

Data Show Trends in Post-BAPCPA Bankruptcy Filings

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Introduction

Almost three years have passed since the general effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). During this time, the bankruptcy community has seen unprecedented changes in the number and types of bankruptcy cases filed. Some observers predicted a quick rebound in bankruptcy filings, others forecast an increase in *pro se* filings, and some saw BAPCPA resulting in a permanent reduction in consumer bankruptcies. As we approach the end of the third year of BAPCPA, the erratic cycling of filings has begun to diminish. This article will use statistical data from the Administrative Office of the United States Courts (AOUSC) and the United States Trustee Program (USTP) to explore bankruptcy filings in the aftermath of BAPCPA.¹

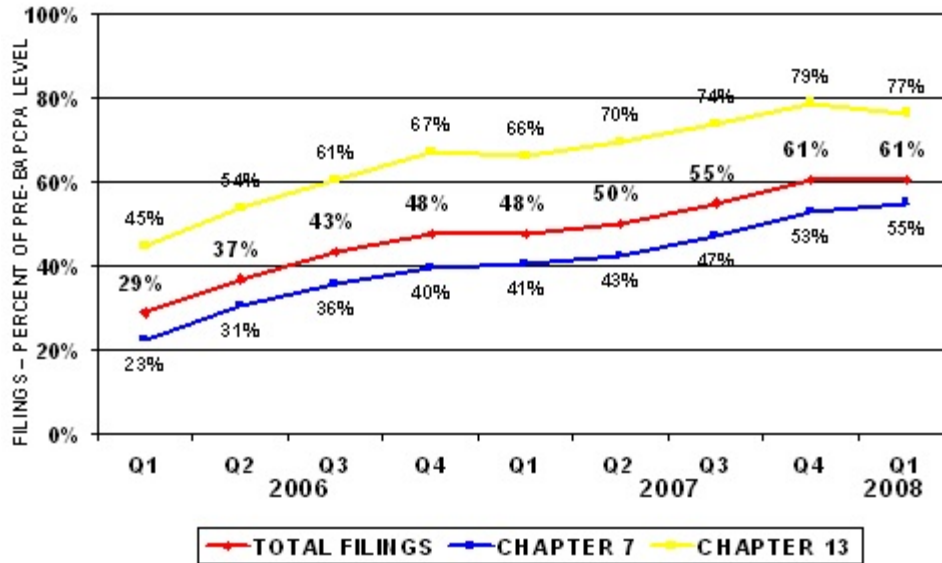
Pre-BAPCPA Filing Surge

One of the surprises resulting from BAPCPA was the unprecedented surge in filings just prior to the October 17, 2005, effective date. In the two weeks before the effective date, there were approximately 550,000 chapter 7 filings – the equivalent of six months of chapter 7 filings at pre-BAPCPA levels. This was followed by a dramatic drop in filings: only about 20,000 chapter 7 cases were filed in the following 10 weeks. Since January 2006, bankruptcy filings have shown a slow but fairly steady rebound, with current figures for total filings running at a little over 60 percent of pre-BAPCPA levels. The extent of this rebound has varied by chapter, with chapter 13 filings reaching more than 75 percent of pre-BAPCPA levels while chapter 7 filings are at 55 percent of prior levels.

Post-BAPCPA there was a pronounced change in the distribution of chapter 7 and chapter 13 cases. Pre-BAPCPA, chapter 7 cases represented about 71 percent of filings as compared to 57 percent of filings in the first 12 months post-BAPCPA. During the same 12 months, chapter 13 cases increased from 29 percent to 42 percent of all filings. This redistribution of cases subsided somewhat in the first half of fiscal year 2008, when chapter 7 cases represented about 63 percent of filings.

¹There are two important differences between the AOUSC and USTP data sources. The USTP data do not include cases filed in North Carolina and Alabama, which are not part of the USTP, and the AOUSC filing figures are several percent higher than USTP figures, mainly due to differences in accounting for reopened and transferred cases. Wherever possible, the official AOUSC filing data are used. However, other statistics (e.g., daily filings and related chapter 11 cases) come from USTP data bases.

PERCENT OF PRE-BAPCPA FILINGS
 (FILINGS COMPARED TO THE SAME QUARTER IN CY 2004)



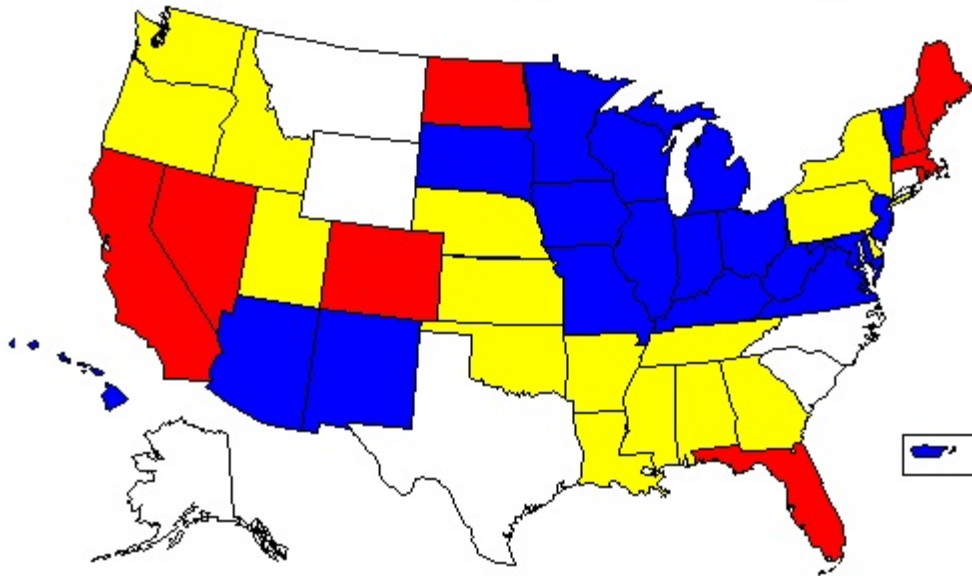
Regional Variations in Filings

Nationwide, filings increased by 38 percent from calendar year 2006 to calendar year 2007. Filings increased in every state during that year, but the rates differed significantly by region of the country. In general, above average increases occurred in the Northeast and Southwest, while states in the South (excluding Florida) and Northwest experienced lower than average increases.

The states with the highest filing increases were Nevada (+98.5 percent), California (+85.2 percent), Maine (+74.1 percent), Rhode Island (+73.8 percent), Massachusetts (+63.2 percent), North Dakota (+62.3 percent), and Florida (+61.3 percent). States with the lowest filing increases were Montana (+1.8 percent), Alaska (+12.1 percent), Wyoming (+15.2 percent), Connecticut (+17.2 percent), Texas (+17.2), and South Carolina (+19.0 percent).

PERCENT INCREASE IN TOTAL FILINGS DURING CY 2007

□ UNDER 20% ■ 20.0% – 34.9% ■ 35.0% – 49.9% ■ 50.0% OR MORE

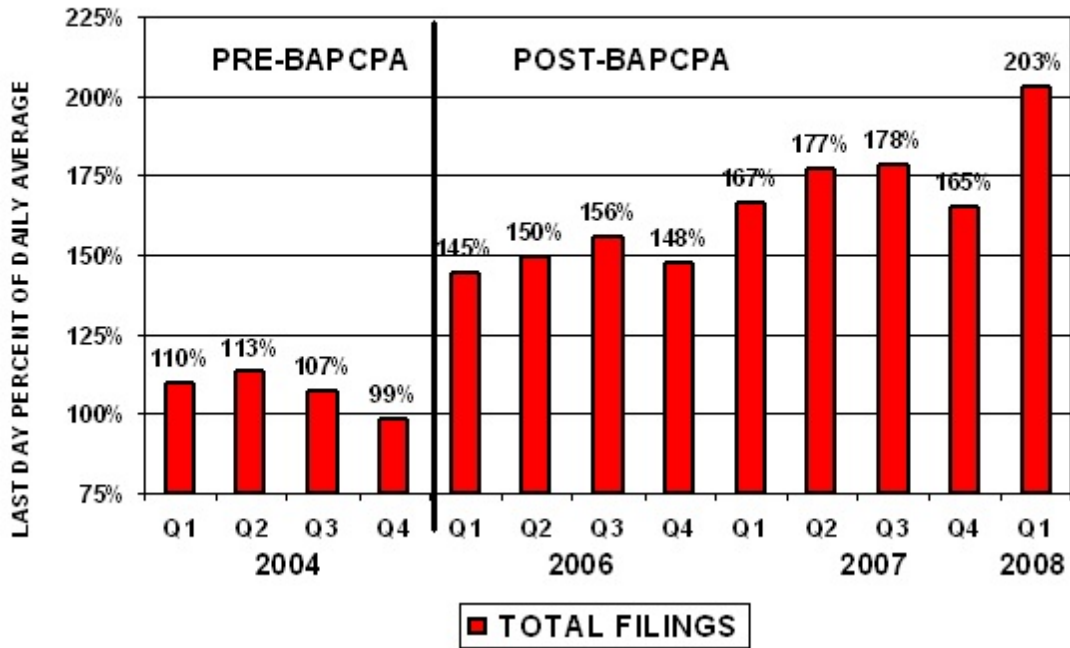


End of Month Filing Increase

Before BAPCPA, filing activity on the last business day of the month was very close to the daily average. After BAPCPA there was a significant increase in chapter 7 and chapter 13 filings at the end of each month. It is likely this is caused by the newly codified definition of “current monthly income” that includes income received in the six calendar months prior to filing (28 U.S.C. § 101(10A)). If a filing is delayed until the next month, the current monthly income calculations on Official Bankruptcy Forms 22A or 22C must be recalculated. For the first half of fiscal year 2008, combined chapter 7 and chapter 13 filings were nearly twice as high on the last business day of the month than on other days of the month. The end of the month surge is more pronounced with chapter 7 cases. In the six months ending March 31, 2008, chapter 7 filings were up 100 percent on the last business day of the month when compared to average daily filings, and chapter 13 filings were up 59 percent.

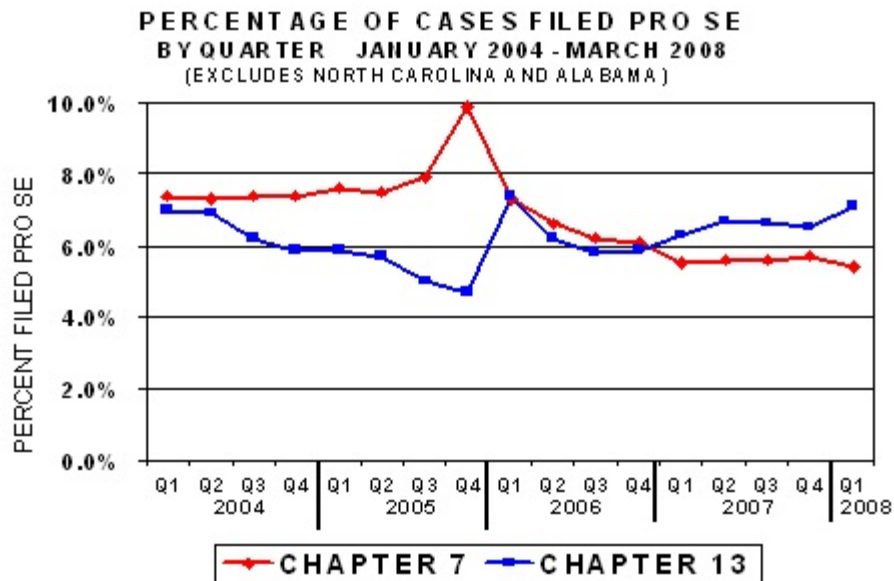
FILINGS ON THE LAST BUSINESS DAY OF THE MONTH

FILINGS ON THE LAST BUSINESS DAY OF THE MONTH
(SHOWN AS A PERCENT OF AVERAGE DAILY FILINGS)



Pro Se and In Forma Pauperis Filings

Since the enactment of BAPCPA, the percentage of debtors who file *pro se* has not significantly changed from the pre-BAPCPA level. Prior to BAPCPA, about 7 percent of debtors filed *pro se*. Over the past five quarters, about 6 percent filed *pro se*. This varies very slightly depending on chapter: a little under 6 percent of chapter 7 debtors filed *pro se* compared to a little over 6 percent of chapter 13 debtors. Among the locations reporting the highest percentage of *pro se* filings were the areas of the Central District of California served by the USTP’s Woodland Hills and Los Angeles offices (26 percent and 24 percent, respectively) and the District of Arizona (23 percent).

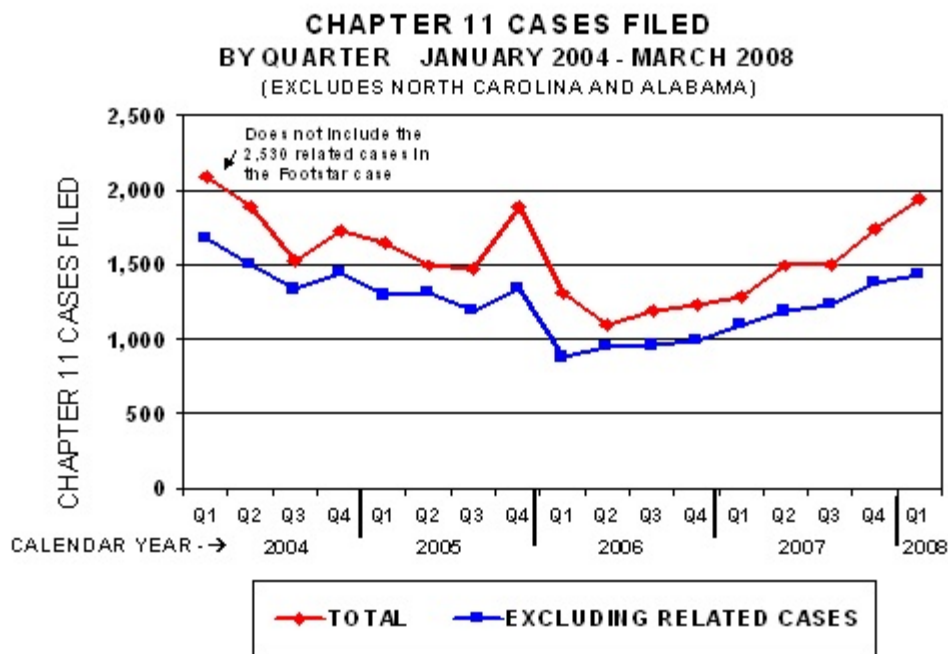


BAPCPA allowed the court to waive the filing fee for certain chapter 7 debtors (28 U.S.C. § 1930(f)) who qualified for *in forma pauperis* (IFP) filing status. Our data show that the filing fee was waived in 14,712 cases filed during calendar years 2006 and 2007, or about 1.83 percent of chapter 7 cases. Nationwide, the rate of IFP filings appears to be stable, as it was 1.86 percent for cases filed in 2006 and 1.80 percent for cases filed in 2007. Areas with the highest percentage of IFP filings in 2006 and 2007 included the Fresno Division of the Eastern District of California (7.1 percent), the Eastern District of Washington (6.8 percent), the District of Alaska (6.6 percent), the San Jose Division of the Northern District of California (6.3 percent), the District of Montana (5.9 percent), and the Eastern District of Pennsylvania (5.9 percent).

Chapter 11 Filings

There were 5,163 chapter 11 filings in calendar year 2006. Filings increased to 6,353 in 2007, and preliminary indications are that chapter 11 filings will again rise substantially during 2008. For the first two quarters of fiscal year 2008, chapter 11 filings have increased by 40 percent over the same period in fiscal year 2007. Part of the recent increase in chapter 11 activity is due to the greater number of related cases filed in recent months.²

BAPCPA also amended the definition of “small business debtor” (28 U.S.C. § 101(51D)) and required U.S. Trustees to provide enhanced oversight in small business chapter 11 cases. USTP data show about one-third of chapter 11 cases are small business cases.³



²As used here, “related cases” means cases with the same filing date, judicial district, assigned judge, and debtor’s zip code. These cases may or may not have been substantively or administratively consolidated by the court.

³ These figures do not include the 5.3 percent of cases in which our records do not indicate whether the debtor is a small business debtor.

Conclusion

Bankruptcy filing rates have been volatile after passage of BAPCPA. After a precipitous decline in the number of filings in early 2006, filings have returned to about 60 percent of pre-BAPCPA levels. The caseload is now increasing in every state, with particularly large increases in California and Nevada. We have not seen a substantial change in the percentage of debtors filing *pro se*, however, and less than 2 percent of chapter 7 debtors have received a waiver of the filing fee. Finally, chapter 11 filings are now on the rise, albeit far below historical levels.

This article has presented a very brief exploration of bankruptcy filings with a special emphasis on post-BAPCPA activity. Some filing patterns presented here may be temporary, while others may be more enduring. In the future, it will be especially challenging to disentangle the effects of BAPCPA on bankruptcy filings from other factors that cause debtors to seek bankruptcy protection.