



United States General Accounting Office
Washington, D.C. 20548

B-283143

July 12, 1999

The Honorable Herb Kohl
United States Senate

Subject: Bankruptcy Reform: Use of the Homestead Exemption by Chapter 7 Bankruptcy Debtors in the Northern District of Texas and the Southern District of Florida

Dear Senator Kohl:

On June 18, 1999, we provided you a letter in response to your request for data on debtors' use of the homestead exemption in chapter 7 bankruptcy cases closed in calendar year 1998 in the Northern District of Texas and the Southern District of Florida.¹ On June 29, 1999, your office asked that we provide (1) further information on debtors' use of the homestead exemption in these two districts and (2) data on the number of personal chapter 7 bankruptcy cases closed in calendar year 1998 in the remaining five districts in Texas and Florida.

Specifically, your office asked that we provide information—based on our sample of closed chapter 7 cases in the Northern District of Texas and the Southern District of Florida—on the average and median amount of all homestead exemptions claimed by debtors in these districts in 1998. Further, your office asked that we provide data on the estimated average and median homestead exemptions claimed for all homestead cases closed in 1998 in each district.

Table I.1 in enclosure I provides the requested data on the estimated average and median amount of the homestead exemptions claimed in each district for (1) homestead claims under \$100,000, (2) homestead claims of \$100,000 or more, and (3) all homestead claims combined. Table I.1 also includes the confidence intervals for our estimates. As originally requested, our June 18, 1999, letter provided data on homestead exemptions under \$100,000 and homestead exemptions of \$100,000 or more. This presentation adds the combined total.

Concerning the second part of your request, table II.1 in enclosure II provides data on the number of personal chapter 7 bankruptcy cases closed in the remaining five districts in Texas and Florida—the Eastern, Southern, and Western Districts of Texas and the Northern and Middle Districts of Florida. We obtained data on chapter 7 cases closed in calendar year 1998 in the remaining five districts in Florida and Texas from the Administrative Office of the U.S. Courts. Enclosure III contains our scope and methodology, provided in our earlier report, for determining the homestead exemptions claimed by chapter 7 debtors in these two districts.

¹ Bankruptcy Reform: Use of the Homestead Exemption by Chapter 7 Bankruptcy Debtors in the Northern District of Texas and the Southern District of Florida (GAO/GGD-99-118R, June 18, 1999).

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We plan no further distribution of this letter for 30 days, unless its contents are made public. At that time, we will send copies to Senators Charles Grassley and Robert Torricelli, the Chairman and Ranking Minority Member of the Subcommittee on Administrative Oversight and the Courts, Senate Committee on the Judiciary; Representatives George Gekas and Jerrold Nadler, the Chairman and Ranking Minority Members of the Subcommittee on Commercial and Administrative Law, House Committee on the Judiciary; and Mr. Ralph Mecham, Director of the Administrative Office of the U.S. Courts. We will send copies of this letter to others upon request.

If you have further questions, please contact me or William Jenkins at (202) 512-5777. Key contributors to this assignment were Christopher Conrad and Wendy Ahmed.

Sincerely yours,

A handwritten signature in black ink that reads "Richard M. Stana". The signature is written in a cursive style with a long horizontal flourish at the end.

Richard M. Stana
Associate Director
Administration of Justice Issues

Data on Chapter 7 Bankruptcy Debtors' Use of the Homestead Exemption in Two Districts

This table contains data on the values of the homestead exemptions claimed in personal (nonbusiness) chapter 7 bankruptcy cases closed in 1998 in the Northern District of Texas and in the Southern District of Florida. It includes data from our sample of cases in each district and our weighted statistical estimates for the population of all chapter 7 cases closed in each district in 1998. The confidence intervals shown are the boundaries within which there is a 95-percent statistical probability that the actual amount for the population of cases would be found.

Table I.1: Results of Analyses of Homestead Exemptions Claimed in 1998 in Two Bankruptcy Districts

	Northern District of Texas			Southern District of Florida		
	Sample results	Population estimates		Sample results	Population estimates	
		Estimate	Confidence interval		Estimate	Confidence interval
Homestead exemption claims						
Total number of cases with homestead exemption claims	414 (52%) ^a	6,999 (52%) ^a	+/- 4% (48% to 56%)	401 (52%)	9,532 (46%)	+/- 4% (42% to 50%)
Number with claims under \$100,000	407 (99%) ^b	6,916 (99%) ^b	+/- 1% (98% to 100%)	397 (99%)	9,459 (99%)	+/- 1% (98% to 100%)
Number with claims of \$100,000 or more	7 (1%) ^b	83 (1%)	+/- 1% (0% to 2%)	4 (1%)	73 (1%)	+/- 1% (0% to 2%)
Homestead claims under \$100,000						
Average amount of claims under \$100,000	\$13,400	\$14,820	\$12,443 to \$17,197	\$12,974	\$16,041	\$13,461 to \$18,621
Median amount of claims under \$100,000	\$8,000	\$8,874	\$7,026 to \$10,945	\$7,872	\$9,884	\$6,870 to \$13,241
Homestead claims of \$100,000 or more						
Average amount of claims of \$100,000 or more	\$149,563	°	°	\$119,167	°	°
Median amount of claims of \$100,000 or more	\$146,000	°	°	\$120,418	°	°
All homestead claims						
Average amount of claims	\$15,703	\$16,338	\$13,633 to \$19,042	\$14,033	\$16,826	\$13,410 to \$19,574
Median amount of claims	\$8,000	\$9,043	\$7,049 to \$11,257	\$8,000	\$9,923	\$6,895 to \$13,410

^aPercentages in row represent percent of the total number of sample cases or percent of the total population of chapter 7 cases closed in each district.

^bPercentages in row represent percent of the total number of sample cases or percent of the estimated total population of cases that included a homestead claim in each district.

^cSample sizes were too small to assess the precision of projections to all chapter 7 cases closed in the district.

Data on Chapter 7 Bankruptcy Debtors' Use of the Homestead Exemption in Two Districts

Source: GAO analysis of a statistically valid probability sample of chapter 7 bankruptcy cases closed in 1998 in the Northern District of Texas and the Southern District of Florida.

Personal (Nonbusiness) Chapter 7 Cases Closed in Calendar Year 1998 in Five Bankruptcy Districts

This enclosure includes information on the number of personal (nonbusiness) chapter 7 bankruptcy cases closed in calendar year 1998 in each of five bankruptcy districts—the Eastern, Southern, and Western Districts of Texas and the Northern and Middle Districts of Florida.

Table II.1: Personal Chapter 7 Bankruptcy Cases Closed in Five Bankruptcy Districts in Calendar Year 1998

Category of closed cases	District				
	Eastern Texas	Southern Texas	Western Texas	Northern Florida	Middle Florida
Filed and closed under chapter 7					
Discharge granted	4,386	11,137	9,632	4,089	34,939
Discharge denied, waived, or revoked	4	11	9	8	176
Dismissed or transferred to another district	92	247	118	43	305
Subtotal	4,482	11,395	9,759	4,140	35,420
Filed under another chapter but converted to chapter 7 prior to closing					
Discharge granted	231	772	794	89	813
Discharge denied, waived, or revoked	0	1	1	0	43
Dismissed or transferred to another district	34	139	32	1	29
Subtotal	265	912	827	90	885
Total	4,747	12,307	10,586	4,230	36,305

Source: Administrative Office of the U.S. Courts

Objective, Scope, and Methodology

Overall, our objective was to review the use of the homestead exemption by debtors whose personal (nonbusiness) chapter 7 bankruptcy cases were closed in calendar year 1998 in two bankruptcy districts—the Northern District of Texas and the Southern District of Florida. Both of these districts are located in states that permit debtors to claim a homestead exemption of an unlimited dollar amount. Specifically, our objectives were to determine for each district (1) how many chapter 7 bankruptcy debtors claimed a homestead exemption, (2) the average and median amount of the exemption claimed, (3) the average and median amount of total debts that debtors who claimed a homestead exemption listed on the schedules of debts filed with their bankruptcy petition, and (4) the estimated average and median amount of the debts discharged by bankruptcy filers who claimed a homestead exemption. As requested, we divided those debtors who claimed a homestead exemption into two groups—debtors who claimed a homestead exemption of (1) less than \$100,000 and (2) at least \$100,000 but not more than \$500,000. In our sample, we found no debtors who claimed a homestead exemption of as much as \$300,000. This enclosure describes our methodology for determining the amount of the homestead exemption chapter 7 debtors claimed in calendar year 1998 in these two districts. A description of our methodology for determining the total amount of scheduled debts and estimating the total amount of discharged debts is found in enclosure II of our earlier report.¹

To determine the amount of the homestead exemption claimed, we reviewed the statutory provisions defining property eligible for a homestead exemption in Texas and Florida. We interviewed bankruptcy court officials in both districts; a private panel trustee, whose responsibilities include reviewing debtors' financial schedules; and an official within the Executive Office of U.S. Trustees. We also discussed our proposed case file review methodology with a bankruptcy judge and incorporated his suggested changes into our methodology. To obtain the data needed to meet our objectives, we reviewed a statistically valid probability sample of closed chapter 7 cases in each district. The results of our analysis are limited to personal chapter 7 bankruptcy cases closed in 1998 in the Northern District of Texas and the Southern District of Florida.

Sample Selection

At our request, the clerk of court in each of the two districts—the Northern District of Texas and the Southern District of Florida—provided us with a list of all personal (nonbusiness) chapter 7 cases closed in each

¹ Bankruptcy Reform: Use of the Homestead Exemption by Chapter 7 Bankruptcy Debtors in the Northern District of Texas and the Southern District of Florida in 1998 (GGD-99-118R, June 18, 1999).

district in calendar year 1998 that were not dismissed. These lists included 13,477 cases in the Northern District of Texas and 20,897 cases in the Southern District of Florida. From this population of cases, we selected a statistically valid probability sample of 823 cases in the Northern District of Texas and 785 cases in the Southern District of Florida to review. We excluded dismissed cases from our samples because debtors whose cases are dismissed generally remain financially responsible for their debts and do not receive a discharge of their eligible dischargeable debts from the bankruptcy court.

We chose closed chapter 7 cases for two reasons. First, proposed personal bankruptcy reform legislation has focused principally on debtors who file under chapter 7 of the bankruptcy code seeking to have their eligible dischargeable debts discharged in bankruptcy. Generally, the debtor no longer has any personal financial liability for debts discharged in bankruptcy. Creditors are prohibited from attempting to collect debts discharged in bankruptcy. Second, the debts actually discharged in bankruptcy can generally be determined only from closed bankruptcy court cases.² We excluded from our samples closed cases that were dismissed because debtors whose cases are dismissed do not generally receive a discharge of their eligible debts and, thus, generally remain financially responsible for all their debts.³ In both districts, our samples included chapter 7 cases closed in calendar year 1998, whether initially filed and closed under chapter 7 of the bankruptcy code or filed under another bankruptcy chapter, but subsequently converted to and closed under chapter 7.⁴ In general, debtors whose cases were converted to chapter 7 prior to closing may claim a homestead exemption.

Our final samples for the two districts are shown in table III.1. The table shows the population of cases from which we selected our sample in each

² In some circumstances, a state court may have concurrent jurisdiction with the bankruptcy court for certain complaints about the dischargeability of particular debts.

³ A chapter 7 bankruptcy debtor's case may be dismissed for various reasons, including "for cause," which can encompass such reasons as the debtor's failure to pay the bankruptcy court filing fee, complete the required financial schedules, attend the required meeting with creditors and the private panel trustee, or where granting relief would be a "substantial abuse" of such bankruptcy provisions.

⁴ In these two districts in calendar year 1998, the great majority of cases converted to chapter 7 from another bankruptcy chapter prior to closing were initially filed under chapter 13. In the Northern District of Texas, 866 of 977 (88.6 percent) cases converted to chapter 7 prior to closing were converted from chapter 13. In the Southern District of Florida, 408 of 416 (98.1 percent) converted cases were converted from chapter 13. Under chapter 13, debtors agree to enter into and perform under a repayment plan, which must be approved by the bankruptcy court, in which the debtors agree to repay all or a portion of their debts over a period not to exceed 3 to 5 years. These chapter 13 repayment plans may not be completed for a variety of reasons. Determining the reasons that cases were converted to chapter 7 from another chapter prior to closing was beyond the scope of our review.

Enclosure III
Objective, Scope, and Methodology

district, the number of cases in our sample in each district, and the final number of cases in each district included in our analyses. Our sample sizes were based on several assumptions about the percentage of debtors who claimed a homestead exemption, the distribution of the amounts of homestead exemptions claimed, and the distribution of the amounts of total debt discharged for debtors who claimed a homestead exemption.

Table III.1: Population of Calendar Year 1998 Closed Chapter 7 Cases Used for Sample Selection and the Composition of the Final Sample in Each District

Closed chapter 7 cases	Northern District of Texas	Southern District of Florida
Nondismissed cases closed in calendar year 1998		
Filed and closed under chapter 7	12,500	20,481
Closed under chapter 7 after conversion from another chapter	977	416
Total	13,477	20,897
Size of random sample		
Filed and closed under chapter 7	580	603
Closed under chapter 7 after conversion from another chapter	243	182
Total	823	785
Less cases in sample deleted from final analysis^a		
Filed and closed under chapter 7	14	5
Closed under chapter 7 after conversion from another chapter	12	6
Net total number of cases analyzed	797	774

Note: Sample was based on the assumption that 30 percent of closed chapter 7 cases would include a homestead exemption claim. However, about 52 percent of the cases in each district's sample included a homestead exemption. This higher than expected percentage permitted us to project the results of our sample to all cases closed in each district with greater statistical confidence.

^aWe deleted cases in which the case file contained insufficient data for analysis or in which there were conflicting data about the amount of the homestead exemption, debts, or debts discharged that could not be reconciled using other documents in the file.

Source: Clerks of the Bankruptcy Courts for the Northern District of Texas and the Southern District of Florida, and GAO data.

There were virtually no empirical data on the percentage of debtors who claimed a homestead exemption in each district in calendar year 1998. Consequently, we discussed this issue with an official in the Executive Office for U.S. Trustees, court officials in each district, and a private panel trustee. Although their estimates varied, each of these officials agreed that

it was likely that a minority of chapter 7 debtors in each district had claimed a homestead exemption. On the basis of these discussions, our sample size in each district was based on the assumption that 30 percent of the chapter 7 cases closed in each district would involve a homestead exemption. We also made some assumptions about the distribution of the amounts of the homestead exemptions claimed. For example, on the basis of our discussions, we stratified our samples in each district. We did this because those we interviewed thought that cases converted to chapter 7 from other bankruptcy chapters prior to closing were likely to have a higher proportion of debtors who claimed a homestead exemption than debtors whose cases were filed and closed under chapter 7. On the basis of these assumptions, we selected a statistically valid probability sample of 823 cases in the Northern District of Texas and 785 cases in the Southern District of Florida. The sample cases within each strata were then weighted in the analysis to account statistically for all chapter 7 cases closed in 1998. Though converted cases are overrepresented in the sample, weights used in the analysis correctly reflect their frequency in the population. Our samples were designed to permit us to include confidence intervals for all results reported and to provide separate estimates for cases filed and closed under chapter 7 and cases converted to chapter 7 from another bankruptcy chapter prior to closing.

During our review of the case files in each district, we deleted some cases from our final analysis because the case files had either insufficient information for our analysis or conflicting information that could not be reconciled using other documents in the file. For example, if the amount of the mortgage debt could not be determined from a reaffirmation agreement, proof of claim, court order, or the financial schedules, we excluded the case from our analysis. We deleted 26 cases (3.2 percent of our sample) in the Northern District of Texas and 11 cases (1.4 percent of our sample) in the Southern District of Florida. Tables III.2 and III.3 provide further information on the cases we deleted from our sample in each district, as well as other problems that we encountered in our file reviews and how we resolved them.

Enclosure III
Objective, Scope, and Methodology

Table III.2: Summary of Problems Detected in Reviewing Closed Chapter 7 Bankruptcy Cases in the Northern District of Texas and Their Resolution

Problem detected	Number of cases	Resolution of problem
Case had been reopened; no longer closed.	4	Cases deleted from sample reviewed.
Case involved a codebtor on the homestead with percentage share unknown.	5	Cases deleted from sample reviewed.
IRS debt with amount listed as "unknown."	48 ^{a,c}	Completed DCIs but total debt will be understated by the true value of the IRS debt.
Very complicated chapter 11 to chapter 7 conversion with amounts that could not be reconciled across schedules.	3	Cases deleted from sample reviewed.
Case file contained numerous debts listed on the wrong schedules, as well as three separate mortgage amounts.	1	Case deleted from sample reviewed.
Business chapter 7 case with land listed as homestead, but owner's share of the land could not be determined.	1	Case deleted from sample reviewed.
Schedule G contained an unexpired lease with amount listed as "unknown."	27 ^{a,b}	Completed DCIs but total debt and discharged debt will be understated by the true value of the unexpired lease amounts.
Case was dismissed for failure to complete the forms in a timely manner.	1	Case deleted from sample reviewed.
Case closed as a chapter 13, not chapter 7.	1	Case deleted from sample reviewed.
Case closed in 1994, not 1998.	1	Case deleted from sample reviewed.
Case was a chapter 13 conversion with debt amounts that could not be reconciled across the schedules.	2	Cases deleted from sample reviewed.
Case involved a home builder with several homes listed on the schedules with no indication as to which one was being claimed as the homestead.	1	Case deleted from sample reviewed.
Case dated back to 1986 and the schedules in the file were different from the current schedules used today.	1	Case deleted from sample reviewed.
Case involved surrendered assets whose values could not be determined.	3 ^b	DCIs were completed, but the amount of the discharged debt will be understated by the lower of the market value or debt owed on the assets that were surrendered.
Schedules were missing or were not complete in the bankruptcy file.	3	Cases deleted from sample reviewed.
Case contained debt for child support in an amount that could not be determined.	2 ^c	True value of the total debt will be understated by the amount owed for child support.
The case had been transferred out of the jurisdiction of the Northern District of Texas.	1	Case deleted from sample reviewed.
Case involved debt for a student loan in an amount that could not be determined.	1	True value of the total debt will be understated by the amount owed for the student loan.
Case was converted from a joint chapter 13 to an individual chapter 7 with incomplete data to determine the debt owed.	1	Case deleted from sample reviewed.

^aThere were eight cases in which both IRS debt and Schedule G unexpired lease amounts were listed as "unknown."

^bThere were two cases in which both Schedule G unexpired lease amounts and the value of surrendered assets were listed as "unknown."

^cThere was one case in which debts for both IRS taxes and child support were listed as "unknown."

Source: GAO review of a probability sample of 823 chapter 7 bankruptcy cases closed in 1998 in the Northern District of Texas.

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Table III.3: Summary of Problems Detected in Reviewing Closed Chapter 7 Bankruptcy Cases in the Southern District of Florida and Their Resolution

Problem detected	Number of cases	Resolution of problem
Case contained a proof of claim from IRS for \$25,000, or increments of \$25,000, for unsecured priority debt that seemed to overstate actual taxes that should be owed.	10 ^a	DCIs were completed for these cases and the IRS proof of claim amounts were recorded for Schedule E with the debt owed being nondischargeable.
Case contained no schedules for recording debt owed.	1	Case deleted from sample reviewed.
Case involved no debt that could be discharged either because there was no unsecured debt or the unsecured debt that was recorded was nondischargeable.	5	DCIs were completed, but total debt discharged in these cases was \$0.00.
Schedule G contained an unexpired lease with amount listed as "unknown."	33 ^a	Completed the DCIs but the total debt and total debt discharged will be understated by the true value of the lease amounts owed.
Case had too many debts listed as "unknown" to accurately complete the DCI.	3	Cases deleted from sample reviewed.
Case involved co-debtors on the homestead property and percentage ownership for debt purposes could not be determined.	3	Cases deleted from sample reviewed.
Case involved IRS and/or county taxes owed with no amounts listed.	2	DCIs were completed, but the total debt will be understated by the true value of the taxes owed.
Case was a converted chapter 11 dating back to 1988 and the schedules in the file were different from the schedules used today.	1	Case deleted from sample reviewed.
Case was sent to a records storage center and was not available for review.	1	Case deleted from sample reviewed.
Case was a converted chapter 11 with business and personal debts comingled and we could not determine what debts were personal debts of the debtor.	1	Case deleted from sample reviewed.
Case was a pro se case in which debts from the schedules could not be reconciled.	1	Case deleted from sample reviewed.

^aOne case contained both a seeming overestimate of unsecured priority debt to the IRS as well as an "unknown" amount of debt on an unexpired lease.

Source: GAO review of a probability sample of 785 chapter 7 bankruptcy cases closed in 1998 in the Southern District of Florida.

General Limitations of the Case File Data Used for Analysis

The local bankruptcy courts, the Administrative Office of the U.S. Courts, and the Executive Office of U.S. Trustees—all of whom collect and report varied bankruptcy data—do not maintain specific data on (1) the number of bankruptcy debtors who claim a homestead exemption, (2) the amount of the exemptions claimed, (3) the type and amount of debts owed by bankruptcy debtors, or (4) the type and amount of debts discharged in bankruptcy. The collection of these data is not statutorily required. Therefore, to identify the debtors in our sample in each district who claimed a homestead exemption, we used the data in the bankruptcy court's file for each debtor. These files contained (1) the financial schedules that debtors are required to file with the bankruptcy court; (2) data on case disposition (such as whether the debtor was granted a discharge); (3) information on the debts that debtors reaffirmed (agreed to repay), if the statements of reaffirmation had been filed with the bankruptcy court; (4) the debts for which creditors had filed a proof of claim regarding the amount of money the debtor owed the creditor who filed the proof of claim; and (5) any court orders. Court orders may include court rulings regarding the amount of disputed debts or allowable exemptions.

The debtors' financial schedules contain, among other information, data on whether the debtor claimed a homestead exemption, the amount of the exemption claimed, and the types and total amount of the debts owed.⁵ The data in the debtors' financial schedules currently represent the only detailed data available for estimating the amount of the claimed homestead exemptions; the number, types, and amounts of the debts owed by a bankruptcy debtor; and the total amount of the debts discharged in bankruptcy. However, these data are of unknown accuracy and reliability.⁶ Although the data in each debtor's schedules are reviewed by a private panel trustee, the trustee does not necessarily review the accuracy of every entry in the schedules. The private panel trustee and the bankruptcy court officials we interviewed in each of the two districts stated that they rarely verify the amount that a debtor claims for the homestead exemption and generally accept the reported amount. Nor do they usually review the accuracy of the individual amounts listed for each debt on the debtor's financial schedules.

⁵ Debtors must also, for example, file schedules with information on their income (Schedule I—Current Income of Individual Debtor(s)) and expenses (Schedule J—Current Expenditures of Individual Debtor(s)). These schedules did not include data needed in our analysis.

⁶ In its October 1997 report, the National Bankruptcy Review Commission recommended that debtors' financial schedules be randomly audited.

For the cases we reviewed, we also did not independently verify the accuracy of the claimed homestead exemption or the amount of the debts listed on the schedules. Our analysis was based on the data as presented in the schedules, except where we could use other documents in the case file to reconcile inconsistencies within the schedules or obtain more reliable data on the amounts of specific debts. As noted in the next section, we made adjustments for errors and inconsistencies, where possible, and our analysis incorporated certain assumptions about other data in the schedules that are described in more detail later. Although we endeavored to use the most accurate data available in each file, the results of our analyses are based principally on the data in the debtor's financial schedules and must therefore be viewed as estimates rather than precise and accurate calculations.

Basic Steps Used in the Case File Reviews

We designed a data collection instrument (DCI) to capture information from the case files on (1) whether the debtor(s) owned property for which the debtor(s) claimed a homestead exemption;⁷ (2) the dollar amount of the debtor's equity in the homestead property claimed as exempt, if any; (3) the dollar amount of all personal property listed; (4) the total dollar amount of secured, unsecured priority, and unsecured nonpriority debts listed on the financial schedules; (5) debts the debtor reaffirmed (agreed to repay) and the dollar amount; (6) the apparent nondischargeable debts and the dollar amount;⁸ and (7) the assets surrendered to creditors. For those debtors who claimed a homestead exemption, we used these data to determine the amount of the debtor's homestead exemption and the amount of the debts discharged by the bankruptcy court. We pretested the DCI on a sample of case files from each district and revised the DCI as needed. The remaining description of the methodology used in reviewing the case files reflects the changes we made as a result of the pretest.

In reviewing the case files, we used the data in the case files to answer four basic questions:

- Did the debtor claim a homestead exemption?
- If an exemption was claimed, what was the amount of the claimed exemption?
- If an exemption was claimed, what was the total amount of the debts listed on the debtor's financial schedules?

⁷ Debtors indicate on their bankruptcy petitions whether they are filing as individuals or jointly with a spouse. Married debtors may, if eligible, file as individuals rather than jointly with their spouses.

⁸ As discussed later, some debts that are usually nondischargeable are readily identifiable from the schedules, and other debts that may be nondischargeable are not readily identifiable.

- If an exemption was claimed, what was the total value of the debts discharged in bankruptcy?

If the debtor did not claim a homestead exemption, we recorded minimal information from the file, such as the docket number, whether the debtor filed individually or jointly with a spouse, and whether the case was originally filed under chapter 7 or another chapter of the bankruptcy code.

Our objective in reviewing the case files was to use the most reliable data available in the files. We used data in the case files to correct errors that could be readily identified in the schedules. For example, mortgage debt could potentially be listed in schedules A⁹, C,¹⁰ and D,¹¹ and the amounts shown in each schedule could be different. When available in the case files, two documents were generally used to resolve such conflicts and determine the amount of the mortgage or other debt used in our analysis. First, where the debtor had filed a reaffirmation agreement with the bankruptcy court that identified the dollar amount of the mortgage (or other debt) reaffirmed, we used the amount recorded on the reaffirmation agreement. Generally, debtors may, with the consent of the creditor, voluntarily agree to reaffirm—agree to repay—any of their eligible dischargeable debts. Debtors may not reaffirm less than the full amount of the debt without the creditor's consent. Second, where the creditor had filed a proof of claim for the amount of a debt, we used the amount in the proof of claim. Under the bankruptcy code and rules, a properly executed and filed proof of claim is presumptively valid. We found that creditor proofs of claim were principally found in cases that had been converted to chapter 7 from chapter 13 prior to being closed under chapter 7.

If the file contained both a reaffirmation agreement and a proof of claim for the same debt, we used the reaffirmation agreement because this is the amount the debtor had agreed with the creditor to repay. Reaffirmation agreements were most frequently available for mortgage and auto debts. Finally, where there was a court order in the file resolving a dispute about the amount of a debt owed, we used the amount in the court order.

⁹ Schedule A—Real Property.

¹⁰ Schedule C—Property Claimed as Exempt. In Texas, the property on which a homestead exemption is claimed need not necessarily be a dwelling; it may be land that meets the statutory qualifications for a claimed homestead exemption.

¹¹ Schedule D—Creditors Holding Secured Claims. This schedule would appropriately include the market value of and outstanding debt claimed on such property as homes and automobiles.

If a debt was listed on more than two schedules, and one of the amounts was different from the remaining amounts, we used the amount that was listed most frequently. We did this only when no reaffirmation agreement, proof of claim, or court order was available in the file to resolve the conflict shown on the schedules.

We excluded some cases from our analysis because the data on the financial schedules could not be satisfactorily reconciled. In tables III.2 and III.3, we have noted the number of cases in each district's sample that were excluded from our analysis and the reasons for their exclusion.

Determining the Number of Debtors Who Claimed a Homestead Exemption and the Amount of the Exemption Claimed

Bankruptcy debtors claim their homestead exemption on schedule C. In many cases, the amount of the homestead exemption claimed on schedule C was the same as the homestead property's claimed market value on schedule C. This would be true only if there were no outstanding debt on the homestead property. The amount of the homestead exemption claimed is the amount of the debtor's equity in the property—that is, the difference between the claimed market value of the homestead property and the total of all outstanding mortgages and liens secured by that property.¹² Therefore, we did not use the homestead exemption claimed on schedule C in any case in which (1) schedule C showed that the claimed market amount and the claimed homestead amount were identical and (2) schedules A and/or D showed that there was an outstanding mortgage on the homestead property.

Wherever there was a mortgage on the homestead property, we determined the amount of the debtor's equity in his or her homestead property by comparing the claimed market value of the homestead property as shown on schedules A, C, and D, to the total amount of all outstanding mortgages and other identifiable liens on the property as shown on (1) schedules A and D; (2) the debtor's written agreement, if any, to reaffirm the debt on the property claimed as a homestead; and (3) any proofs of claim filed with the bankruptcy court by any creditors holding a mortgage or lien to prove the amount of the outstanding debt owed on the property.

We used all of these sources of data from each case file because interviews with court officials, a private panel trustee, and the results of the pretest of our data collection instrument indicated that debtors' financial schedules

¹² It is possible that the debtor could have both a first mortgage and a home equity loan on the homestead property. It is also possible that there could be a tax lien on the homestead property. Such liens would reduce a debtor's home equity and, thus, the amount of the homestead exemption.

frequently included conflicting data about the market value of and outstanding mortgage owed on their homestead property. For market value, we used the most frequent market value of the homestead property found in the debtor's financial schedules. Where one or more amended schedules had been filed, we used the data on the amended schedule(s). The market value shown in the file is the market value claimed by the debtor and may be more or less than the actual market value of the homestead property. Where neither a reaffirmation agreement nor proof of claim was found in the file, we used the most frequent outstanding mortgage amount(s) recorded on the debtors' financial schedules. Overall, we found schedule D to be the best source of data for determining the debtor's claimed market value for homestead property and the claimed outstanding mortgage amount on that property.

As noted earlier, we excluded some cases from our analyses because the data in the debtors' financial schedules could not be satisfactorily reconciled. Our work was performed from February through May 1999 in accordance with generally accepted government auditing standards.

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