

Bankruptcy by the Numbers

By Ed Flynn

Success Rates in Chapter 13

Over the past decade chapter 13 filings have averaged about 355,000 per year, ranging from a low of 296,655 in 2016 to a high of 438,913 in 2010.¹ Well over \$60 billion had been collected by chapter 13 trustees and distributed to creditors during this period.² These impressive monetary results have been achieved despite the fact that the majority of chapter 13 cases do not result in a completed repayment plan. This article focuses on plan-completion rates based on the following four factors that are known at the time the case is filed:

1. Did the debtor have an attorney?
2. Was the filing a joint case involving a married couple?
3. Were filing fees paid in full at the time of filing?
4. Did the debtor report having one or more prior filings?

The Federal Judicial Center, in partnership with the Administrative Office of the U.S. Courts (AOUSC), has recently made available an extensive Interactive Data Base (IDB) of bankruptcy cases. The IDB contains a record for every bankruptcy case filed and closed since 2008. This data allows researchers to work with case-level data rather than summary data.

The main sample used for this article consists of 123,185 cases originally filed as chapter 13s that were closed between fiscal years 2010 and 2016.

It includes all cases closed on one day per month (randomly selected) for each of the 84 months during this period.³

There is relatively little chapter 13 activity in some states. To compute statewide figures for *pro se* cases and prior filings, if a state had less than 300 cases in the original sample, all chapter 13 cases closed from fiscal years 2010-16 were used.⁴

Data Limitations

Data on three of the four factors under consideration is not available for every case. For example, data on prior filings was not reported for cases filed prior to October 2006 (reporting started one year after the effective date of Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). In addition, information on whether filing fees were paid is not available for cases filed prior to October 2005, and information on whether a case was filed *pro se* is missing for some cases filed prior to October 2006. In total, data was missing for one or more of these factors in about 9 percent of the IDB samples (11,037 out of 123,185 cases). All of the cases with missing data were at least three years old when they were closed, indicating that most had ended after completion of a repayment plan.



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- 1 See "Caseload Statistics Data Tables," U.S. Courts, available at uscourts.gov/statistics-reports/caseload-statistics-data-tables (unless otherwise specified, all links in this article were last visited on June 22, 2017).
- 2 See "Chapter 13 Trustee Data and Statistics," U.S. Department of Justice, available at www.justice.gov/ust/private-trustee-data-statistics/chapter-13-trustee-data-and-statistics.

3 The IDB contains a separate record for each year that a case is pending, so more than one record exists for many chapter 13 cases. For this article, the record from the year that each case was closed was used, regardless of when the case was filed.

4 Low-volume chapter 13 states for which the entire population of closed cases was used include Alaska, Delaware, Hawaii, Idaho, Iowa, Maine, Montana, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia, Wyoming and Washington, D.C.

Table 1: Chapter 13 Cases Closed, Fiscal Years 2010-16

	Total	Chapter 13 Plan Completed	Percent with a Completed Plan
All Cases in Sample	123,185	47,849	38.8%
Joint Filings	40,492	20,669	51.0%
Solo Cases	82,693	27,180	32.9%
Filed <i>Pro Se</i>	10,560	240	2.3%
Filed with an Attorney	110,449	45,805	41.5%
Unknown	2,176	1,804	82.9%
Prior Filing	34,513	7,898	22.9%
No Prior Filing	77,635	30,999	39.9%
Unknown	11,037	8,952	81.1%
Fees Paid in Full at Filing	101,851	41,848	41.1%
Fees Not Paid at Filing	20,228	5,025	24.8%
Unknown	1,106	976	88.2%

Another limitation is that the IDB does not contain information on many key aspects of chapter 13 cases (e.g., was the case confirmed, the debtor's household size, claims actually filed by creditors, dollar amounts paid, etc.), which limits the possible scope of analysis. Despite the missing data, the IDB provides a great window on the operation of chapter 13. The AOUSC and the Federal Judicial Center are to be commended for making this data available to the public.

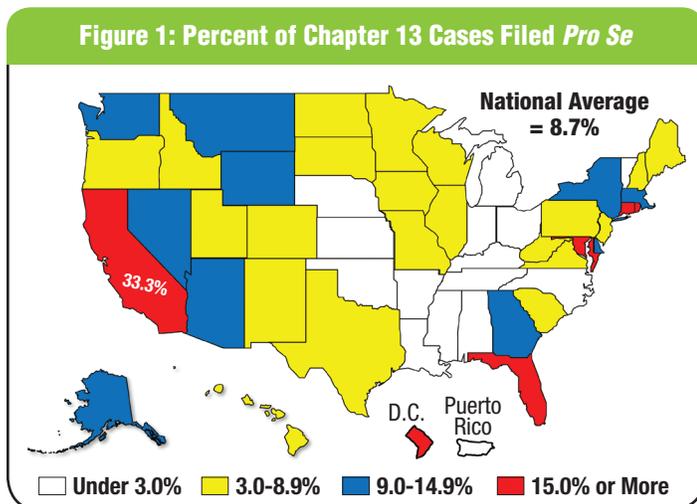
Chapter 13 Success

There is no consensus on what constitutes success in a chapter 13 case.⁵ For the purposes of this article, I will adopt a fairly narrow definition of success: A completion of a court-approved repayment plan resulting in a discharge of remaining debts. Of the IDB sample, 38.8 percent of the cases resulted in a completed plan of repayment and discharge of the debtor. Plan-completion rates were somewhat higher for joint filers, debtors with attorneys, debtors who had not filed previously and debtors who paid their filing fees in full at the time of filing (see Table 1).

Pro Se Cases

Chapter 13 is a complicated legal process, and filing without an attorney does not exempt a debtor from

5 Several excellent discussions of this topic include the following: Hon. Brian D. Lynch, "Measuring Success in Chapter 13," ConsiderChapter13.org (June 2016), available at considerchapter13.org/2016/06/05/measuring-success-in-chapter-13; Gordon Bermant, "What is Success in Chapter 13, and Why Should We Care?," ABI Journal (September 2004), available at abi.org/abi-journal; and Katherine M. Porter, "The Pretend Solution: An Empirical Study of Bankruptcy Outcomes," 90 Tex. L. Rev. 103 (2011), available at scholarship.law.ucl.edu/cgi/viewcontent.cgi?article=1143&context=faculty_scholarship.



compliance with the applicable rules, procedures and deadlines.⁶ Nevertheless, each year 25,000-40,000 debtors decide to file a chapter 13 case without an attorney. Nationwide, 8.7 percent of the chapter 13 cases closed between fiscal year 2010 and fiscal year 2016 were filed *pro se*. The proportion of cases that are *pro se* tends to be fairly low in most states in the center of the U.S. and higher along the East Coast and in many Western states. In California, one-third of chapter 13 cases have been filed *pro se*, accounting for nearly 40 percent of all such cases nationwide (see Figure 1).⁷

6 The AOUSC has prepared a list of valuable services that an attorney can assist with in the process. See "Filing Without an Attorney," available at uscourts.gov/services-forms/bankruptcy/filing-without-attorney.

7 The U.S. Bankruptcy Court for the Central District of California has prepared several very comprehensive reports on the *pro se* experience within that district. See "Annual Pro Se Report," available at cacb.uscourts.gov/publications/all/Pro%20Se%20Annual%20Report.

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Table 3: Joint vs. Solo Chapter 13 Cases Closed, Fiscal Years 2010-16

	Total	Joint	Solo
Total Cases	123,185	40,492	82,693
Percent with Completed Plans	38.8%	51.0%	32.9%
Filed <i>Pro Se</i>	10,560	794	9,766
Percent with Completed Plans	2.3%	11.7%	1.5%
Filed with an Attorney	110,449	38,931	71,518
Percent with Completed Plans	41.4%	51.2%	36.2%
Unknown	2,176	767	1,409
Percent with Completed Plans	82.9%	86.0%	81.2%
Debtors with a Prior Filing	34,513	9,518	24,995
Percent with Completed Plans	22.9%	34.2%	18.6%
Debtors with No Prior Filing	77,635	26,484	51,151
Percent with Completed Plans	39.9%	51.6%	33.9%
Unknown	11,037	4,490	6,547
Percent with Completed Plans	81.1%	83.5%	79.5%
Fees Paid in Full at Filing	101,851	36,344	65,507
Percent with Completed Plans	41.1%	51.6%	35.3%
Fees Not Paid in Full at Filing	20,228	3,742	16,486
Percent with Completed Plans	24.8%	41.9%	21.0%
Unknown	1,106	406	700
Percent with Completed Plans	88.2%	88.9%	87.9%

Table 2: Pro Se Cases Closed, Fiscal Years 2010-16

	Total	Chapter 13 Plan Completed	Percent with a Completed Plan
Total <i>Pro Se</i> Cases	10,560	240	2.23%
Joint Filings	794	93	11.70%
Solo Cases	9,766	147	1.50%
Prior Filing	4,470	53	1.19%
No Prior Filing	6,001	125	2.08%
Unknown	89	62	69.70%
Fees Paid in Full at Filing	5,605	196	3.50%
Fees Not Paid at Filing	4,955	40	0.81%

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Regardless of where the cases are filed, the IDB data paints a fairly dismal picture of the consequences of a *pro se* filing. Only about one in 45 *pro se* chapter 13 cases results in a completed repayment plan. More than half are dismissed within three months of filing, and more than 80 percent are gone within six months. It is likely that many bankruptcy judges have never had a chapter 13 *pro se* case that ended in a discharge after a completed repayment plan (see Table 2 on p. 39).

The *pro se* success rates are even worse for solo debtors, debtors with a prior filing and debtors who do not pay their filing fees. In fact, less than one in 200 *pro se* debtors who satisfy all three of these criteria end up with a successfully completed repayment plan.

Joint Filings

About one-third of chapter 13 cases are joint filings by married couples. The IDB data shows that jointly filed cases are far more likely to result in a completed repayment plan than cases involving a single debtor. This remains true

whether the debtor(s) file *pro se*, have a prior filing or pay their fees in full at the filing. The overall plan-completion rate is less than one-third for solo filers compared to a little over one-half for joint filers (see Table 3 on p. 39).

Filing Fees

The current cost to file a chapter 13 case is \$310 (the \$235 filing fee and a \$75 administrative fee). More than 80 percent of chapter 13 debtors pay their filing fees in full at the time of filing. For those who do not pay, their odds of successful completion of a repayment plan are reduced (see Table 4).

Prior Filings

About 30.8 percent of the chapter 13 debtors in the IDB sample report that they have had at least one prior filing in the previous eight years.⁸ (In contrast, less than 10 percent of chapter 7 debtors report a prior filing.) There is some variation in the refiling rates by location. In nine states, more than 40 percent of chapter 13 debtors were repeat customers, while

Table 4: Filing Fees and Case-Completion Rates

	Total	Percent of Cases in Sample	Chapter 13 Plan Completed	Percent with a Completed Plan
All Cases in Sample	123,185	100.0%	47,849	38.8%
Fees Paid in Full at Filing	101,851	82.7%	41,848	41.1%
Installment Plan Completed	10,521	8.5%	3,648	34.7%
Paying in Installments	8,846	7.2%	1,262	14.3%
Filing Fee Not Paid	847	0.7%	113	13.3%
Unknown or Other*	1,120	0.9%	978	87.3%

* Most of these cases were filed prior to October 2005, and the fees were likely paid in full at filing.

Table 5: Repeat Filers Compared to First-Time Filers

	Total	Repeat	First Time	Unknown
Total Cases	123,185	34,513	77,635	11,037
Percent with Completed Plans	38.8%	22.9%	39.9%	81.1%
Filed <i>Pro Se</i> *	10,560	4,470	6,001	89
Percent with Completed Plans	2.3%	1.2%	2.1%	69.7%
Filed with an Attorney	110,449	30,043	71,637	8,769
Percent with Completed Plans	41.4%	26.1%	43.1%	80.8%
Joint Debtors	40,492	9,518	26,484	4,490
Percent with Completed Plans	51.0%	34.2%	51.6%	83.5%
Solo Debtors	82,693	24,995	51,151	6,547
Percent with Completed Plans	32.9%	18.6%	33.9%	79.5%
Fees Paid in Full at Filing*	101,851	26,945	65,888	9,018
Percent with Completed Plans	41.1%	25.4%	42.1%	80.6%
Fees Not Paid in Full at Filing	20,228	7,568	11,747	913
Percent with Completed Plans	24.8%	13.9%	27.7%	78.2%

* In 2,176 cases *pro se* status is unknown, and in 1,106 cases fee status is unknown.

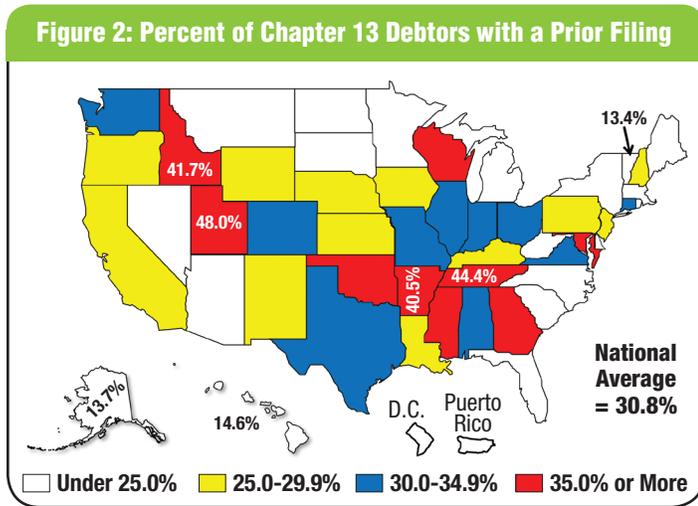
in 19 other states, Puerto Rico and the District of Columbia, the refiling rate was under 25 percent (see Figure 2).

The odds of a repeat debtor completing a repayment plan are only a little over one-half as high as a debtor who is filing for the first time. *Pro se* debtors are far more likely to have at least one prior filing than represented debtors (see Table 5).

Discussion

Four factors were considered in this analysis (attorney or *pro se*, joint or solo, first or repeat filing, and fees paid at filing or not paid). Based on these four factors, the cases in the

⁸ The IDB does not give any information on the prior filing(s) (e.g., when it was filed, the chapter, outcome, etc.).



IDB sample can be split into 16 different categories (with an additional category for the cases where data regarding one or more of these factors was missing). Table 6 shows the success rates for each group, in ascending order.

The eight subgroups of *pro se* debtors all have extremely low success rates. *Pro se* debtors who do not pay their filing fees in full at filing have a less than 1 percent chance of completing a repayment plan. At the other extreme, joint debtors with attorneys have a slightly better than even chance of completing a payment plan.

Among chapter 13 debtors with attorneys, there is a fairly wide range of outcomes. Joint filers who pay their filing fees in full and who have not filed previously are about three times as likely to complete a plan as solo filers with a prior filing who don't pay their fees in full at filing.

Conclusion

If all you know about a chapter 13 case is that it was filed *pro se*, it is a pretty safe bet that the case will not result in a completed repayment plan and a discharge of the debtor. Prior filings, failure to pay filing fees when a case is filed and solo filings all decrease the likelihood of a completed repayment plan.

Predicting success in a chapter 13 case is less certain than predicting failure. Given all of the uncertainty involved in a repayment plan that lasts from three to five years, there are no cases that can be considered a sure thing. Based on the four factors considered in this article, it is difficult to identify cases at filing that have a much-better-than-even chance of completion. **abi**

Table 6: Success Rate for Each Group

<i>Pro Se?</i>	Joint Filing?	Fees Paid at Filing?	Past Filing?	Cases	Percent of Cases	Completed Plans	Success Rate
All Cases in Sample				123,185	—	47,849	38.8%
Y	N	N	Y	2,099	1.7%	10	0.5%
Y	N	N	N	2,560	2.1%	19	0.7%
Y	N	Y	Y	2,070	1.7%	23	1.1%
Y	N	Y	N	2,980	2.4%	52	1.7%
Y	Y	N	Y	142	0.1%	3	2.1%
Y	Y	N	N	154	0.1%	8	5.2%
Y	Y	Y	Y	159	0.1%	17	10.7%
Y	Y	Y	N	310	0.3%	46	14.8%
N	N	N	Y	4,266	3.5%	738	17.3%
N	N	Y	Y	16,560	13.4%	3,874	23.4%
N	Y	N	Y	1,061	0.9%	304	28.7%
N	N	N	N	6,914	5.6%	2,200	31.8%
N	Y	Y	Y	8,156	6.6%	2,929	35.9%
N	N	Y	N	38,698	31.4%	15,057	38.9%
N	Y	N	N	2,122	1.7%	1,029	48.5%
N	Y	Y	N	23,900	19.4%	12,586	52.7%
Cases with Missing Information				11,037	9.0%	8,954	81.1%