

Consumer Protection

Debtors Struggle Longer With Finances Before Bankruptcy, Report Shows

BNA Snapshot

- New report finds debtors struggling longer in financial “sweatbox” before filing bankruptcy
- Changes in debt buying and collection practices most plausible explanation



By [Diane Davis](#)

Debtors are struggling longer with their finances in the years prior to filing for bankruptcy than they have in the past, new academic research shows.

Time spent in the so-called financial “sweatbox” is a period when lenders can profit from customer financial misery through higher interest and fees, the Consumer Bankruptcy Project [report](#) shows.

Understanding who seeks court protection and why will help bankruptcy attorneys interact better with their clients, influence how judges rule in specific cases, and affect laws directed at bankruptcy and consumer debt issues.

“The bankruptcy system only functions effectively when attorneys, judges, and policymakers understand the reality of the problems to be solved,” according to the report, “Life in the Sweatbox,” that was based on 3,200 bankruptcy cases filed between 2013-16.

Two or More Years

Two-thirds of people who file bankruptcy reported struggling with debts for two or more years before filing, the report said. A third reported struggling for more than five years, double the frequency from 2007.

“Changes in debt buying and collection practices is the most plausible explanation for this new data,” report co-author Pamela Foohy told Bloomberg Law.

Other possible reasons could be the continuing effects from changes to consumer bankruptcy laws in 2005, said Foohy, an associate professor at Indiana University Maurer School of Law in Bloomington, Ind.

Those changes under the federal Bankruptcy Abuse Prevention and Consumer Practices Act (BAPCPA) were designed to decrease consumer filings by making it more difficult, expensive, and time-consuming.

The consumer credit industry said the changes were needed because courts were full of deadbeat, “can-pay” debtors who file “bankruptcies of convenience” to escape their obligations and felt no shame in abusing the system, the report said.

But that “vision” of filing bankruptcies out of convenience is “wrong based on the data,” Foohy said.

The reality is that changes in how delinquent debts are bought, sold, and collected may have altered which households file bankruptcy and bring long struggling debtors into the system who wouldn't have filed bankruptcy in prior decades, the report said.

'Long Strugglers'

“Long strugglers”—people who struggle for more than two years before seeking bankruptcy—are “coming to the law in different ways,” report co-author Robert Lawless told Bloomberg Law.

“People are getting sued more frequently by creditors over their debts and once they realize they have a legal and a financial problem, the solution ends up being to file for bankruptcy,” said Lawless, the Max L. Rowe Professor of Law at the University of Illinois College of Law in Champaign, Ill.

It's how these people deal with their problems and gain access to the justice system, said Lawless.

For the long strugglers, their time in the sweatbox is particularly damaging, according to the report.

These debtors deal with persistent collection calls, go without healthcare, food, and utilities, lose homes, and other property, and yet they are still ashamed when they need to file bankruptcy.

Their time in the sweatbox undermines their ability to realize the “fresh start” envisioned in bankruptcy because they don't file until long after the benefits outweigh the costs.

The report shows that these debtors would have benefited from filing bankruptcy months or years earlier. Yet, seven out of 10 long strugglers reported shame when they went to court.

The Consumer Bankruptcy Project has been studying various consumer and bankruptcy issues since the 1980s and is funded by the research budgets of their schools involved in the project, Foohey said. The researchers said they have no specific “agenda” with releasing their report.

Katherine M. Porter, professor of law, University of California, Irvine School of Law in Irvine, Calif., and Deborah Thorne, assistant professor of sociology, University of Idaho in Moscow, Idaho, also co-authored the report that will be published by Notre Dame Law Review in the fall.

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Full text of report available at : https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3126901