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Bankruptcy Filings in the Third District During COVID-19

Early in the pandemic, unemployment rose dramatically. As the crisis deepens, what will happen to households and firms? We chart the past and future course of business and personal bankruptcy rates.

BY WENLI LI, RYOTARO TASHIRO, AND SOLOMON H. TARLIN

Six months after the outbreak of the COVID-19 pandemic in the U.S., what started out as a health crisis has developed into a full-blown economic crisis,¹ particularly since state governments began restricting certain business activities.²

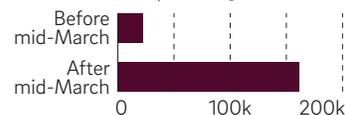
When describing the economic impact of the pandemic, much of the attention is on unemployment. The U.S. Department of Labor reported that more than 3.7 million people had filed for initial unemployment claims in the three states of the Third District between the week ending on March 21 and the week ending on August 22, with an average of 162,000 claims per week. The average weekly initial

FIGURE 1

3.7 mn

Unemployment, Third District states insurance claims, 21 Mar–22 Aug

Average Weekly Initial Claims Pennsylvania, New Jersey, and Delaware; January 1 to August 22, 2020



Source: U.S. Department of Labor.

claims for the three states in 2020 prior to mid-March was only 22,000 (Figure 1). These numbers are eye-opening, and they signal deeper financial problems.

These deeper financial problems will likely push many households and firms into bankruptcy, so we may see a large increase in the number of bankruptcies later this year. The long-term impact of the pandemic on the U.S. economy, therefore, may depend on how the bankruptcy system treats these financially distressed households and firms. For example, if some of the decline in jobs and output becomes permanent, the bankruptcy system will play an important role in determining when and how firms in distress shut

down. Similarly, the bankruptcy system will dictate whether and how soon households can have a fresh start. Only then will they be able to plan with confidence.

There are many ways financially troubled individuals and firms benefit from bankruptcy. Chapter 7 bankruptcy allows households to discharge almost all their unsecured debt, and Chapter 13 bankruptcy gives them the opportunity to reorganize their debt and catch up with their debt payments, especially secured debt payments such as mortgage payments. Similarly, Chapter 7 bankruptcy enables businesses to formally liquidate, and Chapter 11 bankruptcy allows corporations to continue operating while they work with creditors to reduce their debt.³

Past studies suggest that bankruptcies, particularly personal bankruptcies, rise during economic downturns. Using national data, Garrett (2007) found that, compared to nonrecession quarters, personal bankruptcy filing rates are significantly higher during the first quarter of a recession. On the business side, Famiglietti and Leibovici (2020) analyzed firm exit rates during the Great Recession. They found that delinquent firms were significantly more likely to go out of business during that period than firms that were initially in good financial standing.

In this article, we use bankruptcy filing data from the Administrative Office of the U.S. Courts and court-level bankruptcy filing data from the Public Access to Court Electronic Records (PACER) database to investigate both business and personal bankruptcy trends in our district and the nation. We explore how the current crisis has affected the number of bankruptcy filings in the three states of our district. More importantly, we also attempt to predict what will happen in the bankruptcy courts. Economic recovery will be hindered if bankruptcy courts are overwhelmed.

The Data

The data used in this study come from two sources. First, we use monthly bankruptcy filings data provided by the Administrative Office of the U.S. Courts. The data include counts of bankruptcy filings by chapter and are separated into business and nonbusiness

(that is, personal) filings.⁴ Unfortunately, there is a considerable lag in the data, as they are only updated quarterly. To fill in the gap with more recent figures (in particular, figures for July and August 2020), we tabulated the cases using PACER's case locator. PACER is a publicly available database comprising detailed records of all cases from federal appellate, district, and bankruptcy courts. The data are updated in real time.

From the database, we extracted the monthly count of filings by chapter and by state. The relevant chapters for this article are 7, 11, and 13. Delaware and New Jersey have only one bankruptcy district court each. Pennsylvania has three (PA-East, PA-Middle, and PA-West), so we aggregated counts from all three courts for the Pennsylvania filing count.

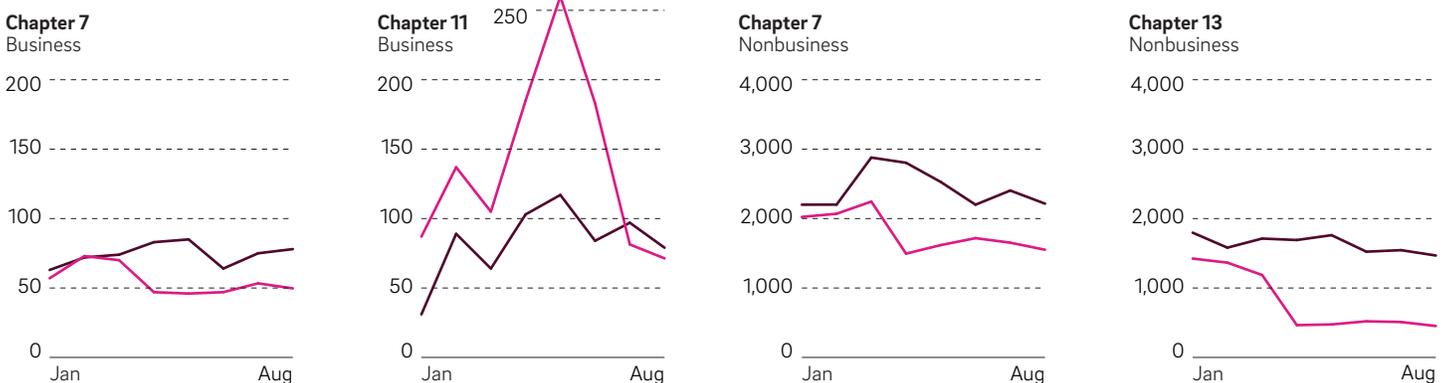
We used past bankruptcy filings data for each chapter and state to estimate the numbers of personal and business filings for the months of July and August, and to match the state data with data from the Administrative Office of the U.S. Courts. Specifically, for Chapter 7 and Chapter 13 filings, we computed the average share of business filings for each state and chapter between 2016 and the second quarter of 2020, and we applied those shares to the total filings extracted from PACER. For example, 3.25 percent of all Chapter 7 filings in Pennsylvania during that period were business filings. Therefore, we estimate that 3.25 percent of Chapter 7 cases in Pennsylvania filed in July and August were for businesses. Since the share of Chapter 11 filings seemed to change over time, we used a simple linear time-series regression to predict the share of business Chapter 11 filings for each state in the months of interest.⁵

It is important to point out that early in the pandemic, COVID-19 seriously disrupted the operations of the bankruptcy courts. For instance, the courthouses in Newark, New Jersey, closed between March 26 and April 6.⁶ Also, most courts reduced the public's physical access to the court and the clerk's office. Parties could still file electronically, but the reduced court staff couldn't process electronic filings as quickly as usual. Access to law firms and other related services was also limited during the shutdown.

FIGURE 2

Business and Personal Bankruptcy Filings in the Tri-State Area

Except for Chapter 11 business bankruptcies, filings remain below 2019 numbers. Number of filings, January through August, 2019 and 2020



Source: Administrative Office of the U.S. Courts via Haver Analytics, Public Access to Court Electronic Records (PACER).

Note: Data through June 2020 from U.S. Courts. Data for July and August 2020 are from PACER with author calculations.

Evidence from the Tri-State Region

We charted the monthly business and nonbusiness filings for the Tri-State region for the first eight months of 2019 and 2020 (Figure 2). We also charted the cumulative business bankruptcy filings as well as the nonbusiness filings for the Tri-State region for the first eight months spanning years 2006 to 2020 (Figure 3). We start at 2006 because of the implementation of the major bankruptcy reform at the end of 2005,⁷ which dramatically altered the incentives to file for bankruptcy for both businesses and households.

In the first three months of 2020, close to the same number of businesses in the Tri-State region filed for Chapter 7 (liquidation) than during the same period of 2019, and a bit more filed for Chapter 11 (reorganization). In April, however, while Chapter 7 business filings declined significantly, Chapter 11 filings surged. For the next four months, Chapter 7 filings remained low, and Chapter 11 filings began to decline. Looking at the cumulative bankruptcy filings and comparing them to those in the past (Figure 3), Chapter 7 filings this year have been at levels lower than those in the past 14 years except for 2006. Chapter 11 filings, on the other hand, surpassed all the years except 2009, the trough of the Great Recession. Note that filings in Delaware accounted for most of the Chapter 11 business filings.⁸

Among businesses filing Chapter 11 this year were restaurants and food service firms, including Cosi, Craftwork, Logan's, and Maines Paper & Food Service, and many health care service firms such as First Harbor Health Management, Mobile Clinic Services, and National Medical Imaging. Trucking and car rental firms also have a significant presence, as do commercial real estate firms.

The pattern for personal bankruptcies in the Third District has been much clearer. For the first two months of 2020, personal bankruptcy filings, Chapters 7 and 13, tracked their 2019 levels. After the pandemic struck in March, strikingly few households filed for either Chapter 7 (liquidation) or Chapter 13 (reorganization) bankruptcies, and the decline in monthly personal bankruptcy filings was particularly severe for Chapter 13 filings. Although the pace of the declines softened in June

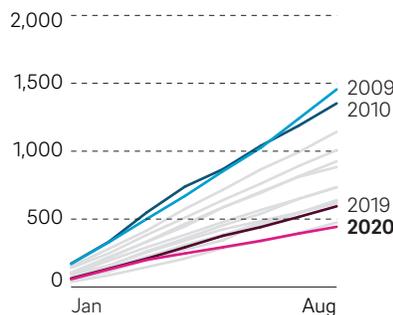
FIGURE 3

Tri-State Cumulative Bankruptcy Filings

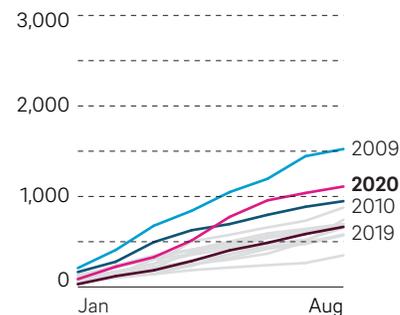
Most filings remain below numbers seen during Great Recession.

Cumulative number of filings, by chapter and year, 2006–2020

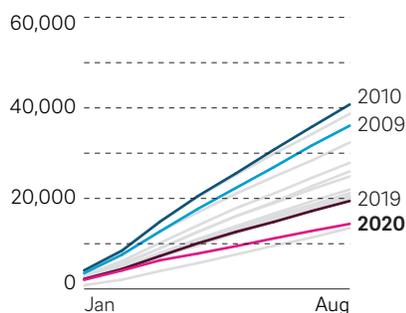
Chapter 7
Business



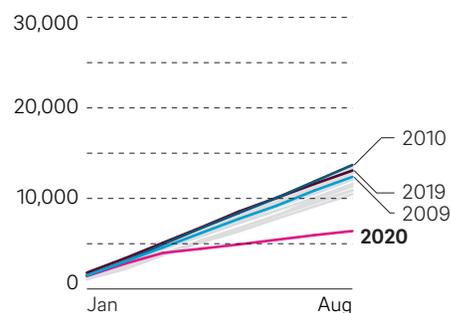
Chapter 11
Business



Chapter 7
Nonbusiness



Chapter 13
Nonbusiness



Source: Administrative Office of the U.S. Courts via Haver Analytics, Public Access to Court Electronic Records (PACER).

Note: Data through June 2020 from U.S. Courts. Data for July and August 2020 are from PACER with author calculations.

and July, there was very little uptick in filings of either chapter (Figure 2). Compared to the previous years in addition to 2019 (Figure 3), personal bankruptcy filings have reached historically low levels since the COVID-19 outbreak.

Evidence from the Nation

The story is much the same for the whole country (Figure 4). The year began with Chapter 7 business bankruptcy filings at almost the same level as seen in recent years, but they have since dropped to the lowest level since 2006. Meanwhile, Chapter 11 business bankruptcy filings also started at a level like what we saw in recent years, but they have now exceeded all years except the four during and immediately after the Great Recession, 2009–2012.

According to numbers compiled from BankruptcyData by *Fortune*, as of June 29, the 10 industries with the most bankruptcy

filings in 2020 were restaurant; construction and supplies; real estate; health care and medical; oil and gas; retail; transportation; agriculture, forestry, and fishing; banking and finance; and telecommunications. This is consistent with what we saw in the Tri-State region.⁹

Nonbusiness bankruptcy filings under Chapter 7 are only slightly above year 2006. Nonbusiness bankruptcy filings under Chapter 13 are at the lowest level we have seen in the past two decades.

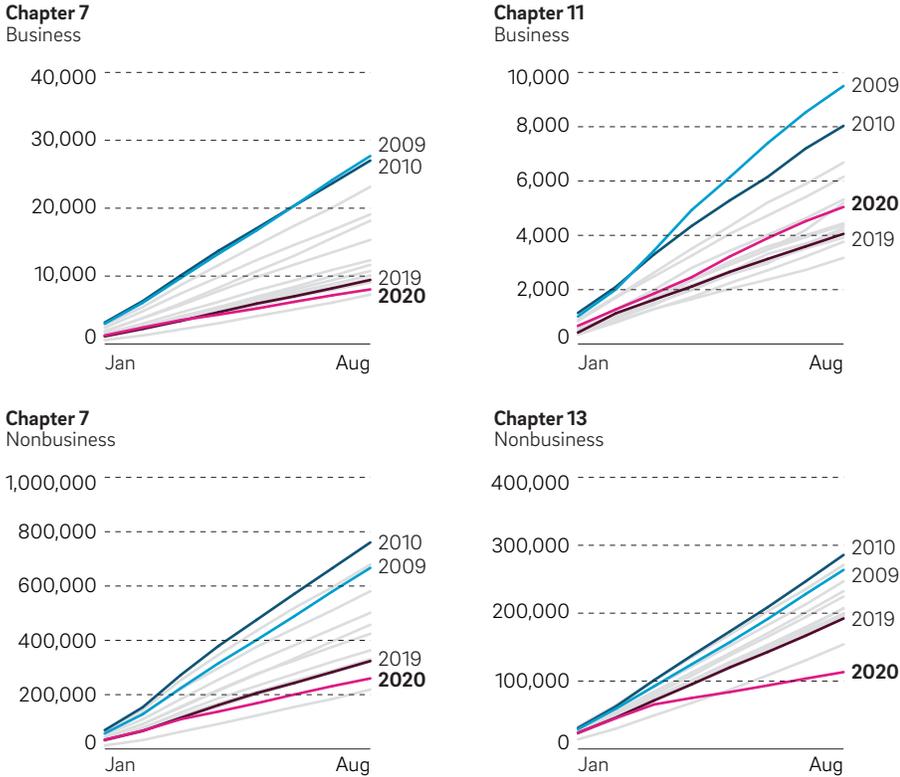
To summarize, in both the Tri-State area and across the nation, we observe a significant softening in personal bankruptcy filings since COVID-19 broke out, particularly in Chapter 13 bankruptcies. In contrast, business bankruptcy filings softened a great deal under Chapter 7 but surged under Chapter 11.

Not surprisingly, business and household loan default rates differ from bankruptcy rates in much the same way.¹⁰

FIGURE 4

National Cumulative Bankruptcy Filings

Filings remain far below numbers seen during height of Great Recession. Cumulative number of filings, by chapter and year, 2006–2020



Source: Administrative Office of the U.S. Courts via Haver Analytics, Public Access to Court Electronic Records (PACER).

Note: Data through June 2020 from U.S. Courts. Data for July and August 2020 are from PACER with author calculations.

Corporate bond defaults rose significantly in April, when globally 25 corporate issuers (those who issued corporate bonds), or 4 percent of the total, defaulted.¹¹ This was almost 2 percentage points higher than the 2.3 percent corporate default rate we saw in April 2019. Monthly defaults hadn't been this high since the commodity downturn in May 2016 (Figure 5). And the default rate continued to climb in the following months. Meanwhile, in the leveraged-loan market, the default rate by issuer count reached 3.9 percent in July 2020, the highest it had been since September 2010 (Figure 6).¹²

By contrast, in the consumer loan market, delinquency rates on bankcards, auto loans, student loans, and mortgages had all been either stable or, as in the case of student loans, had even declined as of May.¹³

Possible Explanations for the Different Responses

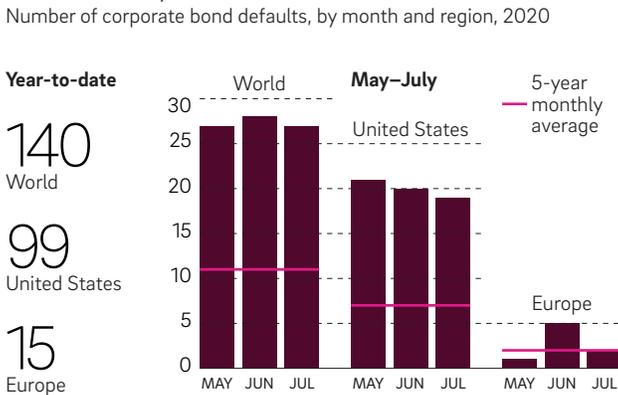
Several factors likely drove this divergence in financial market performance between businesses and consumers, and between different chapters within business and personal bankruptcy filings.

In March, as the pandemic forced states to go into varying degrees of lockdown, causing firms' revenues to plummet and freezing the financial debt markets that companies tap to raise cash, the government announced a suite of programs to

FIGURE 5

Corporate Bond Default Rates Surge

Monthly defaults haven't been this high since commodity downturn, May 2016. Number of corporate bond defaults, by month and region, 2020



Source: Moody's Investors Service July 2020 Default Report Exhibit 1.

FIGURE 6

U.S. Leveraged Loan Default Rate

Defaults surge past 2016 peak. Percent of loans in default, July 2015 through July 2020



Source: LCD Distressed Weekly, an offering of S&P Global Market Intelligence; S&P/LSTA Leveraged Loan Index.

help businesses and corporations. One program, the Paycheck Protection Program (PPP) for small businesses, extended loans to companies employing up to 500 people, with some exceptions. The loans are forgivable if those businesses meet program criteria, which require them to retain workers.

By buying newly issued corporate bonds, the Main Street Program (MSP), the Fed’s main big-company relief initiative, offers loans to companies with up to 15,000 employees or \$5 billion in revenues. The Main Street Program is restricted to firms with highly rated debt, or those that have been downgraded only since the coronavirus crisis began.

By design, the PPP targeted almost all small businesses, and the eligibility requirement didn’t depend on past business performance. The MSP, by comparison, prioritized getting help to businesses that came into the coronavirus crisis in good health. Those businesses that came into the pandemic already weak ended up in bankruptcy faster than they would have had it not been for the pandemic.

This difference alone would have led to fewer business filings under Chapter 7 than under Chapter 11, as small businesses typically file under Chapter 7. Another factor possibly explaining why business filings surged under Chapter 11 but softened under Chapter 7 is that while Chapter 11 historically has proven more useful to large businesses, changes in the federal law since the COVID-19 outbreak have made it a better option for small businesses, too. A standard filing under Chapter 11 requires a reorganization plan, which is confirmed by the court if enough creditors accept it. The seven largest unsecured creditors of the business form a creditor committee to help develop the reorganization plan. The creditor committee process can become costly, since it may involve retaining attorneys and experts to investigate the business. Those costs make it unattractive to many small-business owners. The Coronavirus Aid, Relief, and Economic Security (CARES) Act expanded the range of Subchapter V of Chapter 11 (which eliminates the credit committee requirement and allows a bankruptcy trustee to monitor the debtor’s payments)

to cover more small businesses. Through March 26, 2021, a business qualifies for Subchapter V if it has up to \$7.5 million in noncontingent liquidated and unsecured debt.

Like the PPP, the various welfare programs for households directly targeted all those in need, with little regard for their financial position before the crisis. The CARES Act gave Americans who paid taxes and whose income fell below \$75,000 for single filers and \$150,000 for married filers a one-time direct deposit of up to \$1,200; married couples received \$2,400, plus an additional \$500 per child. The act also offered workers who lost their jobs or were furloughed an additional \$600 per week for four months on top of what state unemployment insurance programs paid, and it applied to the self-employed, independent contractors, and gig economy workers in addition to employees. As a result of these programs, despite unemployment and the crisis, personal income has increased during the pandemic.¹⁴

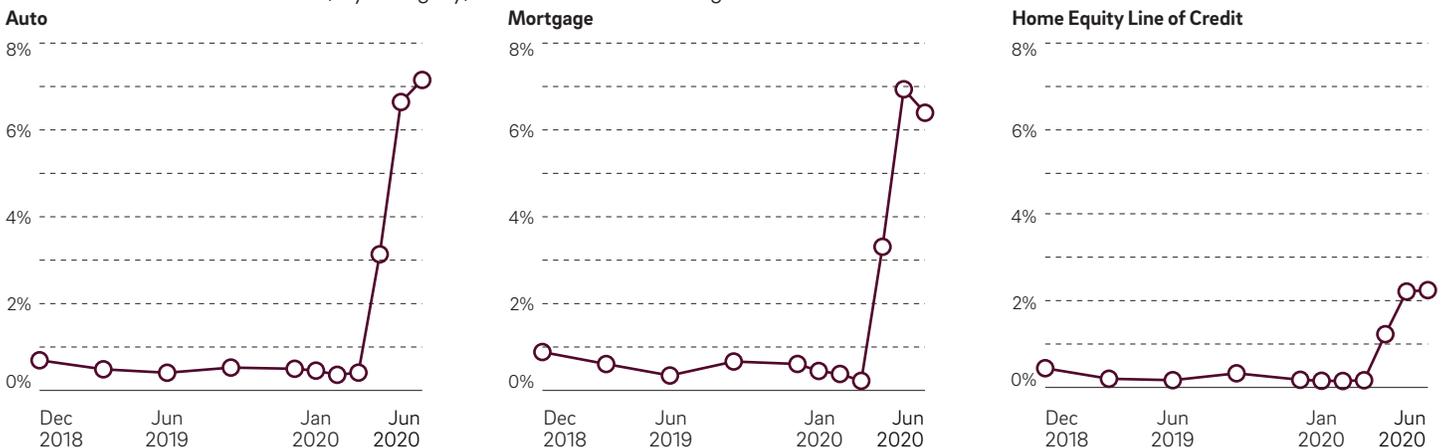
Additionally, under the CARES Act, lenders holding federally backed mortgages suspended borrowers’ payments for up to 12 months if they had lost income because of COVID-19; foreclosure and foreclosure-related eviction action was suspended in many states; and federal student loan borrowers did not have to make payments for six months. During that time, federal student loan interest rates were set at 0 percent.¹⁵

One immediate implication of these welfare programs is that the share of household loans in nonpayment status could have gone up significantly without impacting the delinquency rates. Under the CARES Act, if a consumer requests a deferral and the creditor agrees, the delinquency status on the account can’t get worse. That is, if the account is current, it stays current. If it is 30 days past due before, it stays 30 days past due. Using data from the FRBNY Consumer Credit Panel/Equifax, we calculate forbearance rates for different household debt, including inferred forbearance (Figure 7).¹⁶ We see that the calculated forbearance rates shot up for all three categories of consumer loans in April, May, and June. Put differently, had it not been for the welfare programs, the loan delinquency rates may have gone up significantly.

FIGURE 7

Household Debt Forbearance Rates Surge

Percent of debt in forbearance, by category, December 2018 through June 2020.



Note: Loans in forbearance are loans coded as “natural disaster” or “forbearance,” including deferred and inferred forbearance.

High delinquency rates, however, may not necessarily lead to high bankruptcy filing rates, particularly for households, as we explain below.

Besides the differences in welfare programs, another key practical difference between individuals and corporations that could influence bankruptcy filing rates is that corporations can close—that is, they can exit the economy. This means that uncertainties affect individuals and corporations differently. Rational borrowers may anticipate more debt accumulation and, hence, are waiting for the “right” time to file for bankruptcy, as there is a required time length between two consecutive bankruptcy filings. For corporations, the calculation likely goes the opposite way. If a business (and its lenders) decides that it won’t be able to survive, even after reopening, then it may choose to file for bankruptcy now rather than later.

Additionally, lenders of consumer loans typically do not send their debts to collection agencies until households are already delinquent for 90 days or even 120 days. This is likely not the case with corporations, especially when a large amount of debt is involved.

Finally, individuals may have been too busy dealing with illness and covering basic needs to worry about their financial well-being, especially early in the pandemic.

What to Expect Going Forward

Uncertainty is the biggest challenge posed by the COVID-19 pandemic. We do not yet know when an effective vaccine will become available, whether the virus will mutate into something weaker or stronger, or even whether those who have recovered from COVID-19 will be susceptible to the virus again. These unknowns make policymaking extremely difficult.

Although some parts of the economy were starting to reopen by late spring, most businesses were ordered to remain closed. Even the businesses that had reopened had significant restrictions on their operations. For example, in August 2020 indoor dining for restaurants was still prohibited in New Jersey and Philadelphia, while Pennsylvania outside of Philadelphia and Delaware had a capacity limit of 25 percent and 60 percent, respectively. There is also significant uncertainty regarding how consumers will behave after shutdown orders are lifted. Social activities declined even prior to state-mandated orders,¹⁷ suggesting that changed behavior predated shutdown orders. For example, daily data from OpenTable, a popular website used to make online reservations for dining, show that the number of seated diners in the first two weeks of August 2020 in the U.S. was approximately 55 percent below the same week in 2019.¹⁸ Even at the state level, dining reservations in most states, with the exception of Rhode Island, were significantly down compared to 12 months ago.

All the original consumer welfare programs are expected to expire in the fall, with the replacement programs either currently being discussed by policymakers or set to expire at the end of the year. The additional unemployment payments lasted only four months and were terminated at the end of July. The executive order signed on August 8 replaced it; however, the new benefits are smaller,¹⁹ and the funding could run out more quickly.²⁰ The relief for student loan payments expires at the end of December.

The relief on mortgage loans will last at best to early next year. We may yet see a significant increase in delinquencies and then bankruptcy filings among businesses and perhaps even more so among households.

Should that happen, will the bankruptcy courts have the capacity to provide timely debt relief to businesses as well as households in need? According to recent research by Iverson et al. (2020) and Iverson et al. (forthcoming), there is likely to be severe court congestion in some parts of the country. These researchers first mapped the relationship between the number of bankruptcy cases per unit of unemployment and the caseload per judge. Then they asked, if every district experienced 15 percent unemployment in the second quarter of 2020 (the nationwide unemployment rate was 14.7 percent in April and 13.3 percent in May), what would the expected caseload be in each district? How many judges would be needed in each district to keep caseloads under 50 hours per week? According to their calculations, even in the most optimistic scenario, in which the large number of unemployed who believe that they are only temporarily furloughed will be back to work, the bankruptcy system will still need 50 additional temporary bankruptcy judgeships, as well as the continuation of all current temporary judgeships.^{21,22}

The most-affected workers so far have been low-wage service workers.²³ For these low-income workers, bankruptcy may not be the optimal solution to their debt problem, as they likely have few assets and perhaps low credit scores. Moreover, bankruptcy filing fees and attorney fees can add up fast, so these workers may opt for informal bankruptcy. Although they will show up in delinquency numbers, they might not show up in bankruptcy filings.

Some Final Thoughts

Bankruptcy can be costly and, in some cases, inappropriate, but it has its benefits, such as the reorganization and discharge of debts. Not surprisingly, business bankruptcy filings, particularly under Chapter 11, have begun to tick up.

However, we have yet to see an increase in personal filings. Given the past data and the current economic conditions, we interpret this as a lagged reaction rather than the lack of a response from borrowers. As many of the original government welfare programs are set to expire by the end of the summer with either no replacement or reduced benefits, we expect personal bankruptcy filings to increase in the coming months. Similarly, we also expect corporate bankruptcy filings to increase as consumers may be slow to resume their activities even after the shutdown orders are lifted.

Additional government assistance to both firms and consumers may be required to avoid a surge in bankruptcy filings. This is particularly important as the business bankruptcy system normally is supposed to separate inefficient from efficient firms and shut down only the former. But in the current environment, a firm can be in distress without being inefficient, so we want the bankruptcy courts to save most firms, at least temporarily. 

Notes

- 1** According to the Centers for Disease Control and Prevention, close to 24,000 people had died of the virus in the Third District states (Delaware, New Jersey, and Pennsylvania) by August 18, 2020.
- 2** Restrictions began on March 24 in Delaware, March 21 in New Jersey, and March 19 in Pennsylvania.
- 3** Other types of bankruptcy include Chapter 12 for farming or commercial fishing businesses and Chapter 15 for foreign debtors or related parties.
- 4** Filings are defined as business filings if the debtor is a corporation or partnership, or if debt related to the operation of a business predominates. All other filings are considered nonbusiness filings.
- 5** Separately, we tried a method of separating business and individual filings using the name of the debtor, for instance, defining cases with debtor names including "Inc." as business cases. However, that calculation significantly undercounts business filings, as it does not account for cases where an individual filer owns a small business that accounts for the majority of their debt.
- 6** A district court can have several courthouses or seats. In the case of New Jersey, there are courthouses in Camden, Newark, and Trenton.
- 7** The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 went into effect on October 17, 2005.
- 8** Delaware has favorable corporate taxes and regulations, which incentivize many corporations to headquarter there.
- 9** See Shen (2020).
- 10** Data for performance of small-business loans are not yet available.
- 11** See the Default Reports issued on August 10, 2020, by Moody's Investors Service.
- 12** An issuer is a legal entity that develops, registers, and sells securities to finance its operations. Issuers may be corporations, investment trusts, or domestic or foreign governments. See the LCD Distressed Weekly published in August 2020 by S&P Global Market Intelligence.
- 13** See the U.S. National Consumer Credit Trends Report: Portfolio issued on May 18, 2020, by the credit bureau Equifax. See also Haughwout et al. (2020).
- 14** See Bureau of Economic Analysis (July 31, 2020).
- 15** Undocumented workers didn't get either type of aid, and they are much more financially distressed. But they tend to have little access to credit and are less likely to file for bankruptcy.
- 16** Inferred forbearance are loans determined to be in forbearance based on payment amounts but not coded as forbearance in the narrative code. For April, this means zero payment that month and greater than zero payment the prior month. For May, zero payment in April and May, and payment greater than zero in a prior month. We also include in this category the following narrative codes: 162 (Principal Deferred) and 163 (Payment Deferred). We thank José Canals-Cerdá, Gerald Rama, and Erik Dolson for the graphic.
- 17** See Farboodi, Jarosch, and Shimer (2020).
- 18** See OpenTable (2020).
- 19** The new benefits are \$300 covered by the federal government, plus an additional \$100 if the state government opts in.
- 20** The benefits are available until December 27, 2020, or until \$44 billion from the Federal Emergency Management Agency's Disaster Relief Fund runs out.
- 21** Many scholars have written to Congress calling for more bankruptcy judges for both corporate and individual bankruptcies. See Randles (2020).
- 22** Since the forecast, though unemployment rates have fallen a bit, there is a corresponding increase in the share of currently unemployed workers who report that their unemployment is permanent. As a result, even with updated numbers, the forecast would suggest a large need for additional bankruptcy judges.
- 23** For example, the net month-over-month growth rate of payroll employment in the leisure and hospitality sector between March and April was -46.7 percent, while the overall growth rate for all private sectors was -15.1 percent. The sharp decline is even more apparent when compared to some high-wage sectors: finance (-3 percent), information (-8.8 percent), and professional and business services (-9.9 percent).

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