

December 2007

BANKRUPTCY

Implementation of Reform Act's Debt Reaffirmation Agreement Provisions





Highlights of [GAO-08-94](#), a report to Congress

Why GAO Did This Study

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (referred to hereafter as the Reform Act) included provisions to better inform individuals who file for personal bankruptcy about their options for reaffirming debt—whereby filers may voluntarily agree to pay certain creditors in an effort to retain assets, such as an automobile. Reaffirmation agreements between debtors and creditors are required, by law, to formally disclose to debtors the terms of the agreement, such as the amount of debt reaffirmed. Some requirements differ for credit unions, such as an exemption for reporting debtor financial information when the debtor’s attorney signs the agreement.

The Reform Act required GAO to study the bankruptcy reaffirmation process. This report discusses (1) the extent to which required Reform Act disclosures and other information have been incorporated into reaffirmation agreements, (2) the types of debts reaffirmed and the percent this debt comprised of debtors’ overall debt burden, and (3) how reaffirmed and original interest rates compare.

GAO reviewed a representative sample of bankruptcy files with agreements in five bankruptcy courts (in AL, CA, IL, TX, and WV) selected by, among other things, filing volume and geographic dispersion. Estimates from our sample cannot be generalized to all bankruptcy courts, but can be generalized to each of the selected bankruptcy courts.

To view the full product, including the scope and methodology, click on [GAO-08-94](#). For more information, contact William O. Jenkins Jr. at (202) 512-8777 or jenkinswo@gao.gov.

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What GAO Found

Most reaffirmation agreements across the five districts included Reform Act disclosure statements and other required information. For example, for the five districts, the required disclosure statement for the “Annual Percentage Rate” was included in an estimated 86 to 97 percent of agreements and the disclosure statement for the “Amount Reaffirmed” and the amount was included in an estimated 87 to 98 percent of agreements, as shown below.

Estimated Percentage of Reaffirmation Agreements That Included Disclosure Statements and Other Information for Selected Statements and Information

Required disclosure statements and other information	AL	CA	IL	TX	WV
“Annual Percentage Rate” and the amount	86	97	91	92	86
“Amount Reaffirmed” and the amount	90	98	96	93	87
Debtor monthly income, expense, and net income information to make determination of whether a presumed undue hardship exists ^a	67	71	88	75	67

Source: GAO analysis of bankruptcy file reviews.

Note: The margin of error for this data is plus or minus 10 percent, or less at the 95 percent confidence level.

^aBecause this disclosure statement and the inclusion of information differs for credit unions, these data are for non-credit unions only.

We also estimate that, for the five districts, 67 to 88 percent of non-credit union agreements included monthly income, expense, and net income information—conversely, 12 to 33 percent were missing this information. This information helps to inform debtors, debtor attorneys, creditors, and court officials of the potential inability of the debtor to make payment on reaffirmed debt. In May 2007, a federal judiciary advisory committee proposed the use of a reaffirmation agreement coversheet that, if approved, would make it mandatory for debtors to provide required financial information to determine an undue hardship. If approved, the coversheet would appear to address the issue of missing financial information.

For the five districts, debts secured by assets, such as an automobile, were the most frequently reaffirmed type of debt—comprising an estimated 90 percent or more of all reaffirmations. Unsecured debt—such as credit card debt—was reaffirmed infrequently in reaffirmation agreements, occurring in an estimated 2 percent to 10 percent among all agreements in the five districts. For the five districts, we estimate that in approximately two-thirds of cases the reaffirmed debt burden comprised 25 percent or less of the debtors’ total debts.

In those cases where an original interest rate was provided, rates on reaffirmed debt were generally less than or equal to the original rate. Specifically, the interest rates were equal to the original rate in an estimated 56 to 84 percent of reaffirmed debts for the five districts, less than the original rate for 10 to 44 percent of debts, and greater in 0 to 8 percent of debts. (The margin of error for these estimates is at most plus or minus 16 percent at the 95 percent confidence level.)

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Abbreviations

AL-N	Northern District of Alabama
AOUSC	Administrative Office of the U.S. Courts
CA-C	Central District of California
IL-N	Northern District of Illinois
TX-N	Northern District of Texas
WV-S	Southern District of West Virginia

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United States Government Accountability Office
Washington, DC 20548

December 7, 2007

The Honorable Robert C. Byrd
President Pro Tempore
United States Senate

The Honorable Nancy Pelosi
Speaker of the House
House of Representatives

The Honorable Patrick Leahy
Chairman
The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable John Conyers, Jr.
Chairman
The Honorable Lamar Smith
Ranking Member
Committee on the Judiciary
House of Representatives

Individuals may file for personal bankruptcy in federal bankruptcy courts to reduce their debts by having their eligible debts discharged by the bankruptcy court.¹ Bankruptcy filers may voluntarily reaffirm—that is, agree to pay—certain debts with creditor firms in an effort to retain assets.² Debtors may, for example, be motivated to reaffirm one or more debts through a reaffirmation agreement with a creditor to retain an asset that secures a debt, such as an automobile, home, or household good that otherwise would likely have to be surrendered to the creditor if the debtor

¹ Not all debts are discharged. Discharged debts are those for which the debtor's personal liability is discharged at the end of the bankruptcy process (i.e., eligible debts). Section 523 of the code specifically excepts various categories of debts, such as tax obligations, from the discharge granted to individual debtors. Therefore, the debtor must still repay those types of nondischargeable debts after bankruptcy.

² Such a debt could otherwise be discharged by the bankruptcy court.

did not reaffirm the debt.³ A debtor may also choose to reaffirm a debt that is not secured by an asset, such as credit card debt or a line of credit from a bank. In the late 1990s, several reports, including a 1997 National Bankruptcy Review Commission report, expressed concern over questionable practices that may have led some individuals filing for bankruptcy to take actions that were not in their best interests—by entering, for example, into agreements with creditors that were financially burdensome.⁴

Between 2001 and 2004, an average of more than 1.5 million people annually filed for personal bankruptcy protection. In April 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (referred to in this report as the Reform Act) was enacted and contained provisions designed to better inform debtors and assist them in making decisions about reaffirming debt.⁵ Under the Reform Act, a reaffirmation agreement is required to contain specified disclosure statements that, among other things, are designed to inform debtors of the terms of the reaffirmation agreement as well as the debtor's rights and responsibilities. For example, the amount reaffirmed and the annual percentage rate for that amount must be conspicuously disclosed in the agreement. Statements, among other prescribed narratives, must also be included to inform debtors of their right to rescind a reaffirmation agreement within a certain time period and that the debtor or creditor must file the agreement with the court. The required disclosure statements are designed to help ensure that debtors make decisions about reaffirming a debt that are in their best interests.

The Reform Act required that GAO study the bankruptcy reaffirmation agreement process. This report addresses the following questions regarding reaffirmation agreements in cases filed over a 1 year period beginning October 17, 2005, when the reaffirmation provisions of the Reform Act took effect:

³ A debtor, for the purposes of this report, is an individual who has filed for personal bankruptcy in order to reduce his debt obligations by having the bankruptcy court discharge his eligible debts.

⁴ National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years* (Oct. 20, 1997). Congressional Research Service, *Consumer Bankruptcy Reform: Proposals before the 105th Congress* (Mar. 20, 1998).

⁵ Pub. L. No. 109-8, 119 Stat. 23 (2005).

-
1. To what extent have required Reform Act disclosure statements and other required information (such as the annual percentage rate for the reaffirmed debt) been incorporated into reaffirmation agreements?
 2. What types of debts were reaffirmed and to what extent did reaffirmed debt amounts comprise debtors' overall debt burden when they filed for bankruptcy?
 3. How did the reaffirmed and original interest rates compare?

To answer these questions, we reviewed a representative sample of bankruptcy case files with reaffirmation agreements in each of five district bankruptcy courts: Alabama Northern (AL-N), California Central (CA-C), Illinois Northern (IL-N), Texas Northern (TX-N), and West Virginia Southern (WV-S). The districts were selected based on the following criteria: a range of filing volume, proportion of Chapter 7 filings within the bankruptcy courts,⁶ whether cases were overseen by the U.S. Trustee Program or the Bankruptcy Administrator program,⁷ and courts in dispersed geographic locations. From January 1, 2001, to June 30, 2006, the average quarterly filing volume for the nation's 90 district bankruptcy courts was 385,424. The five districts we selected collectively represented about 12 percent of those average quarterly filings. When determining which districts to include in our study, we selected the 2001 to 2006 time period to gather sufficient historical filing data to determine the average number of filings each district had over time. Each sample of cases within these districts was selected from the universe of cases that were filed in the five districts between October 17, 2005, and October 17, 2006—the first year the Reform Act's reaffirmation provisions were in effect—and also contained at least one reaffirmation agreement. Each universe of cases

⁶ We examined the proportion of Chapter 7 cases filed in each district because reaffirmation agreements are more likely to be found in Chapter 7 cases. According to the Administrative Office of the U.S. Court's *Bankruptcy Basics* guide, Chapter 7 debtors may continue paying a dischargeable debt (such as an auto loan) after the bankruptcy through a reaffirmation agreement, usually for the purpose of keeping collateral (i.e., the car) that would otherwise be subject to repossession.

⁷ The U.S. Trustee Program is the component of the Department of Justice responsible for supervising the administration of bankruptcy cases and private trustees in all but the six bankruptcy court districts in Alabama and North Carolina. Separate from the U.S. Trustee Program, these six districts, also known as the Bankruptcy Administrator program, have judicial branch bankruptcy administrators perform duties similar to those of the U.S. Trustee program, including overseeing the administration of bankruptcy cases, maintaining a panel of private trustees, and monitoring the transactions and conduct of parties in bankruptcy.

with at least one reaffirmation agreement was drawn from a database maintained by the bankruptcy courts. We determined that these data were sufficiently reliable to develop the universe of cases for each of the five district bankruptcy courts from which we selected a representative sample of bankruptcy cases. To determine the reliability of the bankruptcy data we reviewed documentation about the system that maintained them and interviewed agency officials knowledgeable about the data to discuss the procedures they used in collecting and maintaining these data. On the basis of our samples of bankruptcy cases with at least one reaffirmation agreement from the five selected bankruptcy court districts, we generated estimates of percentages, means, and medians to generalize sample results to each district's bankruptcy court. All percentage estimates in this report have a margin of error of plus or minus 10 percent or less, unless otherwise noted. Some percentage estimates we present have a margin of error greater than plus or minus 10 percent. This occurred for percentage estimates based on a small number of cases in the district samples with specific characteristics that were unavailable to us prior to sampling. For instance, when we present percentage estimates for reaffirmation agreements made with credit unions, the small number of agreements made with credit unions in the samples results in larger margins of error. Mean and median estimates have a relative error of 20 percent or less, unless otherwise noted. Some mean and median estimates we present in this report have a great deal of variance, resulting in large percentages of relative error. For instance, when we discuss the mean and median amount of the debt reaffirmed per reaffirmation agreement, individual reaffirmation agreement debts range from very low amounts (such as a small outstanding balance for an automobile) to much higher amounts (as with the outstanding balance for the mortgage on a home); these large variations result in larger percentages of relative error.

Our case file review was performed using a data collection instrument that included uniform questions to ensure data were collected consistently. We relied on data presented in bankruptcy documents filed with the courts by debtors, creditors, and debtor attorneys. Bankruptcy courts, bankruptcy administrators, and the U.S. Trustee Program manage bankruptcy cases and perform some measures to verify data that help ensure the reliability of information provided. For example, bankruptcy court officials have measures to ensure that data entered into information systems are accurate. Also, as a part of the bankruptcy process, the U.S. Trustee Program verifies selected debtor-reported financial data, such as income and assets. On the basis of these measures, we believe the bankruptcy data we reviewed to be sufficiently reliable for our purposes. In addition to reviewing case files in each district, we interviewed bankruptcy court

clerks, U.S. Regional Trustees, case trustees, and the Bankruptcy Administrator for the Northern District of Alabama to determine the availability of reaffirmation agreement data and to learn about the reaffirmation process. We interviewed four creditors that we identified during our case file review as the creditors that most frequently entered into reaffirmation agreements in the five selected districts. We also interviewed debtor and creditor attorneys, bankruptcy consumer advocates who represented the interests of debtors during development of the Reform Act, and academics specializing in bankruptcy issues.

The Reform Act provides that disclosures (with the exception of the terms “Amount Reaffirmed” and “Annual Percentage Rate”) may be made in a different order and may use terminology different from those set out in the Reform Act and that such disclosure requirements shall be satisfied if the required disclosures are given in good faith. This report discusses how the reaffirmation process was working under the Reform Act in selected bankruptcy court districts, not whether agreements were in compliance with the Reform Act. Furthermore, we did not determine the reason that individual reaffirmation agreements did not include required disclosures or other information. Appendix 1 provides additional information on our scope and methodology.

Our work was conducted from June 2006 through November 2007 in accordance with generally accepted government auditing standards.

Results in Brief

Most reaffirmation agreements in the five districts included required Reform Act disclosure statements. For example, the disclosure statement for the annual percentage rate was included in an estimated 86 percent (in AL-N and WV-S) to 97 percent (in CA-C) of all agreements for the five districts in the first year after the Reform Act’s reaffirmation provisions took effect. The disclosure statement for the “Amount Reaffirmed” and the amount was included in an estimated 87 percent (in WV-S) to 98 percent (in CA-C) of agreements for the five districts. Other required information that must be entered into reaffirmation agreement forms, in addition to disclosure statements, was generally included in agreements when required. For example, when a debt being reaffirmed is secured by an asset, the Reform Act requires that a description of the asset securing the agreement be included in the reaffirmation agreement. This information was included in an estimated 87 percent (in WV-S) to 99 percent (in CA-C) of reaffirmation agreements for the five districts. We also estimate that 67 percent (in AL-N and WV-S) to 88 percent (in IL-N) of non-credit union agreements included debtors’ monthly income, expense, and net income

information—conversely, an estimated 12 percent (in IL-N) to 33 percent (in AL-N and WV-S) were missing this information (these data are not required for credit union agreements signed by a debtor attorney).⁸ This information helps to inform debtors, debtor attorneys, creditors, and court officials of the potential inability of the debtor to make payment on reaffirmed debt. While information about income, expenses, and net income available can be determined from other schedules in the bankruptcy filings or during hearings, having that information included in the agreement makes it easier for the courts to evaluate the debtor's financial situation. In May 2007, an advisory committee to the federal judiciary proposed the use of a reaffirmation agreement coversheet that, if approved, would make it mandatory for debtors to provide income and expense information, among other things, on the coversheet to be used in the evaluation of undue hardship. According to the Administrative Office of the U.S. Courts (AOUSC), this new form could take effect by December 1, 2009. If approved, the coversheet would appear to address the issue of missing financial information.

Secured debts (i.e., debts secured by assets that the creditor may repossess if the debtor does not pay the underlying debt) were the most frequently reaffirmed type of debt, comprising an estimated 90 percent (in AL-N) to 98 percent (in TX-N and WV-S) of all reaffirmations for the five districts. Of all types of secured debts, automobiles and homes were the most frequently reaffirmed assets. With respect to homes, reaffirmation agreements are not required to be reviewed by the court. Unsecured debt was reaffirmed infrequently—occurring in an estimated 2 percent (in TX-N and WV-S) to 10 percent (in AL-N) of all reaffirmation agreements in the five districts. Credit card debt was the most frequently reaffirmed unsecured debt in the 52 unsecured agreements we reviewed. As to the extent to which reaffirmed debt amounts comprised debtors' overall debt burden, in approximately two-thirds of cases for each of the five districts the reaffirmed debt burden comprised less than 25 percent of the debtors' total debts.

When the files contained both the original interest rate and the reaffirmed rate, reaffirmed interest rates were generally less than or equal to the original rate. Specifically, interest rates on reaffirmed debt were equal to the original rate in an estimated 56 percent (in WV-S) to 84 percent (in CA-C) of

⁸ The majority of reaffirmation agreements were with non-credit unions—from an estimated 80 percent (in AL-N) to 94 percent (in IL-N) in the five districts.

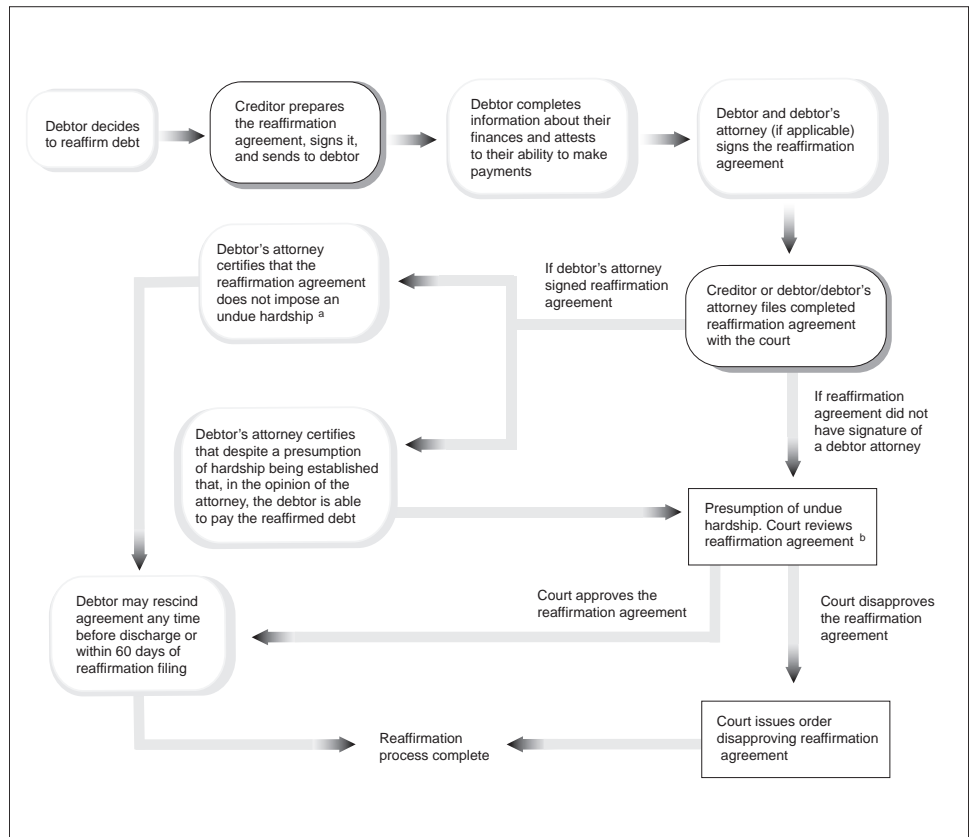
reaffirmation agreements for the five districts. The reaffirmed rate was less than the original rate in 10 percent (in IL-N) to 44 percent (in WV-S) and greater than the original rate in 0 percent (in WV-S) to 8 percent (in IL-N) of agreements for the five districts. For the 9 (of 1,164) reaffirmation agreements we reviewed where the reaffirmed interest rate was greater than the original rate, the amount of the interest rate increase ranged from 0.10 percentage points to 4.25 percentage points. For the 72 (of 1,164) reaffirmation agreements we reviewed where the reaffirmed interest rate was less than the original rate, the amount of the interest rate decrease ranged from 0.01 percentage points to 26.99 percentage points. The average reaffirmed interest rate was an estimated 8 to 10 percent in the five districts. Interest rates for 41 unsecured reaffirmations we reviewed that disclosed a reaffirmed interest rate ranged from 0 to 21 percent. Nineteen of the 41 agreements were reaffirmed with a 0 percent interest rate, while the remaining 22 agreements had interest rates ranging from 7.99 to 21 percent.

Background

Overview of Reaffirmation Agreement Process

The reaffirmation agreement process involves several parties and many steps. Creditors, debtors, debtor attorneys, and the courts each have reaffirmation agreement roles. The process begins when a debtor in bankruptcy decides to reaffirm a debt or the creditor proposes a reaffirmation agreement and forwards it to a debtor. Officials at four credit institutions that frequently engaged in reaffirmation agreements we reviewed stated that once they receive notice of a debtor filing for bankruptcy, the creditors generally send the debtor or the debtor's attorney their proposal for a reaffirmation agreement. Under the Reform Act, certain certifications may be required such as an attorney certification that certifies that the agreement does not impose an undue hardship on the debtor. Also, under the Reform Act, the court is to review agreements where debtors are not represented by an attorney and those that have a presumed undue hardship. A presumption of undue hardship is triggered when a debtor's monthly net income (including expected monthly payments on post-bankruptcy debt) is not sufficient to pay the proposed monthly reaffirmed payment. A debtor may try to counter this presumption in writing. After these reviews, the court may approve or disapprove the agreement. Figure 1 provides more detailed information about the reaffirmation agreement process.

Figure 1: General Process for Reaffirmation Agreements



Source: GAO analysis of the Reform Act.

Note: This general process refers to those reaffirmation agreements that have been made before the granting of the discharge and filed with the court. The Bankruptcy Code provides that such agreements are enforceable only if, among other things, such agreements are filed with the court.

^aWhen a debtor attorney certifies that the debtor is able to make the reaffirmation payment, and no presumption of undue hardship is established, the Reform Act does not require a judge to review the agreement.

^bCredit union agreements are not reviewed by the court unless the reaffirmation agreement is not signed by an attorney representing the debtor. Reaffirmations for real property, such as a home, are not required to be reviewed by the court.

Reform Act Provisions Related to Reaffirmation Agreements

Described as representing the most comprehensive set of reforms in more than 25 years, the Reform Act addressed, among other things, the reaffirmation agreement process. The Reform Act added new disclosures and court review requirements with respect to reaffirmation agreements designed to help ensure that reaffirmation agreements are consistent with the debtor's best interests. The reaffirmation agreement requirements include, among

other things, disclosures notifying debtors of reaffirmed terms. Agreements must also include the debtor’s monthly income and expenses to determine if a presumption of undue hardship exists and certification by the debtor’s attorney that the agreement represents a fully informed and voluntary agreement by the debtor and that the agreement does not impose an undue hardship. Table 1 summarizes key reaffirmation agreement disclosure requirements under the Reform Act. Appendix II provides the full text of the disclosure statements required by the Reform Act.

Table 1: Summary of Reform Act-Required Disclosure Statements and Other Required Information

Reaffirmation section and description	Required disclosure statements and other required information
Part A: Financial data, asset information, and debtor notifications	<p data-bbox="565 835 803 871"><u>Disclosure statements</u></p> <ul data-bbox="565 871 1529 1197" style="list-style-type: none"> • Amount Reaffirmed, using those terms and including the amount. • Statements accompanying Amount Reaffirmed data. • Annual Percentage Rate, using those terms and including the rate. • Statement instructing debtor to review disclosures. • Statements indicating “Summary of Reaffirmation Agreement” and that the summary is pursuant to the Bankruptcy Code. • Statement accompanying variable rate transactions, if applicable. • Statement instructing debtor to consult with attorney or a judge regarding the effect of reaffirming a debt. • Statement explaining the reaffirmation process and certain requirements. <p data-bbox="565 1239 755 1270"><u>Other information</u></p> <ul data-bbox="565 1270 1209 1333" style="list-style-type: none"> • Description of asset securing the agreement, if applicable. • Original purchase price or the original amount of the loan.
Part B: Debtor agreement statement	<p data-bbox="565 1344 787 1375"><u>Disclosure statement</u></p> <ul data-bbox="565 1375 1380 1417" style="list-style-type: none"> • Statement that debtor agrees to reaffirm the debt described in this section. <p data-bbox="565 1459 755 1491"><u>Other information</u></p> <ul data-bbox="565 1491 1209 1554" style="list-style-type: none"> • Description of credit agreement. • Description of any changes to the credit agreement, if any.
Part C: Certification by the debtor’s attorney	<p data-bbox="565 1564 787 1596"><u>Disclosure statement</u></p> <ul data-bbox="565 1596 1529 1690" style="list-style-type: none"> • Statement that the agreement represents a fully informed and voluntary agreement by the debtor, that the agreement does not impose an undue hardship on the debtor, and that the attorney has fully advised the debtor of the effect of the agreement. <p data-bbox="565 1732 755 1764"><u>Other information</u></p> <ul data-bbox="565 1764 1529 1820" style="list-style-type: none"> • If applicable, statement that when a presumption of undue hardship is established, that in the opinion of the attorney, the debtor is able to make the reaffirmation payment.^a

Part D: Debtor statement in support of the reaffirmation agreement^b

Disclosure statement

- Statement that the reaffirmation agreement does not impose an undue hardship on the debtor.

Other information

- Debtor monthly income, expense, and net income information to make the determination of whether the presumption of an undue hardship exists.

Part E: Motion for court approval

Disclosure statement

- Motion for court approval, if debtor is not represented by an attorney.^c
-

Source: GAO analysis of the Reform Act.

^aUnder the Reform Act, in reaffirmation agreements with credit unions where a presumption of undue hardship is established, debtor attorneys are not required to certify that in the opinion of the attorney the debtor is able to make the payment.

^bUnder the Reform Act, the presumption of undue hardship calculation is not applicable to attorney represented debtors reaffirming with credit unions. Correspondingly, in the debtor statement in support of the reaffirmation agreement, monthly income, expense, and net income information is not required for debtors reaffirming a debt with a credit union where the debtor is represented by an attorney.

^cDebtors who are not represented by an attorney are not required to file a motion for court approval where the consumer debt being reaffirmed is secured by a lien on real property.

Flexibility in Disclosure Requirements under the Reform Act

The Reform Act allows for some flexibility in the disclosures required in reaffirmation agreements and provides that the disclosure requirements shall be satisfied if the disclosures were provided to the debtor in good faith. Almost all of the disclosures can be made in a different order and with different terminology than what is set forth in the law. In addition, one creditor official we interviewed stated that his organization uses a standardized form created by the creditor to comply with the Reform Act. However, according to the official, his company has 32 versions of the form designed to comply with individual bankruptcy court requirements.

The AOUSC, which provides administrative, legal, and other support to the federal judiciary, issued a reaffirmation agreement form that incorporates the required and recommended language in the Reform Act. The form was issued on October 2005 and was revised in August 2006 and in January 2007.⁹ Because of the requirement for flexibility in disclosure language, creditors and debtors are not required to use the AOUSC form and may use other forms. According to AOUSC, one of the primary reasons the federal judiciary did not impose a specific reaffirmation form was because the law allows for different reaffirmation agreement forms. The federal

⁹ Appendix III includes the most recent AOUSC reaffirmation agreement form.

judiciary also took other factors into consideration, according to AOUSC, including the many variations of statutory requirements that are dependent upon the debtors' circumstances, and the fact that a creditor and debtor might want to include language in addition to what the law requires.

Court Review of Reaffirmations under the Reform Act

The Reform Act also specifies in what circumstances reaffirmation agreements are to be reviewed by the courts during the bankruptcy process. In general, if the reaffirmation agreement is signed by a debtor attorney, the agreement is effective upon filing with the court, unless income and expense information on the debtor's statement in support of the agreement reflects insufficient funds for making the reaffirmation payment, which triggers the presumption of an undue hardship. If a presumption of undue hardship exists, the court is required to review and approve or disapprove the agreement based on whether the presumption is countered by debtor explanations for how the debtor can afford the reaffirmation payment.

The Reform Act makes certain provisions for reaffirmation agreements that do not include a debtor attorney signature. Reaffirmation agreements might not include a debtor attorney signature because the debtor has opted to undergo the bankruptcy process without an attorney, which is known as a pro se bankruptcy filing. Also, in some instances, debtor attorneys might not sign the agreement because he or she believes the agreement imposes an undue hardship on the debtor. All agreements that are not signed by debtor attorneys must be submitted to the court for review and approval or disapproval, with the exception of reaffirmed consumer debt secured by a lien on real property such as a home.¹⁰ Agreements cannot be disapproved without a hearing and notice of the hearing to the debtor and creditor.

Reaffirmations with Credit Unions

Under the Reform Act, reaffirmation agreements where the creditor is a credit union have different requirements than reaffirmation agreements with other types of creditors. While most requirements for reaffirmation agreements are uniform across all types of lenders, the Reform Act's

¹⁰ Where debtors are not represented by an attorney, the Bankruptcy Code, as amended by the Reform Act, provides that the bankruptcy court must approve the debtor's reaffirmation agreement as consistent with the debtor's best interests, except that no court approval is required if the debtor's reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on the debtor's real property, like a home. 11 U.S.C. § 524 (c)(6) and § 524(k)(3)(J)(i).

presumption of undue hardship provisions are not applicable to agreements with credit unions. This exemption is evident in several Reform Act provisions. For example, while reaffirmation agreements where the creditor is a credit union are to include a debtor statement in support of the reaffirmation agreement when the agreement is signed by a debtor attorney, the statement is not, however, required to include the income and expense information otherwise used to calculate whether there is a presumption of undue hardship. Instead, such a debtor's statement in support of the agreement is required to include that the reaffirmation is in the debtor's financial interest, that the debtor can afford the reaffirmation payments, and that the debtor received a copy of the required disclosures and has completed and signed the agreement. In addition, when the debtor is represented by an attorney, with respect to credit unions, a required debtor notification is to explain the reaffirmation process and state that the reaffirmation agreement is effective upon filing with the court. By contrast, the required debtor notification for agreements with all other types of creditors states that the agreement is effective upon filing with the court unless the agreement is presumed to be an undue hardship.

Required Reform Act Disclosure Statements Were Included in Most Reaffirmation Agreements, though Required Information Was Missing in Some Agreements

We estimate that required disclosure statements were included in most reaffirmation agreements for each of the five districts.¹¹ For example, we estimate inclusion of the statement "Amount Reaffirmed" and the amount was from 87 percent (in WV-S) to 98 percent (in CA-C) of all reaffirmation agreements. Similarly, we estimate that the statement "Annual Percentage Rate" and the amount were in 86 percent (in AL-N and WV-S) to 97 percent (in CA-C) of all reaffirmation agreements for the five districts. Debtor attorney certifications were frequently included in reaffirmation agreements signed by attorneys—from an estimated 95 percent (in WV-S) to 100 percent (in CA-C) of agreements. We also estimate that 67 percent (in AL-N and WV-S) to 88 percent (in IL-N) of non-credit union agreements included monthly income, expense, and net income information—conversely, an estimated 12 percent (in IL-N) to 33 percent (in AL-N and WV-S) were missing this required information (as mentioned previously, these data are not required of credit union agreements signed by a debtor attorney). This information helps to inform debtors, debtor attorneys,

¹¹ We estimate that 5 percent (in CA-C) to 25 percent (in AL-N) of Chapter 7 cases filed in the five bankruptcy court districts during the period of our review included at least one reaffirmation agreement. Appendix IV lists the percentage of Chapter 7 cases by district that we estimate had reaffirmation agreements during our period of review.

creditors, and court officials of the potential inability of the debtor to make payment on reaffirmed debt. While information about income, expenses and net income available can be determined from other schedules in the bankruptcy filings or during hearings, having that information included in the agreement makes it easier for the courts to evaluate the debtor's financial situation. In March 2007, the Judicial Conference's Advisory Committee on Bankruptcy Rules¹² proposed the use of a reaffirmation agreement coversheet that, if approved, would make it mandatory for debtors to provide income and expense information, among other things, on the coversheet to be used in the evaluation of undue hardship. If approved by the Judicial Conference, the mandatory coversheet would appear to address the issue of missing financial information.

Financial Data, Asset Information, and Debtor Notifications Included in Most Reaffirmation Agreements

The Reform Act requires that reaffirmation agreements include financial data disclosure statements for the amount reaffirmed and the annual percentage rate for the amount reaffirmed. As shown in table 2, we estimate that these disclosure statements were included in a high percentage of all agreements within the five districts. For example, the statement "Amount Reaffirmed" and the amount were included in an estimated 87 percent (in WV-S) to 98 percent (in CA-C) of all reaffirmation agreements. Similarly, the statement "Annual Percentage Rate" and the amount were included in an estimated 86 percent (in AL-N and WV-S) to 97 percent (in CA-C) of all reaffirmation agreements for the five districts.

The Reform Act requires several notification disclosure statements designed to help ensure that debtors make decisions about reaffirming debt that are in their best interests, such as informing them of the reaffirmation agreement process as well as the effect of agreeing to reaffirm debt. We estimate these notification disclosure statements were included in high percentages of reaffirmation agreements in all five districts. One notification disclosure explains the reaffirmation process and certain requirements. For example, the disclosure instructs debtors on

¹² The Judicial Conference of the United States operates through a network of committees created to address and advise on a wide variety of subjects, such as information technology, personnel, court administration, and rules of practice and procedure. The Committee on Rules of Practice and Procedure reviews recommendations submitted by the Advisory Committee and approves, modifies, disapproves, or returns those recommendations to the Advisory Committees, as appropriate. The Committee on Rules of Practice and Procedure also transmits proposed rules changes to the Judicial Conference.

which sections of the agreement to read and sign and under what circumstances the agreement may be reviewed by the court before becoming effective. The notification also informs debtors, among other things, of their right to rescind the agreement and that reaffirmation agreements are not required. As shown in table 2, we estimate that non-credit union reaffirmations included the notification disclosure statement explaining the reaffirmation process and certain requirements in an estimated 87 percent (in AL-N) to 96 percent (in CA-C) of reaffirmation agreements for the five districts. This disclosure statement differs for credit unions. We provide estimates for inclusion of disclosure statements in credit union agreements later in this report.

Other required debtor notification disclosure statements were also included in high percentages of reaffirmation agreements in the five districts. As shown in table 2, we estimate that 87 percent (in WV-S) to 97 percent (in CA-C) of all reaffirmation agreements within the five districts included a statement instructing debtors to review the required disclosures. Similarly, we estimate that 87 percent (in WV-S) to 97 percent (in CA-C) of all reaffirmation agreements in the five districts included a statement that summary information in the reaffirmation agreement was made pursuant to the requirements of the Bankruptcy Code.

With respect to unsecured debts, other than requiring a brief description of the credit agreement, the Reform Act does not provide a specific disclosure statement for inclusion of asset information, the original purchase price, or the original amount of the loan. However, when a reaffirmed debt is secured by an asset, the Reform Act requires both the asset and either the original purchase price or original amount of the loan be listed in the agreement. As shown in table 2, we estimate that required information describing the asset securing the agreement was included in 87 percent (in WV-S) to 99 percent (in CA-C) of agreements in the five districts. The original purchase price or the original amount of the loan was also included in a high percentage of agreements—an estimated 81 percent (in WV-S) to 91 percent (in CA-C) for the five districts.

Table 2: Estimated Percentages for Inclusion of Required Financial Data, Asset Information, and Debtor Notification Statements in Reaffirmation Agreements Filed in Five Selected Bankruptcy Courts

Reaffirmation section and description	Required disclosure statements and other information	AL-N	CA-C	IL-N	TX-N	WV-S
Part A: Financial data, asset information, and debtor notifications	Disclosure statements					
	“Amount Reaffirmed” and the amount	90	98	96	93	87
	Statements accompanying Amount Reaffirmed data	88	97	96	91	87
	“Annual Percentage Rate” and the amount	86	97	91	92	86
	Statement instructing debtor to review disclosures	88	97	96	92	87
	Statements indicating “Summary of Reaffirmation Agreement” and that the summary is pursuant to the Bankruptcy Code	88	97	96	92	87
	Statement accompanying variable rate transactions, if applicable	^a	^a	^a	^a	^a
	Statement instructing debtor to consult with attorney or a judge regarding the effect of reaffirming a debt	85	96	91	89	85
	Statement explaining the reaffirmation process and certain requirements ^b	87	96	90	90	89
	Other information					
	Description of asset securing the agreement, if applicable	94	99	97	97	87
	Original purchase price or the original amount of the loan, if applicable	84	91	87	90	81

Source: GAO analysis of bankruptcy file reviews.

^aWe are not able to generate reliable estimates for variable rate transactions because of the low numbers of reaffirmation agreements with these characteristics.

^bBecause this disclosures statement differs for credit unions, these data are for non-credit unions only. See appendix II for credit union disclosure data.

Debtor Agreement Disclosure Statement Included in Most Reaffirmation Agreements

The Reform Act requires a disclosure statement that includes a statement that the debtor agrees to reaffirm the debt, a field for a brief description of the credit agreement, a field for a description of any changes to the credit agreement made as part of the reaffirmation agreement, and fields for debtor and creditor signatures. As shown in table 3, we estimate that this statement by the debtor was included in 84 percent (in WV-S) to 95 percent (in CA-C) of all reaffirmation agreements within each of the five districts. We also estimate that creditors or debtors included required information describing the credit agreement in 76 percent (in WV-S) to 84 percent (in IL-N) of all reaffirmation agreements in the five districts, as shown in table 3. These descriptions varied in content. For example, when reviewing reaffirmation agreements, we observed agreements that included descriptive information about the type of contract involved in the transaction, such as a type of “retail installment contract” or “promissory

note.” Other agreements included more detail about the terms of the credit agreement, such as the number of payments, monthly payment amounts, and original amount of the loan.

Table 3: Estimated Percentages for Inclusion of Required Debtor Agreement Statement and Other Information in Reaffirmation Agreements Filed in Five Selected Bankruptcy Courts

Reaffirmation section and description	Required disclosure statements and other information	AL-N	CA-C	IL-N	TX-N	WV-S
Part B: Debtor agreement statement	Disclosure statement					
	Statement that debtor agrees to reaffirm the debt, a field for a brief description of the credit agreement, a field for a description of any changes to the credit agreement made as part of the reaffirmation agreement, and fields for debtor and creditor signatures	87	95	94	91	84
	Other information					
	Description of credit agreement	81	77	84	82	76

Source: GAO analysis of bankruptcy file reviews.

While not required information in all reaffirmation agreements, in a few reaffirmation agreements in the five districts, creditors or debtors included a description of changes to the credit agreement made as a part of the reaffirmation. We estimate that 12 percent (in AL-N) to 20 percent (in CA-C and WV-S) of all reaffirmations within the five districts included a description of such a change. For example, in one district we reviewed 36 agreements that had changes identified in the agreement. The interest rate was cited as a change in 17 of these 36 agreements. Other changes described in the remaining 19 agreements included reductions in the loan balance, changes to the payment date, and changes in the monthly payment amount. Because analysis of these 36 agreements was conducted in addition to our standardized file review, we are not able to generalize these figures to all reaffirmations in this district.

Debtor Attorney Certification Included in Most Reaffirmation Agreements, although Notice of Undue Hardship Unclear in Some Agreements

Debtor attorneys signed reaffirmation agreements in an estimated 90 percent to 97 percent of all agreements in each of the five districts.¹³ When a debtor attorney signs a reaffirmation agreement, the Reform Act requires that a disclosure statement be included with the signature. The disclosure statement includes the debtor attorney’s certification that (1) the agreement represents a fully informed and voluntary agreement by the debtor, (2) the agreement does not impose an undue hardship on the debtor or any dependent of the debtor, and (3) that the attorney has fully advised the debtor of the legal effect and consequences of the agreement and any default under the agreement. As shown in table 4, we estimate that this required attorney disclosure statement was included in 95 percent (in WV-S) to 100 percent (in CA-C) of reaffirmations signed by attorneys in the five districts.

Table 4: Estimated Percentages for Inclusion of Debtor Attorney Certification Statements and in Reaffirmation Agreements Filed in Five Selected Bankruptcy Courts

Reaffirmation section and description	Required disclosure statement and other information	AL-N	CA-C	IL-N	TX-N	WV-S
Part C: Certification by the debtor’s attorney	Disclosure statement Statement that (1) the agreement is a fully informed and voluntary agreement by the debtor, (2) that the agreement does not impose an undue hardship on the debtor, and (3) that the attorney has fully advised the debtor of the effect of the agreement.	98	100	99	97	95

Source: GAO analysis of bankruptcy file reviews.

In addition to the disclosure statement, the Reform Act requires that when a presumption of undue hardship has been established with respect to the agreement, the debtor attorney certify that in his or her opinion, the debtor is able to make the reaffirmation payment. We estimate that 1 percent (in CA-C) to 11 percent (in WV-S) of all reaffirmation agreements with non-credit unions in the five districts included an attorney certification statement explicitly identifying that a presumed undue hardship was established with respect to the agreement, and that in the opinion of the attorney, the debtor could make the reaffirmation payment.¹⁴ Reaffirmation agreements are not required by the Reform Act

¹³ The estimates are 90 percent for CA-C, 94 percent for AL-N and for WV-S, and 97 percent for IL-N and for TX-N.


¹⁴ Under the Reform Act, the debtor attorney certification where a presumption of undue hardship is established is not applicable to reaffirmation agreements with credit unions.

to include an explicit indication of whether a presumed undue hardship has been established with respect to the agreement. While we did not formally track the extent to which reaffirmation agreements forms included an explicit way for presumed undue hardship to be identified, we observed that some reaffirmation agreement forms included a way to explicitly identify presumed undue hardship in the debtor attorney certification and some did not. For example, we observed reaffirmation agreement forms that included the following language for debtor attorneys to certify, which has no explicit indication of whether a presumption of undue hardship had been established: "If a presumption of undue hardship has been established with respect to this agreement, in my opinion the debtor is able to make the payment." This statement is unclear because it does not explicitly identify whether a presumption of undue hardship has been established with respect to the reaffirmation agreement. Instead, the statement only indicates that "if" a presumption of undue hardship is established, the debtor attorney certifies that the debtor can make the payment. AOUSC's reaffirmation agreement form dated January 2007 addresses this ambiguity by placing a checkable box next to an explicit statement indicating that there is a presumption of undue hardship and that the debtor attorney certifies that the debtor is able to make the required payment. As mentioned previously, use of the AOUSC form is suggested but not required. Figures 2 and 3 illustrate clear and unclear debtor attorney certification of an undue hardship.


Figure 2: Excerpt of Unclear Attorney Certification Form

PART C: CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY)

I hereby certify that 1) this agreement represents a fully informed and voluntary agreement by the debtor(s); 2) this agreement does not impose a hardship on the debtor or any dependent of the debtor; 3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement and; (4) if there was a presumption of undue hardship, in my opinion, the debtor is able to make this payment.



(Signature of Debtor's Attorney, if any)



Date

BAPCA Multi-State Reaffirmation Agreement 9/22/05

Source: Federal judiciary's electronic public access service.

Figure 3: Excerpt of Clear Attorney Certification Form

PART C: CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY).

[To be filed only if the attorney represented the debtor during the course of negotiating this agreement.]

I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

[Check box, if applicable and the creditor is not a Credit Union.] A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

Printed Name of Debtor's Attorney: _____

Signature of Debtor's Attorney: _____

Date: _____

Source: Administrative Office of the U.S. Courts.

In some reaffirmation agreements, the debtor attorney certification portion of reaffirmation agreements included additional language beyond the disclosure statement required by the Reform Act. We estimate that from 1 percent (in CA-C) to 11 percent (in TX-N) of reaffirmation agreements in the five districts included such additional language. We observed several instances where the additional language supplemented the debtor attorney's certification by indicating that the attorney was not guaranteeing the debtor's reaffirmation payment. One example of this supplemental information is shown in figure 4.

Figure 4: Example of Additional Language Added to Debtor Attorney Certification

**However, council does not warrant the ability of the debtor to perform the terms of the Reaffirmation Agreement and the signing of this declaration shall in no way be construed as a guaranty by counsel of the debtor's obligations under said Reaffirmation Agreement*

A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

Source: Federal judiciary's electronic public access service.

Note: In the above text, with the exception of the marked out signatures and date, the wording is exactly as it appeared in the source document, including the asterisk, italics, bolding, and spelling errors.

Debtor Statement in Support of Agreement Included in Most Reaffirmation Agreements, although Required Data Missing in Some Agreements

The Reform Act requires a debtor statement in support of the reaffirmation agreement that is to include debtor-inserted data for determination of whether a presumption of undue hardship is established.¹⁵ The data to be inserted include monthly income, monthly expenses (which are to include payments on post-bankruptcy debt and other reaffirmation payments), and the monthly net income remaining to make the monthly payments for the reaffirmed debt. If the net income is not sufficient to pay the reaffirmation payments, a presumption of undue hardship is established that the debtor may overcome if the debtor explains, to the satisfaction of the court, how the debtor can afford to make the payments. Specifically, the court is required to review reaffirmation agreements where a presumption of undue hardship has been established when net income is insufficient for the reaffirmation payments. The court may approve or disapprove the agreement based on information presented to the court.

¹⁵ Not applicable to agreements with attorney-represented debtors reaffirming a debt with a credit union or when the agreement is for consumer debt secured by real property.

Table 5: Estimated Percentages for Inclusion of Debtor Statement in Support of Reaffirmation Agreement and Other Information in Reaffirmation Agreements with Non-Credit Unions Filed in Five Selected Bankruptcy Courts

Reaffirmation section and description	Required disclosure statements and other information	AL-N	CA-C	IL-N	TX-N	WV-S
Part D: Debtor statement in support of the reaffirmation agreement	Disclosure statement					
	Statement that the reaffirmation agreement does not impose an undue hardship on the debtor ^a	89	97	95	92	92
	Other information					
	Debtor monthly income, expense, and net income information to make the determination of whether a presumed undue hardship exists ^b	67	71	88	75	67

Source: GAO analysis of bankruptcy file reviews.

^aFigures are for non-credit unions only. See appendix II for information on disclosure inclusion for credit unions.

^bFigures are for non-credit unions only. Financial information is not required for debtors reaffirming a debt with a credit union where the debtor is represented by an attorney.

The majority of reaffirmation agreements were with non-credit unions—from 80 percent to 94 percent of reaffirmations in the five districts.¹⁶ As shown in table 5, we estimate that 89 percent (in AL-N) to 97 percent (in CA-C) of reaffirmation agreements with non-credit unions for the five districts included the debtor statement that the reaffirmation agreement does not impose an undue hardship on the debtor. We also estimate that 67 percent (in AL-N and WV-S) to 88 percent (in IL-N) of non-credit union agreements included monthly income, expense, and net income information—conversely, an estimated 12 percent (in IL-N) to 33 percent (in AL-N and WV-S) were missing this required information. This information is a key component in the presumption of undue hardship determination.¹⁷ While information about income, expenses, and net income available can be determined from other schedules in the bankruptcy filings or during hearings, having that information included in the agreement makes it easier for courts to evaluate the debtor’s financial situation. For example, one case included reaffirmation agreements certified by a debtor attorney for two automobiles with monthly payments

¹⁶ The estimates are 80 percent for AL-N, 82 percent for WV-S, 83 percent for CA-C, 84 percent for TX-N, and 94 percent for IL-N.

¹⁷ An article in *The American Bankruptcy Law Journal*, volume 81, issue 3, 2007 (pp. 266-270) discusses determination of the presumption of an undue hardship.

of \$315 and \$376.¹⁸ The debtor's statement in support for each reaffirmation agreement was signed by the debtor but did not include the required monthly income, expense, and net income data. According to monthly expenses and net income reported on other documents the debtor provided the court, which included only one of the reaffirmed car payment amounts as an expense, the debtor's monthly net income was negative \$131, reflecting the potential inability of the debtor to afford the reaffirmed payment amounts.¹⁹

Federal Judiciary Has Proposed a New Form to Evaluate Undue Hardship

In March 2007, the Judicial Conference's Advisory Committee on Bankruptcy Rules proposed the use of a reaffirmation agreement coversheet form that, if approved, would make it mandatory for debtors to provide financial information on the coversheet, such as amount of debt reaffirmed, the annual percentage rate for reaffirmed debt, monthly reaffirmation payment, and monthly income and expense information at the time of petition and reaffirmation agreement filings, to facilitate the evaluation of undue hardship. The coversheet form also requires a supplemental debtor certification that any explanation of the difference between the income and expenses reported on the debtor's bankruptcy petition documents and the income and expenses reported in the debtor's statement of support of the reaffirmation agreement is true and correct. According to AOUSC, this new coversheet form could take effect by December 1, 2009, after undergoing a period of at least 6 months for public comment on the new coversheet as well as final review by the Judicial Conference. If approved, the coversheet would appear to address the issue of missing financial information. See appendix V for the proposed reaffirmation agreement coversheet.

Small Percentage of Reaffirmation Agreements Required a Motion for Court Approval

The Reform Act requires that a motion for court approval be included in reaffirmation agreements when the debtor is not represented by an attorney. We determined whether debtors were not represented by an attorney by noting whether reaffirmation agreements were or were not signed by a debtor attorney. Reaffirmation agreements were not signed by debtor attorneys in an estimated 3 percent to 10 percent of agreements for

¹⁸ Under the Reform Act, the creditor may elect to include a repayment schedule in a reaffirmation agreement.

¹⁹ There was no indication in the case files whether one or both reaffirmation agreements were approved or disapproved by the court.

the five districts.²⁰ In two districts we had sufficient data to estimate the extent to which a motion for court approval was included when a debtor attorney did not sign the agreement. In the two districts (IL-N and WV-S), a motion for court approval was included in 62 percent²¹ (in WV-S) and 80 percent²² (in IL-N) of agreements. In one of the two districts (WV-S) court officials told us that regardless of whether or not a motion for court approval is filed, their internal process calls for clerk staff to review each reaffirmation agreement and forward those with undue hardship or lack of a debtor attorney's signature for court review. In the remaining three districts, the number of agreements including a debtor attorney signature was not sufficient to generate reliable estimates. Our review of cases in these three districts showed that 13 of 26 agreements (in AL-N), 28 of 34 agreements in (TX-N), and 20 of 23 agreements (in CA-C) without debtor attorney signatures included the motion.

Reaffirmation Agreements with Credit Unions Included Required Disclosures in Varying Percentages

Reaffirmation agreements with credit unions comprised an estimated 6 percent to 20 percent of all reaffirmations in each of the five districts.²³ As mentioned previously, under the Reform Act credit union reaffirmation agreements have different requirements than reaffirmation agreements with other types of creditors. The debtor notification statement explaining the reaffirmation agreement process is generally the same as the statement for other types of creditors. However, the debtor notification statement for credit union reaffirmation agreements indicates that the agreement is effective upon filing with the court (for non-credit unions, the debtor notification statement indicates that the agreement is effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship). For the five districts, reaffirmation agreements with credit unions included the complete credit union debtor notification statement that explained the reaffirmation agreement process and stated that reaffirmation agreements with credit unions are effective upon filing with

²⁰ The estimates are 3 percent for IL-N and for TX-N, 6 percent for AL-N and for WV-S, and 10 percent for CA-C.

²¹ The margin of error for this estimate is at most plus or minus 14 percent.

²² The margin of error for this estimate is at most plus or minus 14 percent.

²³ The estimates are 6 percent for IL-N, 16 percent for TX-N, 17 percent for CA-C, 18 percent for WV-S, and 20 percent for AL-N.

the court in an estimated 61 percent to 96 percent of agreements.²⁴ Another difference for agreements with credit unions is that the Reform Act does not require an agreement with credit unions to include debtors' monthly income, expense, and net income information in the debtor statement in support of the agreement (unless the agreement does not include a debtor attorney signature). Instead, the disclosure statement indicates that the debtor believes the agreement is in his or her financial interest and that he or she can afford to make the reaffirmation payments. In four districts²⁵ we estimate that from 54 percent to 93 percent²⁶ of agreements with credit unions included the credit union debtor statement in support of the agreement. However, for these same four districts, we also estimate that 45 percent to 96 percent²⁷ of agreements with credit unions included the debtor statement whereby the debtor's income, expense and net income information could be recorded even though such data were not required (because the agreement was with a credit union and the debtor was represented by an attorney). Appendix II includes estimates for inclusion of other required disclosure statements in agreements with credit unions for the five districts.

²⁴ The estimates are 61 percent for WV-S, 80 percent for AL-N, 82 percent for TX-N, and 96 percent for CA-C and for IL-N. Each of these estimates has a margin of error of plus or minus 18 percent or less.

²⁵ We are not able to generalize to credit union reaffirmation agreements in IL-N due to the small sample of credit union agreements in this district.

²⁶ The estimates are 54 percent for WV-S, 65 percent for TX-N, 77 percent for AL-N, and 93 percent for CA-C. Each of these estimates has a margin of error of plus or minus 18 percent or less.

²⁷ The estimates are 45 percent for TX-N and for WV-S, 80 percent for AL-N, and 96 percent for CA-C. Each of these estimates has a margin of error of plus or minus 18 percent or less. We are not able to generalize to all credit union reaffirmation agreements in IL-N due to the small sample of credit union agreements in this district.

Secured Debts for Autos and Homes Most Frequent Type of Reaffirmed Debt; for Most Agreements, Reaffirmed Debt Burden Less than 25 Percent of Total Debt

Secured Debts Most Frequently Reaffirmed

An estimated 90 percent (in AL-N) to 98 percent (in TX-N and WV-S) of reaffirmations in the five districts were for secured debts. Specifically, debtors more frequently reaffirmed debts for automobiles and homes in comparison to debts for other assets. We estimate that 54 percent (in AL-N) to 87 percent (in CA-C) of reaffirmations in the five districts were for automobiles. In addition to automobiles, in four districts, we estimate that between 15 percent (in WV-S) to 24 percent (in IL-N) of reaffirmation agreements were for homes. Reaffirmations for homes in the remaining district (CA-C) occurred in an estimated 2 percent of agreements. In addition to automobiles and homes, secured debts reaffirmed included, among other things, those for boats, electronics, and household goods. Appendix IV, table 14, provides more information on debts reaffirmed for each district.

Unsecured debt was reaffirmed infrequently—occurring in an estimated 2 percent to 10 percent of all reaffirmation agreements in the five districts.²⁸ In the one district where an estimated 10 percent of all reaffirmations were for unsecured debt, almost half of these agreements were for electricity service (agreements that reaffirmed delinquent payments on electricity service so that the service could continue). Because of the small number of reaffirmation agreements that were unsecured, the following information about these agreements is based on our review of actual reaffirmation agreements and is not projected to the entire population of reaffirmation agreements in the five districts. Twenty of the 52 unsecured agreements reviewed were for some type of credit card debt such as bank

²⁸ The estimates are 2 percent for TX-N and for WV-S, 3 percent for IL-N, 4 percent for CA-C and 10 percent for AL-N.

charge cards, lines of credit, and merchant credit cards. In the remaining 32 cases, debtors reaffirmed either an unsecured personal loan from a bank, a debt to another individual, a tax debt, or electricity service.

Similar to agreements for non-credit unions, most credit union reaffirmation agreements were for automobiles and houses. The types of secured and unsecured debts reaffirmed with credit unions generally did not differ from the types of secured and unsecured debts reaffirmed with non-credit unions. However, we are not able to make statistically significant comparisons between the types of debt reaffirmed by credit and non-credit unions because of the small number of credit union reaffirmation agreements.

For Most Agreements, Reaffirmed Debt Burden Less than 25 Percent of Total Debt

One concern that consumer advocates and academics have had is that if the debtor reaffirms a high proportion of the total debts owed when filing for bankruptcy, the debtor may not obtain the financial “fresh start” that is one of the fundamental purposes of bankruptcy. To determine whether debtors were reaffirming a large proportion of their total debts, we examined reaffirmed debts in each case we reviewed as a percentage of the total debts the debtor reported he or she owed when he or she filed for bankruptcy.²⁹

As shown in table 6, we estimate that in 58 percent (in AL-N) to 68 percent (in CA-C) of cases in the five districts, total reaffirmed debts were less than 25 percent of total debts. By contrast, in 0 percent (in TX-N) to 8 percent (in IL-N) of cases, reaffirmed debts comprised 75 percent or more of total debts. We reviewed 63 reaffirmation agreements in 26 cases in which reaffirmed debt was 75 percent or more of total debts. For these 26 cases, automobiles were reaffirmed in 20 cases, homes in 18, mobile homes in 2, and household goods or other assets in 5 of the cases. In addition, we estimate that the average total amount of debt reaffirmed per

²⁹ Individual bankruptcy cases may contain more than one reaffirmation agreement. We estimate that the average number of reaffirmations per case was from one to two for the five districts. While most cases that we reviewed included one or two reaffirmation agreements, we examined cases that had as many as eight reaffirmation agreements.

case for the five districts was from \$15,000 to \$47,000,³⁰ while the average of total debts per case was from \$120,000 to \$189,000.³¹

Table 6: Estimated Percentage of Cases in Five Districts by Total Amount Reaffirmed as Percentage of Total Debt

Total amount reaffirmed as percent of total debts	AL-N	CA-C	IL-N	TX-N	WV-S
0-24.9%	58	68	62	66	63
25-49.9%	17	28	15	24	19
50-74.9%	21	4	16	9	15
75-100%	4	1	8	0	2

Source: GAO analysis of bankruptcy file reviews.

Note: Figures may not add to 100 percent due to rounding.

The debt burden for debtors after bankruptcy may include debts in addition to those reaffirmed. For example, debtors' total debts may include student loans, child support obligations, or other financial obligations that cannot be discharged in bankruptcy. Our scope of work included gathering information about debts reaffirmed and total debts at the time of filing, but did not gather data on total debt burdens following discharge of all nonreaffirmed debt.

For the five districts, the average amount reaffirmed per reaffirmation agreement was an estimated \$12,000 to \$31,000 for non-credit union reaffirmation agreements.³² For each of the three districts for which we are able to estimate the average amount reaffirmed for credit unions, the

³⁰ The estimates and relative error for these estimates are \$15,000 plus or minus 11 percent for CA-C, \$28,000 plus or minus 17 percent for WV-S, \$34,000 plus or minus 22 percent for AL-N, \$35,000 plus or minus 21 percent for TX-N, and \$47,000 plus or minus 30 percent for IL-N.

³¹ The estimates and relative error for these estimates are \$120,000 plus or minus 12 percent for WV-S, \$149,000 plus or minus 26 percent for AL-N, \$161,000 plus or minus 24 percent for CA-C, \$180,000 plus or minus 21 percent for IL-N, and \$189,000 plus or minus 16 percent for TX-N.

³² The estimates and relative error for these estimates are \$12,000 plus or minus 11 percent for CA-C, \$20,000 plus or minus 17 percent for WV-S, \$25,000 plus or minus 22 percent for AL-N, \$26,000 plus or minus 18 percent for TX-N, and \$31,000 plus or minus 23 percent for IL-N.

average amount reaffirmed in credit union agreements was an estimated \$13,000.³³

Reaffirmed Interest Rates Were Less than or Equal to the Original Rate

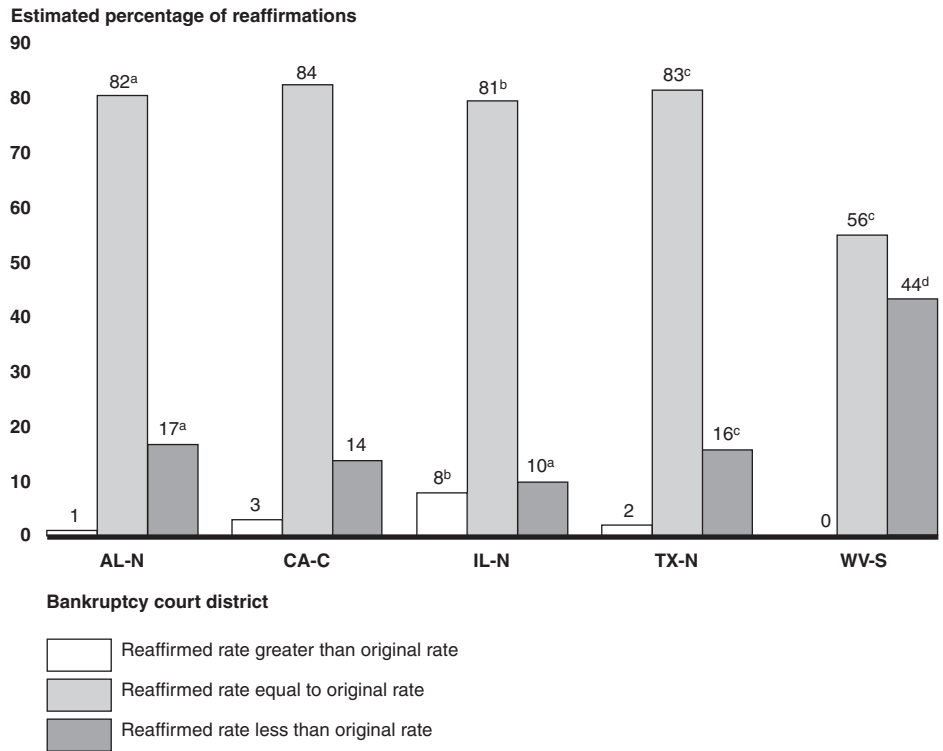
We estimate that the vast majority of interest rates on reaffirmed debt were equal to or less than the interest rate on the original debt, as shown in figure 5. As mentioned previously, the Reform Act requires that the rate on reaffirmed debt be disclosed as the “Annual Percentage Rate,” hereafter referred to as the interest rate. While the Reform Act requires a brief description of the underlying credit agreement, the interest rate for the original debt is not specifically required to be included in reaffirmation agreements. However, we found the original interest rate in reaffirmation agreements or attached original credit agreements in some case files. The original interest rate was available in five districts in an estimated 32 percent to 88 percent of reaffirmation agreements or their supporting documents.³⁴ One district had a high percentage of agreements with the original interest rate because the district had a standard form that required disclosure of the original interest rate.

As reflected in figure 5, we estimate that from 91 percent (in IL-N) to 100 percent (in WV-S) of agreements in each of the five districts had reaffirmed interest rates less than or equal to the original rate. In one of the five district bankruptcy courts (WV-S), the reaffirmed interest rate was less than the original interest rate in an estimated 44 percent of reaffirmation agreements. In the other four districts, interest rates were less than original interest rates in an estimated 10 percent (in IL-N) to 17 percent (in AL-N) of reaffirmation agreements.

³³ The estimates and relative error for the estimates are \$13,000 plus or minus 19 percent for CA-C, \$13,000 plus or minus 29 percent for TX-N, and \$13,000 plus or minus 28 percent for WV-S.

³⁴ The estimates are 32 percent for IL-N, 43 percent for AL-N and for WV-S, 44 percent for TX-N, and 88 percent for CA-C.

Figure 5: Estimated Percentage of Reaffirmation Agreements with Reaffirmed Interest Rates Greater than, Equal to, or Less than Original Rates



Source: GAO analysis of bankruptcy file reviews.

Note: Figures may not add to 100 percent due to rounding.

^aThe margin of error for this estimate is plus or minus 15 percent.

^bThe margin of error for this estimate is plus or minus 16 percent.

^cThe margin of error for this estimate is plus or minus 11 percent.

^dThe margin of error for this estimate is plus or minus 14 percent.

Average interest rates on reaffirmed debt were similar for the five districts. The same was true for original interest rates. For the five districts the average interest rate on the debt reaffirmed was an estimated 8 percent (in CA-C, IL-N, and TX-N) to 10 percent (in AL-N and WV-S), while the average interest rate on the original debt was an estimated 9 percent (in TX-N) to 14 percent (in AL-N).

Moreover, we noted the following characteristics:

- For 9 (of 1,164) reaffirmation agreements we reviewed where the reaffirmed interest rate was greater than the original rate, the amount of the interest rate increase ranged from 0.10 percentage points to 4.25 percentage points. Four of the agreements were for houses, 3 for automobiles, 1 for a mobile home, and 1 for household goods. A variety of creditors were involved in the 9 agreements—ranging, for example, from two credit unions to a mortgage company and a department store.
- For 72 (of 1,164) reaffirmation agreements we reviewed where the reaffirmed interest rate was less than the original rate, the amount of the interest rate decrease ranged from 0.01 percentage points to 26.99 percentage points—which was for a reduction in rate to 0 percent. Over half of the 72 reaffirmation agreements were for automobiles and homes—44 were for automobiles and 7 were for homes. The remaining 21 agreements included 6 agreements for household goods, 5 for mobile homes, 8 agreements for a wide variety of debt—including jewelry and electronic equipment—and 2 agreements that did not disclose the type of debt.
- For the 61 (of 1,164) reaffirmation agreements we reviewed with credit unions (that disclosed both an original and a reaffirmed interest rate), in each of the five bankruptcy courts the interest rate on the reaffirmed debt was equal to or less than the interest rate on the original debt in all but 2 reaffirmation agreements—10 of 10 agreements in AL-N, 27 of 28 agreements in CA-C, 2 of 2 agreements in IL-N, 16 of 17 agreements in TX-N, and 4 of 4 agreements in WV-S.

We interviewed four creditors who were among the firms that most frequently engaged in reaffirmations that we reviewed in the five selected districts. Officials from three of these creditors stated that during the reaffirmation process their policy was to not adjust credit terms, such as interest rates, from the terms established in original debt contracts. The fourth creditor said that when reaffirming debt it had a policy to consider reducing amounts reaffirmed and interest rates based on certain criteria.³⁵

³⁵ According to officials with one creditor, the firm's policy was to offer debtors reaffirming automobile debt reduced interest rates and principal balances if the reductions were within ranges established by the creditor. For example, interest rates may be reaffirmed at the original rate or 8 percent, whichever is less.

As mentioned previously, reaffirmed unsecured debt occurred in a small number of reaffirmation agreements reviewed (52 of 1,164). Consequently, information about these agreements is based on our review of actual reaffirmation agreements and is not projected across the entire population of reaffirmed agreements in the five districts. Interest rates and amounts reaffirmed for unsecured debt in reaffirmations varied in the agreements we reviewed in the five districts. Interest rates ranged from 0 to 21 percent among 41 of 52 unsecured reaffirmations that disclosed a reaffirmed interest rate. Nineteen of the 41 agreements were reaffirmed with a 0 percent interest rate, while the remaining 22 agreements had interest rates ranging from 7.99 to 21 percent. Examples of unsecured debt reaffirmed at 0 percent interest included electricity service and credit card debt. Examples of unsecured debt reaffirmed in the 7.99 to 21 percent range included overdraft protection for a checking account reaffirmed at a 12 percent interest rate and a credit card reaffirmed at a 21 percent interest rate. Amounts reaffirmed for the 52 unsecured agreements also varied (all of the agreements had amounts reaffirmed disclosed), ranging from \$0 (for a line of credit on a credit card) to \$25,000 (for a legal fine owed by a debtor). While we cannot generalize average amounts for unsecured reaffirmations, for the 52 agreements we reviewed, the average amount of unsecured debt reaffirmed was \$2,300.

During our review, court officials in one district and academics who conduct bankruptcy research that we spoke with expressed concerns that debtors who are not represented by an attorney would potentially be at a disadvantage. To test this premise, we analyzed interest rate data based on whether a debtor attorney had signed an agreement (our proxy for whether a debtor was represented by an attorney) and when an original interest rate could be determined (disclosure of the original interest rate is not required). When a reaffirmation agreement did not include a debtor attorney's signature, the interest rate on the reaffirmed debt was equal to or less than the interest rate on the original debt in all reaffirmations reviewed in each of the five bankruptcy courts. In addition, with the exception of one district, we estimate that there was no significant difference between the average interest rate on reaffirmed debt when a reaffirmation agreement either included or did not include a debtor attorney's signature. In one district where the difference was statistically significant, however, the average reaffirmed interest rate was an estimated 8 percent when the agreement was signed by a debtor attorney, and an estimated 12 percent when the agreement was not signed by a debtor attorney.

Agency Comments

We requested comments on a draft of this report from the Director of AOUSC. AOUSC reviewed a draft of this report and had technical comments, which we incorporated as appropriate.

We are sending copies of this report to the Director of AOUSC and interested congressional committees and parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8757 or jenkinswo@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff contributing to this report are listed in appendix VI.



William O. Jenkins, Jr., Director
Homeland Security and Justice Issues

Appendix I: Objectives, Scope, and Methodology

Our objectives were to determine the following:

- To what extent have required Reform Act disclosure statements and other required information (such as the annual percentage rate for the reaffirmed debt) been incorporated into reaffirmation agreements?
- What types of debts were reaffirmed and to what extent did reaffirmed debt amounts comprise debtors' overall debt burden when they filed for bankruptcy?
- How did the reaffirmed and original interest rates compare?

To answer these objectives, in five selected bankruptcy court districts we reviewed a representative sample of bankruptcy cases that included at least one reaffirmation agreement. We selected this sample of bankruptcy cases from a universe of bankruptcy case data provided by bankruptcy court officials. We determined that these data were sufficiently reliable to develop the universe of cases for each of the five district bankruptcy courts. To determine the reliability of the bankruptcy data, we reviewed documentation about the system that produced them and interviewed agency officials knowledgeable about the data. Our case file review was performed using a data collection instrument that included uniform questions to ensure data were collected consistently. We relied on data presented in bankruptcy documents filed with the courts by debtors, creditors, and debtor attorneys. Bankruptcy courts and U.S. Trustees manage bankruptcy cases and perform some measures to verify data that help ensure the reliability of information provided. For example, bankruptcy court officials have measures to ensure that data entered into information systems is accurate. Also, as a part of the bankruptcy process, the U.S. Trustee Program verifies selected debtor-reported financial data, such as income and assets.

We also interviewed bankruptcy experts, creditor officials as well as bankruptcy court, U.S. Trustee, and bankruptcy administrator officials. We used information gathered during these interviews to identify data contained in bankruptcy file documents, including reaffirmation agreements, that could assist in answering our objectives. We considered reviewing reaffirmation agreements from a nationally representative sample of bankruptcy cases that included at least one reaffirmation agreement. However, because of the nature of the bankruptcy courts' data, information needed to develop a sample frame of cases with reaffirmation agreements is only available at the district level. In addition, we interviewed four creditors that we identified during our document review

as the creditors that most frequently signed reaffirmation agreements in the five selected districts.

When reviewing reaffirmation agreements, we determined both whether complete disclosure information was included in the reaffirmation agreement and whether the language in the disclosure, while complete, varied at all from what is required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (referred to here as the Reform Act). Reaffirmation agreements had some variation in disclosure language, as is allowed by the Reform Act, but the variations were generally minor alterations to the disclosure that did not affect the disclosure content. For example, headings were often inserted in the Part A disclosure sections that were not prescribed in the Reform Act but that did not affect the disclosure content. In another example of variation, many agreements also included both credit union and non-credit union disclosure information. For purposes of our analysis, we combined the data categories indicating inclusion of a verbatim disclosure and a nonverbatim (but complete) disclosure.

To obtain additional information about reaffirmation agreements and the bankruptcy process, we reviewed literature from bankruptcy journals and attended the American Bankruptcy Institute One-Year Anniversary Program on the Bankruptcy Abuse Prevention and Consumer Protection Act, October 16, 2006, in Washington, D.C.

Our work was conducted from June 2006 through November 2007 in accordance with generally accepted government auditing standards.

Selection of Five Bankruptcy Court Districts for File Review

In selecting bankruptcy court districts in which to conduct reviews of cases with reaffirmation agreements, we selected courts based on the following criteria: a range of filing volume, proportion of Chapter 7 filings within the bankruptcy courts,¹ whether cases were overseen by the U.S. Trustee Program or the Bankruptcy Administrator program,² and the courts' geographic location. During the January 1, 2001, to June 30, 2006, time period, the average quarterly filing volume for the nation's 90 district bankruptcy courts was 385,424. The five districts we selected collectively represented about 12 percent of those quarterly filings. When determining which districts to include in our study, we selected the 2001 to 2006 time period to gather sufficient historical filing data to determine the average number of filings each district had over time.

¹According to the Administrative Office of the U.S. Court's (AOUSC) *Bankruptcy Basics* guide, Chapter 7 debtors may continue paying a dischargeable debt (such as an auto loan) after the bankruptcy, usually for the purpose of keeping collateral (i.e., the car) that would otherwise be subject to repossession.

²The U.S. Trustee Program is the component of the Department of Justice responsible for supervising the administration of bankruptcy cases and private trustees in all but the six bankruptcy court districts in Alabama and North Carolina. Separate from the U.S. Trustee Program, these six districts, also known as the Bankruptcy Administrator program, have judicial branch bankruptcy administrators perform duties similar to those of the U.S. Trustee program, including overseeing the administration of bankruptcy cases, maintaining a panel of private trustees, and monitoring the transactions and conduct of parties in bankruptcy.

Table 7: Characteristics of Five Selected Bankruptcy Court Districts Relied upon When Selecting Districts for Review

Bankruptcy district	Geographic region	Bankruptcy Administrator or U.S. Trustee	Personal bankruptcy filing volume (quarterly data 1-1-01 to 6-30-06)		Proportion Chapter 7 ^a (1-1-01 to 6-30-06)
			Average quarterly filings	Percent of national filings	Chapter 7 proportion
CA-C	West	U.S. Trustee	17,680	4.6%	87%
TX-N	South Central	U.S. Trustee	7,250	1.9%	50%
AL-N	South Atlantic	Bankruptcy Administrator	6,154	1.6%	50%
WV-S	South Central East	U.S. Trustee	1,648	0.4%	95%
IL-N	Midwest	U.S. Trustee	13,664	3.6%	73%
Total for 5 selected districts	Not applicable	Not applicable	46,396	12%	Not applicable
National average	Not applicable	Not applicable	385,424	100%	71%

Source: GAO analysis of AOUSC data.

^aProportion of Chapter 7 cases was based on comparing the total number of Chapter 7 to Chapter 13 cases. Most individuals file for bankruptcy under Chapter 7 or Chapter 13. In Chapter 7, debtors are discharged of eligible debts and assets are liquidated (unless associated debt is reaffirmed). Chapter 13 allows a debtor to keep property and pay debts over time, usually 3 to 5 years.

Selection of Cases Reviewed within Five Bankruptcy Court Districts

At each of the selected bankruptcy court districts, we obtained a universe of all cases with at least one reaffirmation agreement filed between October 17, 2005, and October 17, 2006. We chose this time period because the Reform Act's effective date for reaffirmation agreement requirements was October 17, 2005. We selected stratified random probability samples of cases from each bankruptcy court. We stratified the sampling universe for each district by case status (open versus closed) and by pro se status (i.e., debtors who file for bankruptcy without attorney representation). For each selected case, we examined every reaffirmation agreement on record. We calculated estimates of percentages and means/medians at the reaffirmation agreement level using methods appropriate for stratified cluster samples. Table 8 provides a description of the sampling universe and samples for the five selected districts.

**Appendix I: Objectives, Scope, and
Methodology**

Table 8: Description of Sampling Universe and Samples for Five Selected Districts for Cases Filed from October 17, 2005, through October 17, 2006

TX-N		
Stratum	Universe size	Sample size
(1) Pro se open cases	6	6
(2) Pro se closed cases	15	15
(3) Non-pro se open cases	228	66
(4) Non-pro se closed cases	729	83
Total	978	170
IL-N		
Stratum		
(1) Pro se open cases	7	7
(2) Pro se closed cases	49	31
(3) Non-pro se open cases	161	59
(4) Non-pro se closed cases	1,607	89
Total	1,824	186
WV-S		
Stratum		
(1) Pro se open cases	4	4
(2) Pro se closed cases	3	3
(3) Non-pro se open cases	103	49
(4) Non-pro se closed cases	84	45
Total	194	101
AL-N		
Stratum		
(1) Pro se open cases	4	4
(2) Pro se closed cases	14	14
(3) Non-pro se open cases	163	60
(4) Non-pro se closed cases	1,056	87
Total	1,237	165
CA-C		
Stratum		
(1) Pro se open cases	87	29
(2) Pro se closed cases	111	37
(3) Non-pro se open cases	156	45
(4) Non-pro se closed cases	342	60
Total	696	171

Source: GAO analysis of information provided by district courts

With these probability samples, each case had a nonzero probability of being selected, and that probability could be computed for any case. Each selected case was subsequently weighted in the analysis to account statistically for all the members of the population, including those who were not selected.

Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval (e.g., plus or minus <YY> percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. As a result, we are 95 percent confident that each of the confidence intervals in this report will include the true values in the study population.

Estimates from these samples are not generalizable to the population of all bankruptcy courts; however, they can be generalized to each of the selected bankruptcy court districts and are intended for illustrative purposes. All percentage estimates in this report have a margin of error of plus or minus 10 percent or less, unless otherwise noted. All mean and median estimates have a relative error of 20 percent or less, unless otherwise noted. Some percentage estimates we present have a margin of error greater than plus or minus 10 percent. This occurred for percentage estimates based on a small number of cases in the district samples with specific characteristics that were unavailable to us prior to sampling. For instance, when we present percentage estimates for reaffirmation agreements made with credit unions, which we estimate comprises only 6 to 20 percent of all reaffirmation agreements across the districts, the small number of agreements made with credit unions in the samples results in larger margins of error. Some mean and median estimates we present in this report have a great deal of variance, resulting in large percentages of relative error. For instance, when we discuss the mean and median amount of the debt reaffirmed per reaffirmation agreement, individual reaffirmation agreement debts range from very low amounts (such as a small outstanding balance for an automobile) to much higher amounts (as with the outstanding balance for the mortgage on a home), these large variations result in larger percentages of relative error.

Appendix II: Reaffirmation Agreement Disclosures and Required Information; Estimates for Credit Unions

This appendix includes two tables. Table 9 presents Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Reform Act) reaffirmation agreement disclosure statements and other required information. We included disclosure inclusion information for all reaffirmation agreements in the letter portion of this report. Because some Reform Act provisions apply only to credit unions, we present data solely for credit unions in table 10. Table 10 shows estimated percentages for inclusion of disclosure statements and other required information for reaffirmation agreements with credit unions, for five bankruptcy court districts—Northern Alabama (AL-N), Central California (CA-C), Northern Illinois (IL-N), Northern Texas (TX-N), and Southern West Virginia (WV-S). As the tables indicate, the Reform Act places most information on reaffirmation agreements within five separately labeled sections—A through E—each with its own set of disclosure statements. Italicized areas in table 9 denote disclosure statements that GAO assessed were or were not included in reviewed reaffirmation agreements.

Table 9: Reform Act Reaffirmation Agreement Disclosure Statements and Other Required Information

Reform Act reaffirmation agreement section	Requirement applicability	Disclosure number ^a	Reaffirmation agreement disclosures ^b
Part A	All agreements	1	The statement: <i>“Part A: Before agreeing to reaffirm a debt, review these important disclosures.”</i>
Part A	All agreements	2	Under the heading <i>“Summary of Reaffirmation Agreement,”</i> the statement: <i>“This Summary is made pursuant to the requirements of the Bankruptcy Code.”</i>
Part A	All agreements	3	The <i>“Amount Reaffirmed,”</i> using that term.
Part A	All agreements	4	In conjunction with the disclosure of the “Amount Reaffirmed,” the statements— <i>“(i) ‘The amount of debt you have agreed to reaffirm’; and</i> <i>“(ii) ‘Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.’”</i>
Part A	All agreements	5	The <i>“Annual Percentage Rate,”</i> using that term.
Part A	Variable rate transactions	6	If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating <i>“The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.”</i>
Part A	All agreements (secured assets only)	7	(1) asset or type of asset
Part A	All agreements (secured assets only)	8	(2) original purchase price or original amount of loan

**Appendix II: Reaffirmation Agreement
Disclosures and Required Information;
Estimates for Credit Unions**

Reform Act reaffirmation agreement section	Requirement applicability	Disclosure number ^a	Reaffirmation agreement disclosures ^b
Part A	Optional for all agreements	9	<p>At the election of the creditor, a statement of the repayment schedule using one or a combination of the following—</p> <p>“(i) by making the statement: ‘Your first payment in the amount of \$___ is due on ___ but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.,’ and</p> <p>stating the amount of the first payment and the due date of that payment in the places provided;</p> <p>“(ii) by making the statement: ‘Your payment schedule will be:,’ and describing the repayment schedule with the number, amount, and due dates or period of payments scheduled to repay the debts reaffirmed to the extent then known by the disclosing party; or</p> <p>“(iii) by describing the debtor’s repayment obligations with reasonable specificity to the extent then known by the disclosing party.”</p>
Part A	All agreements	10	<p>The following statement: “<i>Note: When this disclosure refers to what a creditor ‘may’ do, it does not use the word ‘may’ to give the creditor specific permission. The word ‘may’ is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don’t have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.</i>”</p>
Part A	Non-credit unions only	11	<p>The following additional statements:</p> <p>“ ‘Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.</p> <p>‘1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).</p> <p>‘2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.</p> <p>‘3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.</p> <p>‘4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.</p> <p>‘5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.</p> <p>‘6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.</p> <p>‘7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court</p>

**Appendix II: Reaffirmation Agreement
Disclosures and Required Information;
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Reform Act reaffirmation agreement section	Requirement applicability	Disclosure number ^a	Reaffirmation agreement disclosures ^b
			<p><i>must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.</i></p> <p><i>‘Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).</i></p> <p><i>‘What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement.</i></p> <p><i>‘For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.</i></p> <p><i>‘Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.</i></p> <p><i>‘What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property.</i></p> <p><i>‘A “lien” is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State’s law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.’’</i></p>
Part A	Credit Unions Only	12	<p>If creditor is a credit union, the entire above disclosure (#11) should be included except that item 6 should read as follows:</p> <p><i>“6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.”</i></p>
Part B	All agreements	13	<p><i>“Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts arising under the credit agreement described below.</i></p> <p><i>‘Brief description of credit agreement:</i></p> <p><i>‘Description of any changes to the credit agreement made as part of this reaffirmation agreement:</i></p> <p><i>‘Signature: Date:</i></p>

**Appendix II: Reaffirmation Agreement
Disclosures and Required Information;
Estimates for Credit Unions**

Reform Act reaffirmation agreement section	Requirement applicability	Disclosure number ^a	Reaffirmation agreement disclosures ^b
			<p><i>'Borrower:</i></p> <p><i>'Co-borrower, if also reaffirming these debts:</i></p> <p><i>'Accepted by creditor:</i></p> <p><i>'Date of creditor acceptance.'</i></p>
Part C	Attorney-signed agreements only	14	<p><i>" 'Part C: Certification by Debtor's Attorney (If Any).</i></p> <p><i>'I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.</i></p> <p><i>'Signature of Debtor's Attorney: Date.'</i></p>
Part C	Attorney-signed agreements only; non-credit unions only	15	<p><i>If a presumption of undue hardship has been established with respect to such agreement, such certification shall state that in the opinion of the attorney, the debtor is able to make the payment.</i></p>
Part D	Credit Unions	16	<p><i>"I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement."</i></p>
Part D	Non-Credit unions (unless credit union agreement is not signed by a debtor attorney)	17	<p><i>" 'Part D: Debtor's Statement in Support of Reaffirmation Agreement.</i></p> <p><i>'1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is \$_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$_____, leaving \$_____ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____.</i></p> <p><i>'2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement."</i></p>
Part E	Agreements not signed by attorneys	18	<p><i>" 'Part E: Motion for Court Approval (To be completed only if the debtor is not represented by an attorney.). I (we), the debtor(s), affirm the following to be true and correct:</i></p> <p><i>'I am not represented by an attorney in connection with this reaffirmation agreement.</i></p> <p><i>'I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):</i></p> <p><i>'Therefore, I ask the court for an order approving this reaffirmation agreement."</i></p>

Source: GAO analysis of the Reform Act.

**Appendix II: Reaffirmation Agreement
Disclosures and Required Information;
Estimates for Credit Unions**

^aEach reaffirmation agreement section corresponds with specific disclosure statements required by the Reform Act. While the Reform Act includes the identification of Parts A through E, GAO independently numbered the corresponding disclosure statements.

^bShaded area denotes disclosure statements that GAO determined were or were not included in reviewed reaffirmation agreements.

Table 10 lists disclosure information for reaffirmation agreements with credit unions. The percentage estimates can be generalized to all reaffirmation agreements with credit unions in cases filed in the five districts between October 17, 2005, and October 17, 2006. Unless otherwise noted, our percentage estimates in table 10 fall within a margin of error of plus or minus 20 percent or less.

Table 10: Estimated Percentage of Reaffirmation Agreements with Credit Unions That Included Disclosure Statements and Required Information for Five Selected Bankruptcy Court Districts

Reaffirmation Agreement Section	Disclosure number ^a	AL-N	CA-C	IL-N	TX-N	WV-S
Part A	1	80	96	98	89	61
Part A	2	80	96	98	89	61
Part A	3	90	96	98	90	61
Part A	4	80	96	98	83	61
Part A	5	86	96	98	89	58
Part A	6	^b	^b	^b	^b	^b
Part A	7	99	97	97	94	65
Part A	8	74	97	97	83	62
Part A	9	87	100	97	93	100
Part A	10	80	96	96	83	57
Part A	12	80	96	96	82	61
Part B	13	80	96	98	83	61
Part C	14	100	100	^b	97	89
Part D	16	77	93	^b	65	54
Part E	18	^b	^b	^b	^b	^b

Source: GAO analysis of bankruptcy file reviews.

^aThe disclosure numbers correspond to those listed in table 9, although only disclosure numbers that apply to credit unions are listed in table 10.

^bBecause of the low numbers of reaffirmation agreements with these characteristics, we are not able to generate reliable estimates for these reaffirmation agreement sections.

Appendix III: Federal Judiciary Reaffirmation Agreement Form, January 2007

Form 240A - Reaffirmation Agreement (1/07)

Presumption of Undue Hardship
 No Presumption of Undue Hardship
(Check box as directed in Part D: Debtor's Statement in Support of Reaffirmation Agreement.)

UNITED STATES BANKRUPTCY COURT
District of _____

In re _____, Case No. _____
Debtor Chapter _____

REAFFIRMATION AGREEMENT

[Indicate all documents included in this filing by checking each applicable box.]

- Part A: Disclosures, Instructions, and Notice to Debtor (pages 1 - 5) Part D: Debtor's Statement in Support of Reaffirmation Agreement
 Part B: Reaffirmation Agreement Part E: Motion for Court Approval
 Part C: Certification by Debtor's Attorney

[Note: Complete Part E only if debtor was not represented by an attorney during the course of negotiating this agreement. Note also: If you complete Part E, you must prepare and file Form 240B - Order on Reaffirmation Agreement.]

Name of Creditor: _____

- [Check this box if]* Creditor is a Credit Union as defined in §19(b)(1)(a)(iv) of the Federal Reserve Act

PART A: DISCLOSURE STATEMENT, INSTRUCTIONS AND NOTICE TO DEBTOR

1. DISCLOSURE STATEMENT

Before Agreeing to Reaffirm a Debt, Review These Important Disclosures:

SUMMARY OF REAFFIRMATION AGREEMENT

This Summary is made pursuant to the requirements of the Bankruptcy Code.

AMOUNT REAFFIRMED

The amount of debt you have agreed to reaffirm: \$ _____

The amount of debt you have agreed to reaffirm includes all fees and costs (if any) that have accrued as of the date of this disclosure. Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.

Appendix III: Federal Judiciary Reaffirmation Agreement Form, January 2007

Form 240A - Reaffirmation Agreement (Cont.)

3

the amount of each balance and the rate applicable to it are:

\$ _____ @ _____ %;
\$ _____ @ _____ %;
\$ _____ @ _____ %.

c. If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act:

The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.

d. If the reaffirmed debt is secured by a security interest or lien, which has not been waived or determined to be void by a final order of the court, the following items or types of items of the debtor's goods or property remain subject to such security interest or lien in connection with the debt or debts being reaffirmed in the reaffirmation agreement described in Part B.

<u>Item or Type of Item</u>	<u>Original Purchase Price or Original Amount of Loan</u>
-----------------------------	---

Optional---At the election of the creditor, a repayment schedule using one or a combination of the following may be provided:

Repayment Schedule:

Your first payment in the amount of \$ _____ is due on _____ (date), but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.

— Or —

Your payment schedule will be: _____ (number) payments in the amount of \$ _____ each, payable (monthly, annually, weekly, etc.) on the _____ (day) of each _____ (week, month, etc.), unless altered later by mutual agreement in writing.

— Or —

A reasonably specific description of the debtor's repayment obligations to the extent known by the creditor or creditor's representative.

Form 240A - Reaffirmation Agreement (Cont.)

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2. INSTRUCTIONS AND NOTICE TO DEBTOR

Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).
2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.
3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.
4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.
5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.
6. If the creditor is not a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D. If the creditor is a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.
7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you and the creditor of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

Form 240A - Reaffirmation Agreement (Cont.)

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YOUR RIGHT TO RESCIND (CANCEL) YOUR REAFFIRMATION AGREEMENT

You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

Frequently Asked Questions:

What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A "lien" is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.

NOTE: When this disclosure refers to what a creditor "may" do, it does not use the word "may" to give the creditor specific permission. The word "may" is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.

Form 240A - Reaffirmation Agreement (Cont.)

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PART B: REAFFIRMATION AGREEMENT.

I (we) agree to reaffirm the debts arising under the credit agreement described below.

1. Brief description of credit agreement:

2. Description of any changes to the credit agreement made as part of this reaffirmation agreement:

SIGNATURE(S):

Borrower:

Accepted by creditor:

(Print Name)

(Printed Name of Creditor)

(Signature)

(Address of Creditor)

Date: _____

(Signature)

Co-borrower, if also reaffirming these debts:

(Print Name)

(Printed Name and Title of Individual Signing for Creditor)

(Signature)

Date of creditor acceptance:

Date: _____

Form 240A - Reaffirmation Agreement (Cont.)

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PART C: CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY).

[To be filed only if the attorney represented the debtor during the course of negotiating this agreement.]

I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

[Check box, if applicable and the creditor is not a Credit Union.] A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

Printed Name of Debtor's Attorney: _____

Signature of Debtor's Attorney: _____

Date: _____

Form 240A - Reaffirmation Agreement (Cont.)

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PART D: DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT

*[Read and complete sections 1 and 2, **OR**, if the creditor is a Credit Union and the debtor is represented by an attorney, read section 3. Sign the appropriate signature line(s) and date your signature. If you complete sections 1 and 2 **and** your income less monthly expenses does not leave enough to make the payments under this reaffirmation agreement, check the box at the top of page 1 indicating "Presumption of Undue Hardship." Otherwise, check the box at the top of page 1 indicating "No Presumption of Undue Hardship"]*

1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is \$ _____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$ _____, leaving \$ _____ to make the required payments on this reaffirmed debt.

I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____

(Use an additional page if needed for a full explanation.)

2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: _____
(Debtor)

(Joint Debtor, if any)

Date: _____

— Or —

[If the creditor is a Credit Union and the debtor is represented by an attorney]

3. I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: _____
(Debtor)

(Joint Debtor, if any)

Date: _____

Form 240A - Reaffirmation Agreement (Cont.)

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PART E: MOTION FOR COURT APPROVAL

[To be completed and filed only if the debtor is not represented by an attorney during the course of negotiating this agreement.]

MOTION FOR COURT APPROVAL OF REAFFIRMATION AGREEMENT

I (we), the debtor(s), affirm the following to be true and correct:

I am not represented by an attorney in connection with this reaffirmation agreement.

I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

Therefore, I ask the court for an order approving this reaffirmation agreement under the following provisions (*check all applicable boxes*):

- 11 U.S.C. § 524(c)(6) (debtor is not represented by an attorney during the course of the negotiation of the reaffirmation agreement)
- 11 U.S.C. § 524(m) (presumption of undue hardship has arisen because monthly expenses exceed monthly income)

Signed: _____
(Debtor)

(Joint Debtor, if any)

Date: _____

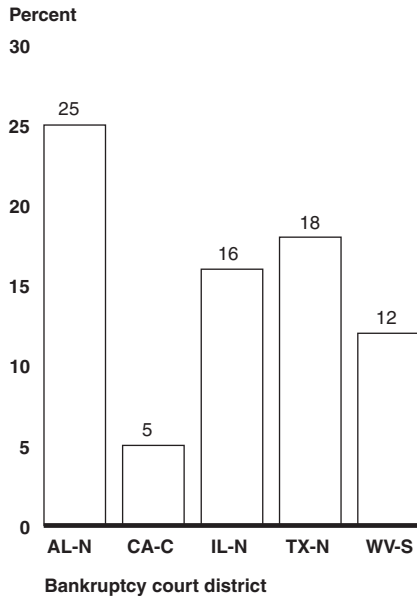
Source: Administrative Office of the U.S. Courts.

Appendix IV: Additional Estimates on Cases and Reaffirmation Agreements Filed in Five Bankruptcy Court Districts

As part of our review, we collected information not reported in the body of this letter that provides context about the extent to which reaffirmations are included in Chapter 7 cases, the financial circumstances of debtors, and content of reaffirmation agreements. For example, we collected information at the case-level about the debtor's assets, liabilities, income, and expenses reported on the petition filed with the court and whether the court waived the requirement for the filer to pay filing fees. We also collected additional data about the reaffirmation agreements that included whether or not (1) the agreement was with a credit union, (2) a debtor attorneys signed the agreement, (3) the court approved or disapproved the agreement, (4) the agreement was rescinded, and (5) the agreement was filed after a case was closed. The following figures and tables provide estimates for the additional information. Unless otherwise noted, our percentage estimates in this appendix fall within a margin of error of plus or minus 10 percent or less, and our mean and median estimates fall within a relative error of 20 percent or less. In addition, for some items we are able to provide estimates for means but not medians, or vice versa. This is because the estimates of means and medians can be different in terms of their distributions and so can the variances of the estimates. Two of the factors that control the sampling error of an estimate are sample size and the estimated variation of the parameter we are estimating (mean and median). The difference between the sampling error of the means and medians is most likely due to the estimated variance of the parameters. Also, our samples were not designed to generate precise estimates of means or medians, so the results (in terms of sampling error) are sensitive to relatively small differences in distributions.

Case-Level Information

Figure 6: Estimated Percentage of Chapter 7 Cases with at Least One Reaffirmation Agreement in the Five Bankruptcy Court Districts (October 17, 2005, through October 17, 2006)



Source: GAO analysis of bankruptcy file reviews and AOUSC data.

Table 11: Estimated Mean and Median Dollar Amounts for Debtor Assets, Liabilities, Income, and Expenses in Case Petitions That Included Reaffirmation Agreements in Five Bankruptcy Court Districts (October 17, 2005, through October 17, 2006)

Item in petition	AL-N		CA-C		IL-N		TX-N		WV-S	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median	Mean	Median
Total assets	\$78,000	\$57,000 ^a	\$108,000 ^a	\$24,000	\$115,000	^e	\$137,000	\$113,000	\$81,000	\$80,000
Total liabilities	149,000 ^a	93,000	161,000 ^a	68,000	180,000 ^a	^e	189,000	139,000	120,000	99,000
Total secured claims ^b	75,000	^e	85,000 ^a	16,000 ^a	108,000 ^a	^e	116,000 ^a	76,000 ^a	71,000	57,000
Total unsecured priority claims ^c	^e	^e	^e	^e	^e	^e	^e	^e	^e	^e
Total unsecured nonpriority claims ^d	^e	32,000 ^a	75,000 ^a	41,000	75,000 ^a	38,000	76,000	50,000	49,000	39,000
Monthly income	2,200	2,000	2,800	2,600	2,700	2,700	3,100	2,800	2,800 ^a	2,300
Monthly expenses	2,500	2,300	3,200	2,900	2,900	2,700	3,600	3,000	2,700	2,500

Appendix IV: Additional Estimates on Cases and Reaffirmation Agreements Filed in Five Bankruptcy Court Districts

Source: GAO analysis of bankruptcy file reviews.

^aThe relative errors for these estimates are greater than plus or minus 20 percent, but less than plus or minus 30 percent.

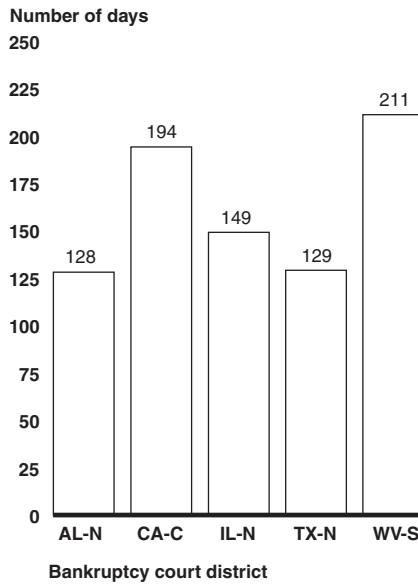
^bSecured claims are those for which the creditor has a lien and can seek to foreclose on or repossess if the debtor does not pay the underlying debt.

^cUnsecured priority claims are debts that the creditor has no right to collect against any particular property and have been granted special status by the bankruptcy law such as taxes and the cost of bankruptcy proceedings.

^dUnsecured nonpriority claims are debts that the creditor has no right to collect against any particular property and have been not granted special status by the bankruptcy law.

^eBecause of the low numbers of reaffirmation agreements with these characteristics, we are not able to generate reliable mean or median estimates for these items in the petition.

Figure 7: Estimated Average Number of Days from Date when Petition was Filed to Date Case was Closed (October 17, 2005, through October 17, 2006)



Source: GAO analysis of bankruptcy file reviews.

Reaffirmation-level Information

Table 12: Estimated Percentages for Certain Characteristics in Reaffirmation Agreements Filed in Five Bankruptcy Court Districts (October 17, 2005, through October 17, 2006)

Description of reaffirmation agreement characteristics	AL-N	CA-C	IL-N	TX-N	WV-S
Reaffirmation agreements that included a debtor attorney's signature	94	90	97	97	94
Reaffirmation agreements that did not include a debtor attorney's signature	6	10	3	3	6
Reaffirmations whereby court documentation indicated approval of the reaffirmation	3	6	17	6	40
Reaffirmations whereby court documentation indicated disapproval of the reaffirmation	1	6	2	0	6
Reaffirmations with indication in the court records that the agreement was rescinded	1	1	3	4	4
Reaffirmations with no indication in the court records that the agreement was rescinded	99	99	97	96	96
Reaffirmations where creditor was credit union	20	17	6	16	18
Reaffirmations where creditor was not a credit union	80	83	94	84	82
Reaffirmation agreements filed after case closed	3	1	2	1	0

Source: GAO analysis of bankruptcy file reviews.

Note: Totals may not add to 100 percent due to rounding.

**Appendix IV: Additional Estimates on Cases
and Reaffirmation Agreements Filed in Five
Bankruptcy Court Districts**

Table 13: Estimated Dollar Amounts for Debtor Monthly Income and Expenses Based on Information from Reaffirmation Agreements in Five Bankruptcy Court Districts (October 17, 2005, through October 17, 2006)

Item	AL-N		CA-C		IL-N		TX-N		WV-S	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median	Mean	Median
Monthly income	2,600	2,500	3,000	2,800	3,000	3,000	3,900 ^a	3,400	2,500	2,500
Monthly expenses	2,100	2,000 ^a	2,800	2,500	2,600	2,500	3,500 ^a	2,900	2,300	2,300
Net income	560 ^a	450 ^a	430 ^a	380	470 ^a	360 ^a	520	430	360 ^a	360 ^a

Source: GAO analysis of bankruptcy file reviews.

^aThe relative errors for these estimates are greater than plus or minus 20 percent but less than plus or minus 30 percent.

Table 14: Total Dollar Amount of Debt Reaffirmed Per Agreement in Five Bankruptcy Court Districts (October 17, 2005, through October 17, 2006)

Item	AL-N		CA-C		IL-N		TX-N		WV-S	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median	Mean	Median
Auto	11,000	9,000 ^a	13,000	11,000	11,000	9,000 ^a	15,000	13,000	10,000	9,000 ^a
House	60,000 ^a	^b	^b	^b	82,000 ^a	^b	63,000 ^a	^b	59,000	^b
Mobile Home	44,000 ^a	^b	^b	^b	^b	^b	26,000	^b	38,000	^b
Boat	^b	^b	^b	^b	^b	^b	^b	^b	^b	^b
Household Good	1,100 ^a	^b	^b	^b	^b	^b	^b	^b	^b	^b
Other	^b	^b	^b	^b	^b	^b	^b	^b	^b	^b
All Items	22,000 ^a	10,000 ^a	12,000	10,000	30,000 ^a	11,000 ^a	24,000	15,000	18,000	10,000 ^a

Source: GAO analysis of bankruptcy file reviews.

^aThe relative errors for these estimates are greater than plus or minus 20 percent but less than plus or minus 30 percent.

^bBecause of the low numbers of reaffirmation agreements with these characteristics, we are not able to generate reliable mean or median estimates for these items.

Appendix IV: Additional Estimates on Cases and Reaffirmation Agreements Filed in Five Bankruptcy Court Districts

Table 15: Estimated Average and Median Dollar Amount of Debt Reaffirmed per Reaffirmation Agreement and Average and Median Original Debt Amount or Original Purchase Price

Description of dollar amount	AL-N	CA-C	IL-N	TX-N	WV-S
Average amount of debt reaffirmed per reaffirmation agreement	\$22,000 ^a	\$12,000	\$30,000 ^b	\$24,000	\$18,000
Average original debt amount or original purchase price	31,000 ^a	19,000	34,000 ^b	30,000	23,000
Median amount of debt reaffirmed per reaffirmation agreement	10,000 ^c	10,000	11,000 ^d	15,000	10,000 ^e
Median original debt amount or original purchase price	17,000 ^d	17,000	19,000	22,000	16,000

Source: GAO analysis of bankruptcy file reviews.

^aThe relative error for this estimate is plus or minus 21 percent.

^bThe relative error for this estimate is plus or minus 24 percent.

^cThe relative error for this estimate is plus or minus 26 percent.

^dThe relative error for this estimate is plus or minus 29 percent.

^eThe relative error for this estimate is plus or minus 22 percent.

Table 16: Estimated Average Interest Rates on Original Debt for Reaffirmation Agreements Filed in Five Bankruptcy Court Districts (October 17, 2005, through October 17, 2006)

Item reaffirmed	AL-N	CA-C	IL-N	TX-N	WV-S
Auto	13 ^a	9	12	9	12
House	11 ^a	10	7	8	^b
Mobile home	7	^b	^b	13 ^a	9
Boat	^b	^b	^b	^b	^b
Household good	21	19 ^a	^b	^b	22
Other	21	^b	^b	8	^b
All items	14	10	11	9	13

Source: GAO analysis of bankruptcy file reviews.

^aThe relative errors for these estimates are greater than plus or minus 20 percent, but less than plus or minus 30 percent.

^bBecause of the low numbers of reaffirmation agreements with these characteristics, we are not able to generate reliable average interest rate estimates for these reaffirmed items.

Appendix IV: Additional Estimates on Cases and Reaffirmation Agreements Filed in Five Bankruptcy Court Districts

Table 17: Estimated Average Interest Rates on Reaffirmed Debt for Reaffirmation Agreements Filed in Five Bankruptcy Court Districts (October 17, 2005, through October 17, 2006)

Item reaffirmed	AL-N	CA-C	IL-N	TX-N	WV-S
Auto	10	9	8	9	9
House	9	9	8	7	8
Mobile home	9	11	^b	12	10
Boat	^b	^b	^b	^b	^b
Household good	21	^b	^b	^b	19 ^a
Other	^b	^b	^b	7 ^a	12 ^a
All items	10	8	8	8	10

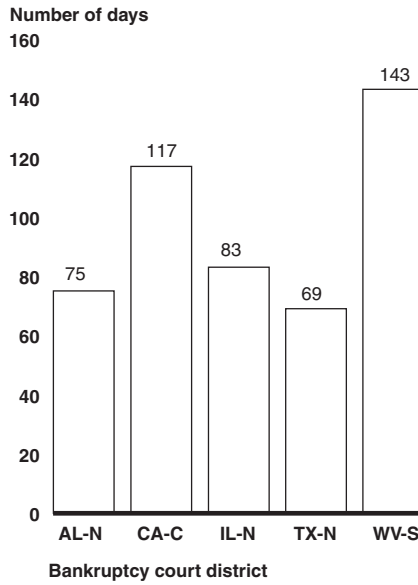
Source: GAO analysis of bankruptcy file reviews.

^aThe relative errors for these estimates are greater than plus or minus 20 percent, but less than plus or minus 30 percent.

^bBecause of the low numbers of reaffirmation agreements with these characteristics, we are not able to generate reliable average interest rate estimates for these reaffirmed items.

Appendix IV: Additional Estimates on Cases and Reaffirmation Agreements Filed in Five Bankruptcy Court Districts

Figure 8: Estimated Average Number of Days from Date When Reaffirmation Agreement Was Filed to Date Case Was Closed (October 17, 2005, through October 17, 2006)



Source: GAO analysis of bankruptcy file reviews.

Appendix V: Federal Judiciary Proposed Coversheet for Reaffirmation Agreements

B27 (Official Form 27) (12/09)

United States Bankruptcy Court
District of _____

In re _____ Debtor Case No. _____
Chapter _____

**REAFFIRMATION AGREEMENT
COVER SHEET**

This form must be completed in its entirety and filed within the time set under Rule 4008. It may be filed by any party to the reaffirmation agreement. The filer also must attach a copy of the reaffirmation agreement to this cover sheet.

Debtor's Name and Address _____ Creditor's Name and Address _____

1. Amount of debt as of commencement of case: \$ _____
Describe collateral, if any, securing debt: _____
2. _____
3. Amount of debt being reaffirmed: \$ _____
4. Repayment term of reaffirmation: _____ months.
5. Monthly payment under reaffirmation: \$ _____
6. Annual percentage rate under reaffirmation: \$ _____
7. Debtor's monthly income at reaffirmation: \$ _____
8. Income from Schedule I, line 16: \$ _____
Explain any difference in the amounts set out on lines 7 and 8: _____
9. _____
10. Debtor's monthly expenses at reaffirmation (without this reaffirmed debt): \$ _____
11. Current expenditures from Schedule J, line 18: \$ _____
Explain any difference in the amounts set out on lines 10 and 11: _____
12. _____

**Appendix V: Federal Judiciary Proposed
Coversheet for Reaffirmation Agreements**

B27 (Official Form 27) (12/09)
Cont., page 2

- Check this box if the amount on Line 10 of this form exceeds the amount on Line 7 of this Form. If these expenses exceed the income, a presumption of undue hardship arises.
- Check this box if the debtor was not represented by counsel during the course of negotiating this reaffirmation agreement.

FILER'S CERTIFICATION

I _____ hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this Reaffirmation Agreement Cover Sheet.

Signature

DEBTOR'S CERTIFICATION
[see Fed. R. Bankr. P. 4008(b)]

I certify that any explanation contained on lines 9 or 12 of this form is true and correct.

Signature (Debtor)

Signature (Joint Debtor, if any)

**Appendix V: Federal Judiciary Proposed
Coversheet for Reaffirmation Agreements**

Form 27

COMMITTEE NOTE

This form is new. It requires the disclosure of financial information necessary for the court to make its determination under § 524(m) of the Code as to whether the reaffirmation agreement creates a presumption of undue hardship.

The form also includes a supplemental debtor's certification that any explanation of the difference between the income and expenses reported on schedules I and J and the income and expenses reported in the debtor's statement in support of the reaffirmation agreement is true and correct. This supplemental debtor's certification is designed to implement the requirements of Bankruptcy Rule 4008(b).

Source: Administrative Office of the U.S. Courts.

Appendix VI: GAO Contact and Staff Acknowledgments

Contact

William O. Jenkins Jr. at (202) 512-8777 or jenkinswo@gao.gov.

Acknowledgments

In addition to the contact named above, Linda Watson, Assistant Director; Pille Anvelt; James Ashley; Ben Atwater; Amy Bernstein; Carlos Garcia; Daniel Garcia; Geoffrey Hamilton; Lemuel Jackson; Ronald La Due Lake; Brian Lipman; Grant Mallie; Jamilah Moon; and Johanna Wong made significant contributions to this report.

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