

# **National Consumer Law Center**

## **Learning Financial Literacy in Bankruptcy Consumer Bankruptcy Education Project**

### **Survey Report**

#### **A. Background**

The vast majority of debtors file bankruptcy to address immediate hardships - ranging from harassing debt collection calls to termination of utility service or imminent foreclosure on their homes. The bankruptcy system is designed to help these overburdened consumers resolve their debt problems and gain a financial fresh start.

All too often, though, the permanent benefits of bankruptcy are lost on debtors who are unsure about their legal rights in the bankruptcy process. These consumer debtors remain vulnerable to creditor overreaching after bankruptcy because they do not learn financial skills necessary to evaluate the costs and benefits of reaffirmation, to properly shop for future credit and to avoid the types of consumer scams aimed at recent bankruptcy debtors.

Unsure of their rights, debtors can thus be left unprotected from creditors who use their considerable economic leverage during and after the bankruptcy process. The result can be unwise reaffirmations, lack of enforcement of the bankruptcy discharge, and susceptibility to a cycle of financial problems.

In response to the growing need to educate consumers about their rights and responsibilities during the bankruptcy process and in the post-bankruptcy marketplace, the National Consumer Law Center sought and received funding for a Consumer

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Bankruptcy Education Project.<sup>1</sup> Part of this project involves NCLC's development of consumer education pamphlets on bankruptcy issues, in addition to a series of training events for bankruptcy attorneys and credit counselors. In order to better tailor the pamphlets to the specific educational needs of consumer bankruptcy debtors, NCLC conducted a survey to determine their level of understanding about the bankruptcy process, their grasp of important bankruptcy concepts such as the effect of reaffirmations and the discharge, and their expectations concerning future credit. The following is a report of the survey results.

### **B. Summary of Findings**

#### *Understanding of bankruptcy concepts:*

- 28.6% of those surveyed did not know that reaffirmations are completely voluntary
- 68.9% either did not know that they could cancel a reaffirmation or believed that there is no right to cancel
- Few viewed reaffirmations as a new undertaking or a renewal of personal liability; and others failed to appreciate that the terms of reaffirmation agreements are negotiable
- Some thought of the discharge as only affecting unsecured debt

#### *Intentions as to reaffirmations:*

- 48.8% of those surveyed intend to reaffirm at least one debt

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<sup>1</sup> NCLC wishes to acknowledge the primary funding source for this project: the Consumer Protection and Education Fund, which was established pursuant to the settlement of a fifty state Attorneys General enforcement action against Sears, Roebuck and Co.

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- 63.0% having a home mortgage and 57.7% having an auto loan intend to reaffirm on these debts
- 28.1% having an auto loan intend to surrender the vehicle to the secured creditor

### *Future credit:*

- 47.2% of those surveyed did not know exactly how long their bankruptcy filing could appear on their credit report
- 41.5% do not feel confident that they will be able to obtain credit after bankruptcy
- 64.7% said they will wait more than 2 years before applying for new credit
- Most hope to avoid or limit credit card use after bankruptcy - 45.8% want to avoid credit cards altogether and 23.3% hope to get by without them
- 80.2% said they would not apply for new credit cards when their bankruptcy case was concluded
- Many expect to pay a substantial premium for obtaining future credit - 46.2% anticipate paying interest rates on auto loans at 18% or higher and 78.2% believe they will pay interest rates higher than 18% on credit cards.

### **C. Respondent Characteristics**

A total of 405 surveys were distributed to 20 panel trustees in the Eastern District Massachusetts, Western District Massachusetts, Western Division Wisconsin, Middle District Tennessee, Northern District Georgia (Atlanta Division), and the Wyoming, Utah, Colorado Districts (Region 19).<sup>2</sup> The panel trustees requested that debtors fill out

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<sup>2</sup> NCLC is grateful for the assistance of Joseph A. Guzinski and Jane Limprecht from the Executive Office of the United States Trustee, J. Christopher Marshall, United States Trustee for Region 1, Beth Roberts Derrick, Assistant United States Trustee in the Districts of Kentucky and Tennessee, Guy G. Gebhardt, Assistant U.S. Trustee for

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the survey while attending the § 341 meeting of creditors.<sup>3</sup> The completed surveys were given back to the panel trustees for return to NCLC. Respondents were also given the option to mail the completed surveys directly to NCLC (only 3 responses were received in that manner). A total of 261 surveys were completed and returned to NCLC.<sup>4</sup>

The surveys were distributed to Chapter 7 panel trustees and therefore all of the respondents had filed a Chapter 7.<sup>5</sup> In response to the question concerning previous bankruptcy filings, 78.5% of those who responded stated that this was the first time they had filed bankruptcy. The overwhelming majority of respondents (93.8%) were represented by counsel (only 16 responded that they had filed without a lawyer).

**Table 1: Previous bankruptcies and attorney representation**

First time filing bankruptcy	205 (261)	78.5 %
Filed bankruptcy before	56 (261)	21.5 %
Represented by attorney	242 (258)	93.8 %
No attorney	16 (258)	6.2 %

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Northern District of Georgia and Howard Tallman, United States Trustee for Region 19 for enlisting the cooperation of the panel trustees.

<sup>3</sup> NCLC is also grateful for the assistance of the following panel trustees: Eva Lemeh, Susan Limor, Robert Waldschmidt, Mark DeGiacomo, Donald Lassman, John Desmond, Jonathan Yellin, David M. Nickless, Joseph B. Collins, Michelle Russell, Harvey Sender, R. Kimball Mosier, Peter M. Gennrich, Randi L. Osberg, James W. McNeilly, Jr., Paul Bonapfel, Herbert C. Broadfoot, John W. Ragsdale, Jr., James R. Marshall, and Barbara B. Stalzer.

<sup>4</sup> A copy of the survey form is attached as Appendix A. The survey form was developed by NCLC with the helpful input from members of an Advisory Committee. A list of the members of the Advisory Committee is attached as Appendix B.

<sup>5</sup> Three respondents stated that they filed a Chapter 13. We assume they may have originally filed Chapter 13 cases that were later converted to Chapter 7.

**D. Discharge and Reaffirmations**

**1) *Understanding of bankruptcy discharge***

One of the first questions in the survey tested the respondents' understanding of the bankruptcy discharge. An open-ended question asked the respondents to "explain what the discharge means in your own words." Approximately two-thirds of the respondents (178) answered this question.

The responses reflect a range of understanding and sophistication, but the majority of respondents seemed to grasp the concept of a discharge and were able to accurately describe it.<sup>6</sup> The most common answers discussed the discharge in simple terms such as a "relief" or "release" from an individual's debts. Other similar responses were:

*"release from any liability"*  
*"absolution of debt"*  
*"the discharge forgives my debts"*  
*"no legal obligation to pay back debt"*  
*"to be relieved of debt under federal law"*  
*"getting rid of my bills"*  
*"debt is waived"*  
*"debt wipe out"*  
*"that the debts listed don't have to be repaid"*  
*"no longer owe that debt"*  
*"all debts cleared"*  
*"we don't have to pay"*  
*"a court order that exempts you from paying your debts"*

A number of respondents viewed the discharge in terms of their ability to gain a fresh start:

*"a new start"*  
*"to restart you on life without having a big amount of bills"*

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<sup>6</sup> Only one person answered: "I'm not sure."

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*“been given a second chance to start my credit”*  
*“getting my credit back in good standard”*  
*“able to rebuild credit”*  
*“fresh start”*  
*“to start over”*  
*“new beginning”*  
*“that I can start fresh with a new goal”*

Though for many, the desire for a fresh start was tempered by their concerns about the impact of the bankruptcy on their credit standing:

*“do not owe the debt; serious credit damage”*  
*“eradication of secured debts owed to creditors with it showing up on my credit report for up to 10 years”*  
*“we keep our stuff but lose our credit for seven years. Ouch!”*

Others considered the discharge as a means to overcome financial hardship and expressed gratitude for having the right to file bankruptcy:

*“help when I need it most”*  
*“being able to pay bills remaining and not stress about shortage of money”*  
*“it means I will be able to make it on my own, and not my daughter helping all the time”*  
*“relief from worry”*  
*“to discharge debts we’re unable to handle”*  
*“that the courts have leniency and my debts are canceled”*  
*“I will get rid of my debt of credit cards”*  
*“ability to keep house, car, kids intact”*

Still others viewed the discharge in terms of freedom from collection actions and creditor harassment:

*“freedom from constant harassment from creditors seeking payments that I cannot make”*  
*“Freedom!”*  
*“it means that the creditors I owe money to will no longer be able to call me for payment”*  
*“my creditors can’t harass me and most of my debt will be discharged”*  
*“no creditors are going to bug me anymore”*  
*“my creditors will no longer pursue me for collection”*

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Some respondents perceived the discharge as having limitations, suggesting that it would not apply to certain debts or that they would remain obligated to reaffirm others. These comments were generally not directed towards debts that are truly non-dischargeable under the Bankruptcy Code, but were often based on the perception that the discharge does not apply to secured debts. Although it is understandable that respondents would not clearly differentiate between the dischargeability of the underlying debt with the survivability of a lien after bankruptcy, more education on this issue would be advisable to ensure that debtors are making informed decisions about reaffirmations. For example, some respondents stated:

*“unsecured debt is no longer owed by me”*  
*“no longer responsible for unsecured debt”*  
*“free from paying some of our debts”*  
*“released from our debt except for those we reaffirm on”*  
*“no longer liable for certain debts”*  
*“not having to pay back unsecured debt”*  
*“to surrender my ownership or name on properties or loans”*  
*“the bills are history?”*  
*“removal of unsecured debt and either reaffirmation of secured debt or surrender of collateral”*

Finally, others viewed the discharge as the event that would bring finality to their bankruptcy case:

*“finalization of the case”*  
*“the final closure of bankruptcy when the case is settled”*  
*“it means everything is legal like”*  
*“your bankruptcy goes through”*  
*“creditors don’t challenge the application to file bankruptcy”*

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### 2) *Intentions as to reaffirmations*

The next set of questions explored the respondents' intentions with regard to reaffirmations.<sup>7</sup> Respondents were almost evenly split on this issue. Among the 256 (98.1%) who responded, 40.2% stated that they would sign at least one reaffirmation agreement and 9.8% indicated that they did not know. One-half (50.0%) answered that they did not plan to sign a reaffirmation.

The response to this question may have understated the number of respondents who actually planned to reaffirm a debt. Of the respondents who stated that they did not plan to sign a reaffirmation or did not know, 10 later indicated in response to other questions that they intended to reaffirm an auto loan, 9 later indicated that they planned to reaffirm a home mortgage, and 3 later indicated that they planned to reaffirm a credit card. If these responses are included, almost one-half (48.8%) of the respondents were likely to enter into at least one reaffirmation agreement.<sup>8</sup>

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<sup>7</sup> It is important to note that the survey looked at respondents' intentions at the time of the first meeting of creditors, which is generally held approximately 60 days before the entry of the discharge and the deadline for filing reaffirmation agreements. We did not follow up with respondents to determine if they actually carried out their intentions.

<sup>8</sup> Though we did not test for regional differences, we did observe that a higher than average number of Massachusetts respondents indicated that they did not intend to reaffirm a debt. In fact, only 26.7 % of the Massachusetts respondents intended to reaffirm at least one debt, even though the "retain and pay" option is not authorized in the First Circuit based on the opinion in *Bank of Boston v. Burr*, 160 F.3d 843 (1<sup>st</sup> Cir. 1998). This more than likely reflects that: 1) the Sears' reaffirmation abuse cases were filed in the District of Massachusetts (*In re Lantanowich*, 207 B.R. 326 (Bankr.D.Mass. 1997), *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181 (D.Mass. 1998)), 2) several Massachusetts bankruptcy judges have issued opinions admonishing debtor's counsel about their obligations to adequately advise debtors about the consequences of reaffirmation (*e.g.*, *In re Melendez*, 235 B.R. 173 (Bankr.D.Mass. 1999), and 3) the Massachusetts local rules

**Table 2: Intentions as to reaffirmation agreements**

Intend to sign reaffirmation	102 (256)	40.2 %
Will not sign reaffirmation	128 (256)	50.0 %
Don't know	25 (256)	9.8 %
Intend to sign reaffirmation (other responses considered)	125 (256)	48.8 %

**3) *Understanding of reaffirmations***

There was some uncertainty about the legal requirements related to reaffirmations. As to the issue of whether respondents believed that reaffirmations were voluntary, more than one-fourth of those who responded (252 responses) either didn't know (22.6%) or felt they could be compelled to enter into a reaffirmation (6.0%). The respondents had even less understanding of their right to cancel a reaffirmation. Among those who responded (219), the majority either did not know if they could cancel (57.5%) or believed that they would have no right to cancel (11.4%).<sup>9</sup>

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mandate the use of a form reaffirmation agreement similar to that promulgated by the Administrative Office of the U.S. Courts.

<sup>9</sup> These results are troubling given that debtors are required to read the Statement of Information Required by 11 U.S.C. § 341 prepared by the Office of the United States Trustee before the meeting of creditors and this form describes the debtors right to cancel reaffirmations and states in bold print: "Reaffirmations agreements are strictly

**Table 3: Understanding as to reaffirmation rights**

Reaffirmations may be required	15 (252)	6.0 %
Reaffirmations voluntary	180 (252)	71.4 %
Don't know	57 (252)	22.6 %
No right to cancel reaffirmation	25 (219)	11.4 %
Reaffirmations may be canceled	68 (219)	31.1 %
Don't know	126 (219)	57.5 %

Among those believing a right to cancel exists (31.1% of total responses), most were correct as to the duration of the cancellation period, with 85.3% (26.5% of total responses) stating that the period is 60 days.<sup>10</sup> However, 14.7% (4.6% of total responses) erroneously believed that they could cancel anytime or provided an incorrect response.<sup>11</sup>

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voluntary.” We can only hope that many of the respondents filled out the survey before reading the Statement.

<sup>10</sup> We did not require that respondents specify the alternate period for cancellation based on the entry of the discharge.

<sup>11</sup> The incorrect responses ranged from 3 to 90 days.

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Some of this uncertainty was also reflected in the responses to the open-ended question concerning the effect of a reaffirmation agreement.<sup>12</sup> Approximately one-half of the respondents (143) answered this question.<sup>13</sup> Most viewed the effect of reaffirmation simply as a continuation of payments on a debt, often under the terms of the original contract. This suggests that some respondents did not consider the terms of a reaffirmation to be negotiable:

*“I will continue to pay the debt”*  
*“Continue to pay original payments”*  
*“You agree to pay timely payments”*  
*“That I will agree to continue paying those bills”*  
*“I will have to pay it every month on time”*  
*“Paying off balance of bill”*  
*“Pay in full”*  
*“You want and can afford to pay that debt”*  
*“Keeping certain loans”*  
*“I make a payment plan”*

Given that many consumer debtors enter into reaffirmations on secured debt, it follows that some respondents discussed it in terms of their ability to retain secured property:

*“Payments will be made and property will be kept”*  
*“Keep the truck”*  
*“That debt is valid and must be paid to maintain possession of the security interest”*  
*“To keep the product/home”*  
*“I want to keep my property”*

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<sup>12</sup> The question asked: “If you sign a new written contract to repay (reaffirm) a debt, what will that mean?”

<sup>13</sup> Three individuals stated that they were unsure or did not know how to respond to the question.

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In general, though, few expressed the concept of a renewal of personal liability or viewed the agreement as a new undertaking.<sup>14</sup> Perhaps many respondents simply felt that this was understood. Those that did focus on this issue generally noted that they were giving up their right to discharge the debt or that they could be sued for nonpayment:

*“Debt would be owed again even after bankruptcy”*  
*“I will be legally obligated to pay that debt in full”*  
*“I will be responsible for paying the debt as if I had not filed bankruptcy”*  
*“You can be sued for the debt”*  
*“I will be obligated to contract after bankruptcy”*  
*“I can’t discharge it”*  
*“I owe the debt just like before the filing”*  
*“We will be responsible”*

#### 4) *Intentions as to specific debts*

##### a) *Auto loans*

There were three questions relating to respondents’ specific intentions as to secured auto loans. One question asked whether respondents intended to surrender their auto or keep it, and whether they were current on their payments. For those who indicated that they were current on their payments, another question asked whether they intended to enter into a reaffirmation agreement or continue making the payments without a formal reaffirmation. Finally, a third question requested various information concerning different kinds of debt, including auto loans. Most of the respondents (238) answered at least one of these auto related questions.

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<sup>14</sup> One respondent clearly misunderstood the consequences of reaffirmation: *“You can pay back money if you want.”* Two other respondents curiously stated that it means you have to “pay principal.”

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Several questions permitted respondents to indicate if they did not have an auto loan.<sup>15</sup> These responses suggested that more than one-fourth of those responding to the auto questions (27.7%) had filed their bankruptcy cases without having an auto loan. This group either has autos that they own free and clear or do not own vehicles at all.<sup>16</sup>

We were initially surprised by the significant number of respondents who stated that they intended to surrender their auto to the secured creditor. Among the responses to the direct question on this issue (Question No. 9), 35.1% answered that they planned to surrender their auto. However, several who stated they would surrender later indicated in response to other questions (Questions Nos. 9 and 10) that they planned to continue making payments on the auto loan or would reaffirm the debt.<sup>17</sup> If these responses are considered, the number who plan to surrender drops to 28.1%. This lower number likely presents a more accurate account of those who were not going to retain their autos.<sup>18</sup>

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<sup>15</sup> Some respondents who did not answer Question No. 12 indicated that they did not have an auto loan in response to Questions Nos. 9 and 10 by noting as their responses to these questions: “not applicable.”

<sup>16</sup> It should not be assumed that many of these debtors have current model vehicles that are fully paid. In a reaffirmation study conducted by Professors Culhane and White that reviewed debtors’ bankruptcy schedules, it was noted that all of the autos owned free and clear by debtors in the sample were at least 5 model years old and more than three-fourths of them were at least 10 model years old. *See American Bankruptcy Law Journal*, “Debt After Discharge: An Empirical Study of Reaffirmation”, Marianne B. Culhane and Michaela M. White, Vol. 73, Fall, 1999.

<sup>17</sup> Several of these responses may have resulted from debtors having more than one auto loan as the survey form did not provide for more than one response to these questions. For example, 3 respondents noted on the form that they had two auto loans and that they intended to surrender on one and reaffirm the other. Another said he or she would surrender two out of three autos.

<sup>18</sup> This is generally consistent with the results from the Culhane and White reaffirmation study where 21% of the debtors indicated on their Statements of Intention that they

**Table 4: Intend to surrender auto**

Plan to surrender auto	61 (174)	35.1 %
Current with payments, will keep	94 (174)	54.0 %
Behind on payments, will keep	19 (174)	10.9 %
Plan to surrender auto (other responses considered)	49 (174)	28.1 %

For those current with payments on their auto loans, another question (Question No. 10) sought to determine how many would enter into a formal reaffirmation or elect to retain the collateral and simply continue to make payments. Since debtors who are current may utilize the “retain and pay” option,<sup>19</sup> they were more likely to select this option; 74.8% stated they would continue payments without entering into a new contract and 25.2% said they would sign a reaffirmation. However, given that many of the secured creditors had probably not yet exerted pressure to reaffirm by the time the surveys were completed, we suspect that more respondents actually signed reaffirmations before their bankruptcy cases were completed.

In addition, a number who said they would simply continue payments later responded to another question (Question No. 12) by stating they would enter into a reaffirmation agreement on their auto loans. Nevertheless, when the responses to all auto related questions were considered, including those by respondents not current on their

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planned to surrender a motor vehicle. *See American Bankruptcy Law Journal, “Debt After Discharge: An Empirical Study of Reaffirmation”, supra.*

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payments, a greater number of respondents (37.9%) stated they would reaffirm their auto loan than those (23.0%) who intended to retain with continuing payments. When just those who planned to keep their autos were considered, 57.7% stated they would reaffirm their auto debt.

**Table 5: Intend to reaffirm auto loan**

Current with payments; will sign reaffirmation	30 (119)	25.2 %
Current with payments; will not sign reaffirmation	89 (119)	74.8 %
Will sign reaffirmation (other responses considered)	71 (174)	40.8 %
Will sign reaffirmation (other responses considered among those intending to retain)	71 (123)	57.7 %

### b) *Home mortgages*

Respondents were also asked about their plans concerning home mortgage debt. Among those who responded to this question (169), more than one-half (56.8%) do not

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<sup>19</sup> In Circuits where this option is authorized by caselaw, the decisions generally require that the debtor be current on the auto loan as a condition for exercising the option. *See, e.g., In re Boodrow*, 126 F.3d 43 (2<sup>nd</sup> Cir. 1997).

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have any mortgage debt. For the remaining 43.2% who have a home mortgage, nearly two-thirds (63.0%) intended to enter into a reaffirmation agreement on the debt.<sup>20</sup>

**Table 6: Mortgage debt**

Have mortgage debt	73 (169)	43.2 %
No mortgage debt	96 (169)	56.8 %
Plan to reaffirm mortgage (among those having mortgage debt)	46 (73)	63.0 %

### c) *Credit cards*

Respondents generally did not distinguish between credit cards issued by department stores and those of major credit card companies. Approximately three-fourths (72.5%) of those who responded to this question listed at least one major credit card in their bankruptcy schedules, and 62.9% listed at least one department store credit card. Slightly more respondents with department store cards (8.2%) indicated they intended to reaffirm than those with cards from a major card company (5.8%).<sup>21</sup> In both cases, though, the number of respondents expecting to reaffirm credit card debt was significantly less than for auto or home-secured loans.<sup>22</sup>

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<sup>20</sup> This may reflect a growing trend among mortgage lenders and servicers to seek formal reaffirmations. We are aware that some lenders have refused to service mortgage loans post-discharge unless a reaffirmation is signed by the debtor homeowner.

<sup>21</sup> Credit cards issued by department stores (or cards issued by national banks or other lenders under the department store's name) are more likely to contain a provision in the cardholder agreement granting the creditor a security interest in the items purchased with the card.

<sup>22</sup> We suspect that debtors' expectations with regard to such debt may not match the outcomes in their bankruptcy cases. Since these surveys were completed at the time of the first meeting of creditors, many were likely filled out before the respondents had met with store company representatives. Some retail credit companies routinely contact

**Table 7: Credit card debt**

Have major credit card	137 (189)	72.5 %
No major credit card	52 (189)	27.5 %
Plan to reaffirm major credit card	8 (137)	5.8 %
Have dept. store card	134 (213)	62.9 %
No dept. store card	79 (213)	37.1 %
Plan to reaffirm dept. store card	11 (134)	8.2 %

**d) Other debts**

Among the 41.8% of respondents who stated that they have a loan from a finance company, 22.1% said they would reaffirm the debt. We were not surprised that more respondents were anticipating a reaffirmation on loans from finance companies than on credit cards. In many cases, these loans are secured by a non-purchase money security interest in household goods.<sup>23</sup>

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debtors at or after the meeting of creditors to propose reaffirmations. These solicitations often combine offers for future card use with threats to recover secured property after bankruptcy, even where the debt may be nominally secured by personal property having little or no value. These surveys in many instances were also completed before credit card creditors would have filed or threatened to file nondischargeability actions alleging fraud. Because of the difficulty of distributing debtor surveys after the creditor's meeting, the survey is probably not a good measure of the extent of credit card reaffirmations. On the other hand, a comparison of debtors' initial intentions as reported in the survey, with the percentage of debtors with credit cards who file reaffirmations, could prove interesting.

<sup>23</sup> Though such liens are generally voidable under section 522(f) of the Bankruptcy Code if the goods can be exempted, some creditors have been aggressive in asserting that certain personal property securing such loans should not qualify as household goods under this section and some debtors have simply elected to reaffirm rather than incur additional costs in litigating this issue. Proposed legislation to amend the Bankruptcy

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As for child support obligations, most (91.3%) of the respondents indicated that they did not owe child support. The respondents who claimed to owe support predictably indicated that the debt would not be discharged by their bankruptcy.

Almost two-thirds (59.9%) of those who responded to the question about utility debt said they did not have utility debt. A significant number (23.4%) of those having utility debt believe that the debt will not be discharged. These responses confirm our suspicion that many debtors erroneously conclude that utility debt is not dischargeable, which in turn may account for the low number of debtors who actually list such debt on their bankruptcy schedules.

Finally, respondents were asked to list any other debts they believed would not be discharged in their bankruptcy and/or that they intended to reaffirm. The most common debts listed as not subject to discharge were student loans (19) and taxes (10). Other debts that respondents felt would not be discharged were those relating to: medical services (3), utilities (3), rent (2), car insurance (1), boat loan (1), Kirby vacuum cleaner loan (1), pension loan (2), and a debt to a friend (1). As for debts to be reaffirmed, several respondents (6) stated they would reaffirm loans secured by home furniture, which we assumed were likely to be purchase money secured loans. Several mentioned simply a “bank” loan (4) or “personal” loan (2).

### **E. Future Credit**

The next section of the survey explored the respondents’ attitudes about their future credit needs and expectations concerning the impact of bankruptcy on their ability to obtain credit. In a related matter, an initial question tested the respondents

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Code would adopt a narrow definition of household goods that may result in even more

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understanding of the credit reporting restrictions applicable to bankruptcy. Only one-half (52.8%) of the respondents were aware of the longer 10-year period for reporting of bankruptcy information. Approximately one-fourth thought that it could be reported for the normal 7-year period (17.6%) or a period from 7 to 10 years (8.6%). The remaining respondents either did not know (12.9%) or gave other incorrect responses (8.1%).<sup>24</sup>

**Table 8: Understanding of credit reporting restrictions**

Correct response: 10-year period	123 (233)	52.8 %
Incorrect response: 7-year period	41 (233)	17.6%
Incorrect response: 7-10 year period	20 (233)	8.6 %
Other incorrect response	19 (233)	8.1%
Don't know	30 (233)	12.9 %

Respondents were cautiously optimistic about their future credit prospects. Approximately one-half (58.5%) believe that they will be able to get credit in the future, while 10.4% felt they will not get credit and 31.1% said they did not know. Nevertheless, respondents did not have plans to rush out after bankruptcy and apply for new credit. Almost two-thirds (64.7%) of the respondents said they will wait more than 2 years before applying for new credit. Among the remaining respondents, 14.7% will wait between 1 to 2 years and 10.3% will apply for credit within a year. Only 7.1% said they will apply for credit immediately after getting their discharge.<sup>25</sup>

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reaffirmations on such debt.

<sup>24</sup> These responses ranged from a period of 3 years to 15 years. One respondent stated that the period is “indefinite.”

<sup>25</sup> Several also wrote in the response: “never.”

**Table 9: Expectations about future credit**

Expect to get credit	141 (241)	58.5 %
Not expect to get credit	25 (241)	10.4 %
Don't know	75 (241)	31.1 %
Wait more than 2 years	119 (184)	64.7 %
Wait between 1 to 2 years	27 (184)	14.7 %
Apply within first year	19 (184)	10.3 %
Apply immediately	13 (184)	7.1 %

Given the large number of consumer debtors who file bankruptcy because of their inability to repay credit card debt,<sup>26</sup> it follows that many of the respondents hope to avoid or limit credit card use after bankruptcy. The majority of the respondents want to avoid credit cards (45.8%) or believe that they can get by without them (33.3%). Only 11.7% feel that it is very important to have at least one credit card. Consistent with this sentiment, most of the respondents (80.2%) said they will not apply for new credit cards when their bankruptcy case is closed. Others stated they would apply for new credit cards (12.7%) or would use their current card(s) after reaffirming the debt (5.1%).

**Table 10: Expectations as to future credit card use**

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<sup>26</sup> For a discussion of the relationship between the rise in personal bankruptcy filings and the increase in credit card delinquencies and chargeoffs, see American Bankruptcy Law Journal, "Credit Card Defaults, Credit Card Profits, and Bankruptcy", Lawrence M. Ausubel, Vol. 71, Spring, 1997.

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Want to avoid credit cards	190 (237)	45.8 %
Can get by without credit cards	80 (237)	33.3 %
Need to have at least one credit card	28 (237)	11.7 %
Don't care or don't know	12 (237)	5.0 %
Other	10 (237)	4.2 %
Will not apply for new credit cards	190 (184)	80.2 %
Will use old credit card after reaffirming	12 (184)	5.1 %
Will apply for new credit cards	30 (184)	12.7 %
Other	5 (184)	2.1 %

Respondents were also asked to indicate the types of new credit they planned to get after bankruptcy. As expected, home mortgage and auto loans ranked the highest.

**Table 11: Types of credit sought after bankruptcy**

Auto loan	64
Mortgage loan	46
Major credit card	28
Home equity loan	8
Department store credit card	6
Tax refund loan	5
Rent to own	4
Finance company loan	3
Payday loan	1

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Other	3
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Respondents were asked to predict what they might expect to pay in interest rates on certain loans. Many chose not to answer this question; 46 responded as to credit cards and 67 responded as to auto loans.

Not surprisingly, few respondents thought they would be able to obtain credit cards at low interest rates, and most anticipated paying interest rates higher than 18%. Approximately one-third (32.6%) believed they will pay interest at 22% or higher. Given the prevailing market rates on credit cards, it is understandable that many debtors emerging from bankruptcy would not expect to obtain credit card debt on the best terms.

**Table 12: Expectations as to future credit terms (credit cards)**

14 % or less interest rate	5 (46)	10.9 %
15-17 %	5 (46)	10.9 %
18 - 21 %	21 (46)	45.6 %
22 % +	15 (46)	32.6 %

We were more troubled, however, by the significant number of respondents who expected to pay dearly for an auto loan. Though interest rates for conventional auto loans during the time when the survey was conducted were generally less than 9 %, the majority of respondents (85.1%) believed that they would not be able to get a car loan for less than 10 %. Significantly, almost one-half (46.2%) anticipated paying quite a premium for such loans, with this group expecting to pay 18 % or higher for an auto loan.

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**Table 13: Expectations as to future credit terms (auto loans)**

9 % or less interest rate	10 (67)	14.9 %
10-14 %	17 (67)	25.4 %
15 - 17 %	9 (67)	13.4 %
18 - 21%	20 (67)	29.8 %
22 % +	11 (67)	16.4 %

### F. Other Matters

One final question asked respondents whether they are able to use the Internet.<sup>27</sup>

Almost two-thirds (65.5%) of those who responded indicated that they have some form of access to the Internet, with 50.0% stating that they use the Internet in their home. 34.5% do not use the Internet.

**Table 14: Use of Internet**

Use Internet in home	29 (58)	50.0 %
Use Internet at public library	1 (58)	1.7 %
Use Internet at other location	8 (58)	13.8 %
Do not use Internet	20 (58)	34.5 %

Finally, respondents were given the opportunity to provide additional comments.

The following are some of the responses:

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<sup>27</sup> This question was added at the suggestion of the Executive Office of the United States Trustees. Unfortunately, the request to add this question did not come until after many of the surveys had been distributed to panel trustees. This accounts for the rather low response.

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*“We filed bankruptcy to save our home from investors who were basically trying to steal it, telling me that they were my only hope.”*

*“My lawyer was very informative and helpful”*

*“The only reason I am filing bankruptcy is because of medical bills.”*

*“I am frustrated that I had to file this Ch 7. My ex-husband filed a bankruptcy and he made false statements on petition. I pointed all this out to trustee but no one cared. It should have been denied the minute they found out he lied.”*

*“Hoped that IRS and state would negotiate on large balances owed.”*

*“I was not happy with the attorney’s explanation and advise, and very disappointed that no other attorney would even speak to me.”*

*“It has been a hard lesson learned.”*

*“I wish there was a way to get rid of bills other than bankruptcy.”*

*“Right now my priority is to live stress free.”*

*“Got into a jam and borrowed money to repay loans. It will never happen again.”*

*“I have a good lawyer!”*

*“Had to file due to disability.”*

*“Living on a cash basis seems more simple and elegant to me presently”*