

# REPEAT FILERS UNDER BAPCPA: A LEGAL AND ECONOMIC ANALYSIS

*By Lance Miller and Michelle M. Miller*

## I. INTRODUCTION

On April 20, 2005, President Bush signed into law the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). BAPCPA was hailed by some as a sensible overhaul of the bankruptcy code aimed towards decreasing repeat bankruptcy filing rates. In this article, we consider specific changes that BAPCPA made to the Bankruptcy Code. Some of these changes were specifically targeted at the congressional view that repeat bankruptcy filings are largely the result of strategic and irresponsible behavior.

This article considers whether, in actuality, BAPCPA decreased repeat filings. Our statistics show that while BAPCPA did increase the time between filings, it did not change the rate of repeat filings. Moreover, the financial description of repeat filers remained the same before and after BAPCPA. BAPCPA may have prolonged the inevitable, but it did not lower the rate of repeat filing or affect who repeatedly files for bankruptcy.

The statistical and economic analysis in this article is based on a random sample of bankruptcy petitions filed in the Northern District of Texas in 2004 and 2006. The sample was restricted to the Northern District of Texas because extensive financial data had already been collected for a previous study. For each debtor, we extracted information from individual Statements of Financial Affairs and Bankruptcy Schedules and analyzed that information to consider impacts of BAPCPA on repeat filings.

Part II of this article will discuss the legislative history of BAPCPA to show the assumptions underlying BAPCPA and the Congressional intent behind the provisions discussed herein. Part II will also consider BAPCPA's legislative intent as described by scholars and courts interpreting BAPCPA soon after its enactment. Finally, Part II will describe the state of economic research and literature discussing bankruptcy and repeat filing, and describe our data in more detail.

Part III of this article will discuss three specific changes to the Bankruptcy Code implemented by BAPCPA, which were aimed in particular at curbing "abusive" repeat filing. Section 362(c) was amended to limit the automatic stay for repeat cases filed within a year of earlier dismissed cases. BAPCPA amended section 707(a)(8) to increase the time debtors must wait between discharges, and added section 109(h) to require that all individual debtors obtain credit counseling before filing for bankruptcy. In addition to discussing these changes from a legal and historical perspective, Part III will also discuss whether and how each change had an impact on repeat filings.

---

Lance Miller is an Associate with Kirkland & Ellis LLP, Los Angeles, California; B.A., University of California, San Diego, 2002; J.D., Boston University School of Law, 2005; Law Clerk to the Hon. William T. Thurman, 2005-2007. Michelle Miller is a PhD Candidate, Boston University Department of Economics; B.S., University of California, San Diego, 2002.

Part IV of this article will discuss the more general themes that can be observed from the data. We will detail the financial description of debtors who filed repeat cases before and after BAPCPA, and we will discuss whether BAPCPA had any broad impact on those filers.

## II. LEGAL AND ECONOMIC BACKGROUND

### A. Legislative History of BAPCPA

Legislative history normally refers to congressional reports appended to a bill, generated from portions of hearings or other analysis generated by congressional members and staff.<sup>1</sup> In this traditional sense, BAPCPA has scant legislative history.<sup>2</sup> As two scholars recently noted,

[A]lthough certain provisions of BAPCPA remained essentially unchanged throughout its eight year odyssey, there is no joint conference committee report, there is no Senate Judiciary Committee Report and the House Judiciary Committee Report is often a mere repetition of the text of BAPCPA. In addition, unlike the Bankruptcy Code of 1978, there are no floor statements from the floor managers that might be considered akin to a conference committee report or even consistent Senate and House committee reports to consult. Nevertheless, despite its limitations, it appears that reference to the House Judiciary Committee Report and the history of proposed legislation related to the eventual enactment of BAPCPA can provide a principled basis for decisions interpreting BAPCPA.<sup>3</sup>

Only one Committee Report published with BAPCPA sheds any light on legislative intent, but that report (although brief) sets an important tone: “Shoplifting is wrong; bankruptcy is also a moral act. Bankruptcy is a moral as well as an economic act. There is a conscious decision not to keep one’s promises.”<sup>4</sup> As shown below, this published statement succinctly summarizes the mood and perception of Congress in passing BAPCPA.

BAPCPA was the product of more than a decade of legislative attempts to curb perceived manipulation and exploitation of the bankruptcy code.<sup>5</sup> Its beginnings stem from the 1994 appointment of a National Bankruptcy Review Commission, established by the House of Representatives.<sup>6</sup> The Commission’s report included a separate dissent prepared by four members of the commission, which contained recommendations that would later find their way into BAPCPA.<sup>7</sup> In particular, the dissenters expressed a belief that:

[B]ankruptcy has become a first resort rather than a last measure for people who cannot keep up with their bills... [B]ankruptcy relief is too easy to obtain, [ ] the moral stigma once attached to bankruptcy has eroded, and [ ] debtors are insufficiently counseled both about personal financial management and about the use of bankruptcy.<sup>8</sup>

The dissenters stated further that “the Bankruptcy Code offers opportunities for unjustifiable debtor manipulation by various means, including abuses of the automatic stay to fend off eviction, repetitious filings, and over-generous exemptions.”<sup>9</sup> Based on these perceptions, the dissenters proposed several amendments to the Bankruptcy Code intended to curb abuse of the Bankruptcy Code (which included repeat filing), including a “means test” to preclude Chapter 7 relief for debtors deemed to have the ability to repay some amounts to creditors.<sup>10</sup>

The dissenters' perception of bankruptcy abuse and resulting proposals were reflected in legislation introduced on September 18, 1997 (the 1997 legislation)—legislation which is now considered the roots for BAPCPA.<sup>11</sup> In several statements discussing the proposed legislation, Representative George W. Gekas (R-Pa), Chairman of the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee, made the following statements: “Historically, bankruptcy was intended as a last resort, pursued only under the most dire of situations; for instance, the loss of a job, an illness in the family, the death of a spouse. Unfortunately, bankruptcy has become a way for reckless spenders to escape their debts.”<sup>12</sup>

The 1997 legislation failed to pass Congress before the end of the 105th Congress. However, soon after the 106th Congress resumed, legislation was introduced which largely mirrored the 1997 legislation (the 1998 legislation).<sup>13</sup> Moreover, statements made by members of Congress in support of the 1998 legislation also largely mirrored statements made a year before in support of the 1997 legislation.<sup>14</sup> For example, the House Majority Leader spoke in opposition to a proposed amendment, stating:

We all teach these lessons to our children about accepting your responsibility and fulfilling your responsibilities. Let the bankruptcy laws of this great land be a complement to the teachings we give our children and an encouragement to that, and let our children know the standards of compliance that are expected of them under the law.<sup>15</sup>

Two years later, the Bankruptcy Reform Act of 2000, substantially similar to the 1997 and 1998 legislation, was sent to President Clinton on December 7, 2000. The President pocket-vetoed the bill by failing to sign it into law within 10 days and issued a memorandum of disapproval which stated, among other things, that:

I firmly believe that Americans would benefit from bankruptcy reform legislation that would stem abuse of the bankruptcy system by, and encourage responsibility of, debtors and creditors alike. Unfortunately, this bill is not balanced reform and it omits critical language to require accountability and responsibility from those who unlawfully bar access to legal health services.<sup>16</sup>

Legislation which closely resembled the Bankruptcy Reform Act of 2000 was proposed by the 107th and 108th Congresses without success. Finally, on February 1, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was proposed.<sup>17</sup> The Congressional Record supporting BAPCPA is relatively small, but the statements made in support of BAPCPA are particularly revealing. For example, Representative Todd Tiahrt (R-Kan) stated:

The bill we are voting on today will help foster greater personal responsibility and make it more difficult for those who use bankruptcy as a tool for fraud to cheat their way out of debt.

Bankruptcy filings have escalated in recent years, which have had negative consequences on our economy. Yet, numerous studies have shown many bankruptcy debtors are able to repay a significant portion of their debts. If this alarming trend continues, all Americans will pay the price in the form of higher costs for goods, services and credit. These higher costs not only harm consumers, it also stymies growth for businesses.

By addressing bankruptcy abuses, S. 256 will play a role in creating a better environment to conduct business in America, which means more jobs for those who need them.<sup>18</sup>

On April 20, 2005, President Bush signed BAPCPA into law, stating the following at the signing ceremony:

Today we take an important action to strengthen - to continue strengthening our nation's economy. The bipartisan bill I'm about to sign makes common-sense reforms to our bankruptcy laws. By restoring integrity to the bankruptcy process, this law will make our financial system stronger and better. By making the system fairer for creditors and debtors, we will ensure that more Americans can get access to affordable credit.

[...]

Our bankruptcy laws are an important part of the safety net of America. They give those who cannot pay their debts a fresh start. Yet bankruptcy should always be a last resort in our legal system. If someone does not pay his or her debts, the rest of society ends up paying them. In recent years, too many people have abused the bankruptcy laws. They've walked away from debts even when they had the ability to repay them. This has made credit less affordable and less accessible, especially for low-income workers who already face financial obstacles.

To make the system more fair, the new law will also make it more difficult for serial filers to abuse the most generous bankruptcy protections. Debtors seeking to erase all debts will now have to wait eight years from their last bankruptcy before they can file again. The law will also allow us to clamp down on bankruptcy mills that make their money by advising abusers on how to game the system.

America is a nation of personal responsibility where people are expected to meet their obligations. We're also a nation of fairness and compassion where those who need it most are afforded a fresh start. The act of Congress I sign today will protect those who legitimately need help, stop those who try to commit fraud, and bring greater stability and fairness to our financial system. I'm honored to join the members of Congress to sign the Bankruptcy Abuse Prevention and Consumer Protection Act.<sup>19</sup>

## **B. Commentary**

Almost immediately after BAPCPA's enactment, courts and scholars alike issued scathing reviews of Congress's perception of consumer debtors. One author described Congressional perception as follows:

With sometimes arrogant disregard for the facts about debt and debtors in bankruptcy, lobbyists and executives for the consumer credit industry convinced Congress that abuse was rampant in bankruptcy, that many debtors were using bankruptcy as a "first resort" to avoid paying creditors, and that courts weren't doing enough to police the bankruptcy system.<sup>20</sup>

Henry J. Sommer, one of the authors of the well-known *Collier on Bankruptcy* treatise, was equally skeptical:

From its Orwellian title, an example of deceptive advertising if ever there was one, to the last of its 512 pages, the bankruptcy bill recently passed by Congress presents numerous challenges to attorneys who represent consumer debtors. How such terrible legislation came to be passed by Congress is a story of money, political mean-spiritedness, and intellectual dishonesty, but that is a story for another article... The silver lining for consumer debtors is that the bill is so poorly drafted that it may not accomplish much of what its financial backers wanted to accomplish.<sup>21</sup>

Bankruptcy courts have been no less harsh in their analysis of the congressional intent. One decision states:

Those responsible for the passing of the Act did all in their power to avoid the proffered input from sitting United States Bankruptcy Judges, various professors of bankruptcy law at distinguished universities, and many professional associations filled with the best of the bankruptcy lawyers in the country as to the perceived flaws in the Act. This is because the parties pushing the passage of the Act had their own agenda. It was apparently an agenda to make more money off the backs of the consumers in this country. It is not surprising, therefore, that the Act has been highly criticized across the country. In this writer's opinion, to call the Act a "consumer protection" Act is the grossest of misnomers.

[...]

It should be obvious to the reader at this point how truly concerned Congress is for the individual consumers of this country. Apparently, it is not individual consumers of this country that make the donations to the members of Congress that allow them to be elected and re-elected and re-elected and re-elected.<sup>22</sup>

As another court put it, some believe "that Congress intended to deny bankruptcy relief to as many debtors as possible, deprive judges of discretion, and clean up a fraud riddled system."<sup>23</sup>

The quotes above represent a vast body of commentary and interpretation agreeing on at least one central point—despite the relatively sparse legislative history surrounding BAPCPA, Congressional intent is clear. Congress believed that consumer debtors were abusing the bankruptcy system by filing repeatedly and strategically.<sup>24</sup>

### **C. Economic Literature Relating to Bankruptcy**

A growing amount of economic literature examines why individuals file for bankruptcy relief. Whereas economists have proposed multiple reasons for bankruptcy filing in general, little discussion exists of repeat filings, likely because data is largely unavailable.

Three economic theories have emerged to explain bankruptcy filing in general. The first theory posits that households file for bankruptcy when they accumulate high levels of debts relative to assets. Economists have examined the impact of many types of debt, including medical debt and credit card debt. One of the most notable papers discussing bankruptcy filing, written by Ian Domowitz and Robert L. Sartain, found that medical and credit card debt are the strongest contributors to bankruptcy.<sup>25</sup> Specifically, they found that:

High medical debt has the greatest single impact of any household condition variables in raising the conditional probability of bankruptcy.... Approximately 1.6 percent of the SCF sample [a survey of American households] has medical debt

exceeding 2 percent of income, implying that for an 87 million household economy, about 233,000 households could be declaring bankruptcy based on medical debt alone, which is approximately 30 percent of debtors in 1994, for example.<sup>26</sup>

Also, with respect to credit card debt, they concluded that a 1% increase in credit card debt relative to income leads to a 46% increase in the probability of filing for bankruptcy.<sup>27</sup>

Similarly, another prominent study found that bankrupt households have higher levels of debt than nonbankrupt households. According to that study, individuals are more likely to file for bankruptcy when the amount of dischargeable debt exceeds nonexempt assets. As explained in that study:

Suppose first that the financial benefit of bankruptcy increased by \$1,000 for all households. Then the average household's probability of filing for bankruptcy is predicted to rise by 0.021 percentage points. Since the average probability of filing in our sample is 0.3017 percent, the model predicts that the number of bankruptcy filings would increase by 7 percent per year. Based on 1.3 million bankruptcy filings per year in the United States (the figure for 1999), this implies that about 90,000 additional bankruptcy filings would occur per year.<sup>28</sup>

Combined, these studies suggest that bankruptcy is driven by a household's debts relative to assets. Thus the decision to file for bankruptcy is strategic and may be planned in advance.

Opposite this theory, many economists argue that households file for bankruptcy when adverse events reduce their ability to repay debts. As one paper stated, "consumers do not plan in advance for bankruptcy and do not respond to financial gain in deciding whether to file. Instead, they file in response to unanticipated adverse events which reduce their ability to repay their debts."<sup>29</sup> In perhaps the most well-known paper in this field, Teresa A. Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook examined the characteristics of households who filed for bankruptcy in 1991.<sup>30</sup> Based on surveys of bankrupt households, they found that most households file for bankruptcy after adverse events reduce their income. Nearly two-thirds of bankruptcies studied cited job-related financial distress as the cause of bankruptcy.<sup>31</sup> A similar survey of bankruptcy filers in 1996 showed that 20% of debtors named job loss as the main cause of their decision to file for relief.<sup>32</sup>

Along the same lines, a study published in 2005 contended that personal bankruptcy is often triggered by medical conditions, which in turn are often correlated with income shocks.<sup>33</sup> About one-half of the surveyed filers cited medical conditions as the cause of bankruptcy.<sup>34</sup>

In another study, the same authors who wrote *As We Forgive Our Debtors* found that employment problems, including layoffs or "skidding" to a lower-paying job were the biggest factors to bankruptcy.<sup>35</sup>

Not surprisingly, anything that causes income to decline puts a family at risk for bankruptcy. Layoffs and firings create huge vulnerability. Even if the worker finds another job, a period without income may create insurmountable debts, especially if the worker was carrying substantial debt loads when unemployment hit.

[...]

As dread as the word unemployment may be, many other income-related setbacks will also contribute to a debt-income mismatch that may lead to bank-

ruptcy. Losing overtime hours or moving from a well-compensated executive position to a commission sales job may be enough. Employees with full benefits who become ‘outsourced’ as contract workers with uncertain incomes and no fringe benefits may suddenly find income and debt out of balance.<sup>36</sup>

Similarly, Elizabeth Warren and Amelia Warren Tyagi contend that in two-income families, both incomes are almost entirely committed to necessities, such as home and car payments, health insurance, and children’s education costs.<sup>37</sup> Thus when an unforeseen event such as job loss, illness, or divorce occurs, families have no discretionary income to fall back on.

By the usual logic, sending a second parent into the workforce should make a family *more* financially secure, not less. But this reasoning ignores an important fact of two-income life. When mothers join the workforce, the family gave up something of considerable (although unrecognized) economic value: an extra skilled and dedicated adult, available to pitch in to help save the family during times of emergency. When Junior got sick, the stay-at-home mother was there to care for him full-time, without the need to hire a nurse. If Dad was laid off, Mom could enter the workforce, bringing in a new income until Dad found another job. And if the couple divorced, the mother who had not been working outside the home could get a job and add *new* income to support her children. The stay-at-home mother gave her family a safety net, an all-purpose insurance policy against disaster.<sup>38</sup>

A third economic theory to explain bankruptcy filings contends that households are forced into bankruptcy because they are financially irresponsible. One recent study, for example, found that bankruptcy filers often purchase a home which is outside their budget.

[W]hile homeownership is considered a cornerstone of middle class stability, growing numbers of Americans are assuming unsustainable mortgage debts. Mortgage lending is much more flexible than in the past. ‘[T]hey buy more than they can truly afford and they have too little margin left when disaster strikes’ (Sullivan et al., 2000, p. 242). Further, home equity lending has increased dramatically in the past decade. Despite record-breaking home-ownership rates and rising house values, total home equity had declined due to the aggressive marketing of home equity loans and the increasing proportion of first time home-buyers who generally make low down payments (Consumer Federation of America, 2000).<sup>39</sup>

This theory is also supported by research suggesting that bankruptcy is caused by credit card abuse. In 1996, the American Bankruptcy Institute published a study which cited ease of obtaining personal credit, and financial mismanagement as two of the primary causes of bankruptcy.<sup>40</sup> Likewise, *As We Forgive Our Debtors* claimed that growing credit card debt coupled with lowered lending standards has contributed to escalating bankruptcy rates.<sup>41</sup>

In sum, three economic theories have been touted as explanations for bankruptcy filings. Some economists argue that people file strategically when the benefit of discharging debt outweighs associated costs of bankruptcy. Other economists argue that people file in response to income shocks, such as the sudden incurrence of medical debt. Still others argue that bankruptcy filings are the result of financial irresponsibility. While each of these models is informative, none of them provides a clear explanation for large numbers of repeat filing.

#### D. Economic Theory Explaining Repeat Filing

Relatively little work exists to explain or discuss repeat bankruptcy filings, largely because data on repeat filers is not readily available. The most comprehensive discussion of repeat filers was completed in *As We Forgive Our Debtors* in 1989 through a survey of debtors and their petitions. Although not an economic study, *As We Forgive Our Debtors* provides a useful picture of repeat filers, classifying repeat cases as “true” or “non-true” repeat cases, where a true repeater is a debtor who obtains successive bankruptcy discharges.<sup>42</sup> A non-true repeater is a debtor who files repeatedly when either the prior or present cases do not result in a discharge of debt.<sup>43</sup> Thus a typical non-true repeater followed circumstances like those of Martha and James Perkins.

[Martha and James Perkins] filed a Chapter 13 in September 1980 that was dismissed in November 1980 because they were unable to make their payments. They gave up on the idea of partial repayment and filed a Chapter 7 in January 1981. Thus they are listed as repeaters, although, in fact, their first filing had no effect on their debts. They simply took two tries to find a solution to their financial problems.<sup>44</sup>

Based on information gathered from surveys of debtors and a review of their petitions, *As We Forgive Our Debtors* estimated that 8% of cases were repeat cases (cases filed by debtors who had filed previously within eight years) and estimated that 3.7% of cases were true repeat cases.<sup>45</sup> The authors acknowledged, however, that those estimates were inherently imprecise because files are incomplete, and they lacked information as to whether cases resulted in discharges.<sup>46</sup> Those estimates were also problematic since they relied on the truthfulness and accuracy of debtors in reporting their prior bankruptcy filings.

As a matter of economic theory, there are two types of repeat filers—behavioral and structural repeat filers. As explained by Jason J. Kilborn in his 2005 study, behavioral debtors repeatedly file for bankruptcy because they over-value current consumption and underestimate future costs.<sup>47</sup> Simply put, behavioral repeat filers are those debtors who just cannot stop spending beyond their means and appear to be those about which Congress was most concerned when it passed BAPCPA.

Confirming something that most of us have witnessed in ourselves and others, behavioralists have amassed evidence that individuals systematically overvalue immediate benefits and costs and undervalue delayed benefits and costs. . . . In particular, present gratification tends to be highly *overvalued*, and future costs tend to be heavily *discounted*. The magnitude of the discount on future costs (and benefits) increases over time. To use the scholarly jargon, individuals apply “hyperbolic discounting” to downplay future costs more and more as the costs move farther and farther into the future. . . . The effects. . . are especially pronounced in the average consumer credit transaction, particularly those involving revolving credit sources like credit cards. Consumer credit facilitates if not, indeed, *enhances* consumers’ susceptibility to the bias toward present consumption and against delayed gratification. Hyperbolic discounting explains (at least in part) why consumers can only be expected to overvalue the benefits of “buying now” while downplaying the costs of “paying later.”<sup>48</sup>

For behavioral repeat filers, filing for bankruptcy relief does not alter their fondness for present consumption. Because credit is available after bankruptcy, they can continue to act on these preferences postfiling.<sup>49</sup> The credit counseling and debtor education requirements in BAPCPA (discussed more fully below) are specifically aimed at behavioral



repeat filers. The counseling requirements emphasize the importance of fiscal responsibility and shed light on the tradeoff between current consumption and future costs.

Unlike behavioral filers, structural repeat filers repetitively file for bankruptcy because of external factors such as job loss, medical problems, and divorce. These are the debtors who just cannot catch a break. An example of a structural repeat filer is a debtor who files for bankruptcy once to discharge medical debt but who then suffers a relapse with those medical problems, incurring additional medical bills. Structural debtors use bankruptcy to smooth consumption during economic distress. Without bankruptcy, individuals in financial distress would have to drastically reduce consumption. Also, if their consumption falls too much, individual debtors could suffer long-term harm. For example, a debtor could face a permanent disability if an illness goes untreated. In addition, financial distress could have negative external effects on other family members—sharp falls in consumption could cause a debtor's children to drop out of school prematurely in order to work.

### **E. Repeat Filing Data**

The majority of the data used in this paper was hand-collected from bankruptcy petitions, Statements of Financial Affairs, and Bankruptcy Schedules. These documents were downloaded from PACER (Public Access to Court Electronic Records), a centralized registration and billing website maintained by most bankruptcy courts. As the petitions are only available in a PDF format, the relevant information then had to be extracted into a more usable format. Our pre-BAPCPA sample consists of 3,327 randomly selected cases from the 31,312 cases filed in the Northern District of Texas in 2004. Our post-BAPCPA sample consists of 2,537 randomly selected cases from the 12,248 cases filed in this district in 2006. The sample was restricted to the Northern District of Texas because extensive financial data had already been collected for a previous study. To mirror the methodology of the bankruptcy courts, we consider an observation at the individual, not the household, level. Thus if a petition was filed jointly, it was split into two observations.

For each petition in our sample, we gathered detailed information from the Statement of Financial Affairs and Bankruptcy Schedules. In the Statement of Financial Affairs and Bankruptcy Schedules, individual debtors detail their debts, assets, and monthly income and expenditures under penalty of perjury. Debts are classified as either secured, unsecured priority, or unsecured nonpriority claims while assets are categorized as real property or personal property. In addition, we collected data on bankruptcy chapter and filer address. We used debtors' addresses to determine the median income for each debtor's residential neighborhood, according to the 2000 Census. Unfortunately, we were not able to collect data on the demographics of each debtor, since this information is not discussed in bankruptcy filings.<sup>50</sup>

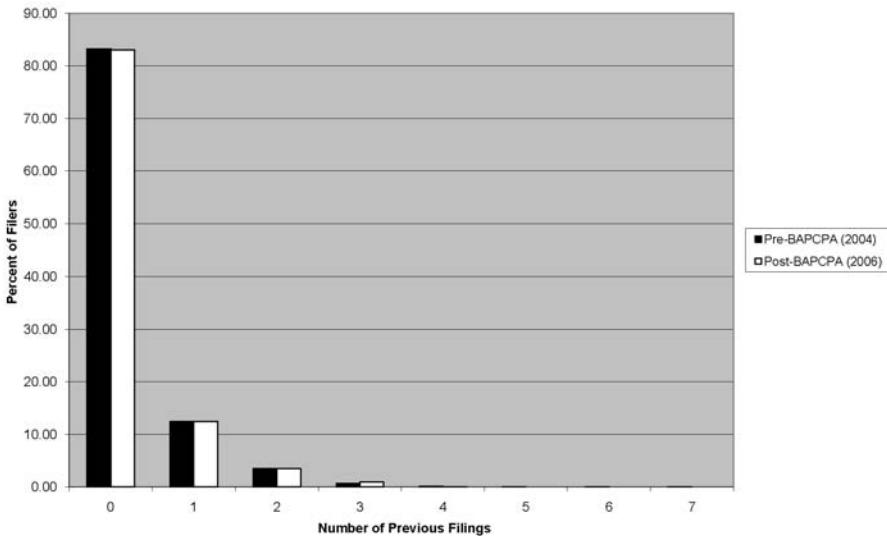
For each debtor in our sample, we isolated repeat-filers by searching PACER records by social security number. Although bankruptcy petitioners are required to report other bankruptcies on their petition, a PACER search is more reliable. In fact, bankruptcy courts perform the same search to determine, for their own purposes, whether a case is a repeat-filing. The petition only requires debtors to reveal cases filed within the past six years (in the case of pre-BAPCPA petitions), while PACER found prior cases dating back to 1992. In addition, debtors may inadvertently omit previous bankruptcy cases. For each repeat filer, the PACER output gives us a complete history of bankruptcy filings. From this history, we determined the total number of prior filings each debtor had, years of previous cases, and the previous chapter under which the debtor filed.

**III. BAPCPA: A LEGAL AND ECONOMIC ANALYSIS**

Table 1 and Figure A illustrate the total number of repeat debtors in our sample. Of the 3,981 debtors in our sample who filed in the Northern District of Texas in 2004, 16.72 % had filed at least once before. Approximately 4.3% of debtors in our sample filed for bankruptcy at least twice before; in fact, one debtor had previously filed seven other cases. After BAPCPA, our statistics are strikingly similar. 16.94% of our post-BAPCPA sample had filed at least once before (compared with 16.72 percent pre-BAPCPA). Approximately 4.52% of debtors in our 2006 sample had filed at least twice before (compared with 4.3% pre-BAPCPA). As evident from Figure A, both the total number and the distribution of previous cases is remarkably similar before and after BAPCPA.<sup>51</sup>

Number of Previous Filings	2004		2006	
	Frequency	Percent	Frequency	Percent
0	3,981	83.28	2,937	83.06
1	593	12.41	439	12.42
2	166	3.47	125	3.54
3	32	0.67	33	0.93
4	4	0.08	2	0.06
5	2	0.04	0	0.00
6	1	0.02	0	0.00
7	1	0.02	0	0.00
Total Number of Filers	3,981	83.28	2,937	83.06
Total Number of Repeat Filers	799	16.72	599	16.94

**Figure A: Percentage of People With A Given Number of Previous Filings**



Based on these numbers, it is evident that BAPCPA as a whole did not have a significant impact on repeat filings. To be sure, the aggregate number of repeat filings decreased after BAPCPA, just as the aggregate number of all filings dropped. However, to the extent that a portion of repeat filings represented “bankruptcy abuses,” it appears that BAPCPA did not eliminate those abuses. That said, the discussion below does show how three specific changes under BAPCPA had specific and observable impacts on repeat filings—specifically the timing of repeat cases.

## A. Limitations to the Automatic Stay

### 1. Section 362(c)(3) and (c)(4)

Before the Bankruptcy Code was enacted, debtors facing imminent creditor action could obtain a stay only upon motion to the court.<sup>52</sup> Thus one of the hallmarks of the Bankruptcy Code of 1978 was an “automatic” stay that arises the moment a bankruptcy petition is filed. The automatic stay provides a blanket prohibition against actions to recover for or enforce prepetition claims, or to obtain possession or control over property of the estate.<sup>53</sup> Indeed, the House Judiciary Report accompanying the Bankruptcy Reform Act of 1979 describes the automatic stay as:

one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him to bankruptcy.<sup>54</sup>

In contrast to this policy, BAPCPA added several important exceptions to the automatic stay. Section 362(c)(3)(A) now provides that a case which is filed within one year of the dismissal of a prior case will involve an automatic stay lasting for only 30 days.<sup>55</sup> Upon expiration of the 30-day period, the automatic stay is lifted “with respect to the debtor.”<sup>56</sup> In turn, section 362(c)(4)(A) provides that a case which is filed within one year of the dismissal of two or more prior cases will involve no automatic stay whatsoever.<sup>57</sup> In either scenario, a debtor may seek an order continuing or reinstating the automatic stay upon a showing that the current case was filed “in good faith as to the creditors to be stayed.”<sup>58</sup>

Debtors who seek to show that a successive case was filed “in good faith” must overcome a contrary presumption. In perhaps the clearest indication of congressional intent, section 362(c)(3)(C) and (4)(D) states that a case is “presumptively filed not in good faith” if:

1. the debtor had at least two cases pending within a year of filing the present case,
2. the prior case was dismissed after the debtor failed to file or amend the petition or other documents required by the bankruptcy code or the court without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a confirmed plan; or
3. there has not been a substantial change in the debtor’s financial or personal affairs since the dismissal of the prior case, or any other reason to conclude that the present case will not end successfully.<sup>59</sup>

Courts interpreting these changes have split over the meaning of section 362(c)(3), which provides that a debtor who had one prior case dismissed within a year is entitled to an automatic stay for 30 days. After the expiration of the 30-day period, section 362(c)(3)(C) provides that the stay is lifted “with respect to the debtor.”<sup>60</sup> This is in contrast to section 362(c)(4), which provides that, with respect to a debtor who has had two prior cases dismissed within a year, the automatic stay “shall not go into effect.”<sup>61</sup>

A majority of courts interpreting section 362(c)(3) apply its literal terms, holding that the automatic stay is lifted only “with respect to the debtor,” as opposed to property of the estate.<sup>62</sup> Under this view, the limitations of section 362(c)(3) are relatively ineffectual,<sup>63</sup> since a debtor’s home and vehicle(s) continues to be protected beyond the 30-day period.<sup>64</sup> According to the majority view, the only property which is impacted by section 362(c)(3) is property which has been abandoned, which is exempt, or which is otherwise excluded from the definition of “property of the estate” under § 541.<sup>65</sup>

The minority view interprets section 362(c)(3) to lift the stay with respect to both property of the estate and property of the debtor.<sup>66</sup> These courts rely on the apparent legislative intent.<sup>67</sup> As one court stated, “there is no indication in the legislative history that § 362(c)(3) only partially terminates the automatic stay while § 362(c)(4) terminates the automatic stay in its entirety. As the title [of section 302 of BAPCPA] indicates, in enacting this provision, Congress intended to discourage ‘Bad Faith Repeat Filings.’”<sup>68</sup>

Courts interpret § 362(c)(4) uniformly.<sup>69</sup> A debtor who has had two cases dismissed within one year of the present case is not entitled to an automatic stay at all. However, even if the automatic stay is limited or absent under § 362(c)(3) and (c)(4), courts agree that the codebtor stay is not impacted.<sup>70</sup> As a practical matter then, a home or vehicle will still be protected by the automatic stay if a case is filed by spouses jointly where only one spouse is subject to a limited stay.

In light of the majority view interpreting § 362(c)(3) and the lack of limitations for the codebtor stay, BAPCPA’s addition of § 362(c)(3) to the Bankruptcy Code may have done little to curb perceived abuse by repeat filing. As evidenced by the cases discussing section 362(c)(3), the creditors who stood to benefit from section 362(c)(3) are secured by repeat filers’ homes.<sup>71</sup> Since a debtor’s home is considered property of the estate at the time of filing, a repeat filing will stay any foreclosure proceedings even beyond the 30-day period; and debtors who know they will not benefit from the automatic stay under § 362(c)(4) may be induced to file jointly to gain the codebtor stay. Thus one court described section 362(c)(3) under the majority view as “meaningless and of no utility.”<sup>72</sup>

## 2. The Numbers

To examine the impact of section 362(c)(3) and (c)(4), Table 2 details the length of time repeat filers waited between cases. As seen in the first row of Table 2, the number of repeat cases filed within one year of each other decreased significantly from 60.57% before BAPCPA to 37.23% after BAPCPA. After BAPCPA, repeat debtors appear to wait longer between cases. The average time between filings increased from 2.16 years before BAPCPA to 3.39 years after BAPCPA. Figure B illustrates this result graphically. Again, the reader can see the dramatic decline in repeat cases filed within a year. This result is fairly consistent regardless of chapter choice—on average, Chapter 7 repeat filers now wait an extra year, and Chapter 13 repeat filers wait an extra 1.3 years.<sup>73</sup>

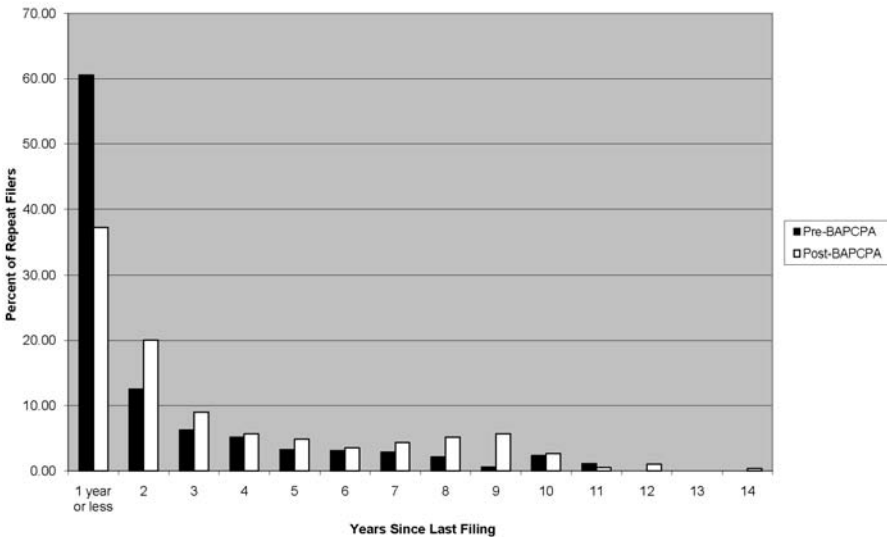
REPEAT FILERS UNDER BAPCPA: A LEGAL AND ECONOMIC ANALYSIS

**Table 2: Time Since Last Filing**

Years Since Last Filing	2004		2006	
	Frequency	Percent	Frequency	Percent
1 year or less	484	60.58	223	37.23
2	100	12.52	120	20.03
3	50	6.26	54	9.02
4	41	5.13	34	5.68
5	26	3.25	29	4.84
6	25	3.13	21	3.51
7	23	2.88	26	4.34
8	17	2.13	31	5.18
9	5	0.63	34	5.68
10	19	2.38	16	2.67
11	9	1.13	3	0.50
12	0	0.00	6	1.00
13	0	0.00	0	0.00
14	0	0.00	2	0.33
Total Number of Repeat Filers	799		599	
Average Time Between Filings	2.16		3.39	
	[0.09]		[0.12]	

Standard errors in brackets

Figure B: Time Since Last Filing



Thus it is quite clear that the changes to § 362(c) had a distinct impact on repeat filings. Despite caselaw which appears to neutralize any real changes to the automatic stay, debtors seem to be waiting at least a year until re-filing. Since the overall rate of repeat filings remained the same before and after BAPCPA, it appears the changes to

§ 362(c) prolonged, but did not avoid, repeat cases. Debtors are aware of the changes to the automatic stay and respond accordingly. The caselaw interpreting § 362(c) appears to have little impact on debtors' reaction to BAPCPA. This may indicate that debtors are more sensitive to perception than the actual state of the law.

These numbers also may indicate that repeat filers have some degree of control over the timing of their repeat cases. If that is true, a large portion of repeat cases are behavioral or "abusive," since they may not have an absolute and desperate need for bankruptcy relief. The amount of repeat cases filed within a year of a prior case decreased by nearly 40%; instead, that 40% was able to wait at least one year following the prior case.<sup>74</sup> If debtors can prolong their filing by a year, do they need relief in the first place? To the extent that BAPCPA was intended to curb this perceived abuse, it appears that BAPCPA was ineffective inasmuch as repeat filings are merely delayed.

The flip side of these findings is that approximately 60% of repeat cases may be structural repeat cases—repeat cases which are unavoidable and necessary. So while BAPCPA's changes to § 362(c) impacted "abusive" repeat cases by prolonging an eventual filing, it also impacted structural repeat filings, which seem to constitute the majority of repeat cases.

Our results also confirm that the automatic stay is an important benefit for repeat filers. This may also suggest that, to the extent that repeat filers cannot avoid filing for relief, they are filing to avoid the loss of property, such as foreclosure of their personal residences.

## **B. Discharge Ineligibility**

### **1. Section 727(a)(8)**

Fear of abusive repeat bankruptcy filing is not new. In fact, soon after Congress enacted comprehensive bankruptcy laws in 1898, the laws were close to repeal in response to pressure from creditors.<sup>75</sup> One of the most bitter complaints raised by creditors was that debtors were filing repetitively to avoid paying their debts.<sup>76</sup> The compromise which resulted was a restriction allowing debtors to discharge debts only once every six years.<sup>77</sup> That restriction was carried through American bankruptcy laws and adopted by the Bankruptcy Code of 1978.<sup>78</sup>

After BAPCPA, debtors who obtain a Chapter 7 discharge are barred from receiving an additional Chapter 7 discharge for eight years<sup>79</sup> and are barred from receiving a Chapter 13 discharge for four years.<sup>80</sup> Debtors who obtain a Chapter 13 discharge are barred from receiving another Chapter 13 discharge for two years.

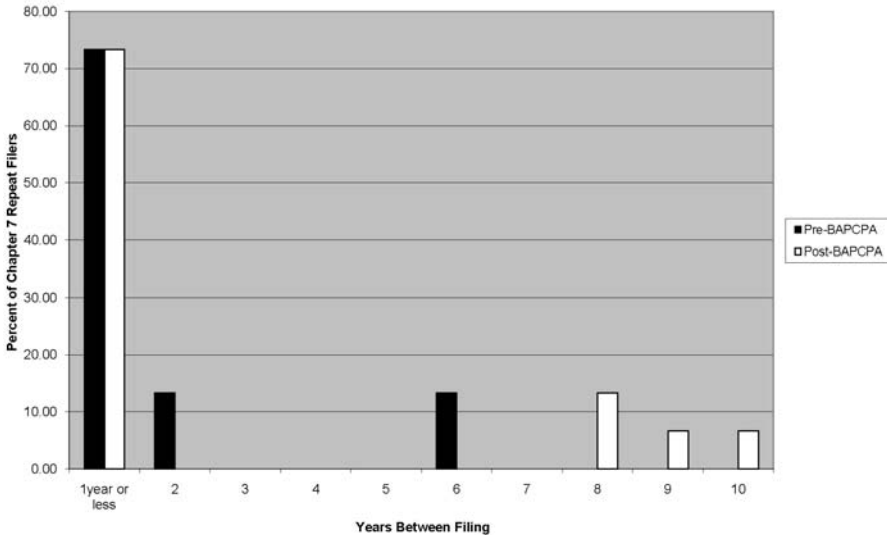
The legislative intent underlying these changes was to target "abusive" repeat filers, and preclude a debtor's ability to use bankruptcy as a regular way of life. As one scholar described the legislative attitude at the time Congress was considering BAPCPA,

The specter of the "serial filer," a debtor who has developed the bankruptcy strategy to a high art, is blamed for abusing the bankruptcy system. These abuses are claimed to be choking the system with cases filed solely for delay, with no intent to fulfill a plan for reorganization. Both popular and academic literature have deemed repeat filers as inherent abusers of the system.<sup>81</sup>

2. The Numbers

In this subsection, we focus on the behavior of debtors who file repeat Chapter 7 cases only.<sup>82</sup> Figure C shows the distribution of debtors filing repeat Chapter 7 cases. As before, the x-axis represents the time debtors waited between filings,<sup>83</sup> and the y-axis denotes the percent of debtors who filed repeat Chapter 7 cases.<sup>84</sup> The black distribution, which represents pre-BAPCPA filers, has several notable attributes. First, it displays a large spike at zero; this spike shows that a large number of debtors filed two Chapter 7 cases within a year.<sup>85</sup> These repeat cases likely represent Chapter 7 debtors whose initial case was dismissed.<sup>86</sup> Since the changes to section 727(a)(8) impact only Chapter 7 debtors who received a prior discharge,<sup>87</sup> we are not concerned with these debtors. The distribution also heightens at the six-year mark; this spike shows that many filers waited exactly six years between Chapter 7 cases. This spike is significant, since it likely represents debtors who received a prior Chapter 7 discharge and who, knowing of the bar to discharge, waited until the bar expired. The white distribution on the other hand, which represents post-BAPCPA filers, has spikes at one year and eight years.

Figure C: Debtors Who Filed Two Chapter 7 Cases in a Row



There is one notable difference between pre and post BAPCPA behavior—the timing of repeat cases spikes in different places. The pre-BAPCPA histogram spikes at six years, while the post BAPCPA line spikes at eight years; we can see that many debtors now wait an additional two years between filings. This result tracks exactly BAPCPA’s revision of § 727(a)(8) to increase the time for discharge eligibility from six to eight years.

## C. Credit Counseling

### 1. The Law

Acting on a belief that many people file for bankruptcy relief because of irresponsibility, Congress amended § 109 to provide that individual debtors are ineligible for bankruptcy relief unless they obtain credit counseling within 180 days of filing. Specifically, § 109(h)(1) provides, in relevant part:

[A]n individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

Credit counseling which satisfies the requirements of section 109(h)(1) must be taken from an agency pre-approved by the U.S. Trustee. To obtain such approval, credit counseling agencies must show, among other things, that they:

- (1) are nonprofit organizations,
- (2) have an independent board of directors with the majority of members not directly or indirectly benefiting financially from the outcome of the counseling services,
- (3) charge a reasonable fee for counseling services,
- (4) provide full disclosure to a client on certain prescribed items,
- (5) provide for the safekeeping and payment of client funds,
- (6) provide trained counselors with adequate experience, and
- (7) have adequate financial resources to provide continuing support services for budget plans over the life of any repayment plan.<sup>88</sup>

By the terms of Code § 109(h)(1), a credit counseling course must be “an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outline[s] the opportunities for available credit counseling and assist[s] such individual in performing a related budget analysis.”<sup>89</sup> According to guidelines promulgated by the U.S. Trustee, credit counseling should average 60 to 90 minutes in length and generally include a collection of a debtor’s financial information, followed by analysis of that data in the context of a personalized budget, and a discussion of the debtor’s options.<sup>90</sup>

Debtors are not subject to the credit counseling requirement if: 1) they reside in a district in which, according to the U.S. Trustee, credit counseling is unavailable,<sup>91</sup> or 2) upon notice and hearing, a bankruptcy court determines that the debtor is unable to obtain credit counseling “because of incapacity, disability, or active military duty in a military combat zone.”<sup>92</sup> A debtor may obtain a temporary 30-day waiver of the credit counseling requirement by submitting a certification that: 1) describes exigent



circumstances that merit a waiver, 2) states that the debtor requested credit counseling services but was unable to obtain the services during the five-day period beginning on the date on which the debtor made that request, and 3) is satisfactory to the court.<sup>93</sup> Courts have been fairly universal in holding that absolute compliance is required for an individual to be a debtor under the Bankruptcy Code.<sup>94</sup>

In enacting the credit counseling requirements, Congress took aim at debtors for whom bankruptcy is not truly a final, desperate option. The House Report accompanying BAPCPA provides that the credit counseling requirement “requires debtors to receive credit counseling before they can be eligible for bankruptcy relief so that they will make an informed choice about bankruptcy, its alternatives, and consequences.”<sup>95</sup> As one scholar explained, “[t]he credit counseling requirement is a product of Congress’s increased awareness of the growing perception that bankruptcy was too easy to access and had become a first resort in some cases, instead of the last resort that it should be.”<sup>96</sup>

Preliminary research discussing the credit counseling requirement suggests the requirement has had a minimal impact on bankruptcy filings in general. Specifically, the U.S. Government Accountability Office stated the following [based on a survey of debtors] in a report to Congress (the GAO Report):

The great majority of counseling is conducted by telephone or via the Internet rather than in person. We did not find evidence that counselors were providing biased information and few clients appear to be entering debt management plans. However, a wide range of observers questioned the value of the pre-filing credit counseling requirement. It was intended to help consumers make informed choices about their options, but anecdotal evidence suggests that by the time most consumers receive the counseling, their financial problems are dire and they have few viable alternatives to bankruptcy.<sup>97</sup>

The GAO Report found that fewer than 2% of credit counseling consumers entered debt management plans<sup>98</sup> and concluded that the impact of the credit counseling requirement is “unclear.”<sup>99</sup>

While quality credit counseling can, in general, be beneficial, a wide range of observers we spoke with—including representatives of federal agencies, bankruptcy attorneys, and panel trustees; consumer advocates; and several counseling providers—told us that the timing of the counseling conducted to fulfill the requirement of the Bankruptcy Act could mitigate its value... [B]y the time individuals obtain pre-filing credit counseling, they usually have already consulted with a bankruptcy attorney and have serious financial problems, such as imminent foreclosure of their homes. As such, anecdotal evidence indicates that the great majority of clients receiving pre-filing counseling have few viable alternatives to bankruptcy. The Bankruptcy Act’s credit counseling requirement therefore may not be serving its purpose of helping consumers make informed choices about whether or not to file for bankruptcy. Providers and others told us that many clients perceived the counseling session as an administrative obstacle rather than a useful exercise.<sup>100</sup>

## 2. The Numbers

Our results suggest that the credit counseling requirements have had the intended effect on all filings, both first-time and repeat cases. As indicated in Table 3, debtors post-BAPCPA have significantly higher levels of debts in all categories. As compared with pre-BAPCPA levels, first-time cases list an increase of approximately \$9,000 in unsecured debts, approximately \$960 in priority unsecured debts, and approximately \$16,000 in secured debts. As compared with pre-BAPCPA levels, repeat cases list an increase of approximately \$9,000 in unsecured debts, approximately \$2,000 in priority unsecured debts, and approximately \$6,000 in secured debts. These results are consistent with the notion that credit counseling discourages debtors with relatively low levels of debt from filing in the first place. So at the very least, our results show that the credit counseling requirements had an impact on filings.

That said, our results were inconclusive as to whether the credit counseling requirements had a distinct and separate impact on repeat filings. Our sample did not include enough instances of debtors who filed twice since BAPCPA (thus having a chance to implement the lessons learned through credit counseling). More research should be done in a few years to address the impact of credit counseling on repeat filing. Because our other results suggest a large portion of repeat cases are filed to avoid foreclosure on real property, we would expect the credit counseling requirements are not separately impacting repeat cases.

## IV. OBSERVATIONS

From a global perspective, our results paint an interesting picture of repeat filers. Most notably, repeat filers look the same both before and after BAPCPA. Table 3 shows the characteristics of first-time filers and repeat filers both before and after BAPCPA.<sup>101</sup> The first two columns describe repeat filers in 2004 and 2006 respectively. In column 3, we examine how the characteristics of repeat filers change from 2004 to 2006. Columns 4 through 6 provide analogous statistics for first time filers. Column 7 shows how repeat filers changed relative to first time filers. A casual glance at Table 3 shows how similar repeat filers look before and after BAPCPA. Repeat filers have the same income,<sup>102</sup> expenditures,<sup>103</sup> level of assets,<sup>104</sup> and level of debts,<sup>105</sup> before and after BAPCPA. Moreover, repeat filers hale from the same neighborhoods before and after BAPCPA.<sup>106</sup>

Our results also hint at a major motivation behind repeat cases—to benefit from the automatic stay and save real property from foreclosure. As seen in row 1 of Table 3, both before and after BAPCPA, repeat filers are more likely to have nonexempt assets. This is due to the large holdings repeat filers have in real property, even though they have relatively fewer assets in personal property. At the same time, repeat filers have smaller total debts than first time filers, but higher levels of secured and priority claims. Also, as indicated in row 12, repeat filers were more likely than first-time filers to file for Chapter 13 relief, both before and after BAPCPA, even though they have similar levels of income and expenditure. These facts, although not conclusive, strongly suggest that repeat cases are filed to obtain the benefits of the automatic stay and to preserve debtors' homes. This is confirmed by the results, discussed above, which show that repeat filers responded to BAPCPA's limited automatic stay provisions under § 362(c).

REPEAT FILERS UNDER BAPCPA: A LEGAL AND ECONOMIC ANALYSIS

Table 3: Debtor Characteristics

Variable	Repeat Filers		First Time Filers		Difference	Difference in Differences*
	2004	2006	2004	2006		
<b>Assets</b>						
Fraction of Debtors Without Assets	0.18 [0.01]	0.11 [0.01]	0.58 [0.01]	0.47 [0.01]	-0.11 [0.02]	0.04 [0.03]
Total Assets	\$111,060.20 [3,164.60]	\$125,636.00 [4,812.60]	\$109,625.90 [1,646.59]	\$127,644.90 [2,186.92]	18,019.00 [2,683.91]	-\$3,443.20 [6,464.32]
Assets in Real Property	\$87,445.45 [2,823.89]	\$96,855.82 [4,044.82]	\$75,200.32 [1,200.70]	\$90,428.72 [1,896.97]	15,228.40 [2,146.83]	-\$5,818.03 [5,233.74]
Assets in Personal Property	\$23,614.75 [959.11]	\$28,780.13 [2,107.02]	\$34,425.60 [898.69]	\$37,216.17 [793.66]	2,790.57 [1,248.79]	\$2,374.81 [2,936.55]
<b>Liabilities</b>						
Total Liabilities	\$130,625.50 [3,244.16]	\$148,166.70 [4,676.26]	\$134,401.30 [2,586.82]	\$159,813.20 [2,731.41]	25,411.90 [3,817.65]	-\$7,870.70 [8,839.69]
Secured Claims	\$98,552.63 [2,760.56]	\$105,034.90 [4,011.01]	\$81,328.07 [1,315.07]	\$97,106.19 [2,013.68]	15,778.12 [2,309.89]	-\$9,295.85 [5,553.85]
Priority Claims	\$4,179.46 [286.35]	\$6,277.47 [458.64]	\$2,916.91 [184.79]	\$3,874.45 [305.16]	\$957.54 [339.10]	\$1,140.47 [788.64]
Unsecured Claims	\$27,893.40 [1,247.24]	\$36,854.33 [1,867.51]	\$50,156.28 [2,107.07]	\$58,832.51 [1,662.53]	8,676.23 [2,838.51]	\$284.70 [6,383.37]
<b>Income</b>						
Current Income of Debtor	\$3,293.61 [78.64]	\$3,202.01 [128.29]	\$3,246.77 [47.41]	\$3,447.90 [75.24]	\$201.13 [84.99]	-\$292.74 [199.59]
Median Income on Debtor's Block	\$48,698.55 [674.90]	\$46,243.22 [770.25]	\$47,310.77 [1,025.85]	\$49,061.71 [306.42]	\$1,750.94 [470.54]	-\$4,206.27 [1,142.90]
Current Expenditure of Debtor	\$2,895.26 [71.69]	\$3,782.19 [158.32]	\$3,191.30 [45.82]	\$3,958.18 [158.88]	\$766.89 [146.52]	\$120.04 [333.51]
<b>Other Variables</b>						
Fraction of Debtors Who Filed Under Chapter 13	0.82 [0.01]	0.89 [0.01]	0.41 [0.01]	0.52 [0.01]	0.12 [0.01]	-0.05 [0.03]
Number of Observations	799	599	3,981	2,937		

Standard errors are in brackets

\* Difference in variables between 2006 & 2004 for Repeat Filers minus corresponding difference for first time filers.

This discussion is given more color by our findings described in Table 4, which shows the breakdown of repeat cases both before and after BAPCPA between Chapter 7 and Chapter 13. Almost all repeat Chapter 7 cases had little or no nonexempt assets. Almost all repeat Chapter 13 cases had nonexempt assets. More importantly, the amount of those

assets increased significantly after BAPCPA for repeat Chapter 13 debtors. This is due in large part to a significant increase in the real property assets held by repeat Chapter 13 debtors. Before BAPCPA, repeat Chapter 7 cases involved a mean of \$79,312.59 in real property assets, compared with \$89,233.43 for repeat Chapter 13 cases. After BAPCPA, the mean value of real property assets held by repeat Chapter 7 debtors actually *fell* to \$56,548.27. At the same time, the mean value of real property held by repeat Chapter 13 debtors *rose* significantly to \$101,847. This is interesting since the mean value of personal property held by Chapter 7 and Chapter 13 repeat cases remained relatively stable. Moreover, Table 4 indicates that repeat Chapter 7 debtors now have *higher* income than repeat Chapter 13 debtors. Why would a repeat debtor who makes less money than the average Chapter 7 debtor opt to file for Chapter 13 relief? Most likely because the repeat Chapter 13 debtor is seeking to redress a mortgage debt and thereby keep real property. Accordingly, Table 4 confirms the notion that, now more than ever, repeat Chapter 13 cases are filed to avoid foreclosure of real property.<sup>107</sup>

**Table 4: Repeat Filers By Chapter**

Variable	2004		2006	
	Chapter 7	Chapter 13	Chapter 7	Chapter 13
<b>Assets</b>				
Fraction of Debtors Without Assets	1.00 [0.00]	0.00 [0.00]	0.97 [0.02]	0.00 [0.00]
Total Assets	\$101,345.50 [7,029.58]	\$113,195.90 [3,534.42]	\$81,787.42 [12,391.04]	\$131,065.60 [5,141.25]
Assets in Real Property	\$79,312.59 [6,278.58]	\$89,233.43 [3,153.92]	\$56,548.27 [10,360.35]	\$101,847.00 [4,314.92]
Assets in Personal Property	\$22,031.96 [1,812.51]	\$23,962.50 [1,100.12]	\$25,239.14 [3,783.95]	\$29,218.60 [2,321.28]
<b>Liabilities</b>				
Total Liabilities	\$135,710.70 [7,856.63]	\$129,507.50 [3,561.93]	\$136,458.20 [15,316.54]	\$149,616.50 [4,902.94]
Secured Claims	\$91,806.57 [6,492.99]	\$100,035.70 [3,049.21]	\$65,501.79 [11,782.70]	\$109,930.10 [4,220.68]
Priority Claims	\$2,666.47 [772.81]	\$4,512.08 [303.98]	\$5,328.05 [1,874.10]	\$6,395.03 [460.81]
Unsecured Claims	\$41,237.71 [3,889.62]	\$24,959.68 [1,230.90]	\$65,628.37 [7,450.58]	\$33,291.31 [1,830.11]
<b>Income</b>				
Current Income of Debtor	\$3,168.25 [140.16]	\$3,321.17 [90.85]	\$4,133.93 [982.26]	\$3,086.61 [77.24]
Median Income on Debtor's Block	\$48,713.13 [1,542.51]	\$48,695.34 [750.73]	\$43,065.70 [2,011.19]	\$46,636.68 [282.03]
Current Expenditure of Debtor	\$3,081.10 [136.78]	\$2,854.41 [82.08]	\$3,861.54 [1,021.71]	\$3,772.37 [125.97]
<b>Other Variables</b>				
Years Since Last Filing	2.95 [0.26]	1.99 [0.09]	3.97 [0.44]	3.32 [0.13]
Number of Observations	144	655	66	533

Standard errors are in brackets

Finally, our results indicate a recent shift in the landscape of repeat filings. *As We Forgive Our Debtors*, published in 1989, described a repeat filing rate of only 8% (compared with 17% found here). *As We Forgive Our Debtors* also concluded that “[t]he image of clever debtors who declare bankruptcy when their six-year waiting period has ended and their debts have peaked is a vision from policymakers’ nightmares

more than it is a reality in the bankruptcy system.”<sup>108</sup> Our findings suggest otherwise. As discussed, 40% of repeat filers waited an additional two years between filing Chapter 7 cases, in response to BAPCPA’s extension of discharge ineligibility from six to eight years. This suggests that 40% of repeat filers are, to some extent, making tactical decisions as to the timing of their cases.

## V. CONCLUSION

As previously discussed, our findings indicate that the overall rate of repeat filing did not change after BAPCPA. Also, the people who are filing repeat cases have the same characteristics as those filing before BAPCPA. The only noticeable change in repeat cases is the timing. Some amount of repeat debtors (approximately 40%) have discretion as to the timing of a repeat case. Those debtors have responded to BAPCPA by waiting longer between cases, to avoid limitations on the automatic stay or to avoid discharge ineligibility. To be sure, these repeat cases are still being filed. BAPCPA simply prolonged the time between these cases. At the same time, the majority of repeat cases appear to be filed by debtors who have limited control over the need or timing of their case. These debtors are subject to the same restrictions enacted under BAPCPA as the “abusive” cases. Our results indicate that a primary motivation behind these repeat cases is to avoid foreclosure of real property (i.e., a debtor’s home).

These results do not seem to match the perception of debtors who file bankruptcy repeatedly that Congress exhibited in the legislative history of BAPCPA. Congress seemed to believe that a majority of repeat cases are filed strategically to manipulate creditors. Whereas our findings confirm that debtors seek to forestall foreclosure of real property, they also suggest that most debtors have little control over the decision to file a repeat case, or the associated timing.

### Research References:

Bankr. Serv., L Ed §§ 12:551, 12:554, 12:726, 12:942, 12:1468, 13:3, 13:29, 13:30, 16A:264, 17:224 to 17:226, 19:34 to 19:43, 19:769, 19:782, 19:948 to 19:950, 25:220, 27:125, 37:274, 43:243, 48:182, 48:209, 48:213, 50:178, 59:311; Norton Bankr. L. & Prac. 3d §§ 17:16, 43:14, 86:18, 151:10, 172:5; Norton Bankr. L. & Prac. 3d 11 U.S.C. § 362

West’s Key Number Digest, Bankruptcy ☞ 2235, 2404, 3275

### NOTES

1. Hon. Thomas F. Waldron and Neil M. Berman, Principled Principles of Statutory Interpretation: A Judicial Perspective After Two Years of BAPCPA, 81 Am. Bankr. L.J. 195, 217 (Summer 2007).

2. Waldron and Berman, 81 Am. Bankr. L.J. at 217. See also *In re McNabb*, 326 B.R. 785, 789, 54 Collier Bankr. Cas. 2d (MB) 750, Bankr. L. Rep. (CCH) P 80333 (Bankr. D. Ariz. 2005) (rejected by, *In re Rasmussen*, 349 B.R. 747 (Bankr. M.D. Fla. 2006)) (“[l]egislative history is virtually useless as an aid to understanding the language and intent of BAPCPA”).

3. Waldron and Berman, 81 Am. Bankr. L.J. at 217.

4. H.R. Rep. No. 31, 109th Cong., 1st Sess. (2005).

5. Lisa A. Napoli, Reaffirmation After the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Many Questions, Some Answers, 81 Am. Bankr. L.J. 259, 261 (Summer 2007).

6. John Hennigan, Recent Development: Rousey and the New Retirement Funds Exemption, 13 *Am. Bankr. Inst. L. Rev.* 777, 797 (Winter 2005).

7. Susan Jensen, A Legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 79 *Am. Bankr. L.J.* 485, 487 (Summer 2005).

8. Jensen, 79 *Am. Bankr. L.J.* at 488-89 (quoting the Report of the National Bankruptcy Review Commission (Oct. 20, 1997)).

9. Jensen, 79 *Am. Bankr. L.J.* at 488-89.

10. Additional Dissent to Recommendations for Reform of Consumer Bankruptcy Law (Oct. 20, 1997).

11. Jensen, 79 *Am. Bankr. L.J.* at 493 (describing the 1997 legislation as “largely reflect[ing] the views of the dissenting Commissioners with respect to the direction of consumer bankruptcy reforms”).

12. Jensen, 79 *Am. Bankr. L.J.* at 493 (citing National Bankruptcy Review Commission Report: Hearing Before Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary, 105th Cong. 2-3 (1997)).

13. Jensen, 79 *Am. Bankr. L.J.* at 519.

14. Representative George Gekas, Chairman of the House Judiciary Sub-Committee stated the following when introducing the 1998 legislation:

The greatest, and perhaps most dangerous, irony I have come across in the past decade is that despite economic growth, low inflation, low unemployment, and increasing personal income, our nation has seen an alarming increase in the number of bankruptcy filings—1.3 million in 1997 to be exact. Think about that for a second. That [is] more than one family per every hundred in the United States and over \$40 billion in debt that has been erased—in a year of strong economic growth.

[B]ankruptcy of convenience is a new phenomenon, borne out of the loss of stigma the word bankruptcy once, but no longer, carried... [The] lack of stigma has become a weed infesting the bankruptcy landscape, [and] has spread as bankruptcy became viewed more as a financial planning tool... and a first choice, rather than a last re-sort.

144 *Cong. Rec.* E88 (daily ed. Feb. 4, 1998) (statement of Rep. Gekas).

15. 145 *Cong. Rec.* H 2718 (daily ed. May 5, 1999).

16. Press Release, White House Office of the Press Secretary, Memorandum of Disapproval by William J. Clinton, at 1 (Dec. 19, 2000).

17. Jensen, 79 *Am. Bankr. L.J.* at 563.

18. 151 *Cong. Rec.* E. 737, E737.

19. Press Release, White House Press Office, President Signs Bankruptcy Abuse Prevention, Consumer Protection Act (Apr. 20, 2005).

20. Keith M. Lundin, Ten Principles of BAPCPA: Not What Was Advertised, 24 *Am. Bankr. Inst. J.* 1 (Sept. 2005).

21. Henry J. Sommer, Trying To Make Sense Out Of Nonsense: Representing Consumers Under “The Bankruptcy Abuse Prevention And Consumer Protection Act of 2005,” 79 *Am. Bankr. L.J.* 191 (Spring 2005).

22. *In re Sosa*, 336 B.R. 113, 114 (Bankr. W.D. Tex. 2005).

23. *In re Ray*, 362 B.R. 680, 684, 57 *Collier Bankr. Cas. 2d* (MB) 1024 (Bankr. D. S.C. 2007).

24. See, e.g. *In re Scarafiotti*, 375 B.R. 618, 630 (Bankr. D. Colo. 2007) (“As the bill’s title reveals, this act was intended to curb what were perceived as abusive bankruptcy practices. Congress wanted to ensure that debtors who have the ability to repay a portion of their debts be forced to do so through Chapter 13”); accord *In re Sanders*, 368 B.R. 634, 638 (Bankr. E.D. Mich. 2007); *In re Stewart*, 373 B.R. 736, 741 (Bankr. M.D. Fla. 2007) (“Congress intended to

## REPEAT FILERS UNDER BAPCPA: A LEGAL AND ECONOMIC ANALYSIS

limit abuses under the bankruptcy system in enacting BAPCPA”); In re Purdy, 373 B.R. 142, 148 (Bankr. N.D. Fla. 2007); In re Mestemaker, 359 B.R. 849, 855 (Bankr. N.D. Ohio 2007).

25. Ian H. Domowitz and Robert Sartain, Determinants of the Consumer Bankruptcy Decision, 54 J. Fin. 403 (1999).

26. Domowitz and Sartain, 54 J. Fin. at 413.

27. Domowitz and Sartain, 54 J. Fin. at 415.

28. Scott Fay, Erik Hurst, and Michelle White, The Household Bankruptcy Decision, 92 Am. Econ. Rev. 706, 715 (2002).

29. Fay, Hurst, and White, 92 Am. Econ. Rev. at 709.

30. As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America (BeardBooks 1989).

31. As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America at p. 75.

32. Andrea Repetto, Personal Bankruptcy and Individual Wealth Accumulation, Ph.D. Thesis, MIT (Unpublished 1998).

33. David U. Himmelstein, et al., Illness and Injury as Contributors to Bankruptcy, Health Affairs, Web Exclusive, W5-63.

34. Himmelstein, et al., at W5-63.

35. Teresa A. Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook, The Fragile Middle Class: Americans in Debt (Yale University Press 2000).

36. Sullivan, Warren, and Westbrook at 15.

37. Elizabeth Warren and Amelia Warren Tyagi, The Two-Income Trap: Why Middle-Class Mothers and Fathers are Going Broke (Basic Books 2003).

38. Warren and Warren Tyagi at 7.

39. Jean M. Lown and Barbara R. Rowe, A Profile of Consumer Bankruptcy Petitioners, 5 J. L. & Fam. Stud. 113, 117 (2003).

40. G. Ray Warner, American Bankruptcy Institute Report on the State of American Bankruptcy System, ABI Bankruptcy Reform Study Project 9 (December 1996).

41. As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America at p. 75.

42. As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America at p. 192.

43. As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America at p. 192.

44. As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America at p. 193.

45. As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America at p. 193.

46. As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America at p. 193.

47. Jason J. Kilborn, Mercy, Rehabilitation, and Quid Pro Quo: A Radical Reassessment of Individual Bankruptcy, 64 Ohio St. L. J. 855 (2003).

48. Jason J. Kilborn, Behavioral Economics, Overindebtedness and Comparative Consumer Bankruptcy: Searching for Causes and Evaluating Solutions, 22 Emory Bankr. Dev. J. 13 (2005).

49. In his 1991 study, one economist constructed a database of 2,000 credit reports on individuals who filed for bankruptcy between 1978 and 1988. He found that “[o]ver 16.2% received at least one new line [of credit] within one year [of filing for bankruptcy]; 53.3% received a new trade line within five years.” Michael Staten, Credit After Bankruptcy: A Problem of Incentives, 80 Credit World 1,12 (1991).

50. Earlier works, however, argue that demographic characteristics have little importance in predicting bankruptcy. In interviewing 400 households, one study found that demographic considerations do not influence the bankruptcy decision. David T. Stanley & Marjorie Girth, Bankruptcy: Problem, Process, Reform 59 (1971). These findings were confirmed years later by researchers who found that divorce and race are statistically insignificant in explaining aggregate filing rates. Ian Domowitz & Thomas L. Eovaldi, The Impact of the Bankruptcy Reform Act of 1978 on Consumer Bankruptcy, 36 J. Law. & Econ. 803 (1993). In addition, economists have

found that financial variables do not differ by demographic groups. For example, As We Forgive Our Debtors showed that total debt relative to income, nonmortgage debt relative to income, and employment tenure do not differ by gender. Thus prior research suggests that missing demographic data should not be a concern.

51. The rate of repeat filings in our data is drastically higher than the estimates provided in As We Forgive Our Debtors, which asserted that only 8% of debtors surveyed were repeat filers. This difference is difficult to explain. As noted, by pinpointing repeat cases through a search of PACER, our study is more reliable than the surveys completed in As We Forgive Our Debtors. That said, methodology cannot explain the vast difference between the rates of repeat filings in As We Forgive Our Debtors and in our study. If anything, perhaps this difference underscores how common bankruptcy relief has become, and the decreased stigma associated.

52. Collier on Bankruptcy 362.LH[2] (15th ed. Rev. 2007).

53. 11 U.S.C.A. § 362(a).

54. H. Rept. No. 95-595, 95th Cong., 1st Session (1977).

55. 11 U.S.C.A. § 362(c)(3)(A).

56. 11 U.S.C.A. § 362(c)(3)(A).

57. 11 U.S.C.A. § 362(c)(4)(A).

58. 11 U.S.C.A. § 362(c)(3)(B) and (4)(B).

59. 11 U.S.C.A. § 362(c)(3)(C) and (c)(4)(D).

60. 11 U.S.C.A. § 362(c)(3)(C).

61. 11 U.S.C.A. § 362(c)(4).

62. In re Paschal, 337 B.R. 274, 279, 55 Collier Bankr. Cas. 2d (MB) 1185, Bankr. L. Rep. (CCH) P 80723 (Bankr. E.D. N.C. 2006) (“[i]f Congress wanted to terminate the stay of all the protections of the automatic stay in § 362(c)(3)(A), it could easily have used language similar to that in § 362(c)(4)(A)(i)”; accord In re Jumpp, 356 B.R. 789, Bankr. L. Rep. (CCH) P 80815 (B.A.P. 1st Cir. 2006); In re Pope, 351 B.R. 14 (Bankr. D. R.I. 2006); In re Hollingsworth, 359 B.R. 813 (Bankr. D. Utah 2006); In re Murray, 350 B.R. 408, 56 Collier Bankr. Cas. 2d (MB) 982 (Bankr. S.D. Ohio 2006); In re Gillcrease, 346 B.R. 373, 56 Collier Bankr. Cas. 2d (MB) 614, Bankr. L. Rep. (CCH) P 80760 (Bankr. W.D. Pa. 2006); In re Johnson, 335 B.R. 805, 55 Collier Bankr. Cas. 2d (MB) 1032 (Bankr. W.D. Tenn. 2006).

63. In re Tubman, 364 B.R. 574, 585, Bankr. L. Rep. (CCH) P 79725 (Bankr. D. Md. 2007) (the majority view “renders Section 362(c)(3) virtually meaningless, and a waste of litigant and judicial resources”).

64. See, e.g. In re Hollingsworth, 359 B.R. 813 (Bankr. D. Utah 2006); In re Pope, 351 B.R. 14 (Bankr. D. R.I. 2006).

65. In re Jupiter, 344 B.R. 754, 757, 56 Collier Bankr. Cas. 2d (MB) 491 (Bankr. D. S.C. 2006). Some courts go even further, holding that the stay is lifted as to “property of the debtor” only for the limited purpose of allowing formal judicial in rem actions to go forward. See, e.g. In re Paschal, 337 B.R. 274, 279-81, 55 Collier Bankr. Cas. 2d (MB) 1185, Bankr. L. Rep. (CCH) P 80723 (Bankr. E.D. N.C. 2006) (noting that § 362(c)(3) lifts the stay as to any “action taken,” which is distinguishable from a more general “act”); In re Curry, 362 B.R. 394, Bankr. L. Rep. (CCH) P 80879 (Bankr. N.D. Ill. 2007); c.f. In re James, 358 B.R. 816 (Bankr. S.D. Ga. 2007).

66. Jupiter, 344 B.R. at 754; Curry, 362 B.R. at 402.

67. Jupiter, 344 B.R. at 760 (“To interpret § 362(c)(3) as allowing the stay to continue as to property of the estate would be contrary to the clear legislative history, do little to discourage bad faith, successive filings, and would create, rather than close, a loophole in the bankruptcy system by allowing these debtors to receive the principal benefit of the automatic stay- protection of property of the estate.”); accord Curry, 362 B.R. at 402; see also Stuart Larsen, New Semi-Automatic Stay One Year After BAPCPA, 26-1 Am. Bankr. Inst. J. (February 2007).

68. Curry, 362 B.R. at 402.



## REPEAT FILERS UNDER BAPCPA: A LEGAL AND ECONOMIC ANALYSIS

69. Stuart Larsen, *New Semi-Automatic Stay One Year After BAPCPA*, 26-1 Am. Bankr. Inst. J. (February 2007).

70. *In re Parker*, 336 B.R. 678 (Bankr. S.D. N.Y. 2006); *In re Haisley*, 350 B.R. 48 (Bankr. E.D. La. 2006).

71. Indeed, the authors have been unable to find a single case issued to date that deals with property other than a primary personal residence.

72. *Jupiter*, 344 B.R. at 760.

73. See Table 4 for a breakdown by chapter.

74. To calculate the percentage change, divide the change by the original number. Thus the percentage change is given by  $(60.58-37.23)/60.58$ .

75. *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* at p. 75.

76. *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* at p. 75.

77. *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* at p. 75.

78. 11 U.S.C.A. § 727(a)(8) and (a)(9). The bar from receiving a Chapter 7 discharge following an earlier Chapter 12 or Chapter 13 discharge is narrower than the bar for subsequent Chapter 7 cases. Specifically, § 727(a)(9) enables a debtor to obtain a discharge following a discharge under Chapters 12 or 13 if: 1) the debtor returned 100% to unsecured creditors, or 2) returned at least 70% to unsecured creditors under a plan which was “in good faith, and was the debtor’s best effort.”

79. 11 U.S.C.A. § 727(a)(8).

80. 11 U.S.C.A. § 1328(f)(1).

81. Susan L. DeJarnatt, *Once Is Not Enough: Preserving Consumers’ Rights to Bankruptcy Protection*, 74 Ind. L.J. 455 (Spring 1999).

82. Unfortunately, conclusive observations can not be made about debtors who first filed under Chapter 13. Because of the varying lengths of particular Chapter 13 plans, we are unable to use the date of filing a Chapter 13 case as proxy for the date that a debtor receives a discharge.

83. It should be noted that we only have information on filing dates and not date of discharge. However, as Chapter 7 cases are resolved in a short period of time, we believe time between filing dates is a good proxy for time between discharges.

84. This is the percent among debtors who filed two Chapter 7 cases in a row.

85. This result is not terribly important for purposes of tracking the impact of § 727(a)(8), since debtors who filed within one year of a prior case were most likely refiled after an earlier case was dismissed rather than discharged.

86. These debtors likely represent “non-true repeaters,” described in *As We Forgive Our Debtors* as debtors who “made successive attempts to craft a bankruptcy solution to a single set of economic troubles.”

87. By placing limitations only on the receipt of successive discharges, Congress was targeting “true repeaters,” as that term was defined in *As We Forgive Our Debtors*.

88. Report to Congressional Requestors: *Bankruptcy Reform, Value of Credit Counseling Requirement Is Not Clear*, United States Government Accountability Office (April 2007).

89. 11 U.S.C.A. § 109(h)(1).

90. Congressional Report on *Bankruptcy Reform: Value of Credit Counseling Requirement Is Not Clear*, U.S. Government Accountability Office at \*20 (April 2007) (hereinafter the GAO Report).

91. 11 U.S.C.A. § 109(h)(2).

92. 11 U.S.C.A. § 109(h)(4).

93. 11 U.S.C.A. § 109(h)(3).

94. See, e.g. *In re Giles*, 361 B.R. 212 (Bankr. D. Utah 2007) (“The Court simply lacks jurisdiction over a debtor’s case where the debtor fails to comply with § 109(h). If a debtor fails

to obtain credit counseling within 180 days of filing and does not qualify for an exception under § 109(h), the debtor may not proceed as a debtor in bankruptcy”); *In re Williams*, 359 B.R. 590 (Bankr. E.D. N.C. 2007); *In re Ruckdaschel*, 364 B.R. 724, Bankr. L. Rep. (CCH) P 97745 (Bankr. D. Idaho 2007); *In re Watson*, 332 B.R. 740, Bankr. L. Rep. (CCH) P 80395 (Bankr. E.D. Va. 2005); *In re Hedquist*, 342 B.R. 295, Bankr. L. Rep. (CCH) P 80509 (B.A.P. 8th Cir. 2006); c.f. *In re Hess*, 347 B.R. 489, 56 Collier Bankr. Cas. 2d (MB) 761, Bankr. L. Rep. (CCH) P 80685 (Bankr. D. Vt. 2006); *In re Enloe*, 373 B.R. 123, 58 Collier Bankr. Cas. 2d (MB) 889 (Bankr. D. Colo. 2007).

95. H.R. Rep. No. 109-31, pt. 1, at 2 (2005), reprinted in 2005 U.S.C.C.A.N. 88.

96. Michael Newman, BAPCPA’s New Section 109(h) Credit Counseling Requirement: Is It Having the Effect Congress Intended?, 2007 Utah L. Rev. 489 (2007); see also *In re Elmendorf*, 345 B.R. 486, 500, Bankr. L. Rep. (CCH) P 80708 (Bankr. S.D. N.Y. 2006); accord *In re Allen*, 378 B.R. 151, 58 Collier Bankr. Cas. 2d (MB) 1387 (Bankr. N.D. Tex. 2007) (“Congress ‘intended to give consumers in financial distress an opportunity to learn about the consequences of bankruptcy—such as the potentially devastating effect it can have on their credit rating—before they file for bankruptcy relief.’” quoting H.R. Rep. No. 109-31, at 18 (2005)); but see *In re Spears*, 355 B.R. 116, 119 (Bankr. E.D. Wis. 2006):

Some have opined that Congress intended § 109(h) to do nothing more than add another hurdle to the already arduous course a debtor must run to file bankruptcy. Others have opined that Congress wanted to direct debtors to entities—the credit counseling agencies—which would dissuade debtors from filing for bankruptcy relief. Still others believe that Congress wanted to educate debtors about debt management, and to let them know that there are valid alternatives to the extreme step of filing for bankruptcy relief. This Court does not profess to know whether any of those goals were Congress’ true intent, or even if that body had a specific intent at all.

97. GAO Report at 19.

98. GAO Report at 22.

99. GAO Report at 23.

100. GAO Report at 23-24.

101. To estimate the impact of BAPCPA on repeat filers, we could just compare the characteristics of repeat filers before and after the law changed. However, this simple difference might pick up the effects of other factors that changed around the time of the law. Therefore, we compare repeat filers to first time filers to “difference out” these confounding factors and isolate the treatment effect.

102. \$3,293.61 pre-BAPCPA and \$3,202.01 post-BAPCPA.

103. \$2,895.26 pre-BAPCPA and \$ 3,782.19 post-BAPCPA.

104. \$111,060.20 pre BAPCPA and \$125,636 post-BAPCPA.

105. \$130,625.50 pre-BAPCPA and \$148,166.70 post-BAPCPA.

106. The median income on a debtor’s block was remarkably similar before and after BAPCPA (\$48,698.55 pre-BAPCPA and \$46,243.22 post-BAPCPA).

107. Although beyond the scope of this paper, our findings also suggest interesting impacts on chapter choice from the so-called “means test,” implemented under BAPCPA in section 727(b)(2).

108. GAO Report at 196-97.