rule out the possibility of another variable that would make the effect go away.

The outcome of interest in our study is categorical. Either someone files a chapter 7, a "no money down" chapter 13, or a "traditional" chapter 13. Because of the mathematics of regression analysis, a logistic regression is appropriate for a categorical outcome.[108] In a logistic regression, we are essentially doing a regression against the chance we will observe the outcomes in which we are interested. Because our study involves more than two categories, we need to conduct a multinomial logistic regression.[109]

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[107] *See* ROBERT M. LAWLESS, ET AL., EMPIRICAL METHODS IN LAW 257-88 (2d. ed. 2016) (providing an overview of regression analysis).

[108] Another commonly used regression technique for categorical outcomes is a probit regression, which generally leads to very similar outcomes as a logistic regression. The principal difference between probit and logistic regressions is the mathematical function used to calculate the regression. *See* LAWLESS, ET AL. *supra* note 107, at 303-04. We ran a multinomial probit regression on our data and reached the same results (i.e., the same variables were statistically significant). We report the more easily interpreted results from the logistic regression.

[109] An assumption of multinomial logistic regression is the "irrelevance of independent alternatives," essentially that the subject's decision does not depend on which alternatives are actually

In a multinomial logistic regression, the outcomes are measured against a base case. In our regressions, we used a chapter 7 filing as the base case. Thus, the regression results can be interpreted as the effect of a variable on a "no money down" chapter 13 or a "traditional" chapter 13 as compared to its effect on a chapter 7. We report relative risk ratios (see the Appendix for the full results) which are interpreted as the increase (or decrease) in relative risk each particular variable has as compared to the base case. For example, if the relative risk ratio for owning a car is 1.2 for a "no money down" chapter 13, then someone who owns a car is 20% (1.2 times) more likely to file a "no money down" chapter 13 as compared to our base of a chapter 7. If we look at "traditional" chapter 13s and this relative risk ratio moves to 1.5 for persons owning a car, we can interpret that to mean that persons owning a car are 50% more likely to file a "traditional" chapter 13 as compared to our base case of filing chapter 7. We also can conclude that owning a car has more of an effect on the decision to file a "traditional" chapter 13, again all as compared to our base case of a chapter 7. Relative risk ratios less than 1.0 are a reduction in risk. A relative risk ratio of 0.8 implies that the presence of the variable makes the outcome only 80% as likely to occur as without the variable.

When moving to variables that are not "either/or" outcomes, the interpretation is somewhat more difficult. The relative risk ratio is the effect of a one-unit increase in the variable. If we saw a relative risk ratio for "traditional" chapter 13 of 1.2 on monthly income as measured in dollars, that would mean each dollar of monthly income made a debtor 20% more likely to file a "traditional" chapter 13. This would be a huge effect, needless to say, but the example makes the point.

In our regressions, we use the natural logarithm of the financial variables and thus a one-unit increase is actually a one-unit increase in the natural logarithm, not the underlying variable. These variables are highly skewed in our data because a few debtors have extremely high incomes, assets, or debts. Lest this digression into our statistical tools get any longer, we will simply note that highly skewed variables in regressions can mess up the results and generally bias results toward false positives. Using the natural logarithms minimizes the skewness in the data.[110]

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in the regression model. As applied to this study, an example of this assumption is that a debtor would be just as likely to choose a "traditional" chapter 13 or a "no money down" chapter 13 regardless of whether chapter 7 was on the books. This assumption might be violated in this study if, for example, debtors actually decided first between chapter 7 and chapter 13 and then, conditioned on choosing chapter 13, decided whether they would pay anything up front. Post-regression statistical tests strongly suggested there was no violation of the assumption of the irrelevance of independent alternatives, and therefore a multinomial logistic regression was appropriate.

[110] The insatiably curious can consult LAWLESS, ET AL., *supra* note 107, at 290-97.

a. Multinomial Logistic Regression, Measures Used

We start our regression analysis with the two variables of interest: race and the overall chapter 13 rate in the judicial district. We then introduce three sets of control variables to account for possible confounding effects.

The first are financial characteristics that might make chapter 13 a good choice as well as determine the urgency of the filing and whether the debtor has funds to pay for attorneys' fees. We include income, total assets, total debt, total priority debt, and secured debt as a percentage of total debt. To reduce skewness and minimize the effect of extreme outliers, income, asset, and debt measures are both Winsorized at 3.5 standard deviations[111] and log-transformed. Obviously, having more income and assets are good proxies for ability to afford an attorney's fee. High-income individuals also may be forced into chapter 13 because of the means test. Chapter 13 likewise allows debtors to repay secured and priority debts ahead of other debts, and chapter 7 is better suited to quickly discharging high levels of total debt, particularly unsecured debt.

We also include three binary variables: whether the debtor owned a house, reported a lender threatening foreclosure as a reason for filing, and had filed bankruptcy in the prior eight years.[112] Chapter 13 is the classic "save your home from foreclosure" chapter, making homeownership an important control. The existence of foreclosure and home ownership also help to control for the urgency of a filing which may incline debtors more toward a "no money down" case. Because debtors may obtain a chapter 7 discharge only one every eight years, debtors who filed bankruptcy in the last eight years should be more likely to file under chapter 13.[113]

The second set of independent variables captures a debtor's informal attempts to negotiate with creditors, formal attempts at refinancing, or efforts to seek assistance from family and friends. It is possible that African Americans file "no money down" chapter 13 more frequently than other debtors because they are less able to work with their creditors outside of the bankruptcy system or less likely to ask others for help. Access to friends and family with funds who can perhaps help

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[111] In regression analysis, extreme outliers can influence the outcome and result in false positives, finding a result where there is no result. A few debtors had extreme amounts of assets, debts and income. A commonly used technique to deal with the outliers is Winsorization, where any outcome above a certain threshold is recoded at the threshold. In our calculations, we recoded any asset, debt, or income value that was more than 3.5 standard deviations from the mean as the value that equaled 3.5 standard deviations from the mean.

[112] All of the variables came from court records, with the exception of whether the debtor reported threatened foreclosure, which came from the CBP questionnaire.

[113] 11 U.S.C. § 727(a)(8).

pay for a bankruptcy lawyer may be a particularly important variable in determining who files "no money down" bankruptcies, especially in light of research showing African Americans are less likely to have such access. We include three binary variables: whether the debtor reported attempting to work with creditors prior to filing, attempting to and failing to refinance prior to filing, and borrowing from family and friends before filing.[114]

Third, we include demographic characteristics that may determine whether the debtor has disposable income or the general wherewithal to come up with the funds to afford an attorney. Specifically, we control for the number of dependents in the household, whether the household was headed by a single female, whether the debtor was living with a spouse or partner, whether the debtor had a bachelor's degree, and the age of the debtor.[115] For two-person households, the existence of a bachelor's degree and age were averaged across both respondents.[116]

b. Multinomial Logistic Regression, Results

Table 3 presents an abbreviated version of the regression results with the full results appearing in the appendix. In summary, the results of the multinomial logistic regression show large effects both for high chapter 13 districts and African American households on the probability of filing with "no money down." In the initial models without controls (column 2) and as compared to a chapter 7, African-American households are 2.3 times as likely to file a "traditional" chapter 13 case and 3.3 times as likely to file a "no money down" chapter 13 case. A one percentage point increase in the chapter 13 rate for the district only slightly increases the probability of a "traditional" chapter 13 (by 6%) but vastly increases the probability of filing a "no money down" chapter 13. A one percentage point translates into a 3.5-fold increase in the probability of filing a "no money" down case as compared to a chapter 7.

These effects remain even after controlling for the possible confounding variables in the model. Of the eight financial control variables (column 3), all but homeownership had the expected effects in the model. Higher income, higher total assets, higher priority debt, higher secured-to-total debt, a previous bankruptcy filing, and a debtor's report that foreclosure prompted the filing all were associated

[114] We obtained all of these variables from the CBP questionnaire.

[115] These variables also all came from the CBP questionnaire.

[116] Because our regressions combine data from the 2007 CBP and the Current CBP, we ran separate regressions with control variables both (1) for the year of the data and (2) for whether the data were from the 2007 CBP or the Current CBP. These variables were not significant, and their inclusion did not change the regressions. The same variables remained significant and the size of the effects for race and judicial district were approximately the same.

with filing a "no money down" chapter 13 case. Also as expected, higher total debts had a negative association with filing with "no money down." Although homeownership did not have the expected positive association with "no money down" filings, this result largely is because homeownership correlated highly with other financial variables, such as total assets. If the total assets variable is omitted from the regression equation, homeownership becomes positively associated with "no money down" chapter 13 filings.[117] Importantly, including these financial controls in the model lowers but does not eliminate the effect from African-American households. Because socio-economic realities mean these financial variables are correlated in one direction or another with African Americans households, it is not surprising these financial variables moderate the effect of race. At the same time, they do not eliminate the race effect, meaning race is having an effect above and beyond the variables in the model.

[117] The same was true with the prior study of African American's higher incidence of filing chapter 13 in general. Braucher et al., *supra* note 8, at 402-03 (reporting that homeownership became positively associated with filing under chapter 13 when total assets was omitted from the regression equation).

Table 3. Multinomial Regression on Probability of Case Type

The results of multinomial regressions on bankruptcy case type are presented below. The table reports relative risk ratios with the base outcome being a chapter 7 filing. Statistical significance at the 5% level is indicated by an asterisk. The presence of control variables is indicated, not necessarily whether those variables were significant. Full results and summary statistics appear in the appendix.

	(1)	(2)	(3)	(4)	(5)
Base outcome: chapter 7					
"Traditional" chapter 13					
African-American household	2.594*	2.278*	2.082*	2.073*	2.064*
Chapter 13 rate in district		6.710*	10.917*	10.734*	12.246*
"No money down" chapter 13					
African-American household	5.340*	3.342*	2.828*	2.831*	2.827*
Chapter 13 rate in district		349.529*	406.385*	419.140*	574.304*
Control variables included					
Financial			yes	yes	yes
Prebankruptcy workouts				yes	yes
Other demographics					yes

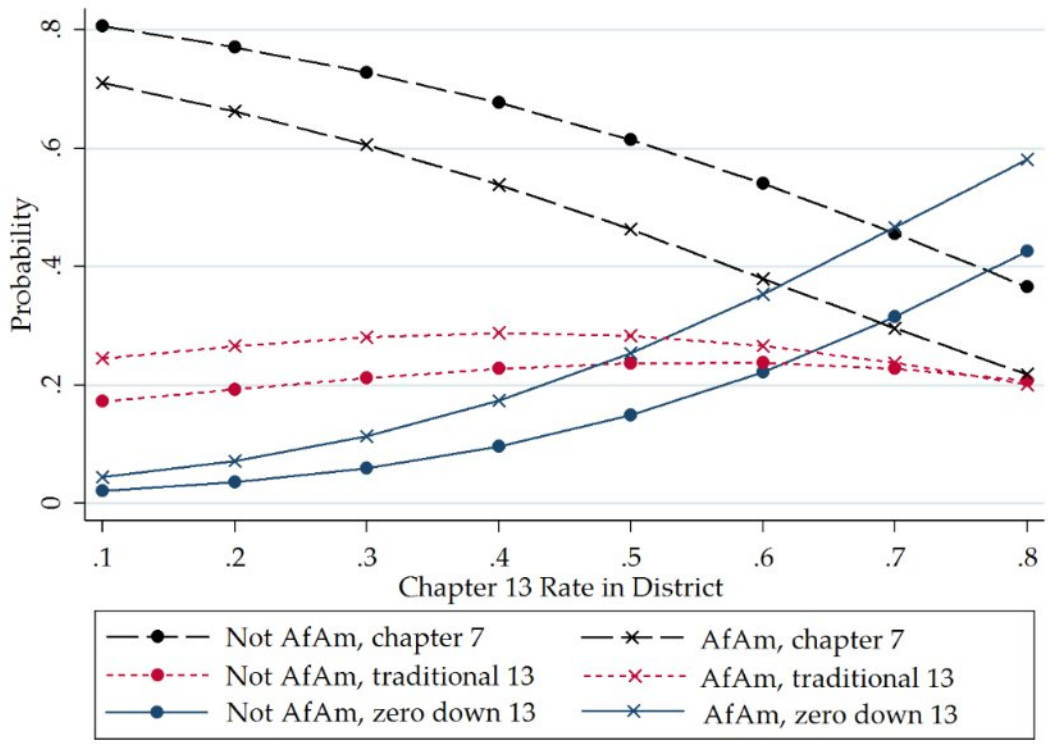
Including debtors' informal attempts to deal with creditors and other, non-race demographics (columns 4 and 5) essentially does not change the race effect and actually increases the judicial district effects. The only one of these control variables that had any effect was dependents under the age of 18, which is associated with a lower probability of filing a "traditional" chapter 13 and an even still lower probability of filing a "no money down" case. In the full model (column 5), an African-American household is approximately twice as likely to file a "traditional" chapter 13 case and 2.8 times as likely to file a "no money down" chapter 13 case, both as compared to a chapter 7.[118] Judicial districts effects become even larger in the presence of controls. A one percentage point increase in the chapter 13 rate in the district makes a "no money down" filing 5.7 times as likely as a chapter 7 filing.

Figure 4 is a graphical depiction of these relationships. It uses the regression results to predict the probability of a chapter 7, a "traditional" chapter 13, or a "no

[118] This effect size is roughly similar to that reported in Braucher et al., *supra* note 8, at 400 (reporting African-American households about twice as likely to file chapter 13 than chapter 7 after controlling for possible confounding variables).

money down" chapter 13 filing given particular characteristics of the debtor. Specifically, we assume that all variables are set at their mean values and then look at the probability of filing the different types of cases based on (1) whether the debtor identifies as African American and (2) the cases in the judicial district that are chapter 13 cases in increments of 10 percentage points from 10% to 80% (mimicking the real-world distribution). In all of the lines, probabilities associated with African Americans are marked with an "X" and those with all other debtors are marked with a circle. Using the points on the left-hand side of the graph as reference, (1) the top two lines on the graph are the probabilities that a household will file chapter 7, (2) the probability that a household will file a "traditional" chapter 13, and (3) the probability that a household will file a "no money down" chapter 13.

Figure 4. Predictive Margins from Multinomial Regression on Probabilities of Filing Different Types of Cases



In districts with lower percentages of chapter 13 versus chapter 7 filings, all debtors have low probabilities of filing chapter 13. But in low-percentage chapter 13 districts, African American households have a higher probability of filing chapter

13, confirming prior work.[119] African-American households also have a higher probability of filing a "no money down" case than other households in low-percentage chapter 13 districts. And all households that file under chapter 13 are more likely to file a "traditional" than a "no money down" case. For instance, in a district where chapter 13s are only 10% of the caseload, an African-American household has a 4.5% probability of filing a "no money down" case as compared to a 2.2% probability for households of all other households. And in these low-percentage chapter 13 districts, a "traditional" chapter 13 is more probable.

As one moves toward higher-percentage 13 districts, the race effect becomes greater and all households' probabilities of filing a "no money down" versus a "traditional" chapter 13 case reverse. For districts where 80% of the cases are chapter 13s, an African-American household has a 58.1% probability of filing a "no money down" case as compared to a 42.3% probability for all other households. In high-percentage districts (60%+ of all cases), every household's probability of filing a "traditional" chapter 13 is lower than filing a "no money down" case. For the highest-percentage chapter 13 districts (80% of all cases), the lines converge for "traditional" chapter 13s, suggesting there is no race effect as to who files a "traditional" chapter 13 in these districts. The race effect in who files chapter 13 in these districts is driven by the "no money down" cases. Because these probabilities are computed from the full regression model, they represent the probabilities after controlling for the possibly confounding variables in the regression.

Figure 4 suggests an explanation for why some judicial districts exhibit high chapter 13 rates, especially combined with the findings regarding the similarities between chapter 7 and "no money down" chapter 13 cases. In districts with low overall chapter 13 filing rates, "traditional" chapter 13 accounts for much of the difference between African-American and other households' chapter 13 rates, though these differences are smaller. As the chapter 13 rate in a district increases, "no money down" chapter 13 accounts for a greater portion of the difference in households' chapter 13 rates. In districts in which 60% or more of consumer bankruptcy filings are under chapter 13, almost all of the difference between African-American households' and non-African-American households' chapter 13 rates is solely attributable to "no money down" chapter 13. In short, the higher chapter 13 rates in certain districts seem to result from cases moving from chapter 7 to "no money down" chapter 13, and this phenomenon is most prevalent among African-American households.

Though "no money down" bankruptcy is most prevalent among African-American households, it is crucial to notice that other households also file under

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[119] Braucher et al., *supra* note 8, at 400-05.

chapter 13 with "no money down." 51.1% of "no money down" chapter 13 filings are those of non-African American households. And, as shown by Figure 4, in places where most consumers file under chapter 7, households with all demographics use the "no money down" bankruptcy option at comparable rates. The same concerns about bankruptcy attorney influence and the cost of filing under chapter 13 with "no money down" should animate the discussion of the implications of "no money down" bankruptcy regardless of the racial aspect of this phenomenon.

c. Robustness: Prepay Ratio

So far, we have explored the categorical variable of whether someone files a chapter 7, a "traditional" chapter 13, or a "no money down" chapter 13. Another possibility is to look at the percentage of attorneys' fees paid prior to filing, which could range from 0% to 100%. This percentage would be a continuous variable and should exhibit the same patterns we see in our categorical variable.

One significant problem prevents such an analysis from being useful. For reasons explained in Part II, almost all debtors who file under chapter 7 pay 100% of attorneys' fees prior to filing. In our data, 81.1% of all chapter 7 debtors paid the entire attorneys' fee upfront. The mean prepayment in chapter 7 is 86.6%. If anything, it is unclear why these figures are not closer to 100%, a topic that merits further research. For our purposes, this means that the prepayment ratio is effectively a categorical variable. High prepayment ratios invariably signal a chapter 7 case.

We thus focus on the prepayment ratio across chapter 13 cases only. On average, African-American households in chapter 13 prepay 11.4% of their attorney fees as compared to 22.6% for all other households, a difference that is statistically significant ($t = 6.68$, $p < .001$). In judicial districts above the median for chapter 13 rates, the prepayment ratio averages 11.3% as compared to 30.5% in below-median districts, a result that is again statistically significant ($t = 15.18$, $p < .001$). Both of these effects are in the same direction and confirm the results from the categorical outcome variables.

As with our analysis for the categorical outcome, we regressed against the prepayment ratio using the same control variables in Table 3. Across different regression specifications, judicial district remains a strong negative indicator of the prepayment ratio. Race is a strong negative predictor in the regressions, including those that control for possible differences in the regression modeling across judicial districts (namely, clustering standard errors at the district level). When the natural

logarithm of the prepayment ratio is used to minimize problems in the regression model, race remains a negative predictor, although only significant at p = .08.

Our analysis on the prepayment ratio support the analyses from the categorical outcomes. Although we are using fewer cases because we drop chapter 7 cases from the analysis and therefore have less statistical power, we still observe the same patterns of outcomes as we did with the categorical variables.

D. Case Outcomes

Having determined that "no money down" chapter 13 filers are a unique subset of debtors who enter bankruptcy with finances more similar to chapter 7 filers than "traditional" chapter 13 filers, are more likely to live in certain judicial districts, and are more likely to be African American, the next question is how this subset of debtors fares in bankruptcy. As noted, chapter 13 cases are twice as likely to result in dismissal as plan confirmation followed by discharge,[120] while almost all chapter 7 cases end with a discharge.[121] If "no money down" cases are dismissed at rates similar to other chapter 13 cases, such a result should raise the concern that a subset of people are paying more than other similar debtors to access bankruptcy, yet receiving fewer benefits, including, perhaps most importantly, the ultimate discharge of their debts.

Data from the Current CBP, at present, are limited in regard to case disposition because most chapter 13 repayment plans are three-to-five years long. As such, 74.1% of chapter 13 cases from the Current CBP remain pending as of the writing of this Article.[122] Table 4 reports the outcomes of all cases from the Current CBP, distinguished by chapter.

[120] *See supra* notes 33-35 and accompanying text.

[121] *See supra* note 27 and accompanying text.

[122] For cases filed in 2013, 2014, and the first half of 2015, we report status as of one year after the case was filed. For cases filed in the latter half of 2015, we report status as of one month after the case was filed.

Table 4. Case Outcomes by Chapter, Current CBP

Table 4 reports the disposition of cases from the Current CBP. For cases filed in 2013, 2014, and the first six months of 2015, case status is reported as of one year after the case was filed. For cases filed in the latter half of 2015, case status is reported as of one month after the case was filed.

	Chapter 7	"No Money Down" Chapter 13	"Traditional" Chapter 13
Dismissed	4.4%	23.8%	19.5%
Discharged	78.8%	4.3%	4.9%
Pending	16.8%	72.0%	75.6%

Although most chapter 13 cases from the Current CBP remain pending, the percentage of "no money down" chapter 13 cases that already have been dismissed is more than five times higher than the percentage of chapter 7 cases that have been dismissed. If these "no money down" filers had filed under chapter 7, the chapter which may better suit their finances, many of them likely would have received a discharge of their debts. Instead, they spent time and at least some money only to have their bankruptcy cases dismissed and return to a very similar financial situation as they faced prior to filing.

Outcomes of cases from the 2007 CBP provide a fuller picture of how "no money down" filers fare. As of the writing of this Article, all but two (less than 0.1%) of the chapter 13 cases from the 2007 CBP have concluded. Table 5 reports the outcomes of cases from the 2007 CBP, distinguished by chapter.

Table 5. Case Outcomes by Chapter, 2007 CBP

Table 5 reports the disposition of cases from the 2007 CBP. Case status is reported as of July 2016. Two chapter 7 cases that remained pending as of July 2016 are excluded.

	Chapter 7	"No Money Down" Chapter 13	"Traditional" Chapter 13
Dismissed	3.0%	54.6%	48.6%
Discharged	97.0%	45.4%	51.4%

Because we count chapter 13 cases converted to chapter 7 and then dismissed or discharged in the "no money down" and "traditional" chapter 13 outcomes, the discharge rate for chapter 13 cases is higher than prior findings, which only report

discharges of chapter 13 filings after plan completion.[123] Although "no money down" chapter 13 cases were less likely to end in a discharge than "traditional" chapter 13 cases, the difference is not statistically significant (chi-square = 2.32, p = .128). Nonetheless, the dismissal rate for "no money down" chapter 13 cases is 18 times higher than chapter 7 cases. If "no money down" filers had opted for chapter 7, almost all of their bankruptcy cases would have ended in a discharge of their debts. Instead, they paid more and received less in bankruptcy.

E. Understanding "No Money Down" Bankruptcy

Why would a debtor file under chapter 13 with "no money down" and pay almost $2,000 more in attorney's fees rather than wait the seven or eight months necessary to save enough to file under chapter 7 and pay attorney's fees up front?[124] Why would a bankruptcy attorney propose that a client file under chapter 13 with "no money down" when the client's finances suggest that chapter 7 is the better option and when the majority of chapter 13 cases end in conversion to chapter 7 or dismissal? Our data cannot explain the development and growth of "no money down" bankruptcy, but we can offer some potential reasons based on prior research about how people behave when they are chronically short on cash and about attorney-client relationships.

Put simply, the phenomenon of "no money down" bankruptcy seems to reflect concerns about money, for both debtors and bankruptcy attorneys. Each face incentives to choose the more expensive and less successful chapter 13 over chapter 7. And the effects of these incentives appear to have increased since 2007, pushing more people to file under chapter 13 without paying any attorneys' fees up front.

To understand why debtors may find "no money down" bankruptcy attractive, recall that by the time most people decide to file, they have struggled for years to pay their debts, and have turned to family and friends, have sold their possessions, and have taken out credit card, payday, and other loans.[125] They are broke and have been for some time. Research shows that living under such conditions of financial scarcity fundamentally changes how people think about money and expenses. Rather than plan for the future, they focus on the here and

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[123] *See supra* note 6.

[124] Chapter 13 plans typically provide for the payment of attorneys' fees on an expedited basis. *See supra* note 70 and accompanying text. Assuming that a debtor will pay the mean of approximately $3,200 in attorneys' fees over 18 months, a debtor will pay about $175 in attorneys' fees per month. If a debtor saved that much per month prior to filing bankruptcy, it would take a debtor about 7 months to save up the mean of $1,200 that attorneys charge to file a chapter 7 case.

[125] *See supra* Part III.C.1. Both the 2007 and Current CBP questionnaires asked respondents how they dealt with their debts prior to filing bankruptcy.

now, prioritizing present needs.[126] This tunneling on what is needed now erodes people's capacity to make financially sound decisions.[127] Indeed, a lack of money can tax a person's decision making ability more than being seriously sleep deprived.[128] The result is that cash-strapped people often turn to expensive financial products, such as payday loans, to pay pressing expenses.[129] People who take out these loans do not necessarily lack the financial acumen to understand that these loans are costly.[130] It is the gravity of their situations that causes them to accept any assistance that presents itself, and put off dealing with the potential fallout for another day.[131] And even if they recognize that they may be adding to their financial woes, people have an optimism bias that leads them to think that their financial situations will improve in the future.[132]

By the time that people decide to file bankruptcy, they also have been inundated with "buy now, pay later," "easy credit," and "cash back" offers for

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[126] SENDHIL MULLAINATHAN & ELDAR SHARIF, SCARITY 1-16 (2013) (overviewing how the lack of a valuable resource—time, money, food—"captures the mind" and causes people to focus on that which is scarce to the exclusion of other, possibly important tasks).

[127] *Id.* at 35-38 (describing the "tunneling tax"); *see also* Lauren E. Willis, *Decisionmaking and the Limits of Disclosure: The Problem of Predatory Lending: Price*, 65 MARYLAND L. REV. 707, 767-69 (2006) (linking "abbreviated reasoning" with the emotional stress, limited cognitive capacity, and the desire to escape the stressful situation as quickly as possible that accompany a lack of money).

[128] MULLAINATHAN & SHARIF, *supra* note 126, at 49-52 (discussing the effect of scarcity on "fluid intelligence" and finding that money concerns reduce a person's IQ by the equivalent of 13 to 14 points). For another example of the effects of financial scarcity, *see* MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 114-15 (2016) (discussing how tenants facing eviction often are not ready when the sheriff arrives and linking an inability "to accept or imagine" that the eviction will happen to how scarcity causes people to "prioritize the now and lose sight of the future").

[129] *See* MULLAINATHAN & SHARIF, *supra* note 126, at 107-08 (linking the use of payday loans and other types of borrowing to financial scarcity).

[130] *See* MEHRSA BARADARAN, HOW THE OTHER HALF BANKS: EXCLUSION, EXPLOITATION, AND THE THREAT TO DEMOCRACY 116-18 (2015) (noting that evidence suggests that people who use payday and similar loans "borrow with forethought and care").

[131] *See* Iain Ramsay, *The Alternative Consumer Credit Market and Financial Sector: Regulatory Issues and Approaches*, 35 CAN. BUS. L.J. 325, 369-71 (2001) (discussing research showing that people are willing to pay higher interest rates in order to receive cash within a short period of time).

[132] *See* Oren Bar-Gill, *The Law, Economics and Psychology of Subprime Mortgage Contracts*, 94 CORNELL L. REV. 1073, 1079 (2009) (discussing optimism bias in the context of mortgages); Jason Kilborn, *Behavioral Economics, Overindebtedness & Comparative Consumer Bankruptcy: Searching for Causes and Evaluating Solutions*, 22 EMORY BANKR. DEV. J. 13, 18-19 (2005) (discussing the "overconfidence bias" that causes people to systematically underestimate the probability that an adverse event will happen to them). The effects of scarcity and optimism are similar to the effects of people's tendency to overvalue present gratification, discount future costs, and skew the relative benefits and costs of future activities. *See* Kilborn, *supra*, at 21-22 (discussing "hyperbolic discounting" and "bounded willpower"); Donald C. Langevoort, *Behavioral Theories of Judgment and Decision Making in Legal Scholarship: A Literature Review*, 51 VAND. L. REV. 1499, 1503-06 (1998) (overviewing decision making biases).

everything from rent-to-own furniture and cars to short-term and home loans. These offers frequently play on the stress caused by financial scarcity, as well as people's fears about their ability to obtain credit.[133] For example, predatory lenders have mailed homeowners "live checks"—instant loans with high interest rates that a consumer accepts by cashing the check—a form of "push marketing" that highlights immediate gains and short-term benefits and deemphasizes long-term costs.[134]

When attorneys offer their clients the ability to file bankruptcy now with "no money down," debtors not only are familiar with paying nothing up front for goods and services, but they also are primed to want to accept such an offer. To debtors, "no money down" bankruptcy merely may be another offer of instant credit in a long line of similar offers. Plus, filing bankruptcy right now seemingly will solve their financial problems, at least in the short term. And it is the short term that cash-strapped individuals are focused on, most likely to the exclusion of considering whether they should save up to file bankruptcy in the future, assuming that option even is presented to them. Who would turn down what likely looks like an interest-free loan and the ability to file bankruptcy today, particularly when the alternative is enduring financial hardship for many more months?[135]

The professional context of attorney-client interactions also may lead debtors to think that filing under chapter 13 right now is a good option, regardless of whether attorneys present chapter 7 as an alternative or only mention chapter 13. In other professional contexts, such as doctor-patient relationships and clinical trials, research has shown that patients believe that their doctors would not suggest that they participate in anything that is unsafe or not in their medical best interests, even if they have been told, as they must be per informed consent protocols, that the clinical trial may not help them.[136] More simply, interacting with professionals is

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[133] *See* Willis, *supra* note 127, at 772-76 (overviewing how people with poor credit or who fear discrimination will respond to credit offers).

[134] *See id.* at 770, 816 (discussing predatory lending marketing tactics). These offers also allow people to avoid the potential ego threat of credit denial and discrimination by guaranteeing approval, which too may push them to accept loans without fully weighing benefits and costs. *See id.* at 772-76 (linking "ego threats" and marketing tactics).

[135] "No money down" bankruptcy is not interest-free even though attorneys' fees are paid over the course of the chapter 13 plan with no interest added, which likely is the payment structure most salient to debtors. The correct comparison is to attorneys' fees in chapter 7.

[136] *See* Joshua Crites & Eric Kodish, *Unrealistic Optimism and the Ethics of Phase I Cancer Research*, 39 J. MED ETHICS 403, 403-04 (2013) (detailing examples in which patients believed the likelihood that they would benefit from a trial exceeded the likelihood that other patients would benefit from the same trial); S Kenyon, et al., *Participating in a Trial in a Critical Situation: A Qualitative Study in Pregnancy*, 15 QUAL SAF HEALTH CARE 98, 100 (2006) (finding that in deciding to participate in a clinical trial people "relied on a generalized faith that both hospitals and health professionals will act in their

stressful for many people. People may become anxious and feel inferior,[137] and may be more likely to defer to professionals' judgments. Being confronted with a large amount of new and complicated information, such as what will be necessary to file bankruptcy and navigate the process, may heighten people's tendency to defer to a professional's judgment.[138] In the context of "no money down" bankruptcy, debtors essentially may be inclined to substitute what they think is their attorney's judgment for their own.

From a bankruptcy attorneys' standpoint, they may think that providing a way for overindebted and stressed people to file bankruptcy immediately is beneficial, and they may offer "no money down" chapter 13 to help clients deal with their money problems. At the same time, attorneys must be cognizant of their own money problems. Bankruptcy attorneys make their living off of representing debtors. Securing clients now is better than telling potential clients to come back when they have saved enough cash to pay attorneys' fees. The chance that these debtors will not return likely is high. Saving money is difficult, particularly over a long period of time during which new expenses may arise unexpectedly. Debtors' circumstances may change such that they no longer need or want to file bankruptcy. And debtors may find another bankruptcy attorney in the meantime.

Based solely on their finances and cash flow, attorneys also may prefer that their clients file under chapter 13, even if some debtors are unable to pay attorneys' fees prior to filing. Attorneys spend more time on chapter 13 cases than chapter 7 cases, which allows them to remain productive and to charge their clients more. The chapter 13 plan also puts their clients on a budget that forces them to set aside money to pay attorneys' fees. Even better, chapter 13 trustees oversee debtors' compliance with plans, often collecting money from debtors and forwarding it to attorneys. Not only does "no money down" bankruptcy assure attorneys that they have clients, attorneys also guarantee themselves a certain number of billable hours

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interests and only suggest interventions that will be of benefit and carry minimal risks").

[137] For instance, Medicaid patients report feeling uncomfortable interacting with medical providers and their staff. Paul Alexander Clark, *Intensive Care Patients' Evaluations of the Informed Consent Process*, 26 Dimensions Critical Care Nursing 207, 212 (2007). In the context of attorney-client relationships, "social identity threat"—a person's concern that she will be devalued because of social group membership—has been shown to cause anxiety and to tax a person's cognitive capacity, resulting in less productive attorney-clients meetings because clients have trouble communicating with attorneys. Cheryl R. Kaiser & Victor D. Quintanilla, *Access to Counsel: Psychological Science Can Improve the Promise of Civil Rights Enforcement*, 1 POL'Y INSIGHTS FROM BEHAV. & BRAIN SCI. 95, 97-98 (2014).

[138] *See* Jeff Sovern, *Toward a New Model of Consumer Protection: The Problem of Inflated Transactions Costs*, 47 WM. & MARY L. REV. 1635, 1678-79 (2006) (discussing how "information overload" can cause people to disregard relevant information).

and a relatively reliable future income stream. "No money down" chapter 13 simply is good business.

Although offering debtors the option to file under chapter 13 with "no money down" may be good business, attorneys also owe a duty of professional responsibility to their clients. Attorneys should inform clients of their legal rights and options and should strive to ensure that their clients understand those rights and options.[139] In the context of consumer bankruptcy, fulfilling this duty means presenting the financial and other benefits and drawbacks of filing under chapter 7 and chapter 13.[140] Based on our data, there are indications that attorneys increasingly may be placing their business interests above their clients' financial interests, even if they do not realize they are doing so.

That bankruptcy attorneys might prioritize their financial interests above their clients' interests is consistent with prior studies of the consumer bankruptcy system.[141] It also is consistent with research regarding the difficulties faced by lower income individuals in finding attorneys to represent them in a variety of legal contexts,[142] and how a flat-rate fee structure may lead attorneys not to zealously advocate for clients,[143] all of which raise concerns about access to justice. That attorneys may put their interests ahead of their clients' such that African Americans in particular file with "no money down" further aligns with a recent study finding that African Americans are more likely to file employment discrimination claims without the assistance of an attorney, which resulted in an increased likelihood that their cases would be dismissed or that they would lose on summary judgment.[144]

Attorneys are not the only professionals who place business considerations ahead of clients' interests. From investment advisors and hedge fund directors to

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[139] Preamble & Scope, ¶ 2, Model Rules of Professional Conduct, American Bar Association.

[140] Rule 2.1: Advisor, Model Rules of Professional Conduct, American Bar Association ("In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation").

[141] *See supra* notes 77-80 and accompanying text.

[142] *See, e.g.*, Amy Myrick et al., *Race and Representation: Racial Disparities in Legal Representation for Employment Civil Rights Plaintiffs*, 15 LEG. & PUB. POL'Y 705, 712 (2012) (noting that "studies generally find that low income plaintiffs are less likely to have lawyers"); Stephen Daniels & Joanne Martin, *The Texas Two-Step: Evidence on the Link Between Damage Caps and Access to the Civil Justice System*, 55 DEPAUL L. REV. 635, 655 (2005) (discussing how tort reform changed how attorneys screened clients and cases, leading attorneys to reject cases with limited recovery prospects, including those of low wage earners); Michelle S. Jacobs, *Full Legal Representation of the Poor: The Clash Between Lawyer Values and Client Worthiness*, 44 HOWARD L.J. 257, 261-62 (2001) (linking research regarding the "moral worthiness" of the poor with a lack of zealous representation of low income clients' interests).

[143] Herbert M. Kritzer, *Lawyer Fees and Lawyer Behavior in Litigation: What Does the Empirical Literature Really Say?*, 80 TEX. L. REV. 1943, 1973-74 (2002).

[144] *See generally* Myrick et al., *supra* note 143.

real estate agents, funeral directors, and physicians, research has shown that professionals sacrifice their clients' interests to increase their own profits.[145] These studies also demonstrate that professional can take advantage of a wide range of people and not only low income or minority clients. Investment advisors cater to a wealthy clientele, yet still successfully play on these clients' anxiety, relative lack of knowledge, and optimism and other biases to increase their profits.[146] For instance, investment advisors use an "act now" or lose out on the opportunity pitch to close sales, a technique akin to file bankruptcy now with "no money down."[147] Regardless of the mechanisms behind the increasing incidence of "no money down" bankruptcy, our data strongly suggest that these debtors are paying more to receive less from the bankruptcy system than other similar debtors.

IV. IMPLICATIONS AND SOLUTIONS

A. The Poor Pay More

"No money down" bankruptcy fits within an increasingly visible pattern of lower-income or cash-strapped individuals paying more for goods and services, and ultimately receiving less. They pay more in rent for lower quality housing.[148] They pay more for home goods and electronics through rent-to-own loans, while facing the distinct possibility of losing that merchandise to repossession.[149] They pay

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[145] *See* Steven D. Levitt & Chad Syverson, *Market Distortions When Agents are Better Informed: The Value of Information in Real Estate Transactions*, 90 REV. ECON. & STATS. 599 (2008) (finding that real estate agents price their clients' houses for less than their own); David E. Harrington & Kathy J. Krynski, *The Effect of State Regulations on Cremation Rates: Testing for Demand Inducement in Funeral Markets*, 45 J. L. & ECON. 199 (2002) (finding that state funeral regulations affect whether funeral directors induce consumers to choose burial over cremation); Judith Chevalier & Glenn Ellison, *Risk Taking by Mutual Funds as a Response to Incentives*, 114 J. POLITICAL ECON. 389 (1997) (finding that mutual fund managers set the risk of portfolios to maximize fund inflows rather than risk-adjusted returns); Jonathan Gruber & Maria Owings, *Physician Financial Incentives and Cesarean Section Delivery*, 27 RAND J. ECON. 99 (1996) (finding that physicians were more likely to recommend expensive cesarean sections when demand for this procedure was low); Donald C. Langevoort, *Selling Hope, Selling Risk: Some Lessons for Law From Behavioral Economics About Stockbrokers and Sophisticated Customers*, 84 CAL. L. REV. 627, 648-58 (1996) (discussing how investment advisors convince clients to make riskier investments because it is in the advisors' economic interests).

[146] *See* Langevoort, *supra* note 145, at 651-58 (overviewing stockbrokers' sale tactics).

[147] *Id.* at 652-53.

[148] *See* DESMOND, *supra* note 128, at 75, 307-08 (discussing how landlords make large profits off of providing housing to low-income individuals, including how they do not lower rents to meet demand, but, rather, charge tenants more in rent, neglect to fix problems with the properties, and evict tenants when they cannot keep up with rent payments).

[149] *See* Jim Hawkins, *Renting The Good Life*, 49 WILL. & MARY L. REV. 2041, 2044 (2008) (noting that the overall cost of merchandise purchased through rent-to-own is twice to three times what someone

higher fees and interest rates on their credit cards, while higher-income individuals pay less and rack up travel miles and other benefits from their credit card use.[150] Lower-income individuals otherwise pay more to borrow money, taking out loans described as "debt traps."[151] They even pay more to use their own money, spending up to 10% of their income to cash checks, pay recurring bills, and send money to their families.[152]

African Americans in particular pay more for goods and services, a result linked with predatory practices.[153] In many of these scenarios, lenders make use of the "buy now, pay later" marketing tactic that plays on financially insecure people's tendency to focus on fulfilling present needs without fully considering the long-term costs of borrowing and spending.[154] And the cash-strapped increasingly go to jail because they cannot pay their bills, only to find they do not have enough money to post bail, and to find that they owe even more in court fees when they exit the justice system.[155]

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would pay if they purchased the merchandise outright); *id.* at 90 (linking the low-income rental market with rent-to-own companies and noting "[t]here [is] a business model at the bottom of every market").

[150] *See* Andrea Freeman, *Payback: A Structural Analysis of the Credit Card Problem*, 55 ARIZ. L. REV. 151, 153-54 (describing how the credit card industry operates "a subprime market"). As investigated by one of this Article's authors, credit card issuers also target people who recently received a discharge in bankruptcy, charging them higher interest rates. *See generally* Porter, *Bankrupt Profits*, *supra* note 40.

[151] *See* Nathalie Martin, *1,000% Interest—Good While Supplies Last: A Study of Payday Loan Practices and Solutions*, 52 ARIZ. L. REV. 563, 577 (2010) (describing why payday loans are a "debt trap"); BARADARAN, *supra* note 130, at 122-26 (detailing how low-to-moderate income individuals have little access to mainstream banks and credit unions and thus turn to fringe lending, and how expensive these loans are for consumers and how profitable they are for fringe lenders).

[152] *See* BARADARAN, *supra* note 130, at 1 (noting further that for low-income individuals, "the total price of simply financial services each month is more than they spend on food").

[153] *See* Pamela Foohey, *Lender Discrimination, Black Churches, and Bankruptcy*, 50 HOUS. L. REV. __, __ (forthcoming 2017) (overviewing studies which establish that African Americans pay more for consumer goods, cars, car loans, home loans, peer-to-peer loans, and small business loans and which connect these results to predatory practices); Ronald H. Silverman, *Toward Curing Predatory Lending*, 122 BANKING L.J. 483, 486-91 (2005) (overviewing "financial strategies" used to "victimiz[e] lower and moderate income persons," and noting that "second-tier" or fringe financial services often are used by African Americans).

[154] *See supra* notes 133-134 and accompanying text.

[155] People are put in jail when they fail to appear for debt collection hearings, resulting in the issuance of a warrant for their arrest. *See* Jessica Silver-Greenberg, *Welcome to Debtors' Prison, 2011 Edition*, WALL STREET J. (Mar. 17, 2011), http://www.wsj.com/articles/SB10001424052748704396504576204553811636610; Chris Serres & Glenn Howatt, *In Jail For Being In Debt*, Star Tribune (June 9, 2010), *available at* http://www.startribune.com/in-jail-for-being-in-debt/95692619/. Similarly, lower-income and cash-strapped individuals also have trouble meeting bail when they are arrested for misdemeanors and felonies, which results in them pleading guilty and accepting punitive plea deals, and in them incurring additional court fees. *See generally* Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes* (May 2, 2016), *available at* http://ssrn.com/abstract=2777615.

Now we also know that cash-strapped individuals pay more in attorneys' fees to file bankruptcy, particularly if they are African American, only to spend more time in bankruptcy and yet have their cases dismissed at rates markedly higher than other people who enter bankruptcy in similar financial situations.[156] Like other types of lending to cash-strapped individuals, "no money down" bankruptcy effectively is a "buy now, pay later" scheme. Not only is it economically inefficient, it also affects people's access to justice and ability to use a key part of America's social safety net, seemingly solely because they do not have money.

The phenomenon of "no money down" bankruptcy suggests a breakdown in attorney-client communications. "No money down" filers may think that chapter 13 is their only option because only attorneys only mention chapter 13. They may assume that chapter 7 and chapter 13 are equally expensive. Or they otherwise may have difficulties understanding and thus balancing the benefits of essentially taking a loan from their attorneys against the benefits of waiting to save up or borrow enough cash to pay attorneys' fees and file under a bankruptcy chapter with a vastly high discharge rate. That African Americans in particular are more likely to file with "no money down" further suggests that these filers are not making fully informed decisions. A possible explanation that our data cannot completely rule out is that African Americans are much less able to borrow or save money, making "no money down" bankruptcy their best option although such an explanation would further require a theory about why this effect varies across different judicial districts with different chapter 13 rates.[157]

Similarly, though "no money down" chapter 13 filers appear to be making financially imprudent decision, we also do not know whether they would be better off waiting to file under chapter 7 until they are able to save or borrow money to pay attorneys' fees. If they wait, they may never file, which, on average, may lead to worse financial outcomes than paying more to file under chapter 13, staying in

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[156] Cases from the Current CBP show that most chapter 13 cases remain pending one year after filing, while most chapter 7 cases have concluded one year after filing. *See supra* Part III.D, Table 4.

[157] In the CBP questionnaires, we asked respondents whether they borrowed from family or friends as a tactic to deal with their debts prior to filing bankruptcy. African Americans were no less likely than other respondents to indicate that they turned to family and friends, which may suggest that they are able to borrow from family and friends at similar rates and amounts as other debtors. In addition, one study of low-income tenants and their struggles with eviction found that these individuals, including African Americans, are able to borrow from family and friends, but that they only asked for help in times of what they consider true emergencies. DESMOND, *supra* note 128, at 121 ("People were careful not to overdraw their account because when family members with money grew exhausted by repeated requests, they sometimes withheld support for long periods of time, pegging their relatives' misfortunes to individual failings."). Filing bankruptcy may be one such true emergency.

bankruptcy longer, and likely having their cases dismissed. Indeed, the year or more that "no money down" filers spend in bankruptcy, when they are free from creditors' calls and have some breathing room, may be what they most need at the time they seek bankruptcy attorneys' assistance. "No money down" filers also may prefer to file under chapter 13, despite its significantly higher cost, because it allows them to pay their creditors more and most people want to pay their debts.[158] Even if these debtors knew how much their attorneys were charging them to file bankruptcy now, they still might accept the "buy bankruptcy now, pay later" offer. Then again, studies of people who take out payday loans show that they often are so desperate to have cash to pay expenses now that they are willing to borrow at any rate, which leads to exploitation of the financially vulnerable that states and the federal government are unwilling to tolerate.[159]

Regardless of whether debtors would accept this filing option with full knowledge of its benefits and costs, and regardless of whether bankruptcy attorneys offer this filing option because they think it will help their struggling clients,[160] "no money down" bankruptcy is a suboptimal solution to these debtors' financial problems. One salient difference between "no money down" bankruptcy and other transactions in which cash-strapped individuals pay more is that attorneys facilitate their clients' access to justice. They should act and advise their clients based on their clients' best interests. The consumer bankruptcy system also is one of the largest social safety institutions in our society. As gatekeepers, attorneys possibly should have a heightened duty to ensure that debtors are able to make the most productive use of bankruptcy.

"No money down" chapter 13 creates a fundamental tension between attorneys' and debtors' interests. A subset of people are not accessing part of our social safety net—chapter 7 bankruptcy—that best fits with their financial needs. As a result, African Americans specifically, and cash-strapped individuals from all racial backgrounds generally are penalized for their inability to pay. Given that attorneys facilitate "no money down" bankruptcy, the best way to ensure that all debtors have equal access to bankruptcy is to cabin attorneys' incentives and role in

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[158] *See supra* notes 42-43 and accompanying text.

[159] *See* BARADARAN, *supra* note 130, at 124-28 (discussing states' regulations of payday loans); *Consumer Financial Protection Bureau Proposes Rule to End Payday Debt Traps* (June 2, 2016), *available at* http://files.consumerfinance.gov/f/documents/CFPB_Proposes_Rule_End_Payday_Debt_Traps.pdf (outlining the Consumer Financial Protection Bureau's proposed rules to regulate payday lenders).

[160] Bankruptcy attorneys also may think that debtors want to pay back their creditors as much as possible, and, out of a paternalistic benevolence, suggest "no money down" chapter 13 as a way for them to do so. This would align with some bankruptcy attorneys' prior comments about the morality of filing under chapter 13 rather than chapter 7. *See supra* notes 45-46 and accompanying text.

chapter choice, while still allowing debtors to have access to this filing option if they so choose.

B. Reforming Bankruptcy Attorneys' Fees

One solution to combat the effects of the "no money down" bankruptcy is to allow debtors to pay bankruptcy attorneys' fees in installments during their chapter 7 cases. If debtors paid about $210 per month for the six months it typically takes for a chapter 7 case to conclude, upon discharge, they will have paid the approximately $1,250 attorneys' fee.[161] $210 likely is very close to the amount that "no money down" filers pay each month to their attorneys through their plans.[162] Eliminating the difference in timing of payment of attorneys' fees should allow debtors to choose which chapter to file under based on factors other than their ability to pay their attorneys immediately.

Although this solution requires amending the Bankruptcy Code, based on *Lamie*, that debtors can pay attorneys' fees over time in chapter 13, but not chapter 7 appears to be a statutory drafting oversight.[163] Bankruptcy attorneys, particularly those whose practice includes some chapter 7 filing, should support the change. Their volume of business should increase. Attorneys whose clients mostly or solely file under chapter 13 may worry that they will need to adapt their practices to accommodate debtors who want to file under chapter 7. But these attorneys likely come from high chapter 13 districts where "no money down" cases are particularly prevalent. People living in these areas may benefit most from increasing the accessibility of chapter 7.

Given the long history of regional disparities in the distribution of chapter 7 and chapter 13 filings,[164] merely changing how attorneys' fees may be paid may not markedly shift the percentage of debtors filing under chapter 7 versus chapter 13, particularly in high chapter 13 districts. Simply because attorneys can offer their clients a "no money down" chapter 7 option does not mean they will do so. As such, two other solutions look to chapter 13.

The first focuses on how bankruptcy judges assess attorneys' fees in chapter 13. The Code requires that judges confirm that the attorney's compensation reflects

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[161] *See supra* note 27.

[162] *See supra* note 124.

[163] *Lamie v. U.S. Trustee*, 540 U.S. 526, 529 (2004) (noting that a deletion of five words in the Code section dealing with the payment professionals' fees in chapter 7 "created apparent legislative drafting error"). *See also* Cecil, *supra* note 58, at 98-99 (proposing that attorneys' fees be given administrative priority status in chapter 7).

[164] *See supra* note 36.

beneficial and necessary services to the debtor.[165] As discussed, almost all bankruptcy courts have issued standing orders that set a "no look" attorneys' fee for chapter 13 cases and provide guidance about how chapter 13 plans should structure the payment of attorneys' fees.[166] Attorneys rely on these orders to set their fees, knowing that if they charge no more than the set amount, the judge almost certainly will approve their fees. Taking away that certainty may change how attorneys think about recommending chapter 13 and discuss chapter choice with their clients.

Revisions to standing orders should center on identifying debtors more likely to benefit from chapter 7 who nonetheless have filed under chapter 13. For instance, standing orders could provide that only if the debtor has paid 25% (or some other percentage) or more in attorneys' fees prior to filing will the "no look" fee apply. Otherwise, the judge will consider whether the attorneys' fee is appropriate in light of the services provided to the debtor. If the debtor would benefit equally or more from filing under chapter 7, the attorney risks the judge finding that the attorneys' fees were not appropriate. More attorneys thus may recommend that debtors with finances more suited to chapter 7 file under chapter 7 in the first instance.

Alternatively, standing orders could provide that the "no look" fee only applies in cases in which the chapter 13 plan contemplates substantial repayment to creditors. This requirement would reflect the policy behind chapter 13—to require debtors who can pay creditors some money to do so—while specifically targeting "fee-only" and similar plans for judicial scrutiny.[167] This scrutiny also may cause attorneys to recommend chapter 7 to debtors more suited to chapter 7 in the first instance.

Coupling either of these revisions with changes to the Code to allow debtors to pay attorneys' fees in installments during their chapter 7 cases may decrease the incidence of "no money down" chapter 13 bankruptcy. A benefit of revising standing orders in this way is that debtors still will be able to file under chapter 13 and pay "no money down" or near "no money down" even if their finances suggest they are more suited to chapter 7. But attorneys will know they will have to explain to the court why their clients elected to file under chapter 13, which may incentivize them to discuss chapter choice prior to filing.

Rather than focusing on revising standing orders to shift attorneys' incentives, another similar solution is to revise the requirements for confirmation of chapter 13 plans to include a condition that the plan must contemplate making a substantial

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[165] 11 U.S.C. § 330(a)(4).

[166] *See supra* note 70 and accompanying text.

[167] Recall that "fee-only" plans provide for payment of attorneys' fees and nothing else. *See supra* notes 72-76 and accompanying text.

repayment to creditors.[168] Bankruptcy judges will be able to set a standard for "substantial" that takes into account the debtor's circumstances. But the "substantial" requirement necessarily will preclude confirmation of "fee-only" plans. Based on "no money down" filers' income and debts, it also likely will preclude confirmation of many of these debtor's chapter 13 plans. Because these debtors' remaining options will be to file under chapter 7 or not at all, the timing of when debtors must pay attorneys' fees in chapter 7 also should be reformed to ensure that people are not denied access to bankruptcy solely because they do not have money to pay an attorney in full prior to filing.

Lastly, all of the above solutions assume that people will file bankruptcy with the assistance of an attorney. But it is the tension between attorneys' and debtors' interests that seems to have led to the increasing incidence of "no money down" bankruptcy. A final solution thus removes attorneys from the equation. A handful of *pro se* debtors already are able to navigate chapter 7 successfully, but the process as it stands is too complicated and technical for most laypeople. Making chapter 7 more accessible will allow all people struggling with debts to use the bankruptcy system irrespective of their income, savings, or ability to borrow money.

V. CONCLUSION

The consumer bankruptcy system is one of the largest social safety institutions. Because attorneys serve as its gatekeepers, they have the opportunity to advance or impede people's access to justice. The existence and increasing use of "no money down" bankruptcy suggests that a subset of filers are receiving less from the bankruptcy system while paying more in attorneys' fees. These filers are more likely to come from districts with high chapter 13 rates and are more likely to be African American. This is not access to justice. Rather, these two characteristics align with prior research about bankruptcy attorneys' role in creating regional and racial disparities in debtors' chapter choice, further suggesting that attorneys play a very important, though likely unintentional role in facilitating people's use of bankruptcy.

The CBP data, however, can only identify "no money down" bankruptcy, not explain it. And we were only able to notice that African Americans are much more likely to file under chapter 13 with "no money down" than other similar debtors because we collected demographic and other information by sending a questionnaire to debtors themselves. As one of this Article's authors has called for, collecting demographic information at the time people file, such as on the

[168] The current confirmation requirements are in 11 U.S.C. § 1325.

bankruptcy petition, will allow for a full census of bankruptcy cases.[169] Although we think that a full census will show a racial gap, not only in filing under chapter 13, but also in filing chapter 13 with "no money down," differences from our results may be found. Until then, "no money down" bankruptcy exists as yet another instance in which cash-strapped and lower-income individuals pay more and receive less. The consumer bankruptcy system not only is one of the largest social safety institutions, it also is one of the most used parts of the judicial system. We must continue to examine the extent of the regional and racial disparities in filings, and if confirmed, reform this integral part of our legal system.

[169] Braucher et al., *supra* note 8, at 424.

APPENDIX

1. Multinomial Logistic Regression Results

Table 3 reports results from a multinomial logistic regression on case type. For space reasons, abbreviated results appear in the body of the paper with the full results shown below. The results show relative risk ratios with standard errors in parentheses below. The base outcome is a chapter 7 filing. Statistical significance at the 5% level is shown by an asterisk.

	(1)	(2)	(3)	(4)	(5)
Base outcome = chapter 7					
Outcome: "traditional" 13					
African-American household	2.594*	2.278*	2.082*	2.073*	2.064*
	(0.288)	(0.259)	(0.294)	(0.293)	(0.305)
Chapter 13 rate in district		6.710*	10.917*	10.734*	12.246*
		(2.039)	(3.977)	(3.937)	(4.653)
Prior bankruptcy			4.974*	4.914*	4.515*
			(0.874)	(0.866)	(0.812)
Foreclosure as reason for bkcy.			3.802*	3.973*	4.046*
			(0.533)	(0.567)	(0.599)
Homeowner			0.973	0.994	0.994
			(0.198)	(0.204)	(0.211)
Monthly income (ln)			3.649*	3.749*	4.663*
			(0.487)	(0.567)	(0.722)
Total assets (ln)			0.943	0.944	0.963
			(0.063)	(0.064)	(0.068)
Priority debts (ln)			1.093*	1.094*	1.091*
			(0.017)	(0.017)	(0.017)
Secured debt/total debt (ln)			8.920*	9.193*	7.468*
			(3.737)	(3.856)	3.267
Attempted to "work with" creditors				0.880	0.926
				(0.110)	(0.120)
Attempted to refinance debt				0.829	0.775
				(0.114)	(0.110)
Borrowed from family/friends				0.903	0.990
				(0.169)	(0.133)
Bachelors' degree or higher					0.740
					(0.145)
Dependents under 18					0.889*
					(0.050)
Lived with spouse or partner					0.853
					(0.165)

	(1)	(2)	(3)	(4)	(5)
Female head of household					1.065
					(0.212)
Age in years					1.006
					(0.006)
Intercept	0.262*	0.147*	0.000*	0.000*	0.000*
	(0.015)	(0.016)	(0.000)	(0.000)	(0.000)
Outcome: "no money down" 13					
African-American household	5.340*	3.342*	2.828*	2.831*	2.827*
	(0.705)	(0.483)	(0.461)	(0.463)	(0.486)
Chapter 13 rate in district		349.529*	406.385*	419.140*	574.304*
		(131.242)	(170.984)	(177.632)	(255.068)
Prior bankruptcy			6.497*	6.409*	5.817*
			(1.284)	(1.270)	(1.207)
Foreclosure as reason for bkcy.			2.820*	2.954*	3.311*
			(0.535)	(0.571)	(0.663)
Homeowner			0.734	0.720	0.717
			(0.184)	(0.182)	(0.188)
Monthly income (ln)			2.350*	2.424*	3.001*
			(0.387)	(0.404)	(0.564)
Total assets (ln)			0.920	0.917	0.917
			(0.079)	(0.078)	(0.080)
Priority debts (ln)			1.037	1.038*	1.042
			(0.021)	(0.021)	(0.022)
Secured debt/total debt (ln)			8.702*	9.068*	7.869*
			(4.440)	(4.633)	(4.169)
Attempted to "work with" creditors				0.776	0.773
				(0.124)	(0.128)
Attempted to refinance debt				0.969	0.951
				(0.176)	(0.179)
Borrowed from family/friends				1.090	1.186
				(0.180)	(0.207)
Bachelors' degree or higher					0.830
					(0.214)
Dependents under 18					0.735*
					(0.055)
Lived with spouse or partner					1.290
					(0.327)
Female head of household					1.396
					(0.353)
Age in years					0.998
					(0.007)
Intercept	0.104*	0.013*	0.000*	0.000*	0.000*
	(0.009)	(0.002)	(0.000)	(0.000)	(0.000)

	(1)	(2)	(3)	(4)	(5)
Model statistics					
N	2,660	2,660	2,604	2,604	2,487
Pseudo R-squared	0.042	0.101	0.282	0.283	0.289
Likelihood ratio chi-squared	187.80*	457.42*	1,250.91*	1,256.44*	1,219,90*

2. Summary statistics for full multinomial logistic regression model

Summary statistics for the fully specified multinomial logistic regression model appear below.

Variable	*Mean*	*Std. Dev.*	*Min*	*Max*
African-American household	0.226	0.419	0	1
Chapter 13 rate in district	0.328	0.171	0.056	0.803
Prior bankruptcy	0.136	0.343	0	1
Foreclosure as reason for bkcy.	0.196	0.397	0	1
Homeowner	0.501	0.5	0	1
Monthly income (ln)	7.698	1.271	0	9.285
Total assets (ln)	10.592	1.779	0	13.622
Priority debts (ln)	2.049	3.598	0	11.488
Secured debt/total debt (ln)	0.336	0.255	0	0.693
Attempted to "work with" creditors	0.588	0.492	0	1
Attempted to refinance debt	0.256	0.436	0	1
Borrowed from family/friends	0.666	0.472	0	1
Bachelors' degree or higher	0.152	0.319	0	1
Dependents under 18	0.957	1.228	0	8
Lived with spouse or partner	0.524	0.500	0	1
Female head of household	0.331	0.471	0	1
Age in years	45.123	13.189	20	90