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## Increased Use of Bankruptcy Petition Preparers Raises Concerns

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From FY 05-11, a total of 2,529 formal actions were filed by the U.S. Trustee Program against bankruptcy petition preparers under 11 U.S.C. § 110. Formal actions include all motions, complaints, and objections filed by Program personnel with the bankruptcy court seeking some type of relief. For FY 05-11, the success rate was 98.5 percent. Success rate is defined as the total number of formal actions where the court granted some or all of the relief sought or the defendant agreed to relief satisfactory to the U.S. Trustees, divided by the total number of formal actions adjudicated or satisfactorily resolved prior to adjudication. Source: US Trustee Program Enforcement Activity, FY 05-11, Annual Data Tables.

U.S. bankruptcy courts increasingly are concerned with abuses committed by some non-lawyers in the business of helping prepare bankruptcy filing documents for a fee.

A growing number of people who seek bankruptcy protection navigate that challenging process without a lawyer's help, as so-called "pro se" filers. But federal bankruptcy law also allows them to pay non-lawyers to prepare petitions for them. The law defines a "bankruptcy petition preparer" (BPP) as "a person other than an attorney for the debtor or an employee of such attorney . . . who prepares for compensation a document for filing."

Many preparers operate within the strict limits the law imposes on them, but some do not.

"We have seen an increase in abuse," said U.S. Bankruptcy Judge Maureen Tighe in the Central District of California. "The increase in 'foreclosure rescue' and 'loan modification' services seems to be the source in the past three years. The homeowners are desperate and take advice from the most questionable sources. There is a wide range of BPPs, from those who are well-meaning but still are giving legal advice, to out-and-out fraud perpetrators—and the down-and-out consumer debtor doesn't know the difference most of the time."

In Tighe's district, several petition preparers have been fined for, among other infractions, the unauthorized practice of law and collecting higher petition-preparation fees than the \$200 allowed by the bankruptcy court. (Petition-preparation fee limits vary in the 91 bankruptcy courts.)

"I have had debtors who have paid thousands of dollars for assistance that was useless or non-existent," Tighe said.

A locally focused report recently presented by Tighe's court includes a troubling finding: "While self-represented debtors receive discharges at a lower rate than represented debtors, the group that did not personally file the cases at the courthouse had their cases dismissed at double the already high rate."

That finding suggests that reliance on inadequate "representation" by BPPs may be the reason. Earlier studies have shown that the vast majority of debtors referred to as "pro se" filers are, in fact, assisted by BPPs. "A 2003 study by the U.S. Trustees Program reported that only 3 percent of debtors filing were truly pro se . . . At the time of the

study, 23 percent of all debtors used a BPP to file," the bankruptcy court report said. "This may have changed recently due to the presence of self-help desks in every division. Court forms and rules require BPPs to disclose their involvement, but the court has reason to believe that approximately half of them fail to do so."

In Maryland, a BPP was sentenced to two years in prison to be followed by three years of supervised release for contempt of court for continuing to offer his services after being barred from doing so.

In New Mexico, a BPP was permanently banned from helping debtors after being cited with violations in nine separate cases.

In Colorado, the bankruptcy court imposed more than \$42,000 in sanctions against a bankruptcy petition preparer.

And in the Eastern District of Wisconsin, bankruptcy judges have cited four preparers with contempt and referred the cases to the U.S. District Court to determine whether criminal charges should be filed against them. "Unethical preparers who are serial filers are a problem for us," said Bankruptcy Judge Margaret Dee McGarity in Milwaukee. "We have a pro se help desk staffed by volunteer attorneys, and a designated person in the clerk's office to help get all the right papers filed. But we need to provide even more assistance."

Over the past five years, McGarity's bankruptcy court, which limits the fee a BPP can charge to \$75, has barred seven individuals from preparing petitions. But some preparers do not sign the petitions as required by law, and tell their clients not to tell the court about the help they received.

Eastern District of Wisconsin Chief Bankruptcy Judge Pamela Pepper noted in a memorandum, prepared for a meeting on pro se debtors, that anyone filing papers now must produce a driver's license, a copy of which is placed in the court file—an effort "to identify people who are filing petitions for someone else."

It can be a difficult task. "We've discovered networks of people—in one, a preparer was barred, then was replaced by her boyfriend, who eventually was barred, only to be replaced by her brother, who was using her formerly incarcerated father's name and a false Social Security number on the petitions," Pepper said. "All of these people accept

money that the most destitute debtors have to beg or borrow to provide paperwork that is deficient at best and damaging at worst."

In its fiscal year 2011 report, the U.S. Trustee Program said bankruptcy trustees nationwide had filed 504 actions against BPPs, with a success rate of 98.8 percent. More than \$1.9 million in fines were imposed and some \$419,000 in fees recovered during that year, the report said.

The U.S. Trustee Program, part of the Department of Justice, features a [warning on its website](#) (Justice.gov) for those who might seek help filing for bankruptcy protection.

"Non-attorney bankruptcy petition preparers may type bankruptcy documents with information supplied by the debtor. They may not provide legal services, such as helping you choose whether to file under Chapter 7 or Chapter 13 or identifying your property that is exempt from the reach of creditors," it states. "Bankruptcy petition preparers may advertise their services under 'document preparation services' and similar categories of services, but not under 'legal services.' If a bankruptcy petition preparer offers to provide legal services to you or fails to disclose that he or she is not an attorney and may not provide legal services, please report this to a U.S. Trustee Program field office."

Efforts to thwart fraud by BPPs are hampered in some districts by cultural differences. "Our challenge is exacerbated by the large Latino population who confuses notaries with 'notarios' because 'notarios' actually can carry out simple legal functions in Central America," Tighe said. "Some of our BPPs just advertise as 'notarios' and reel them in."

In Arizona, the state Supreme Court certifies document preparers—including BPPs—but such state regulation is not available in all states.