

BANKRUPTCY BY THE NUMBERS

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Pursuant to 28 U.S.C. §1930, all Chapter 7 debtors are currently required to pay a filing fee, although some debtors pay the fee in installments. For the first time, under S. 420 and H.R. 333 the court may waive payment of the filing fee in Chapter 7 cases. The applicable language in Sections 418 of the respective bills is as follows:

“Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 if the court determines that such debtor has income less than 150 percent of the income official poverty line... and is unable to pay that fee in installments.”

The fee waiver provision has received relatively little attention compared to many other aspects of bankruptcy reform. In this article we examine the fee waiver provision contained in the pending reform legislation.

In 1993, Congress directed the Judiciary to conduct a study on waiver of the filing fee in individual Chapter 7 cases. In 1998 the Federal Judicial Center (FJC) issued a comprehensive report^{2/} on the results of a pilot fee waiver program conducted in six judicial districts.^{3/} Key findings in the report included:

- Overall, 3.4% of chapter 7 debtors in the pilot districts applied for a fee waiver, and 2.9% were actually approved (85.6% of those who applied);
- The percentage of debtors who applied for a fee waiver ranged from a low of .3% in the Western District of Tennessee to a high of 8.3% in the Eastern District of Pennsylvania;
- Over one-half of the fee waiver applications filed and granted in the six pilot districts were in the Eastern District of Pennsylvania, where legal services and pro bono representation are widely available to Chapter 7 debtors;
- Fee waiver applicants were more likely to have filed pro se than other Chapter 7 debtors;
- Attorneys had been paid in 6.4% of the cases, and non-attorney petition preparers had been paid in another 6.0% of the cases.
- Availability of fee waivers had little or no effect on total filings or the mix of filings in the pilot districts.

The FJC estimated the nationwide cost of the fee waivers (in lost filing fees and additional personnel costs) to be between \$4.5 million and \$7.7 million per year, depending on various eligibility standards and assumptions. However, the FJC also noted that the cost might rise significantly if fee waivers were given

^{1/} All views expressed in this article are those of the authors, and do not necessarily represent the views of the Executive Office for United States Trustees or the Department of Justice.

^{2/} The report was prepared under the direction of the Judicial Conference Subcommittee on In Forma Pauperis, chaired by District Judge Donald E. Walter of the Western District of Louisiana. The principal author of the report was Elizabeth C. Wiggins of the FJC's Research Division. A copy of the report can be found on the ABI's website at: <http://www.abiworld.org/research/ifp.html>.

^{3/} Pilot districts included the Eastern Districts of Pennsylvania and New York, the Southern District of Illinois, the Western District of Tennessee, and the Districts of Montana and Utah.

automatically based on a bright-line income standard.

The official poverty statistics are updated annually by the Bureau of the Census. The current poverty figures can be found at the following website:

<http://www.census.gov/hhes/poverty/threshld/thresh00.html>

For each sized family, there are minor variations depending upon the number of children under age 18, and whether or not the householder is 65 or older, but there are no adjustments made for local cost of living. The current poverty thresholds are as follows

FAMILY SIZE	NUMBER OF CHILDREN	2000 POVERTY THRESHOLD	150% OF POVERTY THRESHOLD
1	0	\$8,959	\$13,439
2	0	\$11,531	\$17,297
3	1	\$13,861	\$20,792
4	2	\$17,463	\$26,195
5	3	\$20,550	\$30,825
6	4	\$23,009	\$34,514

As a first step to gauge the potential impact of the fee waiver provision we estimated the number of debtors who would be eligible to apply for a fee waiver based on income alone. We applied the poverty thresholds that were in effect at the time of filing to the 5,165 no asset Chapter 7 cases currently in our research database. These cases were filed between 1998 and 2000, and were drawn from all judicial districts except for the six districts in North Carolina and Alabama, which are served by Bankruptcy Administrators.

We found that 29.7% of individual chapter 7 debtors have incomes that are less than 150% of the applicable poverty line. This is somewhat higher than the figure for the population at large. According to the Bureau of the Census figures for 1999, 21% of the U.S. population had incomes less than 150% of the poverty line.

This proportion of debtors below the 150% threshold varied somewhat based on family size, ranging from about one-quarter of debtors in households of one or two persons, to about one-half of debtors in households of six or more. There was relatively little variation by state in these figures-most came in at about 30%. States with relatively few debtors with incomes less than 150% of the poverty line included Nevada (11.4%), Texas (18.3%), Connecticut (20.8%), and Kansas (23.3%). Notable exceptions on the high end included Puerto Rico (72.7%), West Virginia (50%), Arkansas (48.8%), and Kentucky (44.8%).

There was considerable variation on the percentages based on gender and marital status. In particular, female debtors, regardless of marital status, were much more likely to have incomes below the 150% threshold than either male debtors or joint filers.

PERCENT OF DEBTORS BELOW 150% OF THE POVERTY LINE			
MARITAL STATUS	JOINT FILING	MALE	FEMALE
- MARRIED	20.8%	32.8%	46.7%
- SEPARATED	8.6%	19.4%	39.8%
- DIVORCED	N/A	19.7%	33.3%
- SINGLE	N/A	23.5%	36.9%
- WIDOWED	N/A	18.2%	58.7%

Certainly some of the Chapter 7 debtors who are under the 150% poverty threshold would be able to pay the filing fee. However, based on the debt, income, and expense figures our database of debtors reported on Schedules F, I, and J, most Chapter 7 debtors expect to have little if any available money after bankruptcy. Only about 8% of the below 150% threshold debtors reported having at least \$50 disposable income after expenses (the approximate amount they would need to pay the fee in installments). Their average gross annual income at filing was only \$11,820, while their average reported general and priority unsecured debt was \$34,724.

Based on the use of the word “procedures” in the legislation, it appears that Judicial Conference’s role will be to issue guidance on the mechanical steps a debtor must follow to file a request for a fee waiver. One major issue is whether debtors who are represented by a paid attorney will be eligible for a fee waiver. Bankruptcy Rule 1006(b)(1) allows an individual to apply to pay the filing fee in installments if the debtor is unable to pay the full fee at filing and if “the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case”. Following upon this Rule, many judges may determine that eligibility for fee waivers should not be more liberal than the existing standard for paying fees in installments.

As noted above, the FJC reported significant geographical differences in the use of the fee waiver during the pilot program. It is not clear whether there is a valid method of extrapolation from this variability to form an estimate of the waiver provision’s use when it is available nationally.