BROOKINGS

Report

Bankruptcy and the coronavirus: Part II

David Skeel Monday, July 6, 2020

Editor's Note:

This report is an update of Bankruptcy and the coronavirus published on April 21, 2020. It is part of the Series on Financial Markets and Regulation and was produced by the Brookings Center on Regulation and Markets.

As the pace of extraordinary intervention by regulators and lawmakers to help consumers and businesses stave off economic collapse slows, and the economy begins to open up, the initial fallout of the crisis will become clearer. Many businesses that do not survive may simply stay closed, paying their creditors (either in full, or under renegotiated terms) and shutting down. According to one new study, the number of incorporated business owners has fallen from 5.8 million to 4.7 million,[1] which suggests this has already begun. Bankruptcy filings also are likely to increase dramatically, as consumers and businesses seek either to restructure their debt or to turn over their assets to the court and leave their current obligations behind.

An earlier report, released a few weeks after the start of the coronavirus crisis, considered some of the bankruptcy implications of the crisis.[2] After discussing evidence that bankruptcy courts are less effective when they are congested, the report suggested a variety of strategies regulators and lawmakers might use to adapt the bankruptcy process to the coming wave of cases. The report also advocated measures (such as temporary new bankruptcy judgeships) to expand the capacity of the bankruptcy system, a recommendation also made by other bankruptcy scholars.[3]

This report begins with an update on the question of whether a bankruptcy wave is in fact materializing. The report then takes a closer look at two key features of the bankruptcy process: the standstill that goes into effect when a debtor files for bankruptcy and the debtor's access to financing for the bankruptcy process. In each context, scholars and other commentators have advocated COVID-19-specific adjustments to the ordinary bankruptcy rules. The report will briefly assess the current proposals, concluding that an expanded standstill is not necessary but enhanced access to financing is.

Read the full report here.

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Footnotes

1. 1 Robert W. Fairlie, "The Impact of Covid-19 on Small Business Owners: Evidence of Early-Stage Losses from the April 2020 Current Population Survey," p. 5, NBER Working Paper Series (June 2020).
2. 2 David Skeel, "Bankruptcy and the coronavirus," ECONOMIC STUDIES AT BROOKINGS (April, 2020).
3. 3 For a detailed set of recommendations, including district-by-district assessments of potential congestion, see Letter from Jared A. Ellias, Chair, Large Corporations Committee of Bankruptcy & COVID-19 Working Group to Sens. McConnell and Schumer, and Reps. Pelosi and McCarthy (June 10, 2020) (attaching memorandum authored by Benjamin Iverson, Jared A. Ellias, and Mark Roe).