

QUARTERLY CONSUMER CREDIT TRENDS

Consumer Bankruptcy, BAPCPA, and the Great Recession

This is part of a series of quarterly reports on consumer credit trends produced by the Consumer Financial Protection Bureau using a longitudinal, nationally-representative sample of approximately five million de-identified credit records from one of the three nationwide consumer reporting agencies.*

* Report prepared by Catherine Razeto and Charles Romeo in the Office of Research.

The United States bankruptcy system provides a legal process for consumers who cannot repay their debts. Bankruptcy law has two primary purposes; to “relieve the honest debtor from the weight of oppressive indebtedness”¹ and to protect the rights and interests of creditors in an orderly and equitable distribution of the debtor’s assets.² In 2005, out of concerns about abuse of the bankruptcy system, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) which changed the eligibility requirements for bankruptcy.

This *Quarterly Consumer Credit Trends* report uses the Consumer Financial Protection Bureau’s (Bureau) Consumer Credit Panel (CCP) to describe how the volume and types of bankruptcy filings have changed over time in the years including BAPCPA and the Great Recession.³ The report considers changes in the attributes of bankruptcy filers by analyzing credit scores and the amount of debt consumers hold prior to bankruptcy. Understanding how the bankruptcy system is being used and by whom is important both because of the role bankruptcy can play in helping consumers recover from financial shocks and the effect the system can have on the cost and availability of credit. In addition, understanding how BAPCPA and macroeconomic conditions such as the Great Recession have impacted the attributes of both bankruptcy filers and those who remain in debt collection informs the Bureau about the attributes of consumers who may be in need of information about their financial options or who may be affected by the Bureau’s rules.⁴

U.S. law allows two primary ways for individuals to file for bankruptcy. Under a Chapter 7 bankruptcy, a debtor’s non-exempt assets are liquidated in order to repay unsecured creditors. The consumer’s remaining debts are generally discharged, meaning that creditors can no longer attempt to collect the debts from the consumer.⁵ A debtor may choose to exempt certain property. For example, a homestead exemption protects at least some equity in the debtor’s primary residence. Under a Chapter 13 bankruptcy, debtors enter into a generally three- or five-year repayment plan to repay a portion of their debt. If the debtor successfully completes the

¹ *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934).

² *Schaffer v. CC Invs., LDC*, 286 F. Supp. 2d 279, 281 (S.D.N.Y. 2003).

³ The Consumer Financial Protection Bureau’s Consumer Credit Panel (CCP) is a 1-in-48 de-identified sample of consumer credit profiles.

⁴ For example, the Bureau issued a proposed rule regarding debt collection practices in May 2019, see 84 FR 23274 (May 21, 2019), and the Bureau’s mortgage servicing rules include specific provisions requiring servicers to provide mortgage loan information to certain consumers in bankruptcy. See 12 CFR 1026.41(f); 12 CFR 1024.39(c).

⁵ Some debts (e.g., student loans other than those that would impose an undue hardship, debts resulting from fraud) are generally not dischargeable in bankruptcy. See 11 U.S.C. § 523(a)(8)(B) and 11 U.S.C. § 523(a)(2)(A).

repayment plan, the remaining non-mortgage debt is generally discharged.⁶ Individuals can keep their assets in full in a Chapter 13 bankruptcy case, whereas in a Chapter 7 case, individuals can only keep assets up to the exemption amounts.

Between 1980 and 2004, personal bankruptcy filings grew at an average annual rate of 7.6 percent.⁷ In response to this increase, Congress passed BAPCPA in 2005. The primary goals of BAPCPA appear to have been to reduce abuse of the bankruptcy system and ensure that debtors repay creditors the maximum amount they can afford. BAPCPA raised bankruptcy court filing fees and made certain procedural changes with respect to the filing requirements that increased the cost of filing for bankruptcy. Additionally, BAPCPA restricted access to bankruptcy by establishing a means test and permitting those whose disposable income exceeds certain limits to proceed only through Chapter 13.

While BAPCPA made filing for bankruptcy more difficult, the financial crisis and the Great Recession led to a large increase in unemployment and a loss in wealth which would be expected to lead to an increased utilization of the bankruptcy system. This report provides data on overall bankruptcy filings and the proportion of filings that are Chapters 7 and 13 from 2001, four years before BAPCPA was enacted, through 2018, nine years after the end of the Great Recession. Further, it examines the debts and credit scores of consumers who have filed for bankruptcy.

Figure 1, below, shows the annual volume of Chapter 7 petitions by calendar year and the number of petitions filed in each year that ultimately resulted in discharge or dismissal. A dismissal occurs when the debtor does not meet the requirements set by the court. As Figure 1 shows, nearly all Chapter 7 cases ultimately result in a discharge. Debtors in Chapter 7 cases usually receive a discharge about four months after the debtor files the petition.⁸ Other sources have documented a rush to file Chapter 7 cases in the weeks before BAPCPA took effect on October 17, 2005.⁹ The CCP data indicate there were 500,000 Chapter 7 filings between October 1st and October 16th 2005 compared to 41,000 between October 1st and October 16th

⁶ Chapter 13 debtors who wish to retain their primary residences generally must repay the mortgage debt in full. See 11 U.S.C. §§ 1322(b)(2), 1328(a). Additionally, some types of debts generally cannot be discharged in Chapter 13. See 11 U.S.C. § 1328(a).

⁷ Garrett, Thomas A. *100 Years of Bankruptcy: Why More Americans Than Ever Are Filing*. Federal Reserve Bank of St. Louis. Available at <https://www.stlouisfed.org/publications/bridges/spring-2006/100-years-of-bankruptcy-why-more-americans-than-ever-are-filing>.

⁸ United States Courts. *Discharge in Bankruptcy – Bankruptcy Basis*. <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/discharge-bankruptcy-bankruptcy-basics>.

⁹ Ashcraft, Adam, et al. *The Bankruptcy Abuse Prevention and Consumer Protection Act: Means-Testing or Mean Spirited?* Federal Reserve Bank of New York Staff Reports. Page 14. May 2007. Available at <https://pdfs.semanticscholar.org/f470/2cce9635e4265d518b6759bf80c40ad0592.pdf>.

2004. After BAPCPA took effect the number of filings declined until economic conditions began to deteriorate in 2007. The number of Chapter 7 petitions steadily increased throughout the financial crisis and declined during the economic recovery. Since 2015, there have been about half the number of Chapter 7 petitions filed in each year compared to pre-BAPCPA.¹⁰

FIGURE 1: CHAPTER 7 PETITIONS, DISMISSEALS AND DISCHARGES BY YEAR OF PETITION

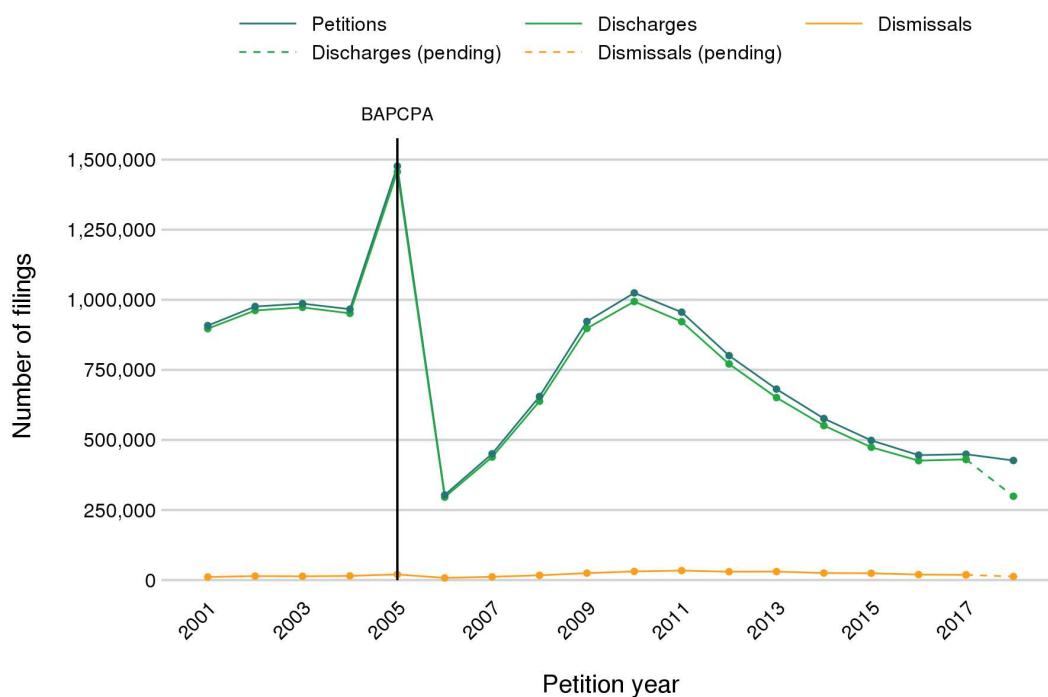


Figure 2, below, shows the number of Chapter 13 petitions, discharges, and dismissals.¹¹ A debtor, a creditor, or the trustee can move to dismiss a Chapter 13 case if the debtor is unable to make the payments on the repayment plan. Figure 2 shows a roughly 40 percent decrease in Chapter 13 petitions after BAPCPA compared to a more than 75 percent decrease in Chapter 7

¹⁰ There appears to be some seasonality in Chapter 7 filings at the quarterly level (there are often more filings in Q2). Chapter 13 filings do not appear to have any noticeable seasonal trend. The number of 2018 filings that are dismissed and discharged are pending because the ultimate status of some 2018 Chapter 7 filings may not yet be observed. Therefore, the sum of discharges and dismissals is less than the number of petitions in 2018.

¹¹ From 2001–2012, the number of petitions in Figure 2 represents the sum of cases ultimately discharged or dismissed. After 2012, petitions represents the number of Chapter 13 petitions observed in the data. Using the number of petitions in the data results in an over count of petitions, because there are petitions that never have a resolution (meaning there is never an associated discharge or dismissal). However, because it takes up to five years for a Chapter 13 case to be resolved, discharge and dismissal data are incomplete after 2012 and the over count cannot be adjusted. The number of petitions in Figure 2 is 20 percent lower each year on average than the count of Chapter 13 filings from the Administrative Office of the U.S. Courts (<https://www.uscourts.gov/news/2018/03/07/just-facts-consumer-bankruptcy-filings-2006-2017>). This is likely in part because Figure 2 excludes cases that convert from Chapter 13 to Chapter 7.

petitions after BAPCPA. Similar to Chapter 7 petitions, Chapter 13 petitions increased during the financial crisis.

Figure 2 shows that more of the cases filed between 2001 and 2012 were ultimately dismissed than were discharged, meaning more than half of all Chapter 13 filers did not complete their repayment plans. The gap between the number of cases ultimately dismissed and discharged is widest between 2007 and 2008, at the height of the financial crisis, indicating that consumers who filed for Chapter 13 in those years were less likely to successfully complete their repayment plan than consumers who filed in other years. The outcomes for filings in later years are pending as consumers who filed for Chapter 13 after 2013 may still be in the process of completing their repayment plans.

FIGURE 2: CHAPTER 13 PETITIONS, DISMISSALS AND DISCHARGES BY YEAR OF PETITION

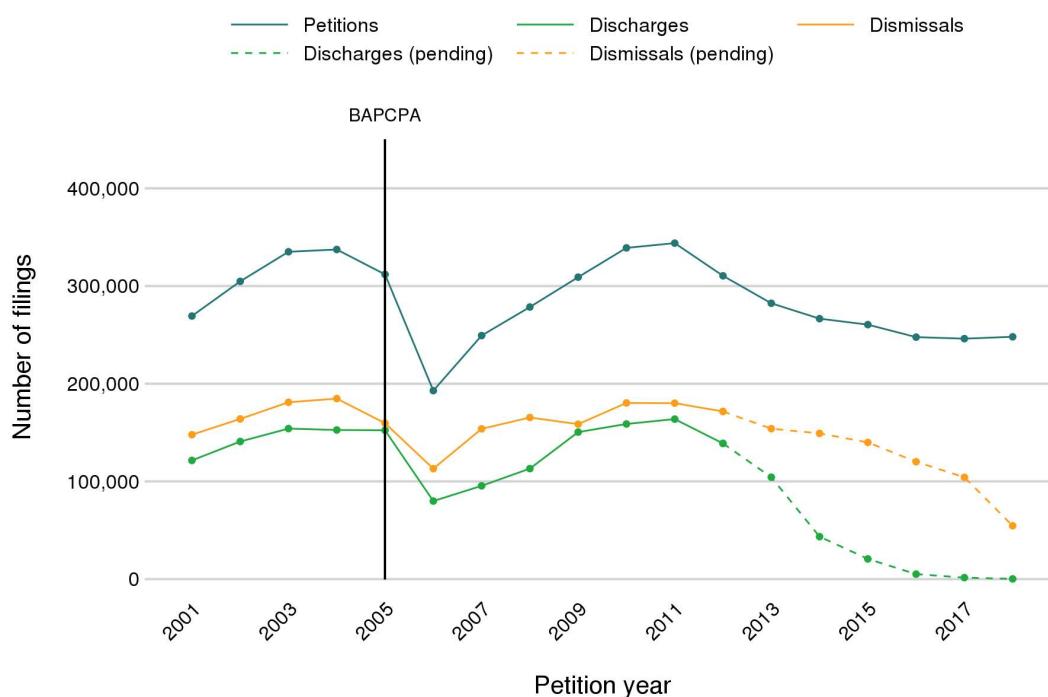


Figure 3, below, shows the share of Chapter 7 and Chapter 13 bankruptcy filings by year. Before BAPCPA became effective in 2005, Chapter 7 filings made up about 75 percent of Chapter 7 and Chapter 13 filings in each year. In 2005, the share of Chapter 7 filings increased to about 80 percent. After BAPCPA the share of Chapter 7 filings declined; however, in the years leading up to the Great Recession, the share of Chapter 7 filings increased gradually and reached pre-BAPCPA levels in 2009 and 2010. One possible explanation that would be consistent with this trend is that as unemployment increased, more consumers became eligible for Chapter 7 and as housing values decreased, more consumers with mortgages were willing to lose their homes in a

Chapter 7 proceeding. In recent years, the share of Chapter 7 filings has declined below pre-BAPCPA levels to around 63 percent in 2018 compared to 77 percent in 2001. This shift in the composition of bankruptcy filings may be attributable to the changes BAPCPA made in eligibility for Chapter 7.

FIGURE 3: SHARE OF CHAPTER 7 AND CHAPTER 13 BANKRUPTCY FILINGS BY YEAR

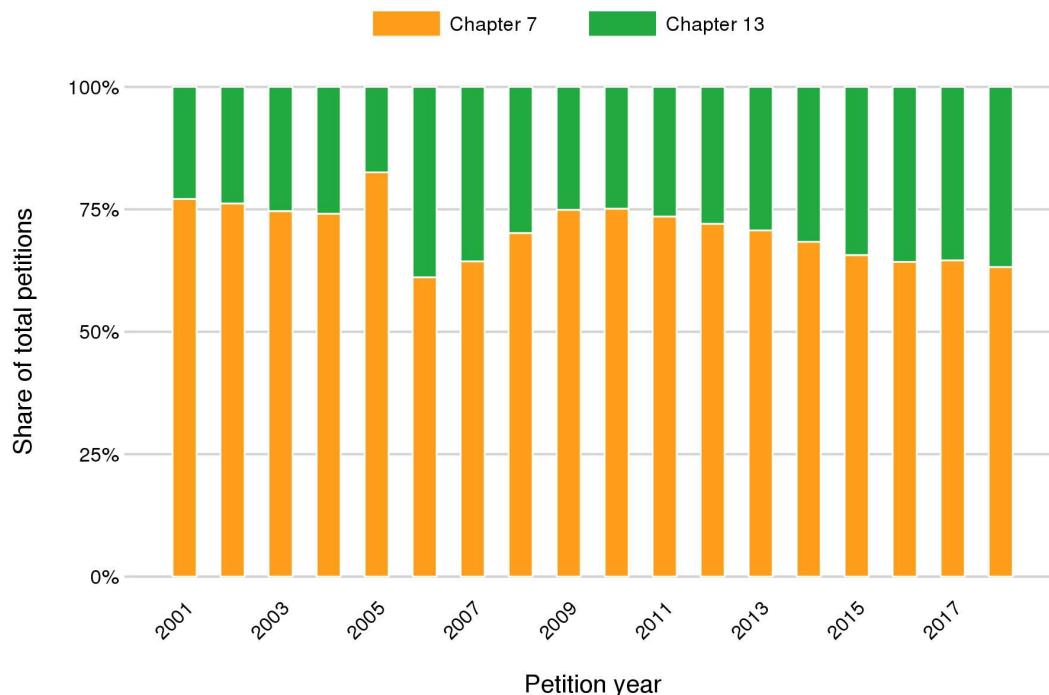


Figure 4, below shows the median credit score for bankruptcy filers one year before they filed for bankruptcy. The Bureau's CCP data includes annual snapshots of consumer credit records from September 2001 to September 2004 and quarterly snapshots from 2005 to 2018. In order to analyze data from time periods prior to bankruptcy consistently for consumers from 2001 to 2018, the remaining figures are limited to consumers who filed for bankruptcy in the fourth calendar quarter of each year. The report uses credit score data from September of the year prior to bankruptcy to look at consumers' credit scores before they reached the point of filing for bankruptcy. Next, the report uses loan balance data from September of the same year as bankruptcy filing to understand the types of debt consumers held as they enter bankruptcy.¹²

Figure 4 shows that consumers who filed for Chapter 7 bankruptcy in the fourth calendar quarter of 2005 had the lowest median credit scores one year prior to filing than any other

¹² Additionally, because a prior bankruptcy often negatively affects credit score and the amount of debt consumers hold, the remaining figures are limited to the first observed bankruptcy filing for a consumer in the data.

Chapter 7 cohort. The 2005 cohort includes at least some of the large swell of consumers who filed for Chapter 7 in the weeks leading up to the BAPCPA effective date on October 17, 2005. Median credit scores among Chapter 7 filers rose steadily after BACPA until 2009. After 2009, credit scores for Chapter 7 filers declined to pre-BAPCPA levels possibly because filers experienced a negative financial shock during the Great Recession. Median credit score trends for Chapter 13 are generally similar to those for Chapter 7, but Chapter 13 scores rose slightly in 2005, and scores for Chapter 13 filers are slightly above pre-BAPCPA levels in most years since 2009.¹³

FIGURE 4: MEDIAN CREDIT SCORE ONE YEAR PRIOR TO BANKRUPTCY FILING

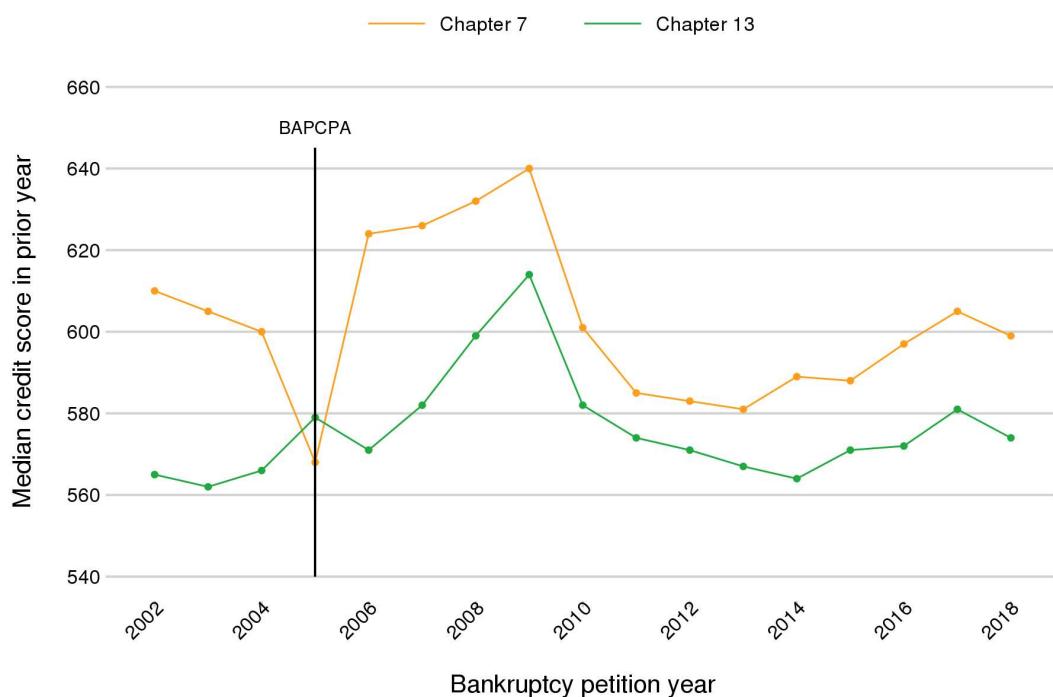


Figure 5, below, shows the average outstanding balance in real 2001 dollars by loan type per consumer in the quarter prior to filing a Chapter 7 bankruptcy petition.¹⁴ Debt levels increased for filings during the financial crisis, particularly mortgage, home equity line of credit (HELOC) and home equity loan, and credit card debt. In the past three years, 2016–2018, average debt

¹³ The 25th and 75th credit score percentiles show a qualitatively similar trend to the median for Chapter 7 and Chapter 13 filers. The decline in Chapter 7 credit scores post-2009 is somewhat more muted in the 75th percentile.

¹⁴ The “Other” category includes personal loans, retail loans, non-loans (e.g., child support), and other non-identifiable loan types.

has fallen below pre-BAPCPA levels. Student debt has steadily increased over the 2001 to 2018 time period for bankruptcy filers, which is consistent with an overall increase in total student loans outstanding over the same period.¹⁵ The dashed line shows average total debt per consumer for all consumers (bankruptcy filers and non-filers). Debt for all consumers rose in the lead up to the financial crisis between 2003 and 2007 but started to fall between 2007 and 2009, whereas debt held by Chapter 7 filers increased by 32 percent between 2007 and 2009.¹⁶

FIGURE 5: AVERAGE DEBT PER FILER BY TYPE OF DEBT IN QUARTER PRIOR TO CHAPTER 7 BANKRUPTCY PETITION AND AVERAGE DEBT FOR ALL CONSUMERS (2001 REAL DOLLARS)

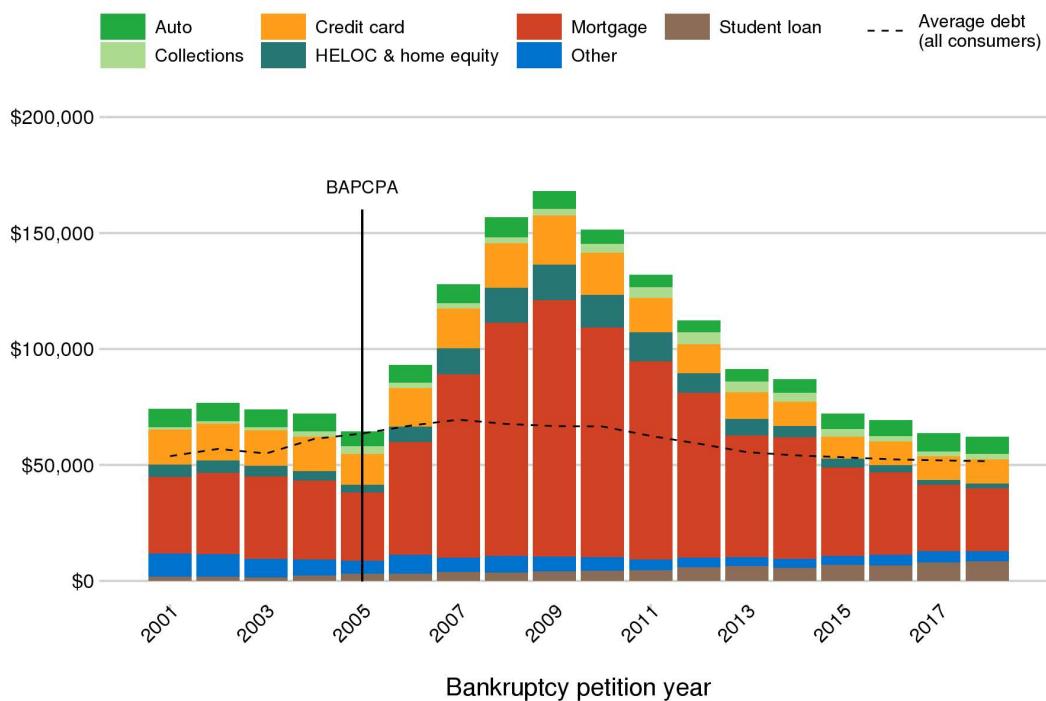


Figure 6, below, shows the average debt held by Chapter 13 filers in the quarter prior to filing a bankruptcy petition. A comparison of Figures 5 and 6 indicates that the average debt held by consumers filing for Chapter 13 is larger in each year compared to consumers filing for Chapter 7, primarily due to mortgage debt. This is consistent with the fact that filers can keep their

¹⁵ Federal Reserve Bank of New York Consumer Credit Panel / Equifax. *2018 Student Loan Update*. https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/sl_update_2018.xlsx.

¹⁶ What is not apparent from the averages in Figure 5 is that more than half of Chapter 7 filers have no debt in many categories except for credit card in most years. In each year except for 2008–2010, more than half of Chapter 7 filers do not have a mortgage. More than half of Chapter 7 filers have no student loan or HELOC/home equity loan debt in each year, no auto debt in 2010–2015, and no collections debt in 2001–2004 or 2006–2009.

home under Chapter 13, regardless of the amount of home equity they hold, so homeowners with equity greater than the homestead exemption are likely more inclined to file for Chapter 13 than for Chapter 7. Average credit card debt is lower in each year except 2005 for Chapter 13 filers compared to Chapter 7 filers.¹⁷

FIGURE 6: AVERAGE DEBT PER FILER BY TYPE OF DEBT IN QUARTER PRIOR TO CHAPTER 13 BANKRUPTCY PETITION AND AVERAGE DEBT FOR ALL CONSUMERS (2001 REAL DOLLARS)

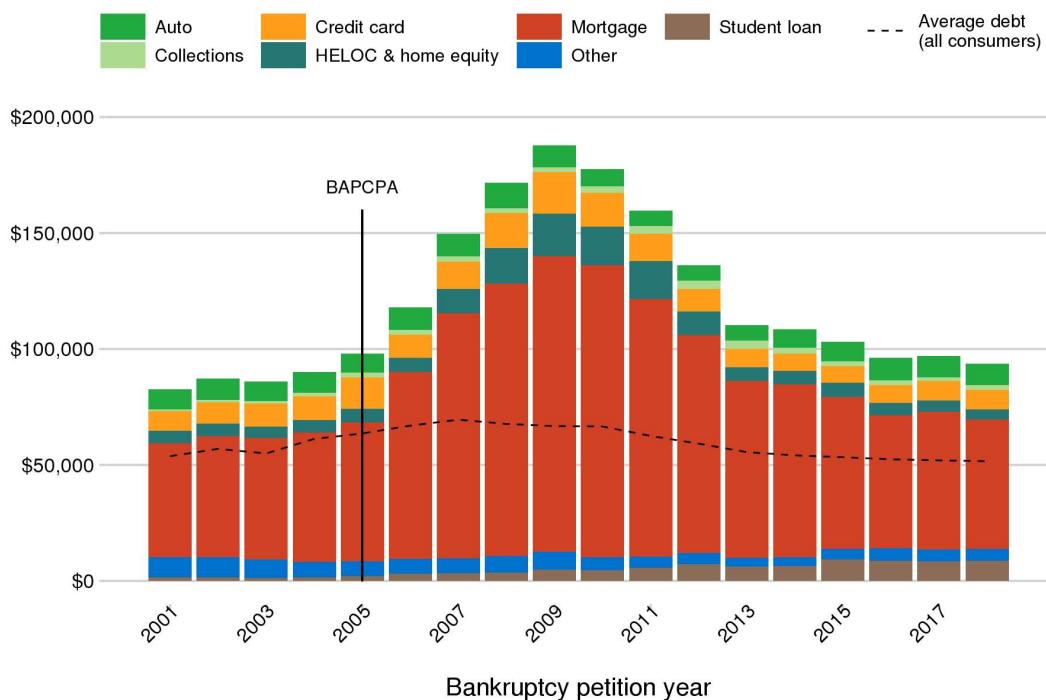


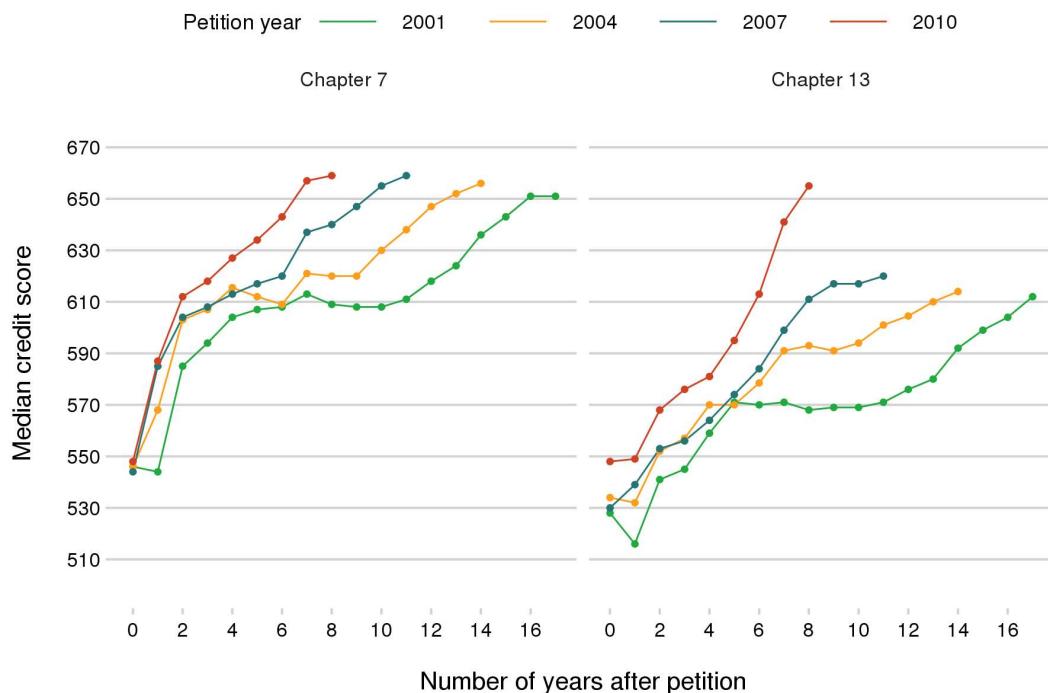
Figure 7, below, shows the median credit score in each year after a bankruptcy petition separately for consumers who filed bankruptcy petitions in every third year from 2001 to 2010. On the whole, median credit scores rise steeply for Chapter 7 filers in the first few years after filing, in contrast to scores for Chapter 13 filers. This could be because debt in a Chapter 7 case is discharged in about four months whereas Chapter 13 filers continue to hold their debt while they complete their three- or five-year repayment plan.¹⁸ The credit score recovery rate for consumers who filed in 2001 appears to slow about five years after bankruptcy, and the rate

¹⁷ Median debt per Chapter 13 filer is greater than \$0 in more loan categories and years than it is for Chapter 7 filers. Median student loan and HELOC/home equity loan debt per Chapter 13 filer is \$0 in each year and median mortgage debt is \$0 from 2015–2018. Otherwise, median debt per Chapter 13 filer is greater than \$0 for collections, auto, and credit card in each year.

¹⁸ Credit reporting agencies generally include Chapter 7 bankruptcy items on consumer credit reports for 10 years and Chapter 13 bankruptcy items for seven years. See Section 605(a)(1) and (b) of the FCRA, 15 U.S.C. § 1681c(a)(1) and (b).

slows for 2004 filers about three years after filing, possibly reflecting the onset of the financial crisis in 2007. On the whole, median scores five to ten years after filing are greater for more recent cohorts of both Chapter 7 and Chapter 13 filers.

FIGURE 7: MEDIAN CREDIT SCORE BY NUMBER OF YEARS AFTER BANKRUPTCY PETITION



Overall, the volume of Chapter 7 bankruptcy filings has decreased post-BAPCPA and the relative share of Chapter 7 petitions compared to Chapter 13 petitions has declined. Given that BAPCPA became effective just before the Great Recession, it is difficult to distinguish the effects of BAPCPA from the effects of the financial crisis on the credit scores and debt levels of consumers who file for bankruptcy. The attributes of bankruptcy filers appear to have shifted after BAPCPA became effective in 2005. However, more research is required to understand how BAPCPA affected the types of consumers who file for bankruptcy.