

Blacks Face Bias in Bankruptcy, Study Suggests

Josh Anderson for The New York Times

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Blacks are about twice as likely as whites to wind up in the more onerous and costly form of consumer bankruptcy as they try to dig out from their debts, a new study has found.

The disparity persisted even when the researchers adjusted for income, homeownership, assets and education. The evidence suggested that lawyers were disproportionately steering blacks into a process that was not as good for them financially, in part because of biases, whether conscious or unconscious.

The vast majority of debtors file under Chapter 7 of the bankruptcy code, which typically allows them to erase most debts in a matter of months. It tends to have a higher success rate and is less expensive than the alternative, Chapter 13, which requires debtors to dedicate their disposable income to paying back their debts for several years.

The [study of racial differences](#) in bankruptcy filings was written by Robert M. Lawless, a bankruptcy expert and law professor, and Dov Cohen, a psychology professor, both with the University of Illinois; and Jean Braucher, a law professor at the University of Arizona.

A survey conducted as part of their research found that bankruptcy lawyers were much more likely to steer black debtors into a Chapter 13 than white filers even when they had identical financial situations. The lawyers, the survey found, were also more likely to view blacks as having “good values” when they expressed a preference for Chapter 13.

“Unfortunately I’m not surprised with these results,” said Neil Ellington, executive vice president of Consumer Education Services, a credit counseling agency in Raleigh, N.C. “The same underlying issues that created the problem in mortgage lending, with minorities paying higher interest rates than their white counterparts having the same loan qualifications, are present in all financial fields.”

The findings, which will be published in *The Journal of Empirical Legal Studies* later this year, did not suggest that there was any obvious evidence of discrimination in the bankruptcy process. “I don’t think there is any overt conspiracy,” Professor Lawless said. “But when you have a complex system, these biases can play out and the people within the system don’t see the pattern because nobody is in charge of looking at these big issues.”

Changes in the bankruptcy law in 2005 were intended to force more debtors to file under Chapter 13 and repay some of their debts, but that has not been the effect. In fact, the rate of Chapter 13 filings has remained relatively steady, at about 30 percent. Last year, overall bankruptcy filings were 1.4 million.

Chapter 13 is not always an inferior choice. Many distressed borrowers go that route because they may be able to save their homes from foreclosure. But even that does not explain away the difference: among blacks who did not own their homes, the rate of filing for Chapter 13 was still twice as high as the rate for other races. And the trend persists across the country, beyond regions like the South where Chapter 13 tends to be a more popular option among all debtors (perhaps, in part, because Chapter 13 originated in the South).

If a debtor chooses an inappropriate chapter, there can be serious implications. Chapter 13 plans, for instance, are more likely to fail than a Chapter 7. Nearly two of every three Chapter 13 plans are not completed, which means the filers’ remaining debts are not discharged, leaving them right where they started. One bankruptcy judge, who sees filers once they can no longer make the required payments in the plans, said the debtors usually do not have enough income to stick with the budget.

“They thought they could cut back on this or that, and you might be able to do that for three or four months,” said the judge, C. Ray Mullins, chief judge for the United States Bankruptcy Court in the Northern District of Georgia. “But in a Chapter 13, it will be either three or five years. There are certain things you can’t anticipate — a spike in gas prices.”

The study has two parts. One used data from actual bankruptcy cases from the Consumer Bankruptcy Project, the most detailed trove of information on filers currently available. The project surveyed 2,400 households nationwide who filed for bankruptcy in 2007.

Results from the second part of the study, which illustrated the lawyer’s influence in determining which bankruptcy chapter to choose, came from a survey sent to lawyers asking them questions based on fictitious couples who were seeking bankruptcy protection. When the couple was named “Reggie and Latisha,” who attended an African Methodist Episcopal Church — as opposed to a white couple, “Todd and Allison,” who were members of a United Methodist Church — the lawyers were more likely to recommend a Chapter 13, even though the two couples’ financial circumstances were identical.

Even though the attorneys’ fees for the more labor-intensive Chapter 13 are more than double the charge for a Chapter 7, some truly distressed debtors will pursue a Chapter 13 anyway, several bankruptcy experts said. That is because they can pay the fee over time, unlike in a Chapter 7, which typically requires a payment before the case is filed. If blacks are perceived as less likely to have the resources — or a family with resources — to come up with a lump sum, some lawyers may be inclined to suggest a Chapter 13, these experts suggested.

But Professor Lawless said he and the other researchers accounted for this possibility in their results. As to the possibility that unscrupulous attorneys could push Chapter 13 filings in an attempt to get higher fees, Professor Lawless said that effect should be apparent across all races.

He said the study has no information about whether other players in the process — judges and bankruptcy trustees, among others — were contributing to the difference in filings rates.

William E. Brewer Jr., president of the National Association of Consumer Bankruptcy Attorneys, and a practicing lawyer in Raleigh, N.C., disputed the premise of the study that Chapter 13 was always more burdensome and always required debtors to pay more to their creditors. “The study does not adequately control for the numerous complex factors that dictate chapter choice,” he said. “Having said this, NACBA intends to present the study to its members for discussion and self-reflection.”

Other, more limited studies have also shown the higher incidence of Chapter 13 among blacks. In Chicago, the Woodstock Institute, a research and policy group, reported last May that in mostly black communities in Cook County, nearly half the cases from 2006 to 2010 were filed under Chapter 13, compared with 32.8 percent of all cases filed in the county. “For people of color, who historically have fewer assets, preservation of assets is a top priority,” said Tom Feltner, vice president at Woodstock, who added that lawyers often have a financial incentive to push Chapter 13 filings. “It is possible that the higher levels of Chapter 13 in communities of color can be explained by a combination of higher attorney’s fees and a filer’s desire, or advice that elevates a filer’s desire, to preserve as many assets as possible.”

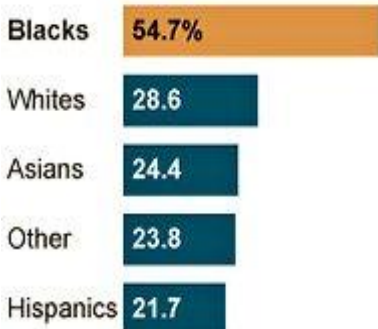
Henry E. Hildebrand III, who has served as a Chapter 13 trustee in Tennessee for 30 years, said he had noticed that blacks and other minorities appeared to be overrepresented in Chapter 13 cases. “We should focus not on picking apart the conclusions,” Mr. Hildebrand said, “but use this study as an indication that we should be attempting to fix what has become a complex, expensive, unproductive system.”

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Higher Rate for Chapter 13

Blacks file Chapter 13 bankruptcies at almost twice the rate of any other group.

Chapter 13 bankruptcy filings as a share of total by group
Based on the 2007 Consumer Bankruptcy Project



Source: “Race, Attorney Influence and Bankruptcy Chapter Choice,” by Jean Braucher, Dov Cohen and Robert M. Lawless, *Journal of Empirical Legal Studies*