

Just Punch My Bankruptcy Ticket: A Qualitative Study of Mandatory Debtor Financial Education

Michael Sousa

Univeristy of Denver Sturm College of Law, msousa@law.du.edu

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JUST PUNCH MY BANKRUPTCY TICKET: A QUALITATIVE STUDY OF MANDATORY DEBTOR FINANCIAL EDUCATION

MICHAEL D. SOUSA*

When Congress amended the Bankruptcy Code in 2005 through the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), it mandated that individual consumer debtors undergo two debtor education courses, one as a condition precedent to filing for bankruptcy relief, and a second for later receiving a discharge of indebtedness. As for the pre-filing credit counseling course, Congressional aim was to have prospective debtors understand the potential alternatives to filing for bankruptcy relief with the goal of having some percentage of debtors settle their debt obligations outside of the bankruptcy system. Regarding the post-filing financial management course, Congress wanted debtors who utilized the bankruptcy system to learn effective financial management techniques to employ after the closing of their bankruptcy cases.

Ever since the prospect of debtor education as a formal component of the bankruptcy process was raised decades ago, bankruptcy scholars and

*Assistant Professor of Law, University of Denver Sturm College of Law. There are a host of individuals who need to be thanked as part of this project and each one contributed to the project in meaningful ways. First, and foremost, I must thank all of the individuals who agreed to participate in this study and to share their stories with me about an incredibly private matter. Second, the members of the Hughes/Ruud Scholarship Committee, namely (in alphabetical order): Professors Lawrence M. Friedman, Bryant G. Garth, Stewart Macaulay, Laura Beth Nielsen, and Joyce Sterling, who reviewed this project and elected to provide funding for it through the provision of a research grant. Third, Professor Joyce Sterling, my colleague at the University of Denver Sturm College of Law, for her guidance, support, and encouragement throughout the development of this article. Fourth, my anthropology professors and colleagues at the University of Denver, who provided me with wonderful guidance while exercising my anthropological skills: Peter Van Arsdale, Ph.D., Larry Conyers, Ph.D., and Dean Saitta, Ph.D. Finally, to my research assistants who offered valuable insight and reflection (in alphabetical order): Jessica Borchers, Kirstin Dvorchak, Julian Ellis, John Feeney-Coyle, Teresa Helms-Abel, Andrew Moore, Kate Puckett, and Lindsey Sowder.

commentators have offered empirical studies and opinions about the efficacy of such a program. To date, however, no empirical study has appeared in the legal literature regarding the effectiveness of the mandated debtor education courses imposed by BAPCPA. Accordingly, the purpose of this Article is to report the findings of my own qualitative study of Chapter 7 debtors regarding their experiences with, and impressions of, the current debtor education courses required by the Bankruptcy Code. My study sought to address two research questions. First, do either, or both, of these mandated debtor education courses help individuals in the way Congress intended? And second, do consumer debtors change their financial behaviors as a result of participating in either, or both, of these mandated debtor education courses? As will be reported herein, the vast majority of the participants interviewed for this study did not find the courses to be of any help to them in their financial lives, and for most, any positive changes made to their financial well-being following bankruptcy was not attributed to anything learned from the education courses themselves, but from the experience of going through the bankruptcy process, never again wanting to find themselves in such a desperate and vulnerable place in life. Nevertheless, a small population of debtors interviewed for this study, less than seven percent, did find the debtor education courses helpful in the ways Congress intended.

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*“They’re kind of lame.”*¹

*“A budget only works if you have . . . enough money coming in.”*²

*“It was an absolute waste of time.”*³

*“As easy as taking the written part of the driver’s exam.”*⁴

I. INTRODUCTION

The sentiments expressed above are representative of the impressions former consumer bankruptcy debtors have about the two financial education courses that all individual bankruptcy filers currently must undergo in order to successfully access the bankruptcy system and to ultimately receive the proverbial “fresh start,” namely, the discharge of one’s in personam obligations to pay pre-petition indebtedness.⁵ These comments stem from a qualitative case study of former Chapter 7 debtors located in the State of Colorado. The purpose of the study was to address two straightforward research questions. First, do either, or both, of these mandated debtor education courses help individuals in the way Congress intended? And second, do consumer debtors change their financial behaviors *as a result* of participating in either, or both, of these mandated debtor education courses? Addressing these questions is significant as over one million individuals file for bankruptcy protection every year.⁶

1. Interview with Participants #19 (Oct. 26, 2012) (A confidential transcript for this and all other interviews (except one unrecorded) are on file with the author).

2. Interview with Participant #12 (Sept. 27, 2012).

3. Interview with Participant #22 (Oct. 1, 2012).

4. Interview with Participants #32 (Sept. 28, 2012).

5. Michael D. Sousa, *The Principle of Consumer Utility: A Contemporary Theory of the Bankruptcy Discharge*, 58 KAN. L. REV. 553, 562 (2010) (“The entry of a discharge ‘operates to release an individual debtor’s *in personam* obligation to pay prepetition indebtedness and serves as a permanent injunction against any act to collect a discharged debt.’ This freedom from personal liability for pre-petition debt is known as the proverbial ‘fresh start.’” (footnote omitted) (quoting George H. Singer, *Section 523 of the Bankruptcy Code: The Fundamentals of Nondischargeability in Consumer Bankruptcy*, 71 AM. BANKR. L.J. 325, 325 (1997))).

6. AM. BANKR. INST., CONSUMER BANKRUPTCY CENTER, <http://www.consumer.abi.org/> (last visited Jan. 5, 2014) (noting that consumer bankruptcy filings have exceeded one million per year since 2008).

Over a decade ago, Professor Jay Westbrook opined that the field of consumer bankruptcy lends itself to empirical investigation primarily because bankruptcy court files are rich in descriptive and demographic data.⁷ Since Professor Westbrook's article first appeared, a host of empirical studies relating to consumer bankruptcy law have been published in the legal literature, and several bankruptcy law scholars, such as Professors Elizabeth Warren, Deborah Thorne, Katherine Porter, and Jean Braucher, often produce empirical studies relating to Chapter 7 and Chapter 13 bankruptcy.⁸ More particularly, past studies by Professors Gary Neustadter and Jean Braucher have relied primarily, if not exclusively, upon qualitative research methods, such as interviewing and direct observation, and both studies evidence how effective qualitative empiricism can be when utilized in the consumer bankruptcy context.⁹

But beyond simply articulating the fruitfulness of employing empirical methods to the study of consumer bankruptcy law, Professor Westbrook offered several insights that may prove useful when reading the present study. First, Professor Westbrook correctly identified that while “[s]tudying people after bankruptcy is very difficult . . . the potential rewards are very great.”¹⁰ Second, in referring to Professors Neustadter and Braucher's prior empirical work, Professor Westbrook

7. See Jay Lawrence Westbrook, *Empirical Research in Consumer Bankruptcy*, 80 TEX. L. REV. 2123, 2124 (2002).

8. The following are examples of some of the empirical studies of consumer bankruptcy law that have appeared in the recent past. The list is certainly not meant to be exhaustive. See generally Jean Braucher, *An Empirical Study of Debtor Education in Bankruptcy: Impact on Chapter 13 Completion Not Shown*, 9 AM. BANKR. INST. L. REV. 557 (2001); Marianne B. Culhane & Michaela M. White, *Taking the New Consumer Bankruptcy Model for a Test Drive: Means-Testing for Chapter 7 Debtors*, 7 AM. BANKR. INST. L. REV. 27 (1999); Robert J. Landry, III, *An Empirical Analysis of the Causes of Consumer Bankruptcy: Will Bankruptcy Reform Really Change Anything?*, 3 RUTGERS BUS. L.J. 2 (2006); Robert M. Lawless et al., *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349 (2008); Ronald J. Mann & Katherine Porter, *Saving Up for Bankruptcy*, 98 GEO. L.J. 289 (2010); Scott F. Norberg, *Consumer Bankruptcy's New Clothes: An Empirical Study of Discharge and Debt Collection in Chapter 13*, 7 AM. BANKR. INST. L. REV. 415 (1999); Katherine M. Porter, *Life After Debt: Understanding the Credit Restraint of Bankruptcy Debtors*, 18 AM. BANKR. INST. L. REV. 1 (2010); Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 TEX. L. REV. 103 (2011).

9. See generally Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L.J. 501 (1993); Gary Neustadter, *When Lawyer and Client Meet: Observations of Interviewing and Counseling Behavior in the Consumer Bankruptcy Law Office*, 35 BUFF. L. REV. 177 (1986).

10. Westbrook, *supra* note 7, at 2147.

recognized the importance of qualitative research to provide insight into the mechanism that is the consumer bankruptcy system.¹¹ Third, in concert with the social science literature, Professor Westbrook noted that a legal empiricist “need not undertake some massive statistical study to gather data that represent a substantial contribution to our understanding.”¹² This conclusion is certainly true, as qualitative research offers what more quantitative work often cannot, that is, to provide a rich description and explanation of peoples’ experiences and behaviors, together with the goal of understanding the meanings they attribute to these shared experiences.¹³

Utilizing my anthropological background, I “entered the field” during the summer and early fall of 2012 and traveled throughout the State of Colorado interviewing a total of fifty-eight former Chapter 7 debtors in an effort to learn about their experiences with, and impressions of, the two financial education courses that were mandated in the 2005 amendments to the Bankruptcy Code as part of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA).¹⁴

Prior to BAPCPA, the Bankruptcy Code did not require consumer debtors to partake in financial education courses, and none were offered on a voluntary basis in conjunction with the bankruptcy system.¹⁵ In its 1997 report to Congress, the National Bankruptcy Review Commission endorsed the concept of debtor education, but only on a voluntary basis.¹⁶ Nevertheless, largely through the lobbying efforts of the consumer credit industry from the 1990s to the early 2000s, Congress was led to believe that debtors turned too easily to bankruptcy without

11. *See id.* at 2154.

12. *Id.*

13. *See* Norman K. Denzin & Yvonna S. Lincoln, *Introduction: The Discipline and Practice of Qualitative Research*, in 4 THE SAGE HANDBOOK OF QUALITATIVE RESEARCH 1, 3–4 (Norman K. Denzin & Yvonna S. Lincoln eds., 4th ed. 2011).

14. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 106(a)–(c), 119 Stat. 23, 37–38 (codified as amended at 11 U.S.C. §§ 109, 727(a), 1328 (2012)) (showing that the credit counseling provisions were added to title 11 of the United States Code by the passage of BAPCPA).

15. *See id.* (illustrating that prior to 2005, the financial courses were not mandated).

16. NAT’L BANKR. REVIEW COMM’N, BANKRUPTCY: THE NEXT TWENTY YEARS 114–16 (1997) (issuing its final report); A. Mechele Dickerson, *Can Shame, Guilt, or Stigma be Taught? Why Credit-Focused Debtor Education May Not Work*, 32 LOY. L.A. L. REV. 945, 949 (1999). The National Bankruptcy Review Commission was established as part of the Bankruptcy Reform Act of 1994. Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, §§ 601–10, 108 Stat. 4106, 4147–50.

exploring other avenues to address their financial situations and that many debtors who could in fact pay back a significant portion of their debts were abusing the bankruptcy system.¹⁷

Earnestly believing these presumptions about debtors, Congress included two mandatory financial education courses for all individual debtors in the 2005 amendments to the Bankruptcy Code. At present, § 109(h)(1) of the Bankruptcy Code provides that an individual “may not be a debtor” unless the person has first participated in a pre-filing credit counseling course during the 180 days before his or her bankruptcy petition is filed.¹⁸ In addition, §§ 727(a)(11) and 1328(g)(1) of the Bankruptcy Code require an individual Chapter 7 or Chapter 13 debtor to participate in a “post-filing financial management course” as a condition precedent to receiving a discharge of debts.¹⁹

17. Richard L. Stehl, *The Failings of the Credit Counseling and Debtor Education Requirements of the Proposed Consumer Bankruptcy Reform Legislation of 1998*, 7 AM. BANKR. INST. L. REV. 133, 134–35 (1999) (“Flush with popular support, and fueled by the generous lobbying efforts of the credit industry, the proposed reforms sought to clamp down on the perceived abuses of the country’s bankruptcy laws by making it ‘more difficult’ for individual consumers to file a petition under chapter 7 of the Bankruptcy Code and subsequently discharge their debts.” (footnotes omitted) (quoting Claire Hughes, *Bankruptcy Filings Rise Despite Push for Reforms*, TIMES UNION, Oct. 1, 1998, at E1)); see also Robert J. Landry, III & Nancy Hisey Mardis, *Consumer Bankruptcy Reform: Debtors’ Prison Without Bars or “Just Desserts” for Deadbeats?*, 36 GOLDEN GATE U. L. REV. 91, 104 (2006) (describing BAPCPA as a “seamless web” of provisions premised upon debtor abuse).

18. 11 U.S.C. § 109(h)(1) (2012) provides as follows:

Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

11 U.S.C. § 109(h)(1).

19. 11 U.S.C. § 727(a)(11) requires the court to grant the debtor a discharge, unless the debtor fails to meet the requirements as follows:

[A]fter filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year

As for the pre-filing credit counseling course, Congress's mission was to have prospective debtors understand the potential alternatives to filing for bankruptcy relief with the goal of having a significant portion of them settle their debt obligations outside of the bankruptcy system.²⁰ With respect to the post-filing financial management course, Congress wanted debtors who utilized the bankruptcy system to learn effective financial management techniques to employ after the closing of their bankruptcy cases, such as utilizing a budget and using credit wisely.²¹ Although both are laudable ideals, the manner in which Congress constructed these courses is a failure if this qualitative study (and other studies detailed in this Article) are indeed representative of the experiences of the more than one million individual debtors that file for bankruptcy each and every year.²²

Significantly, only four out of the fifty-eight participants (6.90%) I interviewed for this study found the mandated education courses helpful in the ways Congress intended.²³ Conversely, the vast majority of the participants interviewed for this study did not find the courses to be of any help to them, and the most common phrase for describing both courses was that they were a "waste of time."²⁴ A small segment of participants did indeed find the education courses to be helpful, albeit in different ways than from what Congress intended.²⁵ For these individuals, the pre-filing credit counseling course proved helpful because it either affirmed their decision to file for bankruptcy, or because the counseling session offered them a comforting voice that allayed any fears about the bankruptcy process.²⁶ Finally, several

after the date of such determination, and not less frequently than annually thereafter.)

11 U.S.C. § 727(a)(11). In turn, 11 U.S.C. § 1328(g)(1) provides as follows: "The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111." 11 U.S.C. § 1328(g)(1).

20. 2 COLLIER ON BANKRUPTCY ¶ 111.02[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013).

21. *Id.* ¶ 111.01[2].

22. AM. BANKR. INST., *supra* note 6.

23. *See infra* note 242; *infra* Part VI.B.2.c.

24. *See* Interview with Participant #02 (Sept. 19, 2012); Interview with Participant #16 (Oct. 10, 2012); Interview with Participant #22, *supra* note 3; Interview with Participants #23 (Oct. 22, 2012).

25. *See* 2 COLLIER ON BANKRUPTCY, *supra* note 20, ch. 111; *see also infra* Part VI.B.2.a-b.

26. *See infra* Part VI.B.2.b.

participants did in fact change their financial behaviors for the positive after leaving the bankruptcy system, but this change was not attributed to anything learned from the education courses themselves.²⁷ Rather, it was the *experience* of going through the bankruptcy process, with all of its accompanying psychological stress and negative moral stigma that caused this change in behavior. I refer to this theme below as “bankruptcy process as behavior modifier.”²⁸

This Article is not the first empirical study of debtor education to appear in the legal literature. Approximately twelve years ago, Professor Jean Braucher published the results of her empirical study of post-filing debtor education and its impact upon the successful completion rate of Chapter 13 repayment plans.²⁹ Because Professor Braucher’s study occurred pre-BAPCPA, an analysis of the financial education courses developed for BAPCPA was impossible.³⁰ Nevertheless, Professor Braucher examined data from five Chapter 13 trusteeships, three that offered debtor education programs and two that had no such program.³¹ In short, Professor Braucher’s study concluded that while debtors who had received a mandatory course in financial management after filing for bankruptcy completed their Chapter 13 plans at a higher rate than those who did not receive any financial education, “a positive association between receiving education and completing a plan” could not be generalized after accounting for different local practices among the trusteeships.³²

At about the same time as Professor Braucher’s empirical study of debtor education with Chapter 13 debtors, Professors Susan Block-Lieb, Karen Gross, and Richard L. Wiener embarked on their own empirical project “to assure that individual debtors who attend an adult financial literacy program . . . leave the bankruptcy system with meaningful, new financial management skills.”³³ Again, this study was completed pre-BAPCPA, but it was conducted in the context of the looming specter of

27. *See infra* Part VI.B.3.

28. *See infra* Part VI.B.3.

29. *See generally* Braucher, *supra* note 8.

30. *Compare id.* (published in 2001), with Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 106(a)–(c), 119 Stat. 23, 37–38 (codified as amended at 11 U.S.C. §§ 109, 727(a), 1328 (2012)) (noting the enactment date of the act as 2005).

31. *See* Braucher, *supra* note 8, at 568–72.

32. *Id.* at 557.

33. Susan Block-Lieb et al., *Lessons from the Trenches: Debtor Education in Theory and Practice*, 7 *FORDHAM J. CORP. & FIN. L.* 503, 510–11 (2002).

mandated debtor financial education that ultimately found expression in BAPCPA.³⁴ Professors Block-Lieb, Gross, and Wiener established a “Pilot Project” that provided financial literacy training to both Chapter 7 and Chapter 13 debtors in the Eastern District of New York from 2001 to 2003.³⁵ In short, the Pilot Project comprised both a classroom component and an empirical component designed “to study the effect of the classroom component on debtors’ knowledge and attitudes about borrowing and their borrowing behavior after bankruptcy.”³⁶ The study was significant in several ways, but perhaps mostly so because it was the first empirical effort to study the “potential benefits and detriments” of financial education in relation to Chapter 7 debtors.³⁷

Part of the empirical component of the Pilot Project analyzed debtors who had participated in the financial management classes against two comparison groups, namely, individuals who had not filed for bankruptcy at all, and individuals who filed for bankruptcy but did not complete the financial management class.³⁸ All individuals subject to the study completed the same questionnaire at two different moments in time.³⁹ Debtors participating in the financial education program completed the first questionnaire early in their bankruptcy cases and completed the second questionnaire approximately three months later.⁴⁰ The comparison groups completed the two questionnaires in the same three month timeframe.⁴¹

According to the study’s findings, a statistical paired t-test demonstrated that “only the trained debtor group gained overall knowledge from the pre-test to post-test as measured by the questionnaires.”⁴² Regarding personal attitudes, the researchers concluded that “the trained debtors showed more negative attitudes toward unnecessary spending relative to the other two groups, and less

34. Compare Susan Block-Lieb et al., *The Coalition for Consumer Bankruptcy Debtor Education: A Report on Its Pilot Program*, 21 EMORY BANKR. DEV. J. 233, 248 (2005) (dates of study: 2001–2003), with Bankruptcy Abuse Prevention and Consumer Protection Act § 106(a)–(c) (noting the enactment date of the act as 2005).

35. Block-Lieb et al., *supra* note 34, at 238; Block-Lieb et al., *supra* note 33, at 511.

36. Block-Lieb et al., *supra* note 33, at 513.

37. *Id.* at 515.

38. Block-Lieb et al., *supra* note 34, at 248–49.

39. *Id.* at 249.

40. *Id.*

41. *Id.*

42. *Id.* at 252 (footnote omitted).

intention to buy than the non-debtors.”⁴³ Finally, the study demonstrated that debtors who underwent the financial education course demonstrated more positive behaviors in using credit cards, paying bills, and budgeting.⁴⁴

This Article reports the findings of my own qualitative study of debtor financial education and adds to the existing scholarly literature in several different ways. First, it is the first study to appear in the legal literature empirically researching the efficacy of the debtor education courses as mandated by BAPCPA. Other empirical studies of the BAPCPA education requirements exist in various arenas, and the findings of these studies will be discussed below. Second, this study is the first to examine the effectiveness of the mandated education courses from a longitudinal perspective. That is, the participants in this study filed for bankruptcy in 2006, 2008, and 2010. The significance of this was to measure whether the participants had continued to utilize any of the lessons learned from the education courses several years after leaving the bankruptcy system. Third, the study itself cut across educational boundaries. Approximately one-half of the debtors interviewed for this study possessed post-secondary degrees (e.g., M.B.A., M.A., and Ph.D.) while the other half did not possess any college degrees when they filed for bankruptcy protection. And although some of the participants who possessed college degrees likely chose themselves based upon their appreciation of research in general (as several indicated to me), the tenor of their responses regarding the financial education requirements did not in any meaningful way depart from the impressions and opinions of those participants who did not possess college degrees. In other words, the impressions of the pre-filing credit counseling and post-filing financial management courses did not differ based upon education level.

Moving forward, Part II of this Article will discuss the relevant legislative history undergirding the enactment of the debtor education requirements in BAPCPA and it will describe these requirements as presently expressed in the Bankruptcy Code. Part III will explore the past comments and opinions put forth by scholars prior to the 2005 amendments to the Bankruptcy Code regarding the prospect of offering educational classes to consumer debtors. Some of these comments and opinions are significant as they found substantiation in this study. Part IV will detail the prior empirical studies of BAPCPA’s debtor education

43. *Id.* at 253.

44. *Id.* at 253–54.

requirements. Part V will set forth the methodology of my qualitative study. Part VI will discuss the findings of this research study. Part VII offers an assessment of the debtor education courses as evidenced by this study and by past empirical studies, and suggests avenues for future research. Finally, Part VIII ends with a brief conclusion.

II. BAPCPA LEGISLATIVE HISTORY AND ITS PROVISIONS ON DEBTOR EDUCATION

Before turning to a discussion of the relevant legislative history to BAPCPA, a very brief sketch of consumer bankruptcy is offered. Individuals who file for bankruptcy protection generally choose to file under Chapter 7 or Chapter 13 of the Bankruptcy Code.⁴⁵ Chapter 7 is a liquidation proceeding, whereby the debtor receives a discharge of his or her debt in exchange for permitting a bankruptcy trustee to liquidate all of the debtor's non-exempt assets for the collective benefit of the creditor body.⁴⁶ In contrast to Chapter 7, debtors can elect to file under Chapter 13 of the Bankruptcy Code, whereby the debtor retains his or her assets moving forward in exchange for committing a portion of future income to repay creditors through a court-approved plan for a period of three to five years.⁴⁷ In either case, BAPCPA mandates

45. Andrew P. MacArthur, *Pay to Play: The Poor's Problems in the BAPCPA*, 25 EMORY BANKR. DEV. J. 407, 413 (2009) (noting that "most individuals will file under either chapter 7 or chapter 13"); Michael D. Sousa, *A Delicate Balancing Act: Satisfying the Fourth Amendment While Protecting the Bankruptcy System from Debtor Fraud*, 28 YALE J. ON REG. 367, 375 (2011) ("Individuals contemplating filing for bankruptcy protection can generally choose to file for Chapter 7, Chapter 13, or Chapter 11.").

46. *Bilzerian v. SEC (In re Bilzerian)*, 276 B.R. 285, 287 (M.D. Fla. 2002) (noting that the purpose of Chapter 7 is "to provide an honest debtor with a fresh start in exchange for the debtor's handing over to a trustee all of the debtor's non-exempt assets for liquidation for the benefit of the debtor's creditors" (citing *Huckfeldt v. Huckfeldt (In re Huckfeldt)*, 39 F.3d 829, 830 (8th Cir. 1994))).

47. *McDonald v. Burgie (In re Burgie)*, 239 B.R. 406, 410 (B.A.P. 9th Cir. 1999) ("In place of liquidating non-exempt assets to pay creditors under chapter 7 of the Bankruptcy Code, Congress gave individuals with regular income the option of adjusting their debts pursuant to a plan under chapter 13. The chapter 13 deal permits a debtor to retain all prepetition property, including earnings, assets, money in the bank and real estate. In exchange for keeping all of these assets, the debtor must commit all postpetition disposable income to the payment of creditors under a chapter 13 plan for a period of three to five years." (footnote omitted)).

participation in the pre-filing credit counseling and post-filing financial management courses.⁴⁸

Commentators trace the origins of BAPCPA to the efforts of the National Bankruptcy Review Commission (NBRC) established by Congress in 1994.⁴⁹ Congress charged the NBRC with, among other things, identifying problems with the then-existing Bankruptcy Code and recommending proposals for change.⁵⁰ After several years of careful study, the NBRC issued its report to Congress in late 1997.⁵¹ One of the NBRC's findings and recommendations for consumer bankruptcy involved financial education for debtors.⁵² Recognizing the potential benefits of financial education, the NBRC recommended that Congress explore the funding of, and authorization for, voluntary financial education for all Chapter 7 and Chapter 13 debtors.⁵³

More generally, however, the overall recommended changes to consumer bankruptcy law proved divisive, and several commissioners issued a "dissent" with respect to the consumer bankruptcy changes suggested by the majority of the commissioners serving on the NBRC.⁵⁴ Most significantly, the following statement made by the dissenting commissioners galvanized both Republican members of Congress and the consumer credit industry, and became a rallying cry for severe changes to the consumer bankruptcy system:

[T]here is growing perception that bankruptcy has become a first resort rather than a last measure for people who cannot keep up with their bills. Lenders everywhere are reporting an increase in the number of bankruptcy petitions filed by people who were current on their debt payments. This phenomenon implies that bankruptcy relief is too easy to obtain, that the moral stigma once attached to bankruptcy has eroded, and that debtors are

48. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 106(a)–(c), 119 Stat. 23, 37–38 (codified as amended at 11 U.S.C. §§ 109, 727(a), 1328 (2012)).

49. Susan Jensen, *A Legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 AM. BANKR. L.J. 485, 486 (2005).

50. *Id.*

51. *Id.* at 486–87. See generally NAT'L BANKR. REVIEW COMM'N, *supra* note 16.

52. NAT'L BANKR. REVIEW COMM'N, *supra* note 16, at 2, 114–16.

53. *Id.* at 114–16.

54. Jensen, *supra* note 49, at 487–91.

insufficiently counseled both about personal financial management and about the use of bankruptcy.⁵⁵

Charged by these statements, the consumer credit industry then engaged in a relentless campaign to move Congress to amend the Bankruptcy Code in order to prevent debtors from abusing the credit industry's perceived liberality of the consumer bankruptcy provisions then existing in the Bankruptcy Code.⁵⁶ Indeed, debtor abuse of the nation's bankruptcy laws became the mantra for those pushing to amend the Bankruptcy Code.⁵⁷ This constituency believed that debtors with an ability to repay some portion of their unsecured debts were purposefully opting to file for Chapter 7 bankruptcy as an easy escape from their financial obligations.⁵⁸ Simply put, the proponents of bankruptcy reform sought to combat this alleged abuse.⁵⁹

The next eight years following the NBRC's report resulted in a tortuous legislative path for bankruptcy reform. By 2003, the House of Representatives had passed bankruptcy reform legislation on six

55. NAT'L BANKR. REVIEW COMM'N, *supra* note 16, at 1044 (dissenting commissioners).

56. For a description of the lobbying efforts put forth by the consumer credit industry, see Jean Braucher, *A Fresh Start for Personal Bankruptcy Reform: The Need for Simplification and a Single Portal*, 55 AM. U. L. REV. 1295, 1301 (2006) ("The credit industry never accepted the 1978 Act's perceived liberalization of personal bankruptcy. The industry continued to fight for constraints on use of personal bankruptcy." (footnote omitted)); Gloria J. Liddell et al., *Does an Economic Crisis Merit a Prima Facie Finding of "Exigent Circumstances" or Other Emergency Relief? The Impact of the Credit Counseling Provision of BAPCPA Upon Distressed Homeowners in a Severe National Economic Downturn*, 44 J. MARSHALL L. REV. 129, 132-33 (2010) ("Creditor and banking groups sought to encourage a congressional revamping of the federal bankruptcy laws through their intensive lobbying efforts. These financial institutions were concerned about what they considered the 'consumer friendly' nature of the bankruptcy laws and the acceleration in filings that had been occurring since the last major overhaul of the bankruptcy laws . . ." (footnote omitted)). See generally Sean C. Currie, *The Multiple Purposes of Bankruptcy: Restoring Bankruptcy's Social Insurance Function After BAPCPA*, 7 DEPAUL BUS. & COM. L.J. 241, 248-49 (2009) ("BAPCPA was the result of the consumer credit industry exerting its influence on how bankruptcy is handled. The consumer credit community long maintained that the Bankruptcy Reform Act of 1978 was far too debtor-friendly." (footnote omitted)); Jensen, *supra* note 49, at 486 & n.4.

57. See Gary Neustadter, *2005: A Consumer Bankruptcy Odyssey*, 39 CREIGHTON L. REV. 225, 229-32 (2006).

58. *Id.* ("Fueled by concern about dramatic increases in Chapter 7 filing rates, [BAPCPA] accepts instead the premise, advanced persistently and forcefully by and on behalf of extenders of consumer credit, that too many consumer debtors with the ability to repay meaningful amounts of non-priority unsecured debt have been seeking Chapter 7 relief." (footnote omitted)).

59. See MacArthur, *supra* note 45, at 413-14.

occasions, while the United States Senate passed its own version of reform legislation four times, all to no avail.⁶⁰ But when Republicans gained control of the House, Senate, and Presidency after the 2004 elections, the push for bankruptcy law reform reignited and became a possibility.⁶¹ On April 20, 2005, President Bush signed BAPCPA into law, and most of its provisions became effective on October 17, 2005.⁶² By most observers' accounts, the consumer credit industry's efforts proved successful; that is, the enactment of BAPCPA represented a major victory for creditors generally by making bankruptcy protection, and in particular Chapter 7 relief, more cumbersome, expensive, and inaccessible to many honest but unfortunate debtors.⁶³

According to the House of Representative's report accompanying BAPCPA, the avowed purpose of the bill was "to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system and ensure that the system is fair for both debtors and creditors."⁶⁴ Rejecting the NBRC's recommendation that debtor financial education be available on a voluntary basis, Congress mandated through BAPCPA that individual debtors receive pre-filing credit counseling before they can be eligible for bankruptcy relief "so that they will make an informed choice about bankruptcy, its alternatives, and consequences."⁶⁵ This pre-filing credit counseling⁶⁶ requirement currently appears in § 109 of the Bankruptcy Code, titled,

60. For a discussion of the legislative history leading up to BAPCPA, see generally Jensen, *supra* note 49. See also H.R. REP. NO. 109-31, pt. 1, at 6 (2005).

61. See Jensen, *supra* note 49, at 562–67.

62. *Id.* at 485; see also Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1501(a), 119 Stat. 23, 216 (indicating that most provisions go into effect 180 days after the date of enactment).

63. See generally James J. White, *Abuse Prevention 2005*, 71 MO. L. REV. 863 (2006).

64. H.R. REP. NO. 109-31, at 2.

65. *Id.*

66. Money Management International, Inc. (MMI) provides pre-bankruptcy credit counseling and is an approved provider by the Executive Office for United States Trustees. ANGELA C. LYONS ET AL., MONEY MGMT. INTER'L, THE EFFECT OF BANKRUPTCY COUNSELING AND EDUCATION ON DEBTORS' FINANCIAL WELL-BEING: EVIDENCE FROM THE FRONT LINES 5 (2008). According to MMI, its pre-filing credit counseling course covers the following topics:

- (1) financial goal setting, (2) budgeting and tracking expenses, (3) gross versus net income, (4) fixed and variable expenses, (5) priority versus non-priority expenses, (6) assets and liabilities, (7) net worth and savings, (8) secured versus unsecured loans, (9) keeping adequate financial records, and (10) debt management strategies.

Id. at 9–10.

“Who may be a debtor.”⁶⁷ Specifically, § 109(h)(1) provides that an individual is ineligible for bankruptcy relief unless the individual first has, during the 180 day period before filing the petition, “received from an approved nonprofit budget and credit counseling agency . . . an individual or group briefing [including by phone or Internet] that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.”⁶⁸ Sections 109(h)(3) and (4) provide limited exceptions to the mandated pre-filing credit counseling requirement for individuals that experience “exigent circumstances” necessitating an immediate bankruptcy filing, or for those individuals who cannot complete a pre-filing credit counseling course due to “incapacity, disability, or active military duty in a military combat zone.”⁶⁹

Harkening back to the dissenting voices of the NBRC, § 109(h)(1) has the theoretical intent of attempting to make bankruptcy a remedy of last resort for many debtors, rather than a remedy of first resort, and to obviate the need to file bankruptcy for many others who can allegedly deal with their financial situations through an alternative to bankruptcy, such as a creditor-approved debt management plan.⁷⁰

67. 11 U.S.C. § 109 (2012).

68. *Id.* § 109(h)(1).

69. *Id.* § 109(h)(3)(A), (h)(4). The interpretations of § 109(h) have presented a host of issues for the courts to address. For a discussion in the literature of some of these issues, see generally Liddell et al., *supra* note 56; Victoria L. VanZandt, *The Exigent Circumstances Exception to the Pre-Petition Credit Counseling Requirement Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Exigent or Extreme?*, 6 DEPAUL BUS. & COM. L.J. 265 (2008); Michael Newman, Comment, *BAPCPA's New Section 109(h) Credit Counseling Requirement: Is It Having the Effect Congress Intended?*, 2007 UTAH L. REV. 489 (2007); Joseph Satorius, Note, *Strike or Dismiss: Interpretation of the BAPCPA 109(h) Credit Counseling Requirement*, 75 FORDHAM L. REV. 2231 (2007).

70. *In re Tomco*, 339 B.R. 145, 152 (Bankr. W.D. Pa. 2006) (“The effect of this legislation is that bankruptcy is a remedy of last resort for the honest but unfortunate debtor.”); *In re Warden*, 2005 WL 3207630, at *2 (Bankr. W.D. Mo. Nov. 22, 2005) (“The apparent congressional hope in enacting the credit counseling requirement is that focusing on a budget analysis with the help of a credit counseling professional might obviate the need for seeking bankruptcy relief for some debtors.”); *In re Wallert*, 332 B.R. 884, 889 (Bankr. D. Minn. 2005) (“Congress’s goal [in requiring pre-filing credit counseling] seems to be to discourage the practice of hastily filing for bankruptcy, even if that be in the face of foreclosure, repossession, or garnishment, and to discourage debtors from deferring their first consideration of bankruptcy until the very eve of such decisive events in the exercise of creditors’ remedies.”); 2 COLLIER ON BANKRUPTCY, *supra* note 20, ¶ 111.02[1] (“Perhaps the real reason for the requirement [of credit counseling] is to curb the number of individuals who can access the bankruptcy system in the first instance by requiring that they receive counseling and, perhaps through counseling, pursue a nonbankruptcy alternative.”).

The very general description of the pre-filing credit counseling requirement in § 109(h)(1)⁷¹ is augmented to some degree by § 111 of the Bankruptcy Code, which addresses such topics as who can be providers of the mandated debtor education programs,⁷² how oversight of the educational programs will be performed by the United States Trustee,⁷³ and what the content of the educational courses should comprise.⁷⁴ Regarding the pre-filing credit counseling requirement, § 111(c)(1) provides that an approved credit counseling agency must offer “adequate counseling with respect to client credit problems.”⁷⁵ A bit more expansively, § 111(c)(2)(E) contemplates that “adequate counseling” should include “an analysis of such client’s current financial condition, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt.”⁷⁶ Most pre-filing credit counseling sessions occur either by phone or through the Internet.⁷⁷

In addition to the pre-filing credit counseling course, BAPCPA also mandates that prior to receiving either a Chapter 7 or Chapter 13 discharge, debtors must participate in a financial management instructional course “so they can hopefully avoid future financial distress.”⁷⁸ In particular, § 727(a)(11) of the Bankruptcy Code provides that “[t]he court shall grant the debtor a discharge, unless . . . after filing

71. Critiques of the pre-filing credit counseling requirement have been expressed in the case law. *See, e.g., In re Elmendorf*, 345 B.R. 486, 490 (Bankr. S.D.N.Y. 2006) (“Congress envisioned that credit counseling would provide individuals with the skills necessary to lead financially responsible lives. This facially well-intentioned section of the BAPCPA has evolved into an expensive, draconian gate-keeping requirement that has prevented many deserving individuals from qualifying for bankruptcy relief.” (footnote omitted)); *In re Tomco*, 339 B.R. at 152 (“As the typical consumer debtor’s insolvency becomes exacerbated, the consumer debtor has no idea what the law requires under these circumstances. The end result is that the honest but unfortunate consumer debtor is placed in an even worse situation. Not being sophisticated in the law, the honest debtor is caught by surprise by the nuances of the credit counseling briefing provisions of the 2005 Act and finds that bankruptcy relief may be beyond his or her reach.”); *In re Sosa*, 336 B.R. 113, 114 (Bankr. W.D. Tex. 2005) (describing the pre-filing credit counseling requirement as “inane”).

72. *See* 11 U.S.C. § 111 (2012).

73. *See id.* § 111(a)–(d). The Office of the United States Trustee is a component of the United States Department of Justice and essentially serves as a “watchdog” over the entire bankruptcy system. *In re Ventura*, 375 B.R. 103, 107 (Bankr. E.D.N.Y. 2007).

74. *See* 11 U.S.C. § 111(c)(2)(E).

75. *Id.* § 111(c)(1).

76. *Id.* § 111(c)(2)(E).

77. 2 COLLIER ON BANKRUPTCY, *supra* note 20, ¶ 111.01[1].

78. H.R. REP. NO. 109-31, pt. 1, at 2–3 (2005).

the petition, the debtor failed to complete an instructional course concerning personal financial management.”⁷⁹ A debtor can be exempted from this post-filing personal financial management course⁸⁰ for the justifications expressed in § 109(h)(4), namely, incapacity, disability, or active duty in a military combat zone.⁸¹ For Chapter 13 debtors, § 1328(g)(1) provides as follows: “The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.”⁸² Similar to Chapter 7 debtors, § 1328(g)(2) exempts Chapter 13 debtors from participating in the financial management course for the reasons identified in § 109(h)(4) of the Bankruptcy Code.⁸³

Much like its credit counseling counterpart, the Bankruptcy Code offers little guidance as to the actual content of the post-filing financial management course. However, what guidance is offered can be found in § 111(d)(1)(B), which states that a financial management course should provide “learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course.”⁸⁴ As others have observed, incredulously absent from this provision is an explication of the goals and outcomes Congress envisioned for requiring debtors to participate in this course.⁸⁵ Moreover, § 111(d)(1)(B) has been described as “vague” and “lack[ing] [in] definiteness.”⁸⁶

79. 11 U.S.C. § 727(a)(11).

80. MMI provides post-filing financial management courses and is an approved provider by the Executive Office for United States Trustees. LYONS ET AL., *supra* note 66, at 5. According to MMI, the topics addressed in this financial management course include, but are not limited to, the following:

(1) financial goal setting, (2) budgeting and tracking expenses, (3) gross versus net income, (4) fixed, variable, and periodic expenses, (5) keeping adequate financial records, (6) comparison shopping, (7) insurance, (8) savings plans and emergency funds, (9) types of credit and costs of credit, (10) wise use of credit, (11) credit reports and credit scores, (12) establishing or re-establishing credit, and (13) consumer rights and protection.

Id. at 10.

81. 11 U.S.C. § 109(h)(4); *see also* 11 U.S.C. § 727(a)(11).

82. 11 U.S.C. § 1328(g)(1).

83. *Id.* § 1328(g)(2).

84. 11 U.S.C. § 111(d)(1)(B).

85. Karen Gross & Susan Block-Lieb, *Empty Mandate or Opportunity for Innovation? Pre-Petition Credit Counseling and Post-Petition Financial Management Education*, 13 AM.

Despite the lack of clarity within § 111 itself, the Executive Office for United States Trustees has promulgated a set of criteria for what concepts a post-filing financial management course should cover.⁸⁷ According to the Executive Office for United States Trustees, the topics to be covered are as follows: (1) budget development, consisting of setting short-term and long-term financial goals, calculating gross and net monthly income, and identifying and classifying monthly expenses as either fixed, variable, or periodic;⁸⁸ (2) money management, consisting in part of keeping adequate financial records, distinguishing between “needs” and “wants,” maintaining proper insurance coverage, comparison shopping, and saving for emergencies;⁸⁹ (3) wise use of credit, consisting of the sources and costs of credit along with the appropriate use of credit;⁹⁰ (4) consumer information relating to consumer protection laws and sources of consumer assistance;⁹¹ and (5) coping with an unexpected financial crisis, consisting of identifying alternatives to borrowing and seeking advice from public and private service agencies.⁹² The post-filing financial management course may be completed in person, over the phone, or through the Internet.⁹³ According to one commentator, the financial management course was designed “to [e]nsure that individual debtors leave the bankruptcy process with a toolbox of financial skills so that, prospectively, they will make more knowledgeable and thoughtful financial choices and avoid future financial failure.”⁹⁴

Ever since the 1997 NBRC broached, for the first time, the notion of offering financial education to individual consumer debtors, several bankruptcy scholars offered their opinions and concerns about such a

BANKR. INST. L. REV. 549, 561 (2005) (“The problem is that BAPCPA fails explicitly to define the goals of either mandate. The statute is vague as to the content, indeed, the very goals, of both the pre- and post-filing requirements.”); Neustadter, *supra* note 57, at 270 (noting that “the justification for instruction in personal financial management is obscure or nonexistent”).

86. 2 COLLIER ON BANKRUPTCY, *supra* note 20, ¶ 111.14[3].

87. See Minimum Qualifications Providers Shall Meet to Become and Remain Approved Providers, 78 Fed. Reg. 16,159, 16,173 (Mar. 14, 2013) (codified at 28 C.F.R. pt. 58).

88. 28 C.F.R. § 58.33(f)(1) (2013).

89. *Id.* § 58.33(f)(2).

90. *Id.* § 58.33(f)(3).

91. *Id.* § 58.33(f)(4).

92. *Id.* § 58.33(f)(5).

93. *Id.* § 58.33(g)(2)–(4).

94. 2 COLLIER ON BANKRUPTCY, *supra* note 20, ¶ 111.01[2].

prospect as Congress embarked on a path to incorporate such a requirement into the Bankruptcy Code.⁹⁵ It is to these commentaries to which this Article now turns.

III. PAST REFLECTIONS ON DEBTOR FINANCIAL EDUCATION

In the years leading up to the enactment of BAPCPA and in the period just thereafter, a handful of scholars commented on the prospective efficacy and utility of debtor education.⁹⁶ An exhaustive discussion of this literature is beyond the scope of this Article; nonetheless, many of the opinions and thoughts of these scholars are important because they were substantiated by the findings of this qualitative study, *seven years after* BAPCPA mandated debtor education as part of the Bankruptcy Code.⁹⁷

Professor A. Mechele Dickerson, one of the first to opine on mandated debtor education, examined what she perceived to be the “limitations of credit-focused debtor education programs.”⁹⁸ In her article, Professor Dickerson raised several potential problems with mandated debtor education programs. First, for Dickerson, the timing of requiring debtors to undergo financial education programs contained “[s]tructural [f]laws.”⁹⁹ While Dickerson conceded that post-petition programs could help people use credit responsibly in the future, she asserted that requiring credit counseling “as a prerequisite to bankruptcy could have dire financial consequences.”¹⁰⁰ This is so, according to Dickerson, because “[f]orcing a debtor to negotiate with creditors . . . or denying bankruptcy relief until after the debtor

95. *See infra* Part III.

96. *See generally* Block-Lieb et al., *supra* note 34; Block-Lieb et al., *supra* note 33; Braucher, *supra* note 8; Dickerson, *supra* note 16; Gross & Block-Lieb, *supra* note 85; Nathalie Martin & Ocean Tama y Sweet, *Mind Games: Rethinking BAPCPA’s Debtor Education Provisions*, 31 S. ILL. U. L.J. 517 (2007); Neustadter, *supra* note 57; Stehl, *supra* note 17; Richard L. Wiener et al., *Unwrapping Assumptions: Applying Social Analytic Jurisprudence to Consumer Bankruptcy Education Requirements and Policy*, 79 AM. BANKR. L.J. 453 (2005).

97. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 106(a)–(c), 119 Stat. 23, 37–38 (codified as amended at 11 U.S.C. §§ 109, 727(a), 1328 (2012)).

98. *See* Dickerson, *supra* note 16, at 947.

99. *Id.* at 952.

100. *Id.*

completes a financial management course would exacerbate the debtor's financial distress and impose an intangible emotional cost."¹⁰¹

From this bounded qualitative study, the debtors I interviewed did not experience participating in a pre-filing credit counseling course as an exacerbation of any financial or emotional cost.¹⁰² Rather, many of the debtors reported to me their own independent efforts to negotiate with their creditors before contemplating filing for bankruptcy relief.¹⁰³ In fact, most of these participants voiced frustration with their creditors' unwillingness to work with them through their financial situations, and one couple attributed their ultimate need to file for bankruptcy relief upon a single credit card company's refusal to be flexible in repayment terms.¹⁰⁴ Moreover, and as will be described more fully in Part VI below, almost every participant I spoke with simply viewed the pre-filing credit counseling course as a "hurdle to jump through" before filing for bankruptcy relief.¹⁰⁵ This finding substantiates the thoughts of Professor Gary Neustadter when he suggested that the pre-filing credit counseling "requirement will waste the time . . . of the substantial number of debtors hopelessly mired in overwhelming debt who otherwise would not have contacted a counseling agency."¹⁰⁶ Moreover, the necessity of participating in a short credit counseling course did not impose any additional psychological costs. This is so because most every participant I interviewed expressed severe pangs of stress and anxiety over their calamitous financial situation before ever learning of any counseling requirement as part of the bankruptcy process.¹⁰⁷

The second major flaw with mandated debtor education identified by Professor Dickerson was substantiated by this study. In questioning the proper length of the debtor education programs, Professor Dickerson correctly noted that "if Congress wants credit-counseled debtors to obtain skills they can use to prevent them from making unwise credit decisions in the future, then an extensive . . . program is needed since only intensive counseling will produce long-term benefits to debtors, creditors, and society overall."¹⁰⁸ Most of the participants in

101. *Id.* (emphasis omitted).

102. *See infra* Part VI.B.

103. *See, e.g.*, Interview with Participants #23, *supra* note 24.

104. *Id.*

105. *See, e.g., infra* notes 321, 331, 342 and accompanying text.

106. Neustadter, *supra* note 57, at 240.

107. *See generally infra* Part VI.B.

108. Dickerson, *supra* note 16, at 953.

this study expressed to me that the current half-hour pre-filing credit counseling course and the approximately two-hour, post-filing financial management course are simply not enough exposure time to the concepts that debtors could successfully employ in their daily lives.¹⁰⁹ Indeed, one debtor suggested to me that these courses should address the psychology behind the use of credit, and require debtors to participate in a series of post-filing personal finance classes for at least six months after the closing of their bankruptcy cases.¹¹⁰

The third major flaw with mandated debtor education identified by Professor Dickerson, namely, that simply completing a financial management course “may not ‘cure’ all economic disabilities,”¹¹¹ was also substantiated by this qualitative study. On this point, Dickerson contends that mandatory debtor education programs assume “that most debtors currently are financially irresponsible, but will behave responsibly once they learn how to manage their finances.”¹¹² For this segment of debtors, Dickerson asserts (and I do not disagree) that financial education can benefit credit-ignorant debtors.¹¹³ Interestingly, though, several of the participants in this study admitted to a practice of engaging in unwise spending habits.¹¹⁴ But, even this segment of debtors did not express any benefit to the debtor education courses mandated by BAPCPA.¹¹⁵

More poignantly though, as bankruptcy law scholars have recognized for many years, many, if not most, people enter the bankruptcy system not as a result of improvident spending, but as a result of a changed life circumstance, such as job loss, underemployment, divorce, or medical problems.¹¹⁶ Because of this, Dickerson argued that many debtors are unlikely to receive any direct benefit by participating in mandatory debtor education programs.¹¹⁷

109. See *infra* Part VI.B.1 (characterizing the debtor education process as unhelpful); *infra* text accompanying note 172.

110. Interview with Participant #16, *supra* note 24.

111. Dickerson, *supra* note 16, at 958–59.

112. *Id.*

113. *Id.*

114. See, e.g., Interview with Participants #31 (Oct. 6, 2012); Interview with Participants #35 (Sept. 26, 2012).

115. See, e.g., Interview with Participants #31, *supra* note 114; Interview with Participants #35, *supra* note 114.

116. Elizabeth Warren, *Financial Collapse and Class Status: Who Goes Bankrupt?*, 41 OSGOODE HALL L.J. 115, 145 (2003); Dickerson, *supra* note 16, at 958–59.

117. See Dickerson, *supra* note 16, at 958. This point has been recognized by other

Professor Dickerson was entirely correct when she opined years before BAPCPA that any mandated debtor education requirements should address debtors' "individual economic deficiencies."¹¹⁸ This is something that BAPCPA fails to do.

In their article, Professors Gross and Block-Lieb offered their own concerns about the then newly amended Bankruptcy Code.¹¹⁹ A subset of their concerns have resonance with this qualitative study. Most notably, Professors Gross and Block-Lieb offered this major criticism of BAPCPA, which still persists to this day:

The problem is that BAPCPA fails explicitly to define the goals of either mandate [i.e., pre- and post-financial education]. The statute is vague as to the content, indeed, the very goals, of both the pre- and post-filing requirements. As such, it is unclear what is intended to occur in these sessions.¹²⁰

Though it is safe to say that the content of the pre-filing credit counseling and post-filing financial management courses have become routinized among providers approved by Congress, it is still an open question whether the courses are having the intended effects on the ground in the everyday lives of debtors.¹²¹ If the themes and patterns found in this study are an indication of the effectiveness of both courses for a large segment of the individual debtor population, then a serious rethinking of these BAPCPA requirements must be undertaken by Congress.

commentators as well. For example, Richard L. Stehl argued as follows:

While many debtors undoubtedly could benefit from educational courses in personal financial management, a major flaw of the proposed legislation is that *all* debtors are required to complete the course work to obtain a discharge. Clearly not all of the projected 1.4 million individuals filing for bankruptcy protection in 1998 will file because of inept budgeting skills. Many consumers file because of financial difficulties associated with sudden layoffs, divorce, single parenthood, uninsured medical expenses or other catastrophic occurrences, and not necessarily chronic financial mismanagement. . . . In light of [this], the wisdom of the proposed debtor education requirement is questionable.

Stehl, *supra* note 17, at 158–59 (footnotes omitted); *see also* Braucher, *supra* note 8, at 563 (questioning whether only one approach to debtor financial education is appropriate in light of the different types of people, and situations, involved in bankruptcy cases).

118. Dickerson, *supra* note 16, at 962.

119. Gross & Block-Lieb, *supra* note 85, at 552.

120. *Id.* at 561.

121. *See infra* Part VI.

While §§ 109 and 111 of the Bankruptcy Code appear to be swimming in detail, Professors Gross and Block-Lieb recognized several limitations with these sections in addressing basic questions, such as, “[i]s the goal of credit counseling to determine whether the debtor should enter into a debt management plan” and thereby not file for bankruptcy relief?¹²² Regarding the post-filing financial management course, it is true that the United States Trustee has mandated that the courses cover four substantive areas: (1) “budget development,” (2) “money management,” (3) “wise use of credit,” and (4) “consumer [protection] information.”¹²³ But, even here, Professors Gross and Block-Lieb correctly criticized BAPCPA because the intended normative goals of the post-filing financial management course are absent.¹²⁴ On this point, Gross and Block-Lieb aptly offered the following series of rhetorical questions:

Should the course be designed to discourage the use of credit and to signal to debtors that they are overspenders and that overspending is deviant? Or should the course, instead, presume that debtors will, of necessity, re-enter the market for consumer credit after emerging from bankruptcy and endeavor to give them the tools for making wise and thoughtful credit decisions? Should the course encourage debtors to adopt specific practices, by promoting asset building or saving, for example, or should it be content rich but value neutral? . . . Are the goals for each type of debtor the same, or can an approved provider offer different courses with different goals for different debtor audiences?¹²⁵

Unfortunately, these poignant questions remain unanswered seven years after BAPCPA took effect.

Utilizing the data collected in their earlier, pre-BAPCPA Pilot Project, Professors Richard L. Wiener, Susan Block-Lieb, Karen Gross, and Corinne Baron-Donovan issued a study in 2005 and related the findings to what they collectively perceived as the shortcomings of BAPCPA’s newly minted education requirements.¹²⁶ Criticizing the fact that BAPCPA fails to differentiate among debtors’ unique

122. Gross & Block-Lieb, *supra* note 85, at 553, 562–63.

123. *Id.* at 563.

124. *See id.*

125. *Id.* at 563.

126. Wiener et al., *supra* note 96, at 453–54.

characteristics and financial circumstances, these researchers concluded from their data that “categorical differences” exist among consumer debtors “based on their income as well as employment, education, marital status and personal control over financial affairs.”¹²⁷ From this the authors rightly conclude that “differences among individual debtors have implications for the ways in which credit counseling should be conducted and how financial literacy training should be designed.”¹²⁸ That is, a “one size fits all” approach to debtor education may prove ineffective in the end.¹²⁹

My qualitative study, with data collected from debtors who filed for bankruptcy in the years following the enactment of BAPCPA, substantiates the findings of this earlier report. Though most every participant I interviewed did not find either debtor education course helpful, the expressed reasons for this did differ based upon such variables as education, employment, and life circumstances. To illuminate the point, it may be helpful to compare just two of the participants I interviewed for this study. One individual with whom I met owns a consulting business that provides complex financial analyses for large corporations.¹³⁰ Though his take-home salary ranges from \$10,000 to \$15,000 per month, he was beset one year by a severe medical illness that resulted in approximately half a million dollars in medical bills, and thus his need to resort to bankruptcy.¹³¹ When asked about the debtor education courses, he commented how he was more financially sophisticated than either his attorney or the bankruptcy trustee.¹³² For him, the debtor education courses were a “waste of time.”¹³³ Contrast his situation with a couple whom I met who together earns about \$50,000 per year, but charged, among other things, \$30,000 on a credit card to pay for their child’s wedding.¹³⁴ Though their financial situation was completely different from the business analyst, this couple also did not find the credit counseling course helpful because they “knew what [they] did wrong,” and by the time they filed for bankruptcy, they had

127. *Id.* at 454.

128. *Id.*

129. *Id.*

130. Interview with Participant #39 (Oct. 6, 2012).

131. *Id.*

132. *Id.*

133. *Id.*

134. Interview with Participants #35, *supra* note 114.

experienced unemployment and underemployment.¹³⁵ But the larger point is this: a “cookie cutter,” generalized education class would never prove useful to the sophisticated business analyst (who admittedly may have been a complete outlier vis-à-vis the “average” debtor), but may have proven useful to the couple if provided to them in enough time to prevent some of their deleterious financial spending.

In addition to these past studies, Professor Nathalie Martin and her co-author Ocean Tama y Sweet have argued that while both the pre-filing credit counseling course and the post-filing financial management course could have potential benefits, they “serve[] no useful function” as currently constituted in the Bankruptcy Code.¹³⁶ As to the pre-filing credit counseling course, Martin and Tama y Sweet argued that “any debtor education on the way into bankruptcy” is “highly questionable” because by that point “[i]t is simply too late . . . to meaningfully affect any decision a debtor could make.”¹³⁷ Martin and Tama y Sweet’s comments in this regard were not based upon any empirical data.¹³⁸ Nonetheless, this empirical study substantiates these astute observations. All of the participants I interviewed had already made the decision to file for bankruptcy prior to learning of the mandated pre-filing credit counseling course. In fact, in only one out of the forty-six cases studied (2.17%) was a debt repayment plan generated.¹³⁹ When I reviewed this debt repayment plan, however, it quickly became clear that any alternative to bankruptcy was impossible. At the time this couple participated in the pre-filing credit counseling course, the difference between their expenses and income was -\$697.00.¹⁴⁰ Calculated by the needed \$956.00 monthly payment to repay their unsecured creditors, this couple’s monthly shortfall would have been -\$1,653.00 per month under the repayment plan.¹⁴¹ Thus, bankruptcy was the only available option. Equally as important, many of the participants reported to me that the pre-filing education course was simply unhelpful because they were “so far gone” financially.¹⁴²

135. *Id.*

136. Martin & Tama y Sweet, *supra* note 96, at 519.

137. *Id.* at 540.

138. *See generally id.*

139. Interview with Participants #35, *supra* note 114.

140. *Id.*

141. *Id.*

142. *See, e.g.,* Interview with Participants #31, *supra* note 114; *see also* Interview with Participants #03 (Sept. 16, 2012) (finding the pre-filing credit counseling course unhelpful

Finally, Martin and Tama y Sweet critiqued the post-filing financial management course based upon its failure to account for the “cultural conditions” leading to overindebtedness and the “psychology of debt and spending.”¹⁴³ Their critique in this regard is also substantiated by this study, for several of the debtors with whom I spoke demonstrated a disconnect between their actual consumption behaviors and their beliefs about practicing sound financial management techniques.¹⁴⁴ Indeed, a few debtors expressed a general inability to control their own spending habits.¹⁴⁵

These past studies and commentaries occurred in the period leading up to the enactment of BAPCPA and the contemplated debtor education requirements. Since 2005, several empirical studies have been conducted on the efficacy of the debtor education requirements.¹⁴⁶ These studies appear in various arenas, and none have been published in the legal literature as of this writing. Because of their significance, this Article will now turn to a discussion of these post-BAPCPA studies on debtor financial education.

IV. PRIOR EMPIRICAL STUDIES OF THE BAPCPA DEBTOR EDUCATION REQUIREMENTS

Though no articles appear to date in the legal literature analyzing BAPCPA’s debtor education requirements, several studies do exist that have empirically assessed the quality and effectiveness of the pre-filing credit counseling and post-filing financial management courses. A brief discussion of each of these studies follows.

A. National Consumer Law Center Report (2007)

One of the first empirical studies to emerge regarding BAPCPA’s debtor education mandate was issued in 2007 by the National Consumer Law Center (NCLC), titled, *New Burdens But Few Benefits: An Examination of the Bankruptcy Counseling and Education Requirements in Massachusetts* (NCLC Report).¹⁴⁷ As the title conveys, the NCLC’s

because they were too deep in debt).

143. Martin & Tama y Sweet, *supra* note 96, at 519.

144. *See infra* text accompanying notes 366–67.

145. *See infra* note 370 and accompanying text.

146. *See infra* Part IV.

147. NAT’L CONSUMER LAW CTR., *NEW BURDENS BUT FEW BENEFITS: AN EXAMINATION OF THE BANKRUPTCY COUNSELING AND EDUCATION REQUIREMENTS IN MASSACHUSETTS* (2007).

study was concentrated solely on education providers in Massachusetts.¹⁴⁸ Nonetheless, and as the NCLC opined, since a majority of the providers studied offer their services in multiple states, the report has national implications.¹⁴⁹ To gather its data, the NCLC did the following: (1) visited the websites of the providers of financial education in Massachusetts, looking for basic information such as cost of service, method of course materials, and hours of operation; (2) reviewed course materials; (3) spoke directly with thirty-six education providers; and (4) surveyed nine clients who had undergone a Massachusetts provider's services.¹⁵⁰ While the NCLC Report concerned itself primarily with language barriers, affordability issues, inconsistent fee waiver policies, and the expense of client counseling via the Internet,¹⁵¹ the NCLC Report noted several issues that are substantiated or supported by this study.

First, while the debtors interviewed by the NCLC described the pre-filing counseling sessions as "interesting and helpful," all of these individuals stated that credit counseling sessions offered no real alternative to filing for bankruptcy.¹⁵² In fact, only a very low percentage of debtors, roughly 0% to 4%, entered into a debt management plan as an alternative to filing for bankruptcy protection.¹⁵³ Second, the NCLC noted the "dearth of reliable information about whether financial education affects behavior and little evidence that consumers file bankruptcy because of lack of financial knowledge."¹⁵⁴ Third, the NCLC criticized the educational courses as not specifically tailored to bankruptcy filers, but rather providing financial literacy advice aimed at a more generalized audience.¹⁵⁵ For example, the NCLC discovered that none of the post-filing financial management courses warn debtors that

148. *Id.* at 1.

149. *Id.*

150. *Id.* at 6–7.

151. *Id.* at 1–2.

152. *Id.* at 3.

153. *Id.* In a debt management plan, the consumer pays off their unsecured debts by making a monthly payment to the credit counseling agency, who in turn distributes the payment to the debtor's creditors. LYONS ET AL., *supra* note 66, at 3 n.5. A benefit of a debt management plan is that the credit counseling agency can negotiate with the creditors to lower the debtor's interest rate or to waive certain fees. *Id.* As studies have noted, however, certain credit counseling agencies have participated in abusive conduct regarding the administration of debt management plans. *See, e.g., id.* at 3.

154. NAT'L CONSUMER LAW CTR., *supra* note 147, at 4.

155. *Id.* at 5.

problems might arise in the manner by which their debts are reported on their credit reports following discharge.¹⁵⁶ Likewise, none of the financial management courses discussed post-discharge collection attempts by creditors or the ramifications of entering into a reaffirmation agreement¹⁵⁷ with a creditor.¹⁵⁸ This type of information is certainly crucial for debtors to have in order to correct their financial situations after their bankruptcy experience.

B. United States Government Accountability Office Report (2007)

Certain members of Congress requested that the United States Government Accountability Office (GAO) study the debtor education requirements mandated by BAPCPA, mainly out of concern that the requirements could be exposing consumers to abusive practices by credit counseling agencies or serving as barriers to those desiring to file for bankruptcy protection.¹⁵⁹ Accordingly, in April 2007, the GAO issued its report, titled, *Bankruptcy Reform: Value of Credit Counseling Requirement Is Not Clear* (GAO Report).¹⁶⁰ The stated objectives of the GAO Report were to examine the following: (1) the actions taken by the Executive Office for United States Trustees to approve providers of debtor education; (2) “the content and results of the counseling and education sessions”; (3) the fees charged by providers of the educational sessions; and (4) the availability of education providers and any associated barriers consumers face to access these services.¹⁶¹

Specifically, with respect to the content and results of both the pre-filing credit counseling session and the post-filing financial management course, the results were far from stellar. While the GAO interviewed numerous governmental agencies, attorney associations, trade

156. *Id.* at 36.

157. *Id.* A reaffirmation is a voluntary agreement between the debtor and a creditor whereby the debtor agrees to repay a debt that would ordinarily otherwise be dischargeable. Jamie Beth Feitlin, Note, *Reaffirmation Agreements Between Debtors and Creditors: The Past, the Present, and the Future*, 15 N.Y.L. SCH. J. HUM. RTS. 177, 177 (1998) (“A reaffirmation agreement is an [a]greement made prior to discharge in bankruptcy to pay certain debts that otherwise would be discharged through the bankruptcy proceeding.” (alteration in original) (quoting BLACK’S LAW DICTIONARY 1263 (6th ed. 1990))).

158. NAT’L CONSUMER LAW CTR., *supra* note 147, at 36.

159. U.S. GOV’T ACCOUNTABILITY OFFICE, *BANKRUPTCY REFORM: VALUE OF CREDIT COUNSELING REQUIREMENT IS NOT CLEAR* 1 (2007).

160. *Id.*

161. *Id.* at 2.

organizations, and consumer advocacy groups¹⁶² in its data collection, the GAO did not interview any individual debtors.¹⁶³ Nevertheless, the conclusion of the GAO with respect to the efficacy of the pre-filing credit counseling requirement is telling. According to the GAO Report:

[I]t is not clear whether the pre-filing requirement is serving its intended purpose . . . of helping consumers make an informed choice about bankruptcy and its alternatives. Anecdotal evidence suggests that by the time most consumers receive the pre-filing counseling, their financial situations are dire, leaving them with no viable alternative to bankruptcy.¹⁶⁴

Regarding the effectiveness of the post-filing financial management course, the GAO Report's conclusion amounted to a single conclusion, namely, that the course "is believed by most observers we spoke with to be beneficial."¹⁶⁵

As a consequence of the indeterminacy of evaluating the pre-filing credit counseling requirement, the Executive Office for United States Trustees retained the RAND Corporation for assistance in assessing what constitutes effective pre-bankruptcy counseling (and how it can be measured), primarily for the purpose of deciding whether counseling agencies qualified for approval or disapproval.¹⁶⁶ This need for assessment resulted in a 2007 report by the RAND Corporation, titled, *Prebankruptcy Credit Counseling*.¹⁶⁷

*C. RAND Corporation Report on Prebankruptcy Credit Counseling
(2007)*

The Executive Office for United States Trustees posed three questions for the RAND Corporation to address, namely: (1) "What

162. *Id.* at 2–3. In collecting its data, the GAO interviewed the members of the following entities: the United States Trustee Program, the Federal Trade Commission, the Internal Revenue Service, the Administrative Office of the United States Courts, the National Association of Attorneys General, the American Bankruptcy Institute, the National Association of Consumer Bankruptcy Attorneys, the National Association of Bankruptcy Trustees, the National Association of Chapter 13 Trustees, the American Bankers Association, the Financial Services Roundtable, the Consumer Federation of America, and the National Consumer Law Center. *Id.* at 2–3.

163. *See id.*

164. *Id.* at 4.

165. *Id.* at 19.

166. NOREEN CLANCY & STEPHEN J. CARROLL, RAND CORP., *PREBANKRUPTCY CREDIT COUNSELING* vii (2007).

167. *Id.*

constitutes effective credit counseling in the prebankruptcy context?"; (2) "What are appropriate operational measures of effective prebankruptcy credit counseling?"; and (3) "Does the mode of delivery of prebankruptcy credit counseling, particularly delivery through the Internet, influence the effectiveness of the counseling?"¹⁶⁸

Harkening back to the criticisms lodged by Professors Gross and Block-Lieb against BAPCPA's mandatory debtor education requirements, the RAND Corporation Report (RAND Report) initially noted that in order to measure the effectiveness of the pre-filing credit counseling requirement, the Executive Office for United States Trustees first needed to "explicitly identify the goals of [pre-filing] credit counseling."¹⁶⁹ According to the RAND Report, all of its other conclusions and recommendations depended upon the Executive Office for United States Trustees articulating specific objectives for the pre-filing credit counseling requirement.¹⁷⁰

But despite its misgivings about the lack of articulated goals for the educational component of the pre-filing credit counseling mandate, the RAND Report made observations that were substantiated by this study. First, the RAND Report recommended that for the pre-filing credit counseling requirement the Executive Office for United States Trustees should take into account an individual debtor's particular characteristics in fashioning effective credit counseling sessions, such as the debtor's level of education.¹⁷¹ Second, the RAND Report questioned the effectiveness of the credit counseling session when conducted over the Internet (with little to no interpersonal interaction between the debtor and the counselor) as opposed to personalized sessions over the telephone or in an in-person session.¹⁷² Third, while credit counseling sessions typically last from sixty to ninety minutes (with much time spent by the counselor learning the debtor's financial circumstances), the RAND Report observed that "[t]here simply may not be enough time to improve the debtor's financial knowledge such that a different financial course [other than bankruptcy] can be chosen."¹⁷³

168. *Id.*

169. *Id.* (emphasis omitted).

170. *Id.* at 15.

171. *Id.* at 20.

172. *Id.* at 17.

173. *Id.* at 2.

D. Executive Office for United States Trustees Report (2008)

BAPCPA required the Director of the Executive Office for United States Trustees (EOUST)¹⁷⁴ to develop a curriculum for the post-filing financial management course to educate debtors “on how to better manage their finances.”¹⁷⁵ In addition to this mandate, Congress instructed the EOUST to test and evaluate the effectiveness of the financial management course and to report on the findings after data collection and analysis were completed.¹⁷⁶ According to congressional direction, the EOUST selected six judicial districts in which to test the effectiveness of the financial management course, namely, Northern Illinois, New Jersey, Northern Texas, Eastern and Western Virginia, and Eastern Washington.¹⁷⁷ The materials developed by the EOUST for the financial management course were test-piloted in these six judicial districts for a period of eighteen months and compared with already-existing consumer education programs.¹⁷⁸

To compare the effectiveness of its course materials, the EOUST utilized the services of the Trustees’ Education Network (TEN)¹⁷⁹ and a non-profit credit counseling agency;¹⁸⁰ TEN and the counseling agency implemented their own curricula to debtors.¹⁸¹ The EOUST contracted with Abt Associates, a private consulting firm, to pilot the EOUST curriculum and to prepare the report presented to Congress in 2008, titled, *Report to Congress: Evaluation of Instructional Classes in*

174. The Executive Office for United States Trustees is an organizational unit of the United States Department of Justice. *In re Myers*, 147 B.R. 221, 233 (Bankr. D. Or. 1992).

175. U.S. DEP’T OF JUSTICE EXEC. OFFICE FOR U.S. TRS., REPORT TO CONGRESS: EVALUATION OF INSTRUCTIONAL CLASSES IN PERSONAL FINANCIAL MANAGEMENT FOR CONSUMER BANKRUPTCY DEBTORS 1 (2008).

176. *Id.*

177. *Id.* at 3.

178. *Id.* at 2. The EOUST created the course materials in conjunction with the Education Development Center (EDC), a non-profit research firm. *Id.* After the creation of the financial management course materials, the EOUST recruited “academic providers of financial management education” to pilot the EDC curriculum. *Id.* at 3. According to the EOUST Report, the academic providers were “universities within the Cooperative State Research, Education, and Extension Service, a component of the U.S. Department of Agriculture.” *Id.*

179. The Trustees’ Education Network “is a nonprofit entity established by the National Association of Chapter Thirteen Trustees dedicated to providing quality personal financial management courses to individuals and families who have filed for protection under chapter 13 of the Bankruptcy Code.” *Id.*

180. *Id.*

181. *Id.*

Personal Financial Management for Consumer Bankruptcy Debtors (EOUST Report).¹⁸²

Methodologically, the EOUST (through Abt Associates) utilized pre- and post-instruction questionnaires¹⁸³ to answer the following questions regarding the curricula offered by the three comparative providers of the financial management course: (1) “Were debtors satisfied with the curricula?”; (2) “Did debtor knowledge in the major areas addressed in the curricula increase after the class?”; and (3) “Did the debtors’ plans to follow sound financial management behaviors increase after the class?”¹⁸⁴ These “questionnaires included 10 true-false questions to measure [] debtor[s]’ knowledge about sound financial management practices and 10 questions to measure financial decisions and planning.”¹⁸⁵ As the EOUST Report indicates, 2,949 debtors completed both the pre- and post-instruction questionnaires; further, the EOUST conducted three-month follow-up interviews with 1,350 of these debtors.¹⁸⁶

Because Congress did not delineate explicit goals for the post-filing financial management course,¹⁸⁷ it is difficult to ascertain whether the results of the EOUST Report satisfy Congress’s intentions of mandating financial management education to all individual Chapter 7 and Chapter 13 debtors. Nevertheless, the EOUST Report evidences mixed, if not disappointing, results. In its summary of findings, the EOUST Report provides as follows:

1. . . . 97 percent [of debtors across all providers] agreed that their overall ability to manage their finances had improved *as a result of participating in the class*.
2. Immediately after the class, almost 44 percent of the debtors reported at least one change in their financial practices that involved either the intention to adopt a practice that they had not planned to follow before the class or planning to adopt a practice sooner than they had expected. *About half of these debtors (or approximately 22 percent overall) reported three months later they had adopted the practice.*

182. *Id.*

183. For a detailed methodology of the EOUST Report, see *id.* at 3–4.

184. *Id.* at 4 (emphasis omitted).

185. *Id.*

186. *Id.*

187. See *supra* note 85 and accompanying text (noting the absence of explicit goals for the post-filing financial management course); see also 11 U.S.C. § 727(a)(11) (2012).

3. Debtors were able to give more correct answers to the 10 knowledge questions after the class than they had answered correctly before the class. However, because of pre-existing knowledge, improvements in knowledge and financial practices as measured by the questionnaires were small.¹⁸⁸

Findings two and three above are incredibly illuminating and speak to the ineffectiveness of the credit counseling and financial management courses mandated in 2005 by BAPCPA. These findings are not to suggest that debtor education is not needed and unhelpful overall. Indeed, increased financial literacy and awareness will enhance the financial lives of many debtors after experiencing the bankruptcy process. But on the other hand, when approximately 78% of the surveyed debtors had not changed their financial practices three months after taking the financial management course (which admittedly can be attributed to many different factors),¹⁸⁹ it may be time for the EOUST to re-evaluate the content of the course, especially given that another four years have passed and at least another four million individual debtors have been subject to the financial management course.¹⁹⁰

With respect to finding number three above, namely, pre-existing knowledge causing a lack in information gain, the EOUST Report attributes this phenomenon to two possible causes:

[1. The] counseling session that all debtors participated in by law before the financial management class may have provided the answers to many of the questions on the questionnaires before the debtors attended the class.

[2.] *The curriculums were predicated on the assumption that many if not most debtors seriously overspent because they were unaware of sound financial management practices.* However, there is suggestive evidence that this assumption is false for some participants. Over half the debtors (53 percent) reported that they had fallen into debt because an unanticipated crisis, such as loss of work or a medical emergency, had left them without financial resources, and not because of the poor financial practices the questionnaire asked them about (use of a very high interest loan, gambling or lottery betting, and excessive use of credit). *Ending up in debt because of such a crisis may have*

188. U.S. DEP'T OF JUSTICE EXEC. OFFICE FOR U.S. TRS., *supra* note 175, at 5 (emphasis added).

189. *Id.*

190. *See* AM. BANKR. INST., *supra* note 6.

nothing to do with lack of knowledge of sound financial practices. However, this observation must be tempered by the facts that:

—debtors' claims of not having mismanaged their finances are unverified and, perhaps, self-serving; and

—overall, 40 percent of the debtors acknowledged that, if not the exclusive reason, financial mismanagement was at least a factor in their bankruptcy.¹⁹¹

The lack of effectiveness demonstrated by the EOUST Report may be explained by the education levels of the participants studied. Of the debtors studied in the EOUST curriculum (n=963), 42% had some college coursework, and 20% had a college or graduate degree.¹⁹² Of those studied in the TEN financial education course (n=1,474), 44% had some college coursework, while 20% had a college or graduate degree.¹⁹³ Finally, of those studied in the credit counseling agency course (n=512), 38% had some college coursework, while 13% had a college or graduate degree.¹⁹⁴ As noted previously, approximately 50% of the debtors surveyed in my own empirical research on this topic possessed a college degree, which similarly may explain the general sentiment surrounding the ineffectiveness of the debtor education classes.¹⁹⁵

E. Money Management International, Inc. Report (2008)

In 2005, the EOUST approved Money Management International, Inc. (MMI) to provide debtors with the mandated pre-filing credit counseling and post-filing financial management courses.¹⁹⁶ In 2008, MMI released a self-study of its bankruptcy education courses, titled, *The Effect of Bankruptcy Counseling and Education on Debtors' Financial Well-Being: Evidence from the Front Lines* (MMI Report).¹⁹⁷ According to the MMI Report, the study was prompted by three research questions, namely: (1) "Does bankruptcy counseling and

191. U.S. DEP'T OF JUSTICE EXEC. OFFICE FOR U.S. TRS., *supra* note 175, at Exhibit, xi (emphasis added). Indeed, the RAND Report also queried whether a debtor's particular characteristics, such as educational level, should be taken into account when offering the pre-credit counseling course. See CLANCY & CARROLL, *supra* note 166, at 20.

192. U.S. DEP'T OF JUSTICE EXEC. OFFICE FOR U.S. TRS., *supra* note 175, at Exhibit 2-7, 16.

193. *Id.*

194. *Id.*

195. See *infra* notes 217, 247 and accompanying text.

196. LYONS ET AL., *supra* note 66, at 5.

197. See generally LYONS ET AL., *supra* note 66.

education increase debtors' level of financial knowledge?"; (2) "Does bankruptcy counseling and education assist debtors in improving their financial behaviors?"; and (3) "Do debtors benefit from both the counseling and education requirements? Or, does one requirement appear to be more effective than the other?"¹⁹⁸ MMI collected data from debtors who participated telephonically in the pre-filing and post-filing education courses from July to December of 2006.¹⁹⁹ According to the MMI Report, "pre- and post-tests were administered [to a random sample of MMI's clients] to measure changes in clients' financial knowledge, current and intended behaviors, and overall satisfaction with the counseling and education."²⁰⁰ As reported by MMI, the debtors who participated in the education courses experienced "statistically significant gains in financial knowledge."²⁰¹ On average, those partaking in the pre-filing credit counseling session "scored 74.9% on the pre-test and 86.0% on the post-test for a net gain in knowledge of +11.1%."²⁰² As for those surveyed in the financial management course, the debtors, on average, scored 80.3% on the pre-test and 85.5% on the post-test "for a net gain in knowledge of +5.1%."²⁰³ Moreover, according to the MMI Report, the debtors were at a "teachable moment" in their lives, and they indicated a willingness to change their financial behaviors as a result of having completed both education courses.²⁰⁴

198. *Id.* at 1.

199. *Id.*

200. *Id.* With respect to the pre-filing credit counseling requirement, the MMI pre- and post-tests included five true/false knowledge-based questions on such financial literacy issues as: "(1) short and long-term financial goals, (2) fixed and variable expenses, (3) gross and net income, (4) secured and unsecured loans, and (5) priority and non-priority expenses." *Id.* at 12. Regarding the post-filing management course, the pre- and post-tests included ten true/false knowledge-based questions on the following concepts:

(1) short and long-term financial goals, (2) needs versus wants, (3) fixed and variable expenses, (4) insurance premiums and deductibles, (5) gross and net income, (6) savings and emergency funds, (7) credit scores and the importance of paying bills on time, (8) debt-to-income ratios and using credit wisely, (9) credit reports and their content, and (10) the impact of credit use on overall financial well-being.

Id. at 12–13. For a detailed description of the methodology employed by MMI, see generally *id.* at 12–15.

201. *Id.* at 1.

202. *Id.*

203. *Id.*

204. *Id.* at 1–2.

It should be noted that MMI also collected qualitative data from a number of their clients following the pre-filing credit counseling and post-filing financial management courses in an effort to assess any planned behavioral changes as a result of participating in the courses.²⁰⁵ With respect to the types of behavioral changes following the credit counseling course, most responses related to budgeting practices.²⁰⁶ “This included creating and following a budget, tracking income and expenses, cutting out unnecessary expenses, and avoiding impulse spending.”²⁰⁷ As for planned changes in debtor behavior following the financial management course, respondents mentioned such actions as planning to create and follow a budget, paying more attention to spending habits, prioritizing expenses, eliminating unnecessary expenses, reducing impulse spending, and finding ways to increase income.²⁰⁸ Significantly, this information was generally provided within three months after the respondents filed for bankruptcy, and before the debtors received their discharges.²⁰⁹ Recognizing this, the MMI Report conceded that follow-up data is “needed to determine whether debtors actually put into practice their intended behaviors after the discharge.”²¹⁰ This qualitative study helps to fill this void, albeit in a first-step, limited manner.

F. Professors D. Thorne and K. Porter Report (2010)

In 2010, Professors Deborah Thorne and Katherine Porter issued a research paper, titled, *Debtors’ Assessments of Bankruptcy Financial Education*.²¹¹ Professors Thorne and Porter collected data from a random sample of consumer debtors who filed for bankruptcy in 2007, and thus had experienced the education courses mandated by BAPCPA.²¹² In addition to having respondents initially complete a questionnaire, the study offered willing participants \$50 each to

205. *Id.* at 18–25.

206. *Id.* at 19.

207. *Id.*

208. *Id.* at 24.

209. *See id.* at 26.

210. *Id.*

211. Deborah Thorne & Katherine Porter, *Debtors’ Assessments of Bankruptcy Financial Education* (Aug. 6, 2010), in CONSUMER KNOWLEDGE AND FINANCIAL DECISIONS: LIFESPAN PERSPECTIVES 197 (Douglas J. Lamdin ed., 2012).

212. *Id.* at 197–98.

complete a telephone interview.²¹³ Thorne and Porter conducted telephone interviews with 1,032 debtors, approximately six to twelve months after their bankruptcy cases were filed, on the subject of the post-filing financial management course.²¹⁴

With respect to their findings, Thorne and Porter reported that 66.7% of debtors surveyed believed that what they learned in the post-filing financial management course would not have helped them avoid bankruptcy if such information had been available prior to their filings.²¹⁵ This finding, however, was stratified among the education level of the respondents. That is, “[r]espondents with less education were significantly more likely to report perceived benefits of financial education. More than a third (35.9%) without a 4-year college degree believed they could have avoided bankruptcy if they had been armed with the information they learned in the financial education course.”²¹⁶ In contrast, “[o]nly one in five (22.2%) of college graduates had a similar belief about the potential of financial education.”²¹⁷

When asked whether the information learned in the post-filing financial management course “would help them avoid financial troubles *in the future*,”²¹⁸ Thorne and Porter concluded:

[That their respondents’] answers suggest considerably more optimism about the efficacy of a financial education class. More than seven of ten respondents (72%) believed that the information from the class would help them avoid financial struggles down the road; just over a quarter, 28%, did not think the class would benefit them in the future.²¹⁹

As Thorne and Porter concluded, “The most common attitude toward [post-filing] financial education was that while the information presented in the course would not have helped them avoid bankruptcy, it would help them steer clear of financial problems in the future.”²²⁰ Nonetheless, in the study conducted by Thorne and Porter, a third (33%) of the respondents were “dually optimistic” about the financial

213. *Id.* at 198–99.

214. *Id.* at 199.

215. *Id.* at 201.

216. *Id.* at 202.

217. *Id.*

218. *Id.* at 203.

219. *Id.*

220. *Id.* at 207.

education course, namely, “they believed that what they learned in the financial education class would have helped them avoid bankruptcy in the first place *and* would help them in the future.”²²¹ In contrast, twenty-eight percent (28%) of their respondents “were dually pessimistic about the benefits of a financial education class,”²²² and these debtors “expressed a considerable amount of frustration and resentment about the required class. They saw little benefit and pointed to the costs—in both time and money—that the course imposed on them.”²²³

The foregoing six studies regarding the effectiveness of the debtor financial education courses mandated by BAPCPA are the main empirical assessments that have been disseminated as of this writing. I hope that my own empirical study as reported in this Article will add to the existing literature in a meaningful way and prompt a further discussion of this issue by Congress. The themes and patterns expressed by the participants in this study likely have resonance for a large swath of debtors nationally. As noted at the outset, this bounded study serves to re-emphasize most commentators’ thoughts and empirical conclusions with respect to the BAPCPA debtor education courses, namely, that as currently constituted they fail to provide any meaningful benefit to the overwhelming number of debtors that file for bankruptcy protection each and every year.²²⁴

The Article will now discuss the methodology utilized in this research project and then, in Part VI, turn to the findings of this empirical study.

V. METHODOLOGY OF THE STUDY

Before proceeding to the methodology of this study and its respective findings, select characteristics of qualitative research are worth briefly mentioning, as qualitative research is infrequently seen in traditional legal literature.

“Qualitative research is a broad umbrella term for research methodologies that *describe and explain* persons’ experiences, behaviours, interactions and social contexts” without relying on quantitative or statistical models.²²⁵ Generally speaking, qualitative

221. *Id.* at 208.

222. *Id.* at 209.

223. *Id.*

224. *See supra* Parts III–IV.

225. Ellie Fossey et al., *Understanding and Evaluating Qualitative Research*, 36 AUSTL.

research aims for depth and richness rather than breadth.²²⁶ More particularly, qualitative research attempts to develop an understanding of the meanings and importance of certain experiences in individuals' lives.²²⁷ Accordingly, rather than focusing on a large representative sample pool, qualitative researchers seek to obtain "in-depth and intimate information" from a smaller group of people.²²⁸ Because of this, "qualitative research makes no claim of the generalizability of findings to a specified larger population in a probabilistic sense."²²⁹ Nevertheless, qualitative research often results in thematic generalizability to a single human experience.²³⁰ Furthermore, qualitative research is concerned with "the applicability of [its] findings, based on how the nature and processes involved in experiences generalize."²³¹ In contrast to the deductive nature of quantitative research, qualitative research is inductive²³² and is often described in the social science literature as "emergent."²³³ "In this sense, qualitative

& N.Z. J. PSYCHIATRY 717, 717 (2002) (emphasis added).

226. Anne-Marie Ambert et al., *Understanding and Evaluating Qualitative Research*, 57 J. MARRIAGE & FAM. 879, 880 (1995).

227. Fossey et al., *supra* note 225, at 730. Professors Denzin and Lincoln describe qualitative research in this way:

The word *qualitative* implies an emphasis on the qualities of entities and on processes and meanings that are not experimentally examined or measured (if measured at all) in terms of quantity, amount, intensity, or frequency. Qualitative researchers stress the socially constructed nature of reality, the intimate relationship between the researcher and what is studied, and the situational constraints that shape inquiry. Such researchers emphasize the value-laden nature of inquiry. They seek answers to questions that stress *how* social experience is created and given meaning. In contrast, quantitative studies emphasize the measurement and analysis of causal relationships between variables, not processes. Proponents claim that their work is done from within a value-free framework.

Denzin & Lincoln, *supra* note 13, at 8.

228. Ambert et al., *supra* note 226, at 880.

229. Fossey et al., *supra* note 225, at 730.

230. See Kelly J. Asmussen & John W. Creswell, *Campus Response to a Student Gunman*, 66 J. HIGHER EDUC. 575, 588 (1995).

231. Fossey et al., *supra* note 225, at 730.

232. As to this dichotomy in approaches, Denzin and Lincoln offer as follows: "Qualitative researchers believe that rich descriptions of the social world are valuable, whereas quantitative researchers, with their etic, nomothetic commitments, are less concerned with such detail. They are deliberately unconcerned with such descriptions because such detail interrupts the process of developing generalizations." Denzin & Lincoln, *supra* note 13, at 9.

233. JOHN W. CRESWELL, *QUALITATIVE INQUIRY & RESEARCH DESIGN: CHOOSING AMONG FIVE APPROACHES* 47 (3d ed. 2013). According to Creswell, an emergent design means that "the initial plan for research cannot be tightly prescribed, and that all phases of

research is designed to be flexible and responsive to context,” as opposed to being tightly driven by a preset hypothesis or central research question.²³⁴ Simply put, this inductive approach serves to protect the phenomenological integrity of the collected data.²³⁵

The funding for this study was made possible through a research grant provided by the Hughes/Ruud Scholarship Fund, a funding source for faculty members at the University of Denver Sturm College of Law interested in pursuing empirical studies in law. The project proposal was vetted in advance by the Hughes/Ruud Research Committee, comprised of notable scholars Lawrence M. Friedman, Bryant G. Garth, Stewart Macaulay, Laura Beth Nielsen, and Joyce Sterling. It is important to state that the Hughes/Ruud Research Committee does not dictate results in advance, and thus, no conclusions or impressions had been determined in advance by the Hughes/Ruud Research Committee. Furthermore, prior to engaging in any data collection, I first received study approval from the Institutional Review Board (IRB) at the University of Denver.

To acquire a population of debtors to interview for the years 2006, 2008, and 2010, I isolated a listing of all individual Chapter 7 petitions (and their corresponding docket numbers) from the Public Access to Court Electronic Records (PACER)²³⁶ system. These three years were chosen so as to offer a longitudinal element to the continuing effectiveness, if any, of the mandated debtor education courses. For the three years considered for this particular study, a total of 52,932 individuals filed for Chapter 7 in the State of Colorado (N=52,932).²³⁷

the process may change or shift after the researchers enter the field and begin to collect data.” *Id.*; see also MICHAEL QUINN PATTON, *QUALITATIVE RESEARCH & EVALUATION METHODS* 40 (3d ed. 2002) (describing emergent design in part as “[o]penness to adapting inquiry as understanding deepens and/or situations change”).

234. Fossey et al., *supra* note 225, at 723.

235. Ambert et al., *supra* note 226, at 880–81.

236. PACER is an “electronic public access program” that permits users to obtain case and docket information from the United States federal courts, including bankruptcy courts. See *About Us*, PACER.GOV, <http://www.pacer.gov/about.html> (last visited Oct. 7, 2013); see also Robert J. Landry, III & Amy K. Yarbrough, *An Empirical Examination of the Direct Access Costs to Chapter 7 Consumer Bankruptcy: A Pilot Study in the Northern District of Alabama*, 82 AM. BANKR. L.J. 331, 340 n.62 (2008) (“PACER is an electronic public access service which contains the case filing information.”).

237. See U.S. Bankr. Court Dist. Of Colo., *Bankruptcy Filing Statistics for the District of Colorado*, USCOURTS.GOV, www.cob.uscourts.gov/co_bk_statistics.asp (last visited Oct. 5, 2013) (follow statistics for years 2006, 2008, and 2010 hyperlinks).

More particularly, in 2006, 7,963 individuals filed for Chapter 7,²³⁸ in 2008, 17,856 people filed;²³⁹ and in 2010, 27,113 consumer debtors filed for Chapter 7 in the State of Colorado.²⁴⁰ From this total population, I conducted a systematic random sampling²⁴¹ of docket numbers that resulted ultimately in a total of 2,822 letters of invitation mailed out to prospective participants.

The invitation letter included a self-addressed, pre-paid postage postcard which allowed individuals to indicate whether they were interested (or not) in participating in the study (by checking a box “yes” or “no”). The postcard had a place for the individuals to provide me with their contact information, which I in turn used to make personal contact. Out of the 2,822 letters of invitation sent out to participate in the study, I received 530 letters marked “undeliverable” by the Post Office. In addition, thirty-four respondents returned the enclosed postcard indicating their desire not to participate in the study. Finally, seven individuals initially contacted me to participate in the study, but later decided not to follow through with our scheduled interview session.

From the letters of invitation sent, fifty-eight people ultimately agreed to be interviewed for this study from a combined total of forty-six bankruptcy cases.²⁴² Fifty percent of the cases studied (twenty-three petitions) were filed in 2010; thirty-seven percent of the cases studied (seventeen petitions) were filed in 2008; and thirteen percent of the cases studied (six petitions) were filed in 2006.²⁴³ Single bankruptcy petitions were filed by twenty-nine participants, while seventeen joint

238. *Id.* (located at statistics for year 2006). This number is lower than normal largely due to the fact that unprecedented numbers of debtors filed for bankruptcy in 2005 before most of BAPCPA’s provisions became effective on October 17, 2005. *See id.* (follow statistics for year 2005 hyperlink) (listing that 40,164 people filed for a Chapter 7 bankruptcy in 2005, and all but 249 of those people filed before November of 2005).

239. *Id.* (follow statistics for year 2008 hyperlink).

240. *Id.* (follow statistics for year 2010 hyperlink).

241. In systematic random sampling, a researcher identifies “a sampling interval, n [.] by dividing the population by the desired sample size, and proceeds to select every n th individual or unit from the sampling frame, starting from a randomly selected spot.” Linda Chang, *Concepts and Techniques in Sampling*, in *APPLIED FIELD METHODS: A MANUAL OF PRACTICE* 75, 76 (Peter W. Van Arsdale ed., 3d ed. 2005) (emphasis omitted).

242. The total number of bankruptcy cases for this study amounted to forty-six, with seventeen being “joint” petitions for married couples. Demographic Information of Study (on file with author).

243. *Id.*

petitions were filed by married couples.²⁴⁴ I interviewed all twenty-nine single filers, and I interviewed twenty-nine of the thirty-four individuals who filed jointly.²⁴⁵ From the twenty-nine single petitions, eleven had been filed by men, and eighteen had been filed by women.²⁴⁶ Exactly half (twenty-nine) of the individuals interviewed for this study possessed a college degree, and several possessed graduate degrees (M.B.A., M.A., Ph.D.), while the other half (twenty-nine) possessed no college degree when they filed their bankruptcy petitions.

The participants lived throughout the State of Colorado in cities such as Greeley, Denver, Grand Junction, Colorado Springs, Pueblo, and Boulder. The interviews themselves were conducted during the summer and early fall of 2012. During this time, I traveled the State of Colorado and interviewed most of the participants either in their homes or at a public location, such as a coffee shop or restaurant. Three of the interviews were conducted by telephone at the request of the participants, and three of the interviews were conducted in my office at the law school.

Semi-structured interviews²⁴⁷ were employed for all fifty-eight participants, and the interviews lasted anywhere from forty-five minutes to over two hours.²⁴⁸ The average interview lasted for more than one hour. In an effort to “privilege” the participants’ voices,²⁴⁹ forty-five out of the forty-six interviews were audio-recorded and transcribed verbatim, only after these forty-five participants expressly consented to be audio-recorded. One participant did not wish to be audio-recorded, so written notes were taken during the interview.

Perhaps most importantly, the notions of privacy and confidentiality are critical to social science research and must be strictly adhered to by

244. *Id.*

245. One of the couples had divorced since their joint bankruptcy filing, and the other four spouses did not attend the interview session.

246. Demographic Information of Study, *supra* note 242.

247. Fossey et al., *supra* note 225, at 727 (“Semistructured interviews are used to facilitate more focused exploration of a specific topic, using an interview guide. Interview guides usually contain a list of questions and prompts designed to guide the interview in a focused, yet flexible and conversational, manner.”).

248. The interviews were not singly devoted to the debtor education courses, but rather on the complete spectrum of the bankruptcy experience for these individuals. Forthcoming papers will address other aspects of this study.

249. Fossey et al., *supra* note 225, at 728 (“[I]f the aim of the analysis is to understand the meanings given to a situation as expressed by interview participants, then verbatim transcription of the participants’ own words in the interviews would be important to privilege their voices in the analysis and interpretation.”).

the researcher.²⁵⁰ In this regard, codes of professional ethics insist on protecting participants' identities and related research locations so as not to cause harm, embarrassment, or "unwanted exposure."²⁵¹ In upholding this basic tenet, all of the participants' names have been omitted and are referred to innocuously, research locations have been generalized, and any particularly identifying characteristics of the participants have been omitted or slightly altered.

VI. IMPRESSIONS AND EXPERIENCES OF THE MANDATED CREDIT COUNSELING AND FINANCIAL MANAGEMENT COURSES

A. *A Day at a Credit Counseling Agency*

In an effort to obtain a holistic account of the mandated credit counseling and financial management courses, I, along with my research assistants, first visited a busy credit counseling agency²⁵² located in a small office building in a populous city in the State of Colorado. This particular counseling agency offers "budget counseling" services for individuals not contemplating filing for bankruptcy at the time of contact and, of course, also provides the mandatory debtor education courses. The purpose of our visit was not only to interview several of the credit counselors about their own experiences in offering these services, but to participate in "mock" pre-filing credit counseling sessions, and to participate in an actual post-filing financial management course together with actual debtors exiting the bankruptcy process.²⁵³ The purpose of completing a mock pre-filing credit counseling session was to attempt to experience first-hand how such a process works, and what the interaction is like between the client and counselor. This visit to the credit counseling agency occurred before I interviewed any of the debtors for this study. This was done purposefully so I could get "a feel" for what the mandated education courses conveyed to debtors, and to get a "baseline" for the financial benchmarks debtors should be striving for after exiting the bankruptcy process.

250. Clifford G. Christians, *Ethics and Politics in Qualitative Research*, in 4 THE SAGE HANDBOOK OF QUALITATIVE RESEARCH, *supra* note 13, at 61, 66.

251. *Id.*

252. As previously indicated, the actual name of the credit counseling agency is intentionally being omitted in order to honor the confidentiality of the agency as promised in the signed informed consent forms.

253. It should be noted that we did not act covertly in this regard; rather, the credit counseling agency voluntarily agreed to participate in this research study.

One of the mock credit counseling sessions occurred with a counselor who had approximately three years of experience. At the start of the interview, the counselor asked the client (i.e., myself) to generally describe “what’s going on financially that you are contemplating bankruptcy.”²⁵⁴ This allowed me some time to convey the reasons why I was presently contemplating filing for bankruptcy. For this session, I presented as a client with a steady income, unmarried without dependents, and who had in the recent past suffered an injury at work and incurred significant medical bills. Several of the client’s medical bills had already been turned over to collection agencies. While the client’s income was sufficient to pay his fixed expenses (i.e., home, transportation, and utilities), the outstanding medical expenses were causing financial problems; the client was using his credit card for some living expenses in an effort to pay down some of the outstanding medical bills caused by his work-related injury.

First, the counselor calculated the client’s current debt to income ratio in an effort to determine whether paying down the medical bills through the client’s present budget was feasible. At the same time, the counselor used a computer program to determine whether a debt management plan would be possible (it ultimately was not based upon the high medical bills in my mock facts). The counselor did note that if “there is a realistic way to pay the debt, we have to give you that option[, a debt management plan,] as part of the process.”²⁵⁵ The counselor then commented that “part of the process of credit counseling is looking at whatever options are out there for you.”²⁵⁶ The counselor did alert the client to the fact that an attorney would not “look for” the option of a debt management plan, even if one was feasible.²⁵⁷

With a debt management plan unworkable, the counselor then proceeded to calculate a budget with the client moving forward (assuming the medical debt was discharged because it would not be an ongoing expense in the budget). The counselor did this because he “might potentially have to file a Chapter 13, and do a repayment with the court because you have flexibility in your budget.”²⁵⁸ The counselor quickly noted, however, that such a decision would be made by an

254. Interview with Credit Counseling Agency (Mar. 6, 2012).

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

attorney, “not her.”²⁵⁹ As explained to the client, working on a budget is to “look at it as a financial perspective and say is there any way for you to pay this debt back without filing for bankruptcy?”²⁶⁰ The counselor agreed that this was the “ultimate goal” of the pre-filing credit counseling session.²⁶¹

Surprisingly though, the counselor worked with the client to calculate a budget for the client moving forward, even if the client resorted to bankruptcy “to make this feasible so you can survive.”²⁶² The counselor calculated future budgets of sixth months, twelve months, and three years in an effort to analyze the client’s ability to repay debt moving forward. According to the counselor, the sixth month budget (between the present day and through the bankruptcy process) asks “what can we do to make it right so that you can balance your budget and pursue the bankruptcy and be able to support yourself without struggling?”²⁶³ The twelve month budget focuses on “how can we make this better so that now you’re done with the bankruptcy you actually manage what you have better so that you can continue to stay out of debt and not have this situation again?”²⁶⁴ The three year budget asks:

Where do you wanna be in three years? How can you allow for savings, reserves, for retirements, we have things called periodic expenses . . . things that you’re not prepared for that come up randomly, . . . how are you gonna prepare for those? We talk about savings, we talk about putting away ten percent of your [take home] income if that’s what you can do from the get go. If you can’t, then what can you do [to save income per month]?²⁶⁵

According to the counselor, “The goal is to have a month’s income in savings as a reserve that you don’t touch unless it is an emergency.”²⁶⁶ The counselor did recognize, though, that not every individual can

259. *Id.*

260. *Id.* The counselor provided guidance on the “five essential expenses” (i.e., home, utilities, household expenses, medical costs, and transportation) and how much income should be attributed to each category of fixed expense. *Id.* The counselor then explained “flexible expenses” to the client (e.g., entertainment and recreation) and noted that reducing flexible expenses is the first way to reconstitute a budget. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

actually afford to save ten percent of his or her take-home income on a regular basis.

According to the counselor, most individuals who contact the agency seeking the credit counseling for bankruptcy purposes have already consulted with an attorney and have made a predetermination to file for bankruptcy.²⁶⁷ Over the past three years of counseling clients, the counselor indicated that “very few” individuals have opted to pursue an alternative path from bankruptcy when one was even available due to some disposable income to pay down their debts over time.²⁶⁸ But most of the individuals utilizing the credit counseling agency’s services cannot financially afford to pursue a debt management plan or another settlement option with their creditors.²⁶⁹ As a matter of practice for one counselor, if the client’s debts are less than \$5,000, the counselor tries to avoid having the client file for bankruptcy.²⁷⁰ She uses this figure as a guide, because in her experience, the average person’s income that she counsels can support a repayment schedule for this amount of outstanding debt over time, but not much more.²⁷¹ Stated differently, in this counselor’s experiences, the average client’s income cannot realistically repay over time more than \$5,000 under a debt management plan.

Furthermore, according to this counselor, by the time most people contact the credit counseling agency for help, they have already “drained all their resources” (such as savings, reserves, and retirement funds) and now “can’t do it anymore,” namely, try to pay down their debt burdens.²⁷² This anecdotal evidence was corroborated by several participants in my study, one of whom withdrew the \$30,000 in her 401K in an effort to try to settle her debts before resorting to bankruptcy, primarily because she viewed bankruptcy as a “black mark on my life resume.”²⁷³ Filing for bankruptcy becomes the only option for the vast majority of individuals that utilize the services of this particular credit counseling agency.²⁷⁴ In the counselor’s experience counseling individuals for the past three years, most people who are considering

267. *Id.*

268. *Id.*

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. Interview with Participant #10 (Sept. 3, 2012).

274. Interview with Credit Counseling Agency, *supra* note 254.

bankruptcy fall generally into three camps: (1) individuals who “use credit cards out of necessity” to pay for such expenses as utilities and mortgage payments to support themselves during a period of job interruption;²⁷⁵ (2) those individuals overwhelmed by medical bills;²⁷⁶ and (3) individuals who recently had a vehicle repossessed or a home foreclosed upon.²⁷⁷ This anecdotal evidence substantiates the empirical findings of bankruptcy law scholars for decades, namely, that bankruptcy debtors are not spendthrifts, but individuals in financial distress due to exogenous influences such as a job loss or medical illness.²⁷⁸

When a client participates in the pre-filing credit counseling course the agency oftentimes does not issue the certificate of completion immediately at the end of a counseling session if a client has not yet consulted with an attorney.²⁷⁹ This is done so the client can “make sure” he or she is going to file for bankruptcy before the counseling agency charges the client for the counseling service.²⁸⁰ If bankruptcy is the route the client ultimately chooses after consulting with an attorney, the client is instructed to contact the agency to obtain the certificate.²⁸¹ One counselor “never send[s] a client out the door without an attorney recommendation if that’s the direction they need to go.”²⁸² The counselor also recommends the name of a bankruptcy petition preparer

275. *Id.*

276. *Id.*

277. *Id.*

278. Indeed, studies show that the vast majority of Chapter 7 bankruptcy filings are prompted by such life altering events as significant medical illnesses, long-term interruptions in employment, death of a spouse, or personal business failure. In an empirical study conducted by Professor Elizabeth Warren, “more than eight out of ten families with children cite just three reasons for their bankruptcies: job loss, family breakup, and medical problems.” Elizabeth Warren, *The Growing Threat to Middle Class Families*, 69 BROOK. L. REV. 401, 411 (2004); *see also* Warren, *supra* note 116, at 127 (“No single problem is more likely to be associated with a bankruptcy filing than an income interruption.”). For other scholarly literature on the causes of consumer bankruptcy filings, *see generally* TERESA A. SULLIVAN ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (2000); ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS AND FATHERS ARE GOING BROKE* (2003); Lawless et al., *supra* note 8; Charles Jordan Tabb, *The Death of Consumer Bankruptcy in the United States?*, 18 BANKR. DEV. J. 1 (2001); Elizabeth Warren, *The Bankruptcy Crisis*, 73 IND. L.J. 1079 (1998).

279. Interview with Credit Counseling Agency, *supra* note 254.

280. *Id.*

281. *Id.*

282. *Id.*

should the client not be able to afford the services of a bankruptcy attorney.²⁸³

During the pre-filing credit counseling session, we questioned whether the counseling agency follows up with any clients that ultimately do decide to file for bankruptcy.²⁸⁴ One counselor replied that she always offers to follow up with all of her clients, but only if the client voluntarily wishes to do so.²⁸⁵ The purpose of the follow-up is to re-evaluate the client's budget in light of the bankruptcy filing.²⁸⁶ The credit counseling agency provides this service as a courtesy.²⁸⁷

This credit counseling agency provides services in-person, over the phone, and through the Internet.²⁸⁸ Several counselors we spoke with noted a distinct preference for an in-person session because it gave the counselors an opportunity to “get to know” the client and learn about their individual financial circumstances, whereas the course through the Internet mainly conveys “basic financial information” (i.e., assets, expenses, income, debts) to the counselor with little opportunity for one-on-one interaction.²⁸⁹ After receiving the financial information provided by the client over the Internet, the counselors are only required to make a “very brief” phone call to the client “to make sure the client read the [course] material” on the Internet.²⁹⁰ Our impressions were that the counselors seemed to believe the in-person sessions were more successful than the Internet counseling sessions, but this was not measured and tested as part of this study.

Finally, as an insider on the ground, we asked one counselor what her overall impressions were concerning the efficacy of the pre-filing credit counseling requirement.²⁹¹ Her response to the question reflects what others have opined about the process. This counselor commented: “If I get somebody that comes into my office that has really thought ahead and said to myself, I see myself continuing to fall into this hole every month, I need to do something about it now, and they have an income,” then there might be a chance of success through a debt

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

management plan.²⁹² More often than not, though, even for these people, bankruptcy would still be the ultimate choice to remedy their financial circumstances.²⁹³ Conversely, if the individual has already consulted with a bankruptcy attorney, there is “very little that I can do to help them number one, and number two, they don’t want my help. And so there I don’t think that it’s effective in any way, shape or form.”²⁹⁴ Later during the conversation, the counselor also offered this reflection of her past three years administering the pre-filing credit counseling course:

*“The process of the client counseling is a process. And that’s what it has come down to.”*²⁹⁵

Later that afternoon, my three research assistants and I participated in an in-person financial management course with debtors who were in the process of exiting their Chapter 7 cases. The course we experienced occurred on a Tuesday afternoon in early 2012 and ran for approximately two and a half hours.²⁹⁶ The course was conducted in a small classroom within a large office building.²⁹⁷ Besides the four of us, four individuals were participating in the financial management course that afternoon.²⁹⁸ The course utilizes the *Money in Motion* workbook published by the American Center for Credit Education.²⁹⁹ Much like the MMI financial management courses, this course and workbook covered, among other things, the following broad topics: (1) developing a budget; (2) knowing and understanding your credit score; (3) comparison shopping; (4) learning about consumer protection laws; (5) using credit wisely; and (6) knowing when things go wrong again financially.³⁰⁰

The instructor was engaging and friendly towards the class, and he seemed to care about the future financial success of these individuals. On several occasions he repeated the mantra that sometimes “life

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.* (emphasis added).

296. First-Hand Observations of a Financial Management Course (Mar. 6, 2012) (on file with author) [hereinafter Financial Management Course]. Handwritten notes were taken during the course.

297. The location has been changed to protect confidentiality.

298. Financial Management Course, *supra* note 296.

299. AM. CTR. FOR CREDIT EDUC., MONEY IN MOTION (2005).

300. *Id.*

happens to good people.”³⁰¹ I interpreted this as a genuine desire for the instructor to comfort the participants and to assuage any concerns they may have had about being judged as a result of their presence in the class. The course first covered the “Key[s] to Getting Ahead” financially.³⁰² Our impressions were that the lessons in this portion of the class would be useful for many individuals. That is, the instructor stressed that “[a] budget is the key to financial independence,” but he conceded that “people don’t like doing budgets because it means doing without and sacrificing.”³⁰³ He advised the class to “set goals that will make your life better and not with those designed to keep up with friends, other family, or society.”³⁰⁴ He distinguished needs (e.g., rent, food, utilities) from wants (e.g., dining out, cable, vacations) and suggested that everyone keep their financial goals on a small card and carry the card with them in their purse or wallet so they could look at it before making any future purchases.³⁰⁵

Along the way, the instructor offered what appeared to be useful financial tips, such as the need to prepare for unexpected expenses, such as job loss or car repair.³⁰⁶ He recommended that committing ten percent of one’s net income should “be on top of your budget as a ‘fixed expense,’” and that people should use the “envelope method” (i.e., placing a certain amount of money in an envelope and not spending beyond that figure) of budgeting for certain items such as gas, groceries, entertainment, and coffee.³⁰⁷ He advised everyone to track their expenses for at least three months, so “you can get an accurate view of where you are spending your money.”³⁰⁸

It was my impression that the debtors in the room seemed to be listening; however, there were few questions asked, and one of the individuals asked tangential questions and wanted to tell stories about his friends’ and family’s financial experiences or his past dealings with creditors. One woman brought her infant into the course, and on several occasions the baby cried and needed to be taken out of the room for comforting. In contrast to my own thoughts, one of my research

301. Financial Management Course, *supra* note 296.

302. AM. CTR. FOR CREDIT EDUC., *supra* note 299.

303. Financial Management Course, *supra* note 296.

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.*

assistants believed that no one was paying attention or cared to learn.³⁰⁹ She particularly noted how one gentleman answered his cell phone during class, and then asked how long the presentation was going to take because he apparently had plans for the evening.

B. Interviews with Former Chapter 7 Debtors

As previously indicated, the main purpose of the study was to interview former debtors from the years 2006, 2008, and 2010 to uncover whether the mandated financial education courses proved beneficial to their financial lives several years after leaving the bankruptcy process, and whether these individuals modified their financial behaviors as a result of lessons learned in the education courses themselves. After speaking with the fifty-eight individuals about their experiences with both the pre-filing credit counseling and post-filing financial management courses, three distinct themes emerged.

The majority of individuals did not find the courses to be helpful at all, and several had very strong negative opinions about the courses.³¹⁰ A very common theme among all participants, regardless of their level of education, was that the courses were “a complete waste of time.”³¹¹ Several people of this mindset noted to me that nothing effective in this regard can be accomplished online or over the telephone.³¹² As one participant commented, if there are to be required educational courses,

[I]t's gotta be more of a psychology type of thing versus telling you [to] get a budget . . . [c]ause I think you gotta understand why people spend money or make the decisions that they make. You know what I'm saying? Because I don't think everyone who file[s] bankruptcy did it because they spent too much money.³¹³

As previously noted, only four participants (two couples) out of fifty-eight (6.90%) found one of the courses helpful in the way Congress intended when it amended the Bankruptcy Code to mandate education for all individual debtors.³¹⁴ But even among these four individuals, none found the pre-filing credit counseling course helpful, only the post-

309. Observations of Research Assistant Kirstin Dvorchak.

310. See *infra* Part VI.B.1.

311. See, e.g., Interview with Participant #24 (Sept. 24, 2012).

312. See, e.g., *id.*

313. *Id.*

314. See *supra* note 242; *infra* Part VI.B.2.c.

filing financial management course.³¹⁵ That said, however, a portion of the debtors interviewed did indicate that either or both courses were indeed helpful in various indirect ways as described below, but their expressions of efficacy were often tepid.³¹⁶

Another segment of debtors who had changed their financial behaviors for the better after exiting the bankruptcy process did so not as a result of anything learned from the mandated education courses, but due to the *experience* of having lived through the need to file for bankruptcy protection;³¹⁷ that is, the stress of severe indebtedness and the consequent psychological trauma of needing to file for bankruptcy ingrained in these individuals a strong personal commitment never to descend into financial disrepair again. Below, I refer to this phenomenon as “bankruptcy process as behavior modifier.”³¹⁸

1. Debtor Education as Unhelpful

For the majority of debtors who found the mandated education courses unhelpful, three distinct sub-themes emerged. Some debtors viewed the pre-filing credit counseling course as simply a hurdle to jump over before filing for bankruptcy protection; others expressed ineffectiveness with both educational courses because they were allegedly already using sound financial management tools in their own estimation; and others noted the lack of personalization of the courses to address their particular financial circumstances.³¹⁹ Indeed, several debtors’ comments raised more than one of these sub-themes. For example, an educated sixty-six-year-old man with whom I spoke filed for bankruptcy due to excessive debt resulting from a catastrophic medical illness.³²⁰ When reflecting on the credit counseling courses, he viewed them as just “something I had to do,” as he already understood the content of the courses from his background as an accountant, and as

315. See *infra* Part VI.B.2.c.

316. See *infra* Part VI.B.2.a–b.

317. See *infra* Part VI.B.3.

318. See *infra* Part VI.B.3.

319. At least one of the participants I interviewed attributed his entire bankruptcy filing to the failure of the technology business he owned. Interview with Participant #36 (Sept. 12, 2012). This individual was familiar with financial matters and business in general, so I consider him to be an outlier for this study. *Id.* Accordingly, it came as no surprise that he considered the pre-filing credit counseling course to be unhelpful and simply “a hoop you had to jump through.” *Id.* This participant did not remember anything about the post-filing financial management course. *Id.*

320. Interview with Participant #26 (Sept. 8, 2012).

he and his wife already operated on a budget prior to filing for bankruptcy.³²¹ A second sixty-year-old educated male who filed for bankruptcy due to a combination of business-related debts and overspending in his personal life also shared these sentiments.³²² That is, this participant already resolved to file for bankruptcy before participating in the counseling courses, claimed to have already understood budgeting “in terms of basic accounting,” and maintained that “answering the questions [in the courses] were perfunctory.”³²³

The first person I interviewed for this study was a single male who possesses two graduate degrees and attributed his need to file bankruptcy to a “confluence of forces,” including a job loss and ongoing divorce proceedings.³²⁴ When asked whether the pre-filing credit counseling course proved helpful, he described it as “a pro forma kind of thing,” which “didn’t make much of an impression” on him because he had “already made the decision” to file for bankruptcy.³²⁵ The pre-filing credit counseling course “didn’t have any effect on [his] decision” to file, and he remarked how he was “just checking off a box” to get the requirement completed.³²⁶ Furthermore, he also described the post-filing financial management course as unhelpful, and in this respect noted as follows: “It didn’t influence me in any way that I can remember right now. I just remember that it was something that I had to do and I did it and got it off my agenda.”³²⁷ In similar fashion, another middle-aged man who filed for bankruptcy, largely because his construction work dried up for several years, described the courses as a “pain in the ass” and something “I had to do to get done” in order to get through the bankruptcy process.³²⁸ This individual did not remember the particular content of either education course, but was adamant that at least the pre-filing credit counseling course “can’t help you at all” because it “comes after the financial loss.”³²⁹

321. *Id.*

322. Interview with Participant #29 (Oct. 29, 2012).

323. *Id.*

324. Interview with Participant #20 (June 18, 2012).

325. *Id.*

326. *Id.*

327. *Id.*

328. Interview with Participant #25 (June 20, 2012). At the request of this participant, the interview was not audio-recorded; rather, handwritten notes were taken during the interview.

329. *Id.*

These sentiments were shared by an educated, middle-aged couple who filed bankruptcy largely due to periods of unemployment.³³⁰ Significantly, this couple used a phrase that many others did when describing either or both financial education courses, namely, “a waste of time.”³³¹ When pressed about this view, their added comments became emblematic of the majority of debtors’ opinions about the courses. This couple was critical of the pre-filing credit counseling course because “they didn’t do anything. . . . They just ask you questions. . . . We had already been there and done that. We’d already been through all those things [i.e., using a budget].”³³² Moreover, the couple commented that any counseling course at that time in their lives would not have been “enough to pull us out is what our problem was.”³³³ In other words, at the time they participated in the pre-filing credit counseling course, their financial situation had become too disastrous to repair in any way other than filing for bankruptcy. With respect to the post-filing financial management course, this couple perceived it as a “[h]urdle that [we] needed to get through to get [our] discharge. . . . And if anything, it was a check off to us. If anything.”³³⁴

Another middle-aged couple, who experienced a financial calamity after turning to credit cards to supplement lost income after the woman’s personal business suffered losses, remarked that the pre-filing credit counseling course was “a goofy online one” that did not offer any benefits because “[t]here’s no way to actually get a person to really make that information that they talk about their own, you know, where they can take off and actually utilize it.”³³⁵ The couple would have preferred to have a counseling course tailored to their individual circumstances and made more personalized to them.³³⁶

An educated, middle-aged woman who filed for bankruptcy, largely as a result of a difficult marital situation, also did not find value in either educational course.³³⁷ When I asked her if she remembered the credit counseling course, our exchange proceeded as follows³³⁸:

330. Interview with Participants #23, *supra* note 24.

331. *Id.*

332. *Id.*

333. *Id.*

334. *Id.*

335. Interview with Participants #19, *supra* note 1.

336. *Id.*

337. See Interview with Participant #16, *supra* note 24.

338. If an exchange appears verbatim, “I” represents myself as “interviewer” and “R”

R: It's a scam because you have to pay first, . . . and it doesn't work . . . if they don't follow through. I think there should be more penalties on the bankruptcy side, meaning you have to complete more, you have to go to school more, because people you know like, they would take, the first one is not that bad because they want to kind of assess where you are, but the second one, when you're done is like you just have it done and let's get it over with and that's it. And I think there [should] be more follow up.

I: Did you learn anything from this course?

. . .

R: Uh-huh, no.

I: They weren't helpful at all?

R: No.

. . .

R: I think it's a way for you to pay money, that's it they gather, money, regardless[,] \$50.

. . .

R: It's a waste of time.³³⁹

A young woman I met filed for bankruptcy while obtaining her college degree in finance.³⁴⁰ She did not find the debtor education courses helpful because she was "already practicing what they were trying to teach me."³⁴¹ So, "I was going through the motions on them [both education courses]."³⁴² She added, "I had a budget, I know how to be responsible, but circumstances do creep up on you and you can't handle them. If you haven't planned for the emergency already, it's gonna knock you down."³⁴³ In similar fashion, a middle-age woman with a college education did not find the courses helpful because she already put herself on a more restrictive budget by the time the need for bankruptcy arose.³⁴⁴ She described the courses as "easy," "quick," and

represents the participant as "respondent."

339. *Id.*

340. Interview with Participant #11 (Oct. 15, 2012).

341. *Id.*

342. *Id.*

343. *Id.*

344. Interview with Participant #10, *supra* note 273.

failing to “make an impression.”³⁴⁵ She took the courses online, and briefly mentioned the lack of interaction.³⁴⁶

Some of the debtors I met with and interviewed for this study did not have any formal higher education. I interviewed a forty-six-year-old woman who had dropped out of high school, but obtained her GED degree.³⁴⁷ She and her husband lost their jobs, which prompted the need to file for bankruptcy.³⁴⁸ This woman took both the pre-filing credit counseling and post-filing financial management courses offered by Money Management International, Inc.³⁴⁹ Both sessions were conducted through the Internet.³⁵⁰ Our exchange regarding her recollection of the pre-filing credit counseling course went as follows³⁵¹:

I: Do you remember [the courses]?

R: They were stupid.

I: Let’s separate them out. . . . Why was the first one stupid?
And my question really is was it helpful and what’d you learn?

R: No. ‘Cause I’m smarter than that.

. . .

I: But it wasn’t helpful?

R: It was stupid questions.

. . .

R: It . . . really is a waste of time.

. . .

But it They were pretty much I If I remember right, yes or no questions, how to do what, how to do this, what’s gonna make your life better um, so on and so forth.

I: Like winning the lottery’ll make your life better.

345. *Id.*

346. *Id.*

347. Interview with Participant #01 (Sept. 15, 2012).

348. *Id.* When I met this participant, she had separated from her husband, so I was only able to interview her as part of this study.

349. Interview with Participant #01, *supra* note 347.

350. *Id.*

351. Some of the intervening comments during the conversation have been omitted for brevity; significantly, none of the words appearing herein have been changed or edited.

...

R: Getting a job will make my life a lot better.³⁵²

This participant also felt the same way about the post-filing financial management course.³⁵³ Another woman interviewed, sixty years of age and who did not have a college degree when she filed for bankruptcy, had similar thoughts about both courses.³⁵⁴ Our exchange proceeded as follows:

I: Do you remember . . . the pre-credit counseling course?

R: Yeah.

...

I: Thoughts on it? Anything you learned?

R: I learned absolutely nothing.

I: Why?

R: Because it was pretty cut and dry. I mean, . . . [how can you pay a very large bill]³⁵⁵ when you're making eighteen to twenty-two thousand dollars a year? You can't.

...

I: But was it helpful in . . . you understanding how to budget or manage your finances?

R: No.

...

R: It was a pain in my butt to have to do it.

I: And do you feel the same way about the course you had to take before you got your discharge of debts?

...

R: Yes. It It seemed like . . . an effort in futility because it was . . . it was all stuff I had already heard. And I know. I mean, I'm almost sixty years old. I've been around the block.

352. Interview with Participant #01, *supra* note 347.

353. *Id.*

354. Interview with Participant #02, *supra* note 24.

355. The bracketed language was changed from the original to protect the identity of the participant.

...

R: And . . . it's making money for somebody. I think it's a waste of time.³⁵⁶

A middle-aged couple (without college degrees) whom I met described their descent into bankruptcy as largely stemming from the financial recession of the late 2000s, primarily because the husband's work in the construction industry dried up for long stretches of time.³⁵⁷ These participants described the pre-filing credit counseling course as "just . . . part of something you had to do."³⁵⁸ For them, the pre-filing credit counseling course "didn't seem to really have a lot of impact on us" because, although the counselor "threw a couple of suggestions out there," nothing was covered in the course "that we weren't already doing."³⁵⁹ Equally as important, this couple noted that because "we were so far gone anyway [that the pre-filing credit counseling course] wasn't gonna matter, we weren't gonna be able to get out of [needing to file for] bankruptcy."³⁶⁰

Another couple, who have spent most of their lives as hourly factory workers, descended into bankruptcy due to a mixture of a work-related injury, a job loss, and their candid admissions of large improvident expenditures on their credit cards.³⁶¹ Unlike everyone else I interviewed for this study, this couple shared a home with several generations of extended family, and budgeting for this "economic unit" proved difficult.³⁶² Though it would appear that this couple would benefit from both education courses, even they expressed a strong negative reaction to the courses. When I asked them about their impressions of the courses, our exchange proceeded as follows:

R1: It was a waste of time because we knew what we did wrong. We knew how things would go and we knew better, even walking in the door we knew better. . . .

356. Interview with Participant #02, *supra* note 24. Some of the intervening comments during the conversation have been omitted for brevity; significantly, none of the words appearing herein have been changed or edited.

357. Interview with Participants #15 (Sept. 8, 2012).

358. *Id.*

359. *Id.*

360. *Id.*

361. Interview with Participants #35, *supra* note 114.

362. *Id.*

R2: They were telling what you were doing wrong. They weren't telling you how to solve the problem which is what you need is somebody to tell you how to get things straightened out.

I: So it wasn't helpful.

R1: Well there's no way you can straighten things out when your income is nothing. You know, I mean, how are you gonna fix things and do better when you're trying to live on nothing?

...

R1: No.

I: What about the class afterwards? The classes you needed to take before you got your discharge. . . .

R1: If you're not gonna make a budget and you're not gonna stick with it it's not doing you any good. I knew how to budget long before. I knew how to make a budget but putting a family dynamic together in our situation we haven't figured out a way, so yeah.

I: Okay so that wasn't helpful.

R1: No because, you know, I took accounting, I know the numbers, I can do the taxes, I can do all these things. It's the emotional content of the family and I want it now, I want it yesterday, I gotta have it 'cuz the next door neighbor has it, kind of you know.³⁶³

For a small segment of the debtors who found the education courses to be unhelpful because, according to them, they were already using or trying to use a budget, the ineffectiveness was overlaid with notions of their own sense of morality or faultless conduct. For these individuals, the credit counseling courses were in part not helpful because they internally interpreted their own past financial conduct as responsible, and as such, no correction was in order. For example, a middle-age couple with whom I met, who needed to file for bankruptcy due to the husband's physical disability and the wife's underemployment, did not find the pre-filing credit counseling course to be of any assistance.³⁶⁴ When asked for an explanation for the answer, the husband's response proceeded as follows:

363. *Id.*

364. Interview with Participants #31, *supra* note 114.

I remember in fact telling the lady well we did have a budget, we did keep to this and stuff We did things and I said look at our background and I go we weren't extravagant or anything we were normal people You know we put things on our credit card and clothes or whatever because of what we were making and whatever, but we did what we were supposed to do. We did what we did and most people do that until that one thing comes where one of you can't work and stuff and then you try to keep going and you keep going to make it

. . .

We never just went out and blew [money] I guess that's the best way to say it. We were pretty normal and did what we were suppose[d] to and tried to budget and save and stuff like that.³⁶⁵

But, there was a level of disconnect between this explanation and the couple's actual spending habits. Most notably, later in our conversation the couple mentioned taking approximately \$6,000³⁶⁶ from their savings and income to make non-essential home repairs during the periods of disability and underemployment.³⁶⁷

Finally, a thirty-five-year-old, single mother shared with me her impressions of the pre-filing credit counseling course.³⁶⁸ The depth of her negative reaction and the detail with which she provided me with her insight deserves direct quotation. Words cannot adequately convey the recalled acerbity in her voice when she discussed this topic. Our conversation went as follows:

I: [S]hare your thoughts [about the education courses].

R: What a joke. I'm sorry, but I thought they were a joke. I was like okay, this is like going to Okay, well, you know, if you have this much and it was a[n] automated program and you had to pay. I don't have money to pay. You kidding me? Why don't you teach me some . . . life skills in my situation of okay, what's more important to you? If you don't save this amount I guess online learning classes was not I just felt like, it was like really? Click, click. I gotta sit here for forty-five minutes 'cause that's the minimum time. Really? I don't wanna hear some computer telling me how to do things.

365. *Id.*

366. This figure has been slightly changed for confidentiality purposes.

367. Interview with Participants #31, *supra* note 114.

368. Interview with Participant #07 (Oct. 13, 2012).

I: . . . It was on the Internet? . . .

R: It was on the . . . Internet.

. . .

I: So it wasn't even a person?

R: No. And I was I was I was like bub. This is retarded.

. . .

R: . . . And it was like I want somebody to come down and say, okay, . . . wake up. This is properly how you should do it. A class. Somebody who can sit there and say these are the choices you made. . . . You know, not somebody just reh reh reh reh. And I'm sitting there like, click, yes. Does this make sense . . . ? And I'm like no, that's not gonna teach me anything. Honestly.

I: Well, what would've taught [you] something? . . .

R: Showing me the numbers. Sitting down [with me], not just as a lawyer or in court, to say you know if you would've not done this, you could've actually been more positive. More of like a financial guider to say based upon the decisions that you made and the scenario that you have, if you would've changed maybe a handful of behaviors or priorities, you would have potentially increased your amount of income flow of two percent versus the negative flow of thirty-five percent. . . . I mean that would've been like oh, really? . . . Like give me numbers. . . .

. . .

I: Mmm.

R: I did [the pre-filing credit class] at work, like okay, I'm at work. Everybody's gone. And I had a I didn't have Internet at home 'cause I lost my services. And I was like you've got to I paid a hundred dollars for this? I could've had my twelve-year-old teach me this. This I was like okay, all right. I know I've been bad. I know I was irresponsible. . . .

. . .

R: But no one ever sat down and said if you would've maybe changed some of how you Instead of putting on your card or maybe going through my checkbook and my statements to say okay, w[ere] these necessary? Rethink . . . that. You know, what were they really for? Stop and think about that. Think about what the purpose was. And then, when you really think it, [and

s]eriously consider now that you're in this boat what you The other outcomes you could've presented yourself. I would've been more like oh, shit.

I: Rather than hearing [what things were discussed during the counseling session]?

. . .

R: [*using a sarcastic voice*] What's a checking account? You know, how do you manage? How much do you save? Do you think it's important to save? How much per paycheck do you think you should save? How much do you think your I'm like oh, my goodness. You've gotta be You're asking the person who's failing in all this. . . . I'm not gonna pass anything and all I know is I just need to get out from underneath this heavy weight. And the classes really felt like they really didn't do much for me.³⁶⁹

For some, however, the debtor education courses did offer benefits, as detailed immediately below.

2. Debtor Education Offers Benefits

Despite the majority of participants who viewed the mandated debtor education courses as severely unhelpful and merely a ministerial obstacle to overcome, several of the participants did find some usefulness and benefit to the mandated financial education requirements, but not typically in the way Congress intended in designing the courses. That is, several of the participants I interviewed did not learn useful lessons on such topics as budgeting, saving, or changing unwanted financial practices in the future. Rather, several participants found indirect benefits to either, or both, education courses. These benefits can be divided into the following three distinct sub-themes.

a. Affirmance of Decision to File for Bankruptcy Protection

One of the beneficial themes that emerged with respect to the pre-filing credit counseling was the notion of *affirmance of decision to file for bankruptcy protection*. For example, a seventy-three-year-old man who filed for bankruptcy due to what he self-described as a “do whatever you want and pay for it later kind of attitude,” found utility in

369. *Id.*

the pre-credit counseling course.³⁷⁰ Though he had already decided to file for bankruptcy before taking the counseling course, he believed the course to be helpful because it “reaffirmed” his decision to file.³⁷¹ This sentiment was shared by a fifty-four-year-old man who had incurred unsustainable credit card debt.³⁷² He found the pre-filing credit course to be useful because he “was yearning for some positive feedback for what I was doing. And it feels like there’s some light or hope there that was being offered.”³⁷³ That said, when asked whether he learned anything in the credit counseling session that resulted in a change of behavior, he commented that “I wouldn’t say there was [a] whole lot.”³⁷⁴ According to him, he “knew most of the stuff that was on there anyway.”³⁷⁵ This notion of seeking re-affirmance for the decision to file for bankruptcy was shared by a married couple, one aged seventy-six, and the other eighty-one years old, who found utility in the pre-filing credit counseling course because the counselor “just reaffirm[ed] that I need someplace, somewhere to get out of this situation.”³⁷⁶ For this couple, nothing in the education courses changed their financial behavior because “[they] already knew that. It wasn’t [them] that got [themselves] in trouble.”³⁷⁷

b. Bankruptcy Education as a Comforting Voice

A small subset of participants expressed the notion that the pre-filing credit counseling course proved helpful because it offered some sense of psychological comfort around the very hard-to-accept notion that bankruptcy would be happening in their lives. For example, a couple in their seventies who admitted to not taking responsibility for their debts and engaging in what they self-described as “magical thinking,” found utility in the pre-filing credit counseling course because it “just settled you down” and made them feel less “exposed to the

370. Interview with Participant #08 (June 28, 2012).

371. *Id.*

372. Interview with Participant #09 (Oct. 10, 2012).

373. *Id.*

374. *Id.*

375. *Id.*

376. Interview with Participants #18 (July 27, 2012).

377. *Id.* According to this couple, their financial hardship was occasioned by lending money to friends and family members who failed to repay the funds. *Id.*

threat of losing everything and not knowing what [we were] gonna lose and what [we were] responsible for.”³⁷⁸

c. Mandated Education Offering Intended Benefits

As previously noted, four out of the fifty-eight individuals interviewed for this study did in fact find utility in one or both of the mandated education courses in the ways Congress apparently intended. A forty-three-year-old couple, who filed for bankruptcy due to a combination of unemployment and underemployment, did not find the pre-filing credit counseling course helpful because by the time they considered bankruptcy as an option, they were simply too deep in debt to explore other avenues.³⁷⁹ Nonetheless, both found the post-filing financial management course helpful, and they changed their consumption behavior as a result of the course.³⁸⁰ When I asked about the financial management course, our exchange proceeded as follows:

I: Thoughts [about the course]?

R1: It was It was fine. I mean, I learned a few things and stuff. And maybe, you know, I’ve . . . I always thought I was pretty good with our money and everything. . . .

R2: It’s helped some. It’s helped us on . . . on where we’re at now, I think.

R1: . . . We’ve learned about not doing cards and . . . learning to save up and pay off . . . pay for things with cash. And do stuff like that instead of jumping out and getting a card every time someone offers one for you.

. . .

I: So it changed your behavior to some degree.

R1: It did. It did.

R2: It did. It did. Definitely.³⁸¹

While they were unable to save and plan for the future prior to their bankruptcy filing, by the time of this interview, this couple was in the habit of regularly saving several hundred dollars per month and

378. Interview with Participants #17 (Oct. 15, 2012).

379. Interview with Participants #03, *supra* note 142.

380. *Id.*

381. *Id.*

restricting themselves to one credit card which they try to use only for emergency situations.³⁸² Also, they did not accept a credit card offer until almost one and a half years after their discharge.³⁸³ Additionally, they had managed to remain current on their two mortgages and had relied on cash for all other bills.³⁸⁴ This was likely made possible because both individuals were now employed on a full-time basis, and both were making a bit more money as hourly employees than they were earning when they filed for bankruptcy several years ago.³⁸⁵

Another middle-aged couple I met also did not find much benefit to the pre-filing credit counseling course, characterizing it as something that your attorney just “tells you to do”; however, the financial management course affected their post-bankruptcy behaviors.³⁸⁶ The couple traditionally lived a modest lifestyle within their financial means, but the husband was seriously injured in an automobile accident, which caused a period of unemployment and, consequently, a reliance on the use of credit cards to make mortgage payments and to purchase groceries.³⁸⁷ For this couple, the utility of the financial management course was distinguishing between “wants” and “needs.”³⁸⁸ This concept “always stuck in [their heads] . . . [a]nd it still does.”³⁸⁹ As a result of the financial management course, the couple decided to take such actions as lowering their monthly cable bill, discontinuing cell phone usage, clipping coupons for groceries, and driving less each week.³⁹⁰

3. Bankruptcy Process as Behavior Modifier

“Human beings do not learn unless they’re taught very much the hard way.”³⁹¹

Several of the participants in the study reported having changed their financial behaviors in the years following their bankruptcies by adopting such practices as keeping a budget, observing the amount of

382. *Id.*

383. *Id.*

384. *Id.*

385. *Id.*

386. Interview with Participants #06 (July 2, 2012).

387. *Id.*

388. *Id.*

389. *Id.*

390. *Id.*

391. Interview with Participant #08, *supra* note 370.

spending, and limiting the use of credit cards.³⁹² Hearing such reports, I questioned whether this resulted from partaking in the debtor education courses. Interestingly, while these participants reported that such behavioral changes did not stem from the mandated debtor education courses, a common theme emerged from their stories. That is, it was *experiencing* the bankruptcy process itself, with its accompanying internal feelings of failure, embarrassment, and stress that caused a change in their consumption behaviors and not anything that they learned in the debtor education classes.

For example, a middle-aged single mother responded as follows when I questioned whether her experience with bankruptcy gave her the insight to, for example, save in advance to purchase clothes for her daughter: “Uh-huh, a little bit yes because first of all I don’t ever want to be in that position again. Ever. And I learned that you can live simple and still have it all, because if you have no stress, you’re happy.”³⁹³ The seventy-three-year-old man mentioned above commented to me that post-bankruptcy, “you’re in a situation where okay now budget or otherwise, you have no choice but to be in this situation that you’ve put yourself in so now you’ve got to budget whether you want to or not.”³⁹⁴ Additionally, a thirty-five-year-old woman who filed for bankruptcy due to sustained unemployment commented about using a budget post-discharge.³⁹⁵ When I asked how well the budgeting was working, the following exchange ensued:

R: I definitely am rigorous about spending. I don’t spend like I used to. It’s really taught me a lesson, being poor for so long, not to spend on extraneous things. I’m very . . . frugal now.

I: And . . . What changed your behavior? Something about the process or something you learned in those credit counseling courses?

R: It would’ve been the process of having to go through so much stress with the um . . . the filing itself, the court . . . hearing, and then the aftermath of the court hearing. I . . . I definitely don’t have any credit cards now. I don’t think I’ll ever get one again.

392. See *infra* text accompanying note 395, (discussing budgeting); see also *infra* text accompanying note 396 (discussing spending and credit cards); *infra* text accompanying note 403 (discussing credit cards); *infra* text accompanying note 407 (discussing budget and credit).

393. Interview with Participant #16, *supra* note 24.

394. Interview with Participant #08, *supra* note 370.

395. Interview with Participant #05 (Oct. 6, 2012).

Um I'm just trying to erase all my debt and . . . and do cash only really for the rest of my life.³⁹⁶

The reflections of a thirty-five-year-old, single mother of two children, who filed for bankruptcy protection admittedly due to some irresponsible financial behaviors, mirrored the previous participants' sentiments in explaining why her behavior changed after bankruptcy:

It was overwhelming and so there's a point where it was just like . . . I look back and I'm like if I would've known through this experience And that's why I'm [a] stickler about budgeting I don't think I would've been in that position. If I would've known what I know now through just the emotional experience 'cause I'm an emotional person. I take things to heart and I feel like a lot of it is a reflection of who I am. Those were my decisions.³⁹⁷

A forty-seven-year-old, single female with a doctorate degree filed for bankruptcy after experiencing a "culmination of events," including the break-up of a relationship, deleterious health issues, and a downturn with her personal business.³⁹⁸ Early on in our conversation, this woman remarked that "bankruptcy has taught me a lot too. I mean I've had to learn some things that have been really, I think blessings in disguise."³⁹⁹ Prior to bankruptcy, this woman described herself as being on a "loose budget," whereas today she claims to adhere to a "very tight budget."⁴⁰⁰ I questioned whether this change could be attributed to either education course mandated by the Bankruptcy Code.⁴⁰¹ She immediately replied, "I think they're a waste of time."⁴⁰² Asked why, the following exchange ensued:

R: Do you know what's been the biggest lesson for me?

I: Go ahead.

396. *Id.*

397. Interview with Participant #07, *supra* note 368.

398. Interview with Participant #22, *supra* note 3.

399. *Id.*

400. *Id.*

401. *Id.*; *see also supra* notes 18–19 and accompanying text (detailing the provisions mandating the financial education courses).

402. Interview with Participant #22, *supra* note 3.

R: Is the reality of living through bankruptcy ‘cause what speaks louder to me is the reality of you don’t have cash for that, you don’t get it.

...

I: But did you learn that through one of those courses?

R: No. I learned that from the good school of hard knocks. How’s that?

I: Fair enough.

R: Because seriously I think that’s a more powerful lesson. I think the thing that has had the biggest impact on me from a learning perspective is not having access to credit. None. . . .

...

R: . . . [T]he reality is you have to learn how to use your money because there are no options, there’s nothing to save you. You can’t go, “Oh, I can’t pay that, I’ll just use my credit card.” That’s not an option. It’s, “I can’t buy that. I don’t get it.”⁴⁰³

A couple who found the education courses to be a waste of time did change their financial behavior in the years following the closing of their bankruptcy case.⁴⁰⁴ When asked if this behavior modification resulted from the materials presented in either course, the notion of *lived experience* was raised again:

I: Was that [controlling spending] something you learned as a result of the bankruptcy or in one of these sessions? . . .

R1: No, it was as a result of living it.

R2: It was a school of hard knocks.

I: Okay.

R2: It was having to learn and accept what you wanted or what you didn’t want. . . .

...

What we needed, what we didn’t need. Um . . . How to prioritize things that we needed. We still do that now. It used to be that we could do anything in a month. We had enough money. . . .

403. *Id.*

404. See Interview with Participants #23, *supra* note 24.

...

Now you gotta budget. . . .

...

Well, it . . . it's [a] realization, I guess.⁴⁰⁵

According to this couple, they have “gotten a lot smarter about how to manage money and how to manage a budget” from the bankruptcy experience itself.⁴⁰⁶ As they reported to me, today they are scrupulously utilizing a budget, not relying on credit to maintain their standard of living, and are able to pay their bills timely on a monthly basis.⁴⁰⁷ Nevertheless, the couple does need to actively resist the urge to go shopping and charge for items on their credit cards.⁴⁰⁸ The couple currently has two credit cards with minimal balances, just as a way of rebuilding their credit scores for the future.⁴⁰⁹

The thirty-five-year-old single mother, quoted extensively above, commented on how her financial behavior has changed over the past few years (she reported to now being called “frugal” by all of her friends).⁴¹⁰ When I then asked whether the course itself changed her financial behaviors, her emotionally charged response followed:

R: . . . No, I don't think that course made me. I think it's the experience made me go oh . . . oh, shit. Um . . . I'm not proud of And um I take pride in what I do. At work.

...

R: With my kids. I tried. And I hold myself accountable. And part of that is the emotional part of being ashamed. Like oh, shit. Okay I [now] have [a] clean slate. . . . It almost gave me like a restart. . . .

...

R: . . . ‘[C]ause that was probably the most stressful time in my [life]. Being a single mom for four years prior was cake compared to the financial burden and the stress that I had during this duration was absolutely . . .

405. *Id.*

406. *Id.*

407. *Id.*

408. *Id.*

409. *Id.*

410. Interview with Participant #07, *supra* note 368.

I: Leading up to the bankruptcy? Or during the bankruptcy?

R: [Both]. Starting at the point of where I was like oh, I'm getting behind. That's when the stress started to [come] on. . . .

. . .

R: [Before] I was happy and I didn't have a worry, but once it started to come it really changed me as a person. And I was shorter with the kids. I was . . . always looking behind my shoulder as if somebody's gonna come and get me and serve me with papers. . . .

. . .

R: . . . That to me was an experience enough to say [I'm done]. I probably got more gray hairs during that duration of prior to filing and during. And it wasn't until after I was . . . it was done and clear that I actually felt relief. . . .

. . .

R: . . . So whatever from this day forward or the day that [the bankruptcy case] is finalized. Forward is one hundred percent my accountability and I have to accept it. . . . You can't mess up again. You can't make bad decisions. You really have to focus on what is important to you.

. . .

R: Made me like okay, I can't file bankruptcy for ten years and the only thing that I care about is feeding my children, giving them the necessities, and keeping a roof over their head. Everything else, I could care less about. It wasn't a priority anymore.

. . .

R: But to get that stress off was worth it. It was like oh, my God. . . . Now I can start over. But then the stress of I can't do anything.

. . .

R: . . . And it It puts things in perspective.

. . .

R: It really was like, okay, this is what you have. This is what you've got. You don't have any more than that. So it It forces. At least it forced me to at least

...

R: God knows I would never wanna be in that position again. It was stressful. Extremely stressful.⁴¹¹

VII. ASSESSMENT AND AVENUES OF FURTHER STUDY

It is well-established that most legal scholarship is concerned primarily with policy questions⁴¹² and normative conclusions.⁴¹³ This is certainly not the foremost concern of qualitative research in the social sciences. Rather, as social scientist Michael Q. Patton notes, qualitative research is concerned with “detailed descriptions of people’s activities, behaviors, actions, and the full range of interpersonal interactions and organizational processes that are part of observable human experience.”⁴¹⁴ But even so, the data uncovered by this qualitative study does add richness to the debate over the efficaciousness of mandated debtor education, and substantiates the prior empirical studies and scholarly commentaries in the following ways.

If the congressional intent behind the pre-filing credit counseling course was to educate debtors about the options available to addressing their financial situations with the hope of persuading large numbers to forego resorting to bankruptcy, then this “goal” seems to have proven to be a failure. As reported by the 2007 National Consumer Law Center Report, less than 4% of debtors actually enter into a debt management plan.⁴¹⁵ As an aside, a study needs to be conducted with respect to the limited number of debtors who do enter into debt management plans or find avenues other than bankruptcy to resolve their financial problems. I suspect that some subset of these individuals eventually resort to filing for bankruptcy relief. For 96% of the remaining debtors, as demonstrated by this and all the other empirical studies, bankruptcy remains the only viable option of rescuing people from crushing indebtedness. As such, the pre-filing credit counseling course is inadequate for the following reasons.

411. *Id.*

412. Westbrook, *supra* note 7, at 2125; *see also* Philip C. Kissam, *The Evaluation of Legal Scholarship*, 63 WASH. L. REV. 221, 234 (1988) (“This category of scholarship traditionally has employed the several methods of legal analysis, legal synthesis, and practical policy arguments. For a long time, this kind of study has been the staple product of law review publications if not of all legal scholarship.”).

413. Kissam, *supra* note 412, at 238–39.

414. PATTON, *supra* note 233, at 4.

415. NAT’L CONSUMER LAW CTR., *supra* note 147, at 3.

As this and every other study on the topic has uncovered, the pre-filing credit counseling course comes at a point in time when it is too late to remedy the financial storm experienced by most people. Indeed, debtors are simply “too far gone” financially to utilize bankruptcy alternatives. As others have previously suggested, and I do not disagree, Congress should consider dispensing with the pre-filing credit counseling requirement *in toto*.⁴¹⁶ Furthermore, even the report issued by the Executive Office for United States Trustees explicitly recognizes that the mandatory debtor education curriculums are predicated on the assumption that many, if not most, debtors seriously overspent due to a lack of awareness of responsible financial management practices.⁴¹⁷ There is no question that many debtors do engage in imprudent spending, particularly with credit cards, as several participants admitted to me for this study.⁴¹⁸ And, yes, this has some causal effect on their negative financial situation. But, as empirical studies have demonstrated for years, the triggering event for a bankruptcy filing is almost always an exogenous event or an unanticipated crisis.⁴¹⁹ Congress’s continued failure to recognize this dynamic is inexcusable. If Congress does not remove the pre-filing credit counseling requirement from the Bankruptcy Code (and there is no indication that it plans to do so), then the course should be amended in the following ways.

First, the curriculum should not be based on the assumption that everyone who files for bankruptcy protection did so as a result of irresponsible financial behavior.⁴²⁰ In other words, a “one-size fits all” approach simply does not work. Although it will likely cost more money and prove more difficult to administer, the pre-filing credit counseling course needs to be tailored to the individual characteristics of the debtor based upon the causal factors leading to the need for bankruptcy relief (e.g., job loss, medical illness, material over-spending), and the relative financial literacy of the individual debtor. Though this will cause someone (either the debtor or a credit counselor) to make a subjective judgment about the debtor and his or her circumstances, a tailored approach may prove more beneficial in the long run.

416. Martin & Tama y Sweet, *supra* note 96, at 540.

417. U.S. DEP’T OF JUSTICE EXEC. OFFICE FOR U.S. TRS., *supra* note 175, at Exhibit, xi.

418. See *supra* text accompanying notes 396, 403, 407, 411.

419. See *supra* note 8.

420. See U.S. DEP’T OF JUSTICE EXEC. OFFICE FOR U.S. TRS., *supra* note 175, at Exhibit, xi; see also *supra* note 277.

Second, Congress must find a way to offer a pre-filing credit counseling class at a much earlier point in time, perhaps almost a year before an individual's financial calamity becomes insurmountable. Indeed, when I asked the thirty-five-year-old single mother if there was anything she would want someone to know about the bankruptcy process, she immediately responded, "I think the most important [thing] is when you realize that you are to the point where you are not at a breakeven-point and you start . . . are in a negative income, that you . . . you seek help. You . . . You seek help in the sense of getting your finances together."⁴²¹ If Congress and the consumer credit industry are truly concerned about the number of individuals who resort to the bankruptcy process, then perhaps courses can be advertised nationally and funded jointly by Congress and the consumer credit industry.

Third, as several participants reported to me, the provision of debtor education over the telephone or through the Internet appears to be a laughingstock.⁴²² With the ability to partake in these courses while at work or while watching television, together with the overall impersonal nature of the courses, it is unsurprising that many individuals do not find the courses valuable. Consequently, a study needs to be conducted regarding the relative effectiveness of the courses, by comparing the effectiveness of providing the course through in-person classes, over the telephone, or via the Internet.

Fourth, as several participants in this study commented to me, both courses should include a component addressing the psychology behind the use of credit, and in particular, credit cards.⁴²³

Fifth, and finally, while the post-filing financial management course does have potential benefit, it too needs to be tailored around the individual circumstances of each debtor, and must be more than just a "one-shot," two-hour program.⁴²⁴ For debtor education programs to be effective, debtors should be required to participate in a series of financial education programs for six months to a year following their Chapter 7 or Chapter 13 discharges. Perhaps the Bankruptcy Code can be amended to include a provision where a discharge can be revoked if a debtor fails to participate in this series of post-filing financial education programs. It may be that continued financial education is the only way

421. Interview with Participant #07, *supra* note 368.

422. See *supra* note 312 and accompanying text.

423. See *supra* text accompanying notes 110, 313.

424. See *supra* text accompanying note 173.

for debtors to actually incorporate sound financial behavior into their everyday lives.

To date, the Executive Office for United States Trustees has not taken steps to track and monitor the outcomes of the credit counseling sessions because, according to one official, such a task is not a component of the office's statutory responsibilities.⁴²⁵ But without data on the outcomes of the pre-filing credit counseling requirement, Congress is without the information needed to determine how well the statutory mandate is serving to educate consumers about bankruptcy and its alternatives, and perhaps more importantly, how many debtors actually avoided bankruptcy as a result of the pre-filing course. In a similar vein, there is no Department of Justice mandate to follow-up with debtors upon exiting the bankruptcy system to determine whether they have altered their financial practices as a result of the post-filing financial management course. Both of these studies by the federal government are in order.

VIII. CONCLUSION

Almost a quarter century ago, Professor Peter Schuck noted that the outcome of empirical work is “substantively contingent.”⁴²⁶ That is, until the data is gathered and analyzed, the empirical researcher “cannot know whether one will make important new findings or ‘merely’ confirm what everybody (especially in retrospect) ‘already knows.’”⁴²⁷

It is my belief that this qualitative study accomplishes both, but again with the caveat of being non-generalizable to the population at large in a probabilistic sense. First, this report contributes new findings to the existing literature insofar as it provides data on individuals who underwent the bankruptcy process several years in the past (anywhere from two and one-half to six years later) in an effort to study their impressions of, and experiences with, the mandated debtor education courses. This has not yet been accomplished regarding the issue of the BAPCPA education requirements. Second, this study also begins to answer a significant question that has not yet been addressed in prior studies, namely, whether consumer debtors actually change their financial behaviors (presumably for the better) as a direct result of

425. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 159, at 25.

426. Peter H. Schuck, *Why Don't Law Professors Do More Empirical Research?*, 39 J. LEGAL EDUC. 323, 331 (1989).

427. *Id.*

participating in either, or both, of the mandated debtor education courses. As demonstrated by the data collected in this study, less than seven percent of debtors' financial behavior is affected by these courses.⁴²⁸ Third, and perhaps as equally as important, this qualitative study serves to substantiate the major findings of the six prior empirical studies of the BAPCPA debtor education requirements, and the more than ten years' worth of arguments by bankruptcy law scholars over the potential inadequacy of the debtor education requirements as constituted in the Bankruptcy Code.⁴²⁹ All of this data taken together, collectively, results in a seemingly generalizable portrait of the mandated education courses. And the portrait is not appealing. In fact, all of this data serves to triangulate in a coherent way the conclusion that the mandated debtor education courses are by and large misguided, and are in desperate need of overhaul and reform.

It has been said that the enactment of BAPCPA constitutes the "most sweeping change[] to this country's bankruptcy laws since the Bankruptcy Code was adopted in 1978."⁴³⁰ This assessment is certainly accurate. But, while the changes were momentous and a long-time coming, that does not mean that they were made with much insight and forethought. For the past decade, Congress has, for whatever reason, repeatedly ignored the admonitions of bankruptcy law scholars regarding the misguidedness of BAPCPA overall. Perhaps the ever-growing body of evidence over the ineffectiveness of the debtor education requirements will prompt Congress to finally act, for another eight years or more of futility is too much to bear.

At the outset of this Article, I quoted Professor Westbrook as noting that "[s]tudying people after bankruptcy is very difficult[,] . . . [but] the potential rewards are very great."⁴³¹ I cannot attest to the latter, but I now have a definite appreciation for the former. Not only are people extremely hesitant to discuss a most private area of their lives, namely, finances, and understandably so, but it is extremely difficult to find willing participants, and to locate people several years after their exits from the bankruptcy process. Nevertheless, the participants with whom I met for this study welcomed me into their homes, devoted their precious time to me, and shared with me many intimate aspects of their

428. See *supra* note 242 and accompanying text; *supra* Part VI.B.2.c.

429. See *supra* notes 8, 278.

430. *In re Tomco*, 339 B.R. 145, 151 (Bankr. W.D. Pa. 2006).

431. Westbrook, *supra* note 7, at 2147.

personal lives. It is said that in qualitative research, the researcher is often affected and changed through his or her interactions with the participants.⁴³² That is certainly true in my case, and I remain grateful to all those who participated in this study.

432. See Orit Karnieli-Miller et al., *Power Relations in Qualitative Research*, 19 QUALITATIVE HEALTH RES. 279, 279 (2009).