

Chapter 13 Bankruptcy: Successful Versus Unsuccessful Debtors

Using logistic regression analysis, this study examined the financial factors that predict the likelihood of a debtor finishing a chapter 13 repayment plan and attaining a discharge of their remaining unsecured debts. Higher per capita income, few or no previous bankruptcy filings, and low housing expenses are the strongest predictors of the likelihood of successful completion among chapter 13 debtors in the district of Utah. Information that helps debtors make the most appropriate choice of chapter should be made available to consumers.

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In 2002, more than 1.5 million bankruptcy cases were filed in the United States, compared to only 287,570 cases filed in 1980 (American Bankruptcy Institute, 2003). Overall, about 70% of non-business (consumer) filings are for chapter 7 discharges and the remaining 30% are chapter 13 repayment plans. Despite the fact that bankruptcy law is federal in origin, considerable variation occurs in the ratio between chapter 7 and 13 in each of the 94 federal bankruptcy court districts.

In a chapter 7 bankruptcy a debtor discharges or wipes out their unsecured debts. Only unsecured debts can be discharged in bankruptcy. Secured debts must be repaid or the lender can repossess the collateral. Although chapter 7 debtors who own sufficient assets can be required to sell some assets above state or federal limits, most filings are no-asset cases. In contrast, debtors who file chapter 13 establish a monthly repayment plan to repay a portion of their unsecured debts. Chapter 13 is also useful to debtors who are behind in payments on their home or other secured debts; chapter 13 allows them to restructure their debts and get caught up to avoid foreclosure or repossession. Other priority debts that cannot be discharged in bankruptcy such as back taxes, child support and alimony, and student loans can be dealt with in a chapter 13 repayment plan. Another advantage of chapter 13 is that it enables the debtor to repay the current value of non-real estate collateral rather than the amount owed, which is often much higher. Most car loans are for more than the value of the vehicle; chapter 13 allows the debtor to repay the lower value amount to retain the collateral. A chapter 7 debtor controls all their future income once the case is confirmed and the unsecured debt discharged. In chapter 13, much of a debtor's future income is allocated to a repayment plan for three to five years.

Utah ranks highest among the 50 states in the number of filings per household with one case for every 37.9 households (American Bankruptcy Institute, 2002) and tenth among the states in the percentage of chapter 13 cases filed (American Bankruptcy Institute, 2003). While large states may have two or three districts, Utah comprises one federal bankruptcy district.

The rapidly growing number of consumer debtors who file for bankruptcy protection has induced Congress to propose limits and means-testing in an attempt to make bankruptcy less "attractive" and to force more debtors into chapter 13 repayment plans. Ironically, anyone can file for bankruptcy court protection; one does not need to be insolvent. While the vast majority of debtors are drowning in debt (Lown & Rowe, 2002; Norberg, 1999; Sullivan, Warren, & Westbrook, 1989; 2000), Congress wants to force more debtors into chapter 13 plans to repay some of their unsecured debts rather than discharging them in chapter 7.

While 30% of consumer debtors file a chapter 13 repayment plan, only about one-third of those repayment plans are completed and receive a discharge of the remaining unsecured debt (Braucher 2001; Norberg, 1999). The successful completion rate varies significantly from one state to the next from a low of 11% in Florida to a high of 47% in West Virginia (Bermant & Flynn, 2000). Debtors whose plans are dismissed are no longer under the protection of the bankruptcy court. With the dismal track record of chapter 13, it is important to understand why plans fail (cases are dismissed) or how debtors who succeed in chapter 13 differ from debtors who fail to complete their plans. When a plan

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fails, the case is dismissed; successfully completed plans receive a discharge of their remaining unsecured debts.

Overview of Chapter 13 and Chapter Choice

Nationwide, from 1990 through the first quarter of 2003, the percentage of bankruptcy filings in chapter 7 varied little, averaging about 70% of all cases. However, the percentage of consumer debtors filing in chapter 13 varies dramatically from one judicial district to another, ranging from less than 10% to more than 70% (Bermant & Flynn, 2000; American Bankruptcy Institute, 2003).

All secured debts must be repaid or the lender can repossess the collateral; only unsecured debts can be discharged in bankruptcy. Why do debtors choose to file a chapter 13 repayment plan which obligates their future income to debt repayment for three to five years instead of taking the quicker and easier chapter 7 option in which all their unsecured debts are discharged? Most chapter 7 cases are completed in less than six months. Debtors choose chapter 13 for a variety of reasons. Chapter 13 allows debtors to catch up on mortgage arrears, an option not available in chapter 7. Further, other priority debts such as back taxes, child support and alimony, and student loans, cannot be discharged; arrearages can only be dealt with in chapter 13. Finally, debtors who received a chapter 7 discharge within the past six years are ineligible to re-file under chapter 7. Thus, an undetermined portion of chapter 13 debtors have no choice of chapter. Chapter 7 is the easiest option for consumers who are dealing only with unsecured debts.

Although it is tempting to label debtors who did not receive as discharge as “unsuccessful,” interviews with judges, trustees, and attorneys revealed that some of these debtors might consider their case a success if their only reason for filing for bankruptcy was to stave off foreclosure on home loans. As soon as a bankruptcy case is filed, the automatic stay halts all legal actions, including collection efforts and foreclosures. Chapter 13 allows home owner debtors who are behind on their mortgage to get caught up on delinquent payments under the protection of the court. In order to avoid foreclosure, they must make their regular monthly mortgage payment plus a payment on arrears which can be spread out during the repayment plan.

Another factor that affects chapter choice is the local legal culture. The local legal culture in each judicial district is far more influential in dictating chapter choice than any of the objective factor such as ability to repay, assets to protect, and state exemption levels (Bermant, Flynn, & Bakewell, 2002; Braucher, 1993; Sullivan, Warren & Westbrook, 1994). According to Braucher (1993), certain judges and/or trustees believe strongly that debtors should repay at least some of their unsecured debts in a chapter 13 plan and the numbers in their district reflect this bias. In other districts the court authorities let it be known that most debtors are better off filing under chapter 7.

Review of Literature

Although business bankruptcies such as Enron, Worldcom and United Airlines receive considerable media attention, businesses represent only a tiny portion of the 1.5 million yearly bankruptcy cases. From 1980-2001, virtually all the growth in bankruptcy numbers resulted from the increase in personal or consumer filings while the number of business filings has remained flat (American Bankruptcy Institute, 2003). However, it is important to recognize that some of the “consumer” filings are really due to the failure of a small business. Sullivan, Warren, and Westbrook (1989) reported that approximately 20% of their sample of non-business filings were really due to small business failure. The only ways to determine if a consumer filing is due to a small business failure is to closely examine the court records, a very time consuming process, or by interviewing the debtor, a costly and time consuming endeavor.

Congress has repeatedly pressed ahead with bankruptcy reform bills despite the paucity of empirical research to support proposals for change. While members of the legal profession publish extensively in law journals, very few conduct empirical research. The most complete data on consumer bankruptcy come from the Consumer Bankruptcy Project by Sullivan, Warren, and Westbrook (1989, 2000). Their first study (1989) was devoted to analyzing data from the court records of 1,529 debtors who filed in 1981 from 10 judicial districts in three states. Bankruptcy court records provide scant information on important socio-demographic variables of interest to researchers. Thus, their second study collected demographic data and the debtor’s reason for filing at their 341 hearings, the only time they need appear in court. Sullivan, Warren, and Westbrook (1989, 2000) concluded that both chapter 7 and 13 debtors were drowning in debt and had no prospects of repayment.

Bermant and Flynn published a number of descriptive studies of chapter 7 debtors but did little research on chapter 13 filers. In general, little is known about chapter 13 debtors; Bermant (1999) recommended research to determine how chapter 13 success varies across different financial profiles and plan characteristics. In a comparison of chapter 7 and 13 Bermant and Flynn (2002) report that, compared to chapter 7 filers. Chapter 13 debtors are more likely to be homeowners, to have more dependents, and to have filed a previous bankruptcy; although their incomes were higher, their families were larger, as well. Compared to chapter 7, chapter 13 debtors have higher secured debts and

higher level of priority debts (those debts that cannot be discharged and cannot be dealt with in a chapter 7 filing).

In a study of 71 chapter 13 debtors in the Southern Mississippi district, Norberg (1999) concluded that chapter 13 debtors pay back very little of their unsecured debts, regardless of whether they complete their plan or have their case dismissed. In fact, the chapter 13 debtors in this study paid back about the same amount of unsecured debts that chapter 7 debtors pay through reaffirmations and informal repayments. Norberg reported that 20% of cases were dismissed without confirmation while one-third of cases completed their plan and received a discharge. Debtors who finished their plans and received a discharge paid back about five times as much unsecured debt as failed or dismissed plans but Norberg concluded that it was almost impossible to predict which cases would succeed. Successful debtors owed more secured debt, were more likely to have filed once previously, and proposed shorter plans than did their unsuccessful counterparts. Neither income, debt-to-income ratios, amount of proposed distributions to unsecured creditors nor the amount of income available for living expenses was correlated with attaining a discharge. However, due to the very small sample, none of these findings are immutable.

Purpose and Hypotheses

The purpose of this paper is to compare chapter 13 debtors who successfully discharge their debts to debtors who fail to complete their plans and have their cases dismissed. Based on previous research and interviews with bankruptcy professionals, the following five hypotheses are proposed.

Relationship Between Per Capita Income and Discharge

Per capita income will be positively associated with the likelihood of a debtor completing a repayment plan and receiving a discharge. As the per capita income rises, the debtor will be more capable of enduring three to five years of living on a reduced income while making monthly debt payments to the bankruptcy trustee.

Relationship Between Trustee Payment Ratio and Discharge

A negative relationship will exist between the amount a debtor pays towards a repayment plan each month in relation to monthly expenses and the likelihood of that debtor receiving a discharge. As the ratio of monthly payment to income rises, the likelihood of discharge falls.

Relationship Between Previous Filings and Discharge

Norberg (1999) reported that one previous bankruptcy filing was positively associated with the likelihood of discharge. A debtor with one previous experience in the bankruptcy courts will have a better understanding of the process and the endurance necessary to complete a chapter 13 repayment plan.

Relationship Between Secured Debt and Discharge

The likelihood of discharge is positively associated with the amount of secured debt a household brings into bankruptcy (Norberg, 1999). As the secured debt level rises, the likelihood of receiving a discharge rises as well. Debtors with more secured debts may feel a greater obligation to keep their collateral and must therefore continue making payments for the full repayment period.

Relationship Between Housing Expenses and Discharge

An inverse association between housing expenses and the likelihood of discharge is expected. Housing expenses comprise the largest portion of monthly household expenses; thus the relationship with the likelihood of discharge will be inverse. As housing expenses rise, the likelihood of discharge falls.

Methods

The data collection methods are described in detail in Lown and Rowe (2003). Briefly, a sample of 2,567 cases, representing 21.3% of all consumer filings for 1997, was selected at random from cases filed in the Utah judicial district in 1997. This year was selected in order to allow for the maximum five year repayment plan so that outcomes of the chapter 13 cases could be determined.

The sample of chapter 13 debtors was divided into those who completed their repayment plan and received a discharge of their remaining unsecured debt (the "successful" debtors), and the remaining debtors whose plans were dismissed (not completed). Thus, the two categories of discharge and dismiss were the binary dependent variables.

Chapter 13 dismissals (failures) were compared to chapter 13 discharges (successes). The variable chosen to do the comparison was the "discharge" variable. The categories of this discrete variable were: 1= discharged and active

cases (if they got this far then they should be considered “successful” and lumped with the discharges), 0= dismissed and converted cases (those debtors who converted from a chapter 13 to a chapter 7 liquidation).

The independent variables in the study were selected based on previous research and ideas generated by interviews with bankruptcy professionals for differentiating successful from unsuccessful cases. All the independent variables were continuous in nature: monthly per capita income, monthly trustee payment, number of previous filings, amount of secured debts, and monthly housing expenses.

Results

Of the 2,567 cases from 1997, 1,080 cases (42.1%) were filed in chapter 13. After initially filing in chapter 13, 123 cases converted to chapter 7, resulting in 957 chapter 13 cases (37.3%) for this analysis. Of the 957 debtors, 205 (21.4%) had one previous bankruptcy filing, 12 had filed twice prior to 1997; only two debtors reported filing bankruptcy three times prior to their current filing. The majority (70.2%) of chapter 13 debtors reported no previous bankruptcy filing within the past six years, the time frame of interest in the court records.

Sharp contrasts exist in the levels of secured debt among chapter 13 debtors. Secured debts are all debts, excluding the home, backed by collateral. The mean for this category is \$59,634 while the median is much lower, at \$23,841. Three-fourths of the debtors had a secured (non-mortgage) debt load of \$7,871 or more while a quarter of the debtors had nearly \$100,000 or more in secured debts.

Housing expenses are the largest single consumer expense and was measured as monthly rent or mortgage payments. One-fourth of chapter 13 debtors paid \$820 or more per month on housing expenses. Half of the debtors paid \$600 or more per month; 68% of the chapter 13 debtors had monthly housing expenses between \$225 and \$1,105.

As shown in Table 1 the trustee payment ratio is based on the monthly trustee payment in relation to monthly living expenses. The debtors had up to three previous filings within the past six years. Some of these filings may represent completed cases but most were likely repeated attempts to complete one bankruptcy discharge.

Table 1.
Independent Variable Types and Minimum and Maximum Statistics

	Per Capita Income	Trustee Payment Ratio	Number of Previous Filings	Secured Debt	Housing Expenses
n	927	885	891	824	812
Missing	30	72	66	55	110
Zero	0	0	0	78	35
Maximum	12,335	10.24	3	1,328,000	5,000
Minimum	157	0.00	0	123	10
Range	12,177	10.24	3	1,327,877	4,990

Of the 957 chapter 13 cases, 228 (23.8%) were granted a discharge of their remaining unsecured debts after completing their repayment plan. More than twice as many chapter 13 debtors (N = 712) had their cases either dismissed from bankruptcy court or converted their case to a chapter 7 liquidation.

Table 2 shows the distribution of the results comparing chapter 13 discharges (successes) to dismissals (failed plans).

Monthly per capita income was obtained by dividing the monthly household income by the number of persons in the household. The average per capita monthly income of chapter 13 debtors was \$854 compared to a median of \$687. The lowest 25% of households in the sample had a monthly per capita income less than \$486 a month.

On average chapter 13 debtors paid 27% of their monthly income to the trustee each month. Monthly expenses include housing, transportation, food, utilities and other necessary expenses. At the median, households were paying 18% of their monthly income to the trustee. Twenty-five percent of the chapter 13 debtors paid 29% or more of their monthly income to the trustee each month.

The majority (70.2%) of chapter 13 debtors were filing for the first time (at least within the six year time frame required by the court). About one-fifth of the sample (21.4%) had one previous bankruptcy filing. Whether or not the

Table 2.
Frequency Statistics of the Discharge Variable for Chapter 13 Debtors

	Frequency	Percentage
Discharge?		
Yes	228	23.8
No	712	74.4
Missing	17	1.8

debtors had filed for bankruptcy within the previous six years was a significant factor in whether they achieved a discharge.

Despite the strong contrasts in secured debt levels among these chapter 13 debtors, no significant difference exists between the secured debt levels held by chapter 13 debtors who received a discharge and those who did not. In contrast to the secured debt levels, there is a highly significant difference between the mean housing expenses of discharged and non-discharged debtors.

Logistic Regression

Logistic regression was used for the analysis since the dependent variable was binary. In order to run a logistic regression analysis, two dummy variables were created: “discharge” and “dismiss.” Initially these two discrete variables were characteristics of a four-part variable named bankruptcy outcome. The four categories of bankruptcy were dismissed, discharged, converted (i.e., from chapter 13 to chapter 7) and active (i.e., the case is not closed). Cases were coded according to their recorded outcome or status. To create the “discharge” dummy variable, the five remaining active cases were combined with the cases coded as discharged and were coded as “1.” Cases marked dismissed or converted were combined and were given a “0” code. All of the independent variables are continuous.

Table 3.
Logistic Regression Results for Likelihood of Achieving a Chapter 13 Discharge (n=640)

Variable	Estimate	SE
Per Capita Income	0.000	0.000**
Trustee Payment Ratio	0.150	0.274
Previous Bankruptcy Filing	-0.518	0.223*
Secured Debt	0.000	0.000
Housing Expense	-0.001	0.000*
Intercept	-0.904	0.231
-2 log likelihood	704.866	

*p<.05. **p<.01

The results of the logistic regression analysis shown in Table 3 suggest that per capita income, the number of previous bankruptcies, and the housing expenses of the debtors are all significant predictors of likelihood of achieving a chapter 13 discharge. As per capita income increases so does the likelihood of the debtor receiving a discharge of their unsecured debt, a positive relationship. A negative relationship exists between the number of previous bankruptcy filings a debtor has and the likelihood of receiving a discharge. As the number of previous bankruptcies reported by the debtors decrease, the likelihood of discharge increases.

Conclusions

The purpose of the study was to compare chapter 13 debtors who received a discharge to those who did not attain a discharge and then determine the factors most likely to influence the successful completion of chapter 13 repayment plans and, consequently, a discharge of the remaining unsecured debts. Based on previous research, five hypotheses were tested.

It was expected that higher per capita income debtors would be more likely to attain a discharge. The null hypothesis that no relationship exists between the mean levels of per capita income for the two groups was not rejected. Additionally, the null hypothesis of no relationship in trustee payment ratio between the two types of debtors was not rejected. The trustee payment ratio, though not statistically significant, was found to have an opposite influence on the likelihood of discharge compared to what was hypothesized. According to the analysis, as the trustee payment ratio increases, so does the likelihood of discharge.

Using logistic regression, we find that contrary to Norberg's (1999) study, the successful completion of a chapter 13 payment plan is more likely to be accomplished by a debtor who has not filed bankruptcy within the past six years. This contradictory finding needs further research. One major difference in the two studies was the number of subjects, almost a thousand in this study compared to Norberg's (1999) sample size of only 71 cases.

The difference in mean levels of secured (non-mortgage) debt between discharged and dismissed debtors proved to be insignificant. However, the direction of the relationship is in the expected direction: positive.

There is indeed a negative relationship between the likelihood of discharge and the amount of a debtor's housing expense. The higher the housing expense, the less likely the debtor was to attain a discharge.

The three financial characteristics that best predict the likelihood of a debtor completing a chapter 13 repayment plan and receiving a discharge of unsecured debts are: per capita income, the number of previous bankruptcies filed by a debtor, and the monthly housing expense.

Discussion

These findings have direct implications for debtors, financial counselors, bankruptcy professionals, and members of Congress. Debtors who file chapter 13 repayment plans should be apprised of their chances for success. While some debtors with a low likelihood of completion may file a chapter 13 in order to accomplish a more limited, but important, goal such as catching up on mortgage arrearage in order to avoid foreclosure and loss of their home, others may decide to file a chapter 7 plan instead if they find out their chances of success are low. Although financial counselors need to take care to avoid charges of the unauthorized practice of law, they need to know the differences between chapter 7 and 13 and the success rate of repayment plans for their bankruptcy district. Many financial counselors know little about bankruptcy and thus are in a poor position to advise their clients. While many debtors go directly to a bankruptcy lawyer when their financial problems become unbearable, an unknown portion go first to financial counselors.

In most bankruptcy districts attorneys are influenced to recommend either chapter 7 or 13 based on the preferences of the judges and trustees. This local legal culture plus the individual beliefs of attorneys strongly influence chapter choice (Braucher, 1993). While attorneys, trustees, and judges have strong opinions about chapter choice, most have no idea of the chapter 13 success rate in their district. Attorneys may know the numbers for their practice but most do not keep detailed statistics on completion rate in their practice and certainly don't conduct detailed empirical analysis.

Members of Congress have formed strong opinions on bankruptcy chapter choice. Many members of Congress have voted to make chapter 7 more restrictive and to implement procedures to force more consumer debtors into chapter 13. All the empirical evidence suggests that would be a mistake. When debtors who voluntarily choose chapter 13 have a one-third or less likelihood of receiving a discharge, what are the odds when debtors who would prefer chapter 7 are forced to file a chapter 13 repayment plan?

Various limitations of the data restrict the conclusions that can be drawn from the study. Although chapter 13 is intended for "consumer" bankruptcies, Sullivan, Warren, and Westbrook (1989) found that 20% of their sample of "consumer" filers were really small business failures. The present study did not attempt to separate out small business failures in this sample. The study was limited to the variables listed in the court records. In addition to failing to record

a reason for the bankruptcy, many basic demographic variables such as education and marital history are also missing from the court records. One might expect that attitude plays a role in whether a debtor perseveres to complete a lengthy repayment plan but no attitudinal variables are available. Perhaps “innocent” victims of bad luck like uninsured medical problems or job loss are more likely to complete a repayment plan than a debtor who took every advantage to run up debts with no intention of ever repaying. Debtors who freely chose a chapter 13 plan with full intention to repay a portion of their debts may be different from debtors whose only option was chapter 13 because they owed back taxes, were behind on their mortgage or had filed chapter 7 within the previous six years. Not all chapter 13 debtors intend to complete a repayment plan.

Although it seems logical that the trustee ratio burden should influence the outcome, no statistical significance was found in this study. In this study the trustee payment ratio was calculated as a percent of family expenses, not as a percent of total or per capita income. Future studies should examine the trustee payment ratio in more depth. Examine the variables in relation to per capita income; this study found that as the housing expense increased, the likelihood of discharge decreased. It would be worthwhile to examine the housing expense variable in relation to per capita income and total income.

Another factor that was not considered in this study was whether the debtor actually had a choice between filing a 7 or 13. Debtors who desire bankruptcy court protection do not have a choice of chapter if they received a chapter 7 discharge within the past six years, they are behind on their house or vehicle payment and which to keep the collateral, owe back taxes, are behind on child support or alimony payments or are delinquent on student loans. Interviews with bankruptcy professionals suggest that many chapter 13 filers have no intention of completing their plan but only intend to make monthly payments to the trustee until their mortgage is caught up or their back taxes, etc. are repaid. Future research should add a “choice” variable to distinguish chapter 13 cases that truly had a choice between 7 and 13 and those who had to file 13 in order to retain collateral or satisfy other factors listed above. Another factor to control for in future studies is whether the filing was truly a consumer bankruptcy or whether it represented the failure of a small business.

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