

Repeat Bankruptcy Filers

Data from the bankruptcy records for the federal district court in Utah were analyzed to determine how often debtors file for bankruptcy protection more than once. Using a sample of debtors who filed for bankruptcy protection in 1997, the PACER/Electronic Case Filing System was used to track debtors by their social security number between 1985 and 2004 to identify repeat filers in Utah. Repeat filers are debtors who filed more than one time during this 20-year period. About 37% of debtors filed more than once in this district in 20 years; more than 8% of the sample may be abusing the system. Rates of repeat chapter 13 filers could potentially be reduced by financial counseling.

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During each Congressional session for the past six years, one or both houses of the U.S. Congress has proposed or passed some form of bankruptcy reform legislation. Under pressure from the credit card industry, the reforms include changes that would make it more difficult to file for consumer bankruptcy in general and, specifically, to force more debtors to file for chapter 13 repayment plans rather than chapter 7 discharges. One of the arguments for tightening bankruptcy filing requirements is that it has become too easy to file for bankruptcy and many consumers are using the system to discharge debts too frequently. Some debtors file as often as allowed by law and then run up debts and file again.

Bankruptcy law is within the purview of the federal government, although variations in implementation vary among the states and federal bankruptcy court districts within states. While some states comprise one bankruptcy court district, other states contain more than one district. The state of Utah comprises one federal bankruptcy court district.

This study was undertaken for two purposes. First, to assess to what extent consumer debtors are filing "as often as the law allows." If so, then perhaps federal bankruptcy law or local practices within a district need to be tightened to prevent abuse of the system. Secondly, a federal bankruptcy judge requested a study of the problem of repeat filers in her district. Some debtors may need more than one chance to complete a chapter 13 repayment plan and receive a discharge of their remaining unsecured debts. Thus, two filings to accomplish one chapter 13 discharge are not abuse. Plenty of unexpected expenses can surface during a three to five year repayment period when all of the debtor's disposable income is supposed to be allocated to debt repayment.

In contrast, a chapter 7 discharge of unsecured debt is a relatively simple process, requiring paying a court filing fee, attorney fees and appearing in court only once. Generally a discharge of unsecured debts is granted and the case is closed within six months of filing. While there is no limit on how frequently debtors may file chapter 13 repayment plans, there is a statutory limit on chapter 7 filings. Once a debtor has received a debt discharge in chapter 7 they are prohibited from filing another chapter 7 within six years. The filing forms request information on cases filed within the previous six years but not for prior cases.

This study will distinguish between debtors who make repeated attempts to accomplish a single discharge of debt in bankruptcy and filers who may be abusing the system. How do debtors who filed multiple times compare to debtors who filed only once or twice in two decades? Debtors who file repeatedly may be trying to delay foreclosure, avoid paying taxes, or to deal with difficult creditors but have no intention of completing their bankruptcy plan (Nelson, 2000; Williams, 1997). It is important to distinguish between honest debtors who may need more than one attempt to complete a chapter 13 discharge and filers who are abusing the system to escape their credit obligations.

Review of Literature

How extensive is the problem of repeat filers? Darling and Redmiles (2002) identify repeat filers as an important emerging issue that presents a significant challenge to the bankruptcy system. They define repeat (serial) filers as "debtors who have filed bankruptcy numerous times within a short period of time." Williams (1997) stated that there is a wide variation in the extent of the problem among districts but provided no statistical evidence.

Although legal scholars and policy makers have addressed the issue of repeat filers (Congressional Budget Office, 2000; National Bankruptcy Review Commission, 1997; Nelson, 2000; Williams, 1997), little data exist to document the extent of the problem. A survey of bankruptcy professionals conducted by the American Bankruptcy Institute (1996) identified repeat filings as a “significant problem that needs to be addressed.” The National Bankruptcy Review Commission (1997) estimated that 8% of debtors are repeat filers. Strand, Hira, and Carter (1994) studied repeat filers in Iowa and Manitoba and compared them to first-time petitioners. They reported that 14% of filers in both locations were repeats. Compared to first-time filers, repeaters were older, had lower incomes, lower assets, and lower debt levels.

Sullivan, Warren, and Westbrook (1989) defined a repeater as someone who receives more than one discharge of debt, excluding debtors who made multiple attempts to obtain one discharge. They estimated that 3% of their cases represented repeaters; the self-employed were more likely than wage earners to repeat. In a small study of chapter 13 debtors Norberg (1999) found that 39% had filed previously but only 7% had filed more than twice. Norberg reported that second time filers were more likely to complete their chapter 13 plan than were first time filers. In contrast, Evans (2004) found that among chapter 13 debtors in Utah, those with more than one filing were less likely to get a discharge than those with only one filing. Limitations of the Norberg study include the very small sample size (N=71).

Previous studies have shown that only about one-third of chapter 13 debtors complete their plan (Braucher 2001; Flynn & Bermant, 2003; Lown & Rowe, 2003; Norberg, 1999; Sullivan, Warren, & Westbrook, 1989). The high failure rate of chapter 13 plans raises the question: to what extent are filing rates inflated by repeat filers?

Conceptualizing Abusive Filing Patterns

There are many possible repeat filing patterns. A debtor could file for chapter 7 and receive a debt discharge, file again after six years expired and again six years later. Few people would have trouble labeling this debtor as an abuser of the bankruptcy system. But what about the three time filer who made two failed attempts at chapter 13 repayment plans and then filed a chapter 7 and received a discharge? Is this abuse of the system? Perhaps the debtor filed in a district where the local legal culture encourages chapter 13 repayment plans and discourages chapter 7 plans. What if the debtor’s attorney encouraged a 13 rather than a 7 because of the higher legal fees for chapter 13 cases? Anecdotal evidence suggests that many chapter 13 debtors’ budgets that form the basis for their repayment plan are based on guesses about expenses and thus are unrealistic from the beginning (Evans, 2004).

The decision on where to draw the line in defining abuse was more difficult with chapter 13 cases. Norberg (1999) reported that chapter 13 debtors in his sample of 71 cases from the Southern Mississippi district who filed twice were more likely to accomplish a discharge than were one-time chapter 13 filers. Because a chapter 13 involves a three to five year repayment plan where all of the debtor’s disposable income is supposed to be allocated to the monthly trustee payment, many factors over which a debtor has little or no control could contribute to dismissal. Thus, two or three chapter 13 filings to attain one debt discharge was not considered abusive.

Basically there are two ways to develop a monthly budget for a chapter 13 repayment plan: the percentage method and the pot plan method. All of a debtor’s disposable income is supposed to be allocated to repayment of unsecured debt over a three to five year period. In some districts the local legal culture encourages chapter 13 plans to propose to repay a certain minimum percentage of unsecured debt. Generally this expectation is passed down from the top and is based on the beliefs of the chief judge (Braucher, 1993). This percentage approach often results in an unrealistic budget because the dollar amount of the trustee payment may be far more than the debtor can afford. Unrealistic repayment plans may be one of the reasons why chapter 13 plans in Utah almost always propose a five rather than three year plan. The second method, the pot plan, at least in theory, results in a more realistic monthly budget. In this process the debtor and the attorney determine how much is needed for living expenses and the remaining dollars are available for repayment each month to the trustee.

Family economics research has confirmed that few families follow the paper and pencil (or computer) budget taught in personal finance classes. Muske and Winter (2001) reported that many household money managers follow an informal, mental accounting system instead. Many debtors likely get into financial trouble because they lack the skills or interest in managing and monitoring their finances; others are likely so frustrated with overwhelming bills that they do not even open their mail. It is likely that many bankruptcy petitioners really have no idea how much they need to spend each month on necessary variable living expenses such as food, clothing, and miscellaneous.

Purposes and Objectives of the Study

One purpose of this study was to determine the extent of the repeat filing problem in one federal bankruptcy court district. A second purpose was to distinguish between debtors who make repeated attempts to accomplish a single discharge of debt and debtors who file repeatedly within a short time period and appear to be abusing the bankruptcy system.

This study relates to two goals of the American Bankruptcy Institute: “to enhance or improve the efficacy, efficiency or fairness of the bankruptcy system” and “to better educate decision makers and policy makers in the performance of their duties with respect to the bankruptcy system.” Utah Bankruptcy Judge Judith Boulden raised the issue of the need for empirical evidence on the extent of the problem of repeat filers and suggestions for how to reduce the number. These data will be useful to the judiciary and the bar to encourage closer examination of:

- a) the possible influence of local legal practices that may contribute to repeat filings,
- b) insufficient monitoring and counseling for “troubled” chapter 13 debtors,
- c) the need for financial education and counseling for chapter 13 plan participants, and
- d) chapter 7 debtors who file every six years.

The specific objectives of this study were to:

1. determine the incidence of repeat filers in the Federal Bankruptcy District of Utah.
2. estimate how many debtors are abusing the bankruptcy system.

Data from Utah were used because the state ranks first in the nation in number of filings per household and has a high chapter 13 filing rate compared to the rest of the nation. Because debtors often make more than one attempt to achieve a discharge of unsecured debt in a chapter 13 repayment plan, the high filing rate for this district may be due, at least in part, to the local legal culture that emphasizes repaying debts in a chapter 13.

Methods

This project analyzed data from one federal bankruptcy district to examine the incidence of repeat filings among a sample of debtors who filed for bankruptcy court protection in Utah in 1997. A large data set from the 1997 files of the Federal Bankruptcy District of Utah was available from a prior study (Lown & Rowe, 2003). A sub-sample of 466 cases was selected for analysis. This sample was limited to debtors whose filing status did not change over the time span from 1985 to mid-2004. This restriction was necessary because tracking changes in filing status between joint (married) and single (of any marital status) petitioners would have complicated the study considerably. Fisher and Lyons (2004) report a strong connection between bankruptcy and divorce with the cause running in both directions. Households experiencing divorce are financially less stable than those whose marital status does not change and thus more likely to file more than once.

The PACER Electronic Case Filing system was used to search by Social Security numbers to determine the number of times these 466 cases filed for bankruptcy in this district. PACER only goes back to 1985 so we were able to track these debtors from 1985 through the middle of 2004. Next, the sample was separated into chapter 7 and 13 cases based on the chapter that was filed in 1997. Then cases were sorted according to whether they appeared to be taking advantage of the bankruptcy system.

Results

The sample consisted of 466 cases filed in 1997. Table 1 summarizes the cases based on the total number of times they filed over the two decades of this study. Both chapter 7 and 13 cases from 1997 are included.

Of the 466 debtors in this sample who filed bankruptcy in Utah in 1997, 63.1% filed only once in this district in the past 20 years. More than one-third (36.9%) of the cases included debtors who filed more than once. One- and two-time filers totaled 388 cases (83.3%). One married couple filed jointly for bankruptcy nine times over the two decades. Two couples were close behind with eight filings each. One male filed seven times while the greatest number of filings for a female filing alone was six.

The remaining 78 cases (16.7% of the 466 cases), those with three or more filings within the two decades, could possibly be classified as abusive repeat filers. However, one could argue that some of the triple hitters were really honest debtors who ran into bad luck. When debtors with three filings were included with the one- and two-time filers there were 37 cases out of the 466 cases (7.9%) who appear to be abusing the system by filing repeatedly. However, three chapter 7 discharges in 20 years is far more egregious than three attempts to complete a chapter 13 repayment plan. So the next step was to separate chapter 7 and 13 cases based on their 1997 filings.

Table 1
Total Number of Filings of 1997 Filers over Two Decades (N=466)

Total number of filings 1985-2004	1997 filers (n=466)	
	Frequency	Percent
9	1	0.2%
8	2	0.4%
7	3	0.6%
6	6	1.3%
5	12	2.6%
4	13	2.8%
3	41	8.8%
2	94	20.2%
1	294	63.1%
Total	466	100.0%

The first column in Table 2 shows the total number of cases filed from 1985-2004 by any one individual or couple who filed chapter 7 in 1997. Table 2 shows that 231 (77.6%) of the cases who filed for chapter 7 did not file at any other time in this district during the two decades. Nineteen of the chapter 7 cases filed in 1997 resulted in a dismissal. Perhaps these debtors failed to show up for the 341 meeting of creditors, the only time they must appear in court. Another possible reason for dismissal is that fewer than six years had elapsed since their last debt discharge. While debtors who filed chapter 7 in 1997 are included in Table 2, their other filings could be chapter 7 or 13.

Table 2
Number of Filings by Outcome for Chapter 7 Filers in 1997 (N=294)

Total number of filings 1985-2004	Debt Discharged		Case Dismissed		Total	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
9	1	0.3	-	-	1	0.3
8	-	-	-	-	-	-
7	-	-	-	-	-	-
6	2	0.7	-	-	2	0.7
5	2	0.7	-	-	2	0.7
4	6	2.0	2	0.7	8	2.7
3	10	3.4	3	1.0	13	4.4
2	28	9.5	9	3.1	37	12.7
1	226	76.9	5	1.7	231	77.6
Total	275	93.5	19	6.5	294	100.0

As shown in Table 3, chapter 13 cases were far less likely to receive a discharge compared to chapter 7 debtors. Of the 159 debtors who filed chapter 13 in 1997, only 53 (33.3 %) completed their repayment plan and received a discharge of their remaining unsecured debts.

Also contrasting with chapter 7, chapter 13 debtors were more likely to file multiple times in either chapter during the 20 years. Thus, almost two-thirds of chapter 13 debtors filed more than once which reflects the low completion (discharge) rate for chapter 13 repayment plans in this district. Those debtors whose cases were dismissed in 1997 were more likely to file multiple times compared to debtors who received a chapter 13 discharge in 1997.

Table 3
 Number of Filings by Outcome for Chapter 13 Filers in 1997 (N=159)

	Total filings 1985-2004		Debt Discharged		Case Dismissed		Total	
	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent
8	-	-	2	1.3	2	1.3	2	1.3
7	-	-	3	1.9	3	1.9	3	1.9
6	-	-	3	1.9	3	1.9	3	1.9
5	-	-	9	5.7	9	5.7	9	5.7
4	1	0.6	4	2.5	5	3.1	5	3.1
3	2	1.3	24	15.1	26	16.4	26	16.4
2	10	6.3	41	25.8	51	21.1	51	21.1
1	40	25.2	20	12.6	61	37.8	61	37.8
Total	53	33.3	106	66.7	159	100.0	159	100.0

Regardless of marital status, debtors may file for bankruptcy alone (as a single or individual filer) or, if married, may file a joint petition. Although single filers may be legally married but filing a bankruptcy petition alone, this situation is relatively rare. Persons filing alone are usually not married, although they may be divorced or separated. There were 189 joint (married) filers representing 378 individuals, 136 male single filers, and 141 female single filers in this sample for a total of 655 debtors. Utah has the highest percentage of adults who are married, fully 68% of the adult population. The 378 married debtors represent 57.7% of the sample, suggesting that single persons may be overrepresented in bankruptcy court in this district.

Table 4
 Total Number of Filings by Filing Status of 1997 Filing (N=466)

Total number of filings 1985-2004	Joint filers (N=189 cases)	Single filers (N=277)	Total
9	1	-	1
8	2	-	2
7	2	1	3
6	4	2	6
5	7	5	12
4	10	3	13
3	16	25	41
2	39	55	94
1	108	186	294
Total	189	277	466

Discussion

The percent of repeat filers (37%) was very similar to the number of repeaters in Norberg's (1999) study. At first count approximately 8% of these cases appear to be abusing the system. While this is a modest percentage, with 22,000 filings per year in this district that amounts to approximately 1,760 cases. However, the number of debtors who are over-using the system likely exceeds 8% because debtors who filed more than once but not consistently as an individual or joint case were excluded. By analyzing only debtors whose filing status did not change over the 20 years, the sample focuses on the more stable households and likely underestimates the extent of abuse.

It is important to acknowledge the difference between filing for bankruptcy and receiving a discharge of unsecured debt. While most chapter 7 petitioners receive a quick discharge of their unsecured debts, almost three quarters of the chapter 13 cases filed in 1997 in this district failed to complete their repayment plan and thus did not receive a debt discharge (Lown & Rowe, 2003). Many of these debtors likely filed again or will file in the future, perhaps in another district if they move out of state.

The distribution of cases between 7 and 13 varies dramatically from one district to the next. On average, about 40% of Utah bankruptcy cases file under chapter 13 with the remaining 60% in chapter 7; this compares to a national average of 70% chapter 7 and 30% chapter 13. This sample of 466 cases (655 debtors) is a sub-sample of over 12,000 cases filed in Utah in 1997. As shown in this study, most chapter 7 cases result in a discharge of debt while the chapter 13 discharge rate is lower than other districts where about one-third of chapter 13 cases earn a discharge. Only 26.4% of chapter 13 cases in the larger 1997 sample of 2,567 debtors completed their repayment plan and received a discharge of their remaining unsecured debts (Lown & Rowe, 2003). The combination of a high chapter 13 filing rate with a lower than average discharge rate is likely to result in repeat filings which inflate the district's filing statistics.

At what point does repeat filing become abusive? One couple in our sample filed nine times, beginning in 1997 with a chapter 7 in which they discharged their unsecured debts. They repeated with another chapter 7 discharge six years later, as soon as allowed by law, in 2003. In between these two chapter 7 discharges they filed chapter 13 seven times, including three times in 2000. Each chapter 13 case was dismissed. What did they accomplish? Assuming they were granted an automatic stay for each filing, they were able to keep their creditors at bay until they could discharge their unsecured debts in chapter 7 as soon as the law allowed. Together this couple accounted for nine filings, each time inflating the bankruptcy rate for this district.

Is there an obvious point at which debtors can be labeled as abusing the bankruptcy court system? Without delving into the many detailed documents in the bankruptcy files, which may not tell the whole story of job loss and other financial, mental health, or other misfortunes, most observers can probably agree that debtors who filed more than three times in two decades are probably using the system to escape their debts, taking advantage of the automatic stay but not really intending to repay their debts. Debtors filing four or more cases are very few in number. A red flag could be posted on cases the third time they file and sent to the trustee for special consideration and questioning.

Seventy-eight of the 466 (16.7 %) cases in this sample filed three or more bankruptcy petitions in this district during the time period under study. With the rapid and sustained increase in bankruptcy filings over the same time period, court resources are undoubtedly strained to accommodate these additional cases. There is a cost to the court of spending additional resources on monitoring repeat debtors. However, if some of these repeat filers are abusing the system and taking advantage of the automatic stay to repeatedly avoid paying their debts, they are also placing a burden on the court. According to the federal bankruptcy law, debtors suspected of substantial abuse of the system can be denied court protection. One way to monitor and reduce abuse is to flag all cases with three or more filings. One problem with this approach is relying on the debtor to honestly report prior filings. Currently the court documents only ask the debtor to report prior filings within the past six years. This is due to the legal limit on receiving a second debt discharge in chapter 7 within six years. The court could require on filing documents that the attorney provide a complete listing of bankruptcy cases filed within the previous six years with case number and outcome of the case. The bankruptcy clerk's office should search the electronic case filing system by Social Security number for debtors with multiple filings. These cases should be reviewed by a trustee to determine if they should be denied bankruptcy court protection due to abusive filings. Since the rate of abuse in this sample is estimated to be about 8%, the feature of the proposed bankruptcy reform legislation before Congress that would require means testing of all cases would be very inefficient.

The results of this study suggest that chapter 13 debtors in this district have a difficult time completing their repayment plan. About two-thirds of these debtors drop out of the system prior to receiving a discharge. While some of these debtors are likely in a chapter 13 plan rather than a 7 because they are behind on their mortgage or vehicle payment and are using chapter 13 to get caught up, many reappear in the court system. The discharge rate for chapter 13 plans might be increased by providing individual financial counseling to second or third time filers. Although most chapter 13 debtors could likely benefit from financial counseling, the costs of counseling every case would be prohibitive without raising the filing fees. However, such a service for repeat filers might be an efficient use of court resources to prevent subsequent filings and thus reduce the overall burden on the bankruptcy court.

Limitations

As far as we are able to determine this is only the second empirical study focusing specifically on repeat bankruptcy after Strand, Hira, and Carter (1994). The methods used in this study are certainly not above criticism

and need refinement in the future. Among the limitations of this study is the fact that not all of the 1997 debtors were exposed to the potential for filing bankruptcy in this district during the entire 20 year period. It is likely that not all the debtors lived in this bankruptcy district continuously from 1985 to 2004. Some debtors may have filed additional times in other districts.

Among the one-third of debtors who reported their age on their petition in 1997, the youngest was 19 and the oldest was 77. In a national data set of chapter 7 debtors ages ranged from 19 to 92 (Flynn, Bermant, & Bakewell, 2003). A debtor who was 19 in 1997 was not eligible for filing before age 18 and a 77 year old is unlikely to have filed again after 1997. So not all of the sample was exposed to the possibility of bankruptcy in this district during the two decade period. Thus, the estimate of repeat filers is conservative.

The Utah bankruptcy district is not representative of other districts. Due at least in part to the local legal culture that encourages chapter 13 repayment plans, Utah consistently ranks higher than the national average in chapter 13 filings. The district has the highest filing rate per household with one case per 36.7 households (American Bankruptcy Institute, 2003).

Implications for Lenders

If debtors are filing chapter 7 every six years like clockwork, is this a problem that the courts can address? Can they deny court protection to debtors who are filing within the parameters of federal law? There is not likely a basis for denying court protection if the debtor is not also filing chapter 13 in between the chapter 7 cases.

Repeat chapter 7 cases are really more of a problem for the creditors. Once a chapter 7 discharge appears on a credit report it remains for 10 years. The lender is taking a major risk but likely expecting to make a profit. It is not up to the bankruptcy court to refuse access to a chapter 7 discharge. But one must wonder about the creditor who lends to a consumer with two chapter 7 discharges. The sub-prime market must be profitable.

Future Research

This study is being expanded to include a much large sample of cases in this district. Similar studies need to be conducted in other bankruptcy court districts, particularly those with high chapter 13 filing rates. Since it is quick and easy to search the PACER system for social security numbers, each court district should implement this practice to flag potential abusers.

Endnotes:

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