

Q & A: Will Bankruptcy Filings Reach Record Levels?

Q: Will bankruptcy filings set a new record this year?

A: Probably not: The all-time record year for filings was 2005, when 2,078,415 new cases were filed. Filings had been quite high for several years prior to 2005, but enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) resulted in a large surge in filings prior to its' October 17 effective date.

In the first four months of 2020 about 215,000 cases were filed. The monthly average would have to more than quadruple for the rest of the year to reach the 2005 levels. The extent and duration of the damage from COVID-19 is unknown at this point. If the economy does not recover and unemployment remains extremely high, filings certainly could reach record levels in 2021.

Q: Will bankruptcy filings set a monthly record?

A: Almost certainly not: The record month for filings was October 2005, when over 630,000 cases were filed. (Nearly all of these cases were filed prior to the October 17 effective date of BAPCPA.) Filings are expected to be up sharply in the next few years, but it is doubtful that they will increase ten-fold, which is what it would take to surpass the October 2005 filings record.

Q: Will bankruptcy filings set a daily record as a result of COVID-19?

A: No: The all-time record for daily filings was October 14, 2005 when about 150,000 cases were filed in a single day. This was the last weekday before the effective date of BAPCPA. Filings are expected to soar as a result of COVID-19, but even in a worst-case scenario, the additional filings will be more spaced out than in 2005, so this dubious record should remain safe.

Q: Will chapter 11 filings set a new annual record?

A: Maybe. The record year for chapter 11 case filings was 1986, when 24,442 cases were filed nationwide. (Chapter 11 filings have been about 7,000 per year for the past six years.) Many of the chapter 11 cases in 1986 were filed by family farmers. Chapter 12 became available on November 26, 1986, and chapter 11 activity declined in subsequent years.

About 2,500 chapter 11 cases were filed during the first four months of 2020, so we would need about 2,750 cases per month for the rest of 2020 to enter record territory this year. Conceivably this could happen. Millions of businesses face financial stress due to COVID-19. Additionally, the availability of Subchapter V from the Small Business Reorganization Act of 2019 makes chapter 11 a more viable option for troubled small businesses.

Observers are in widespread agreement that chapter 11 filings will spike in the very near future. Whether or not this takes filings into record territory this year or next remains to be seen.

Q. Will the chapter mix of filings change as a result of COVID-19?

A: Yes, it already has shifted. Over the last five years, about 37 percent of filings have been chapter 13 cases. April was the first full month that filings were affected by the COVID-19 crisis. During that month slightly less than one-quarter of filings were chapter 13 cases.

It is likely that this trend will continue for the foreseeable future. Chapter 13 provides for adjustment of debts for individuals with regular income. The recent surge in unemployment means that many millions of people do not have the regular income needed to fund a chapter 13 plan.