

alfn intersect
servicing + bankruptcy

Legislative Updates

*Tuesday, March 16, 2021
12:00-1:15 PM Central Time*

Attendee Questions

If you have a question during the webinar today, you can type your question using the Questions feature of the GoToWebinar control panel. In the event we aren't able to get to all of your questions today, one of our presenters will be in touch with you in the next few days so that we can properly address any of your unanswered questions.



*Select the ? to type your question
to our presenters*

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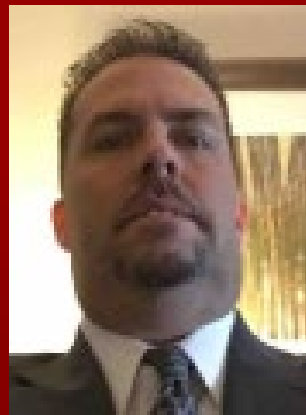
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SPEAKER



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Session Overview

- This panel will discuss recent legislative updates and their impact on Bankruptcy from the default servicing perspective. Topics will include the CARES Act, Consolidated Appropriations Act (CAA), Bankruptcy Administration Improvement Act of 2020, Stimulus Bill, and the proposed Consumer Bankruptcy Relief Act. Panelists will also discuss Bankruptcy statistics and historical data that shed some light on the future of filings as well as discuss challenges and opportunities as we move forward into 2021 and beyond
- Panelists will further discuss how changes to Federal Law and moratorium related issues have impacted the way we file claims, review proposed Chapter 13 plans for potential areas of concern, and evaluate when and how to seek relief from stay in the face of default.

BANKRUPTCY FORECAST 2021 AND STATISTICS/TRENDS

TODAY, 1 IN 5 RENTERS IS BEHIND ON RENT AND MORE THAN 10 MILLION HOMEOWNERS ARE DELINQUENT ON THEIR LOANS. ALMOST 12% OF HOMEOWNERS WITH MORTGAGES ARE LATE ON THEIR PAYMENTS (CENSUS BUREAU FIGURES).



“Research indicates there could be 10 or more bankruptcy cases for each additional 1,000 job losses”

Over 65M Have Filed for Initial Unemployment Since March 15, 2020



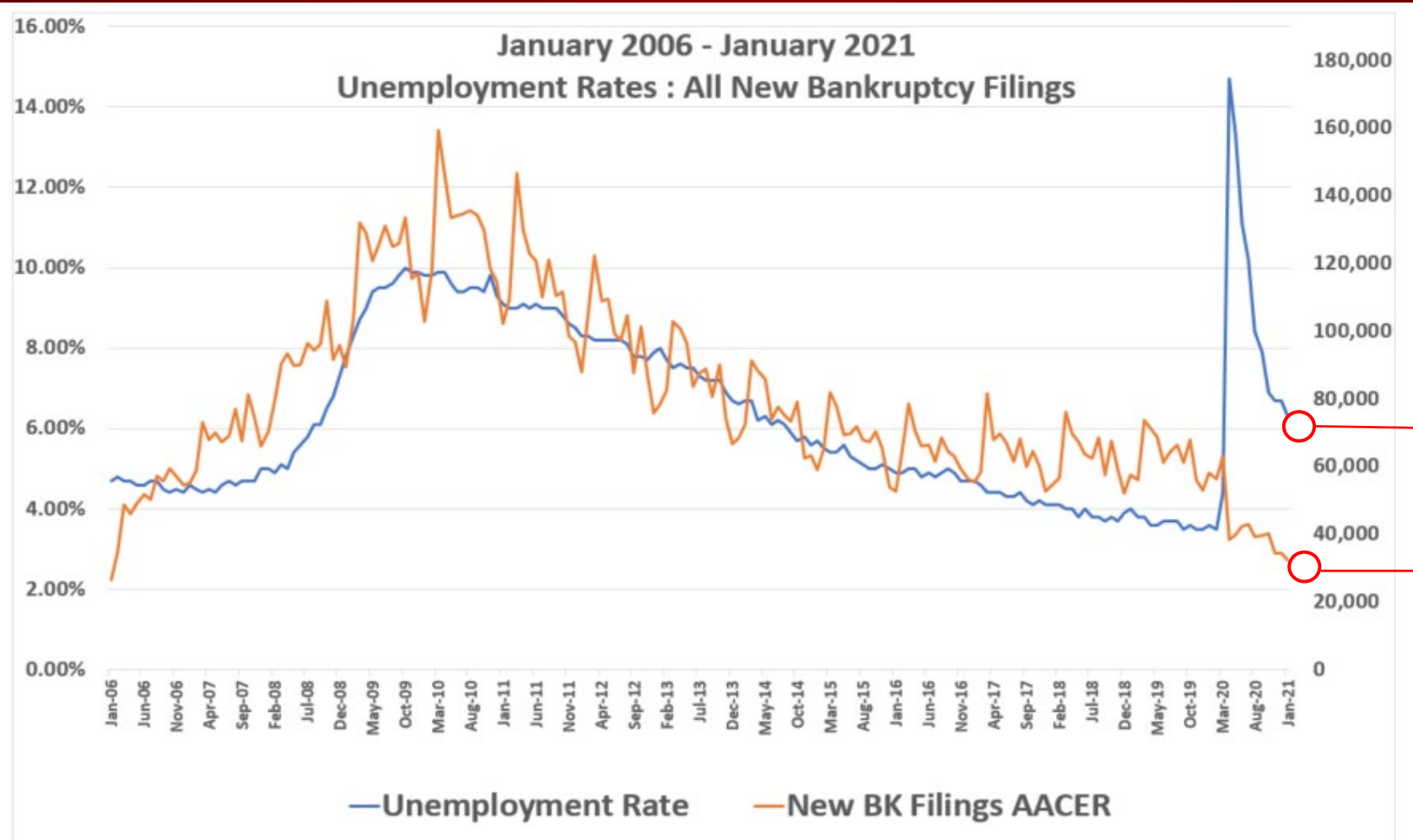
‘It’s really a question of when.’ The coronavirus pandemic is about to spawn a surge in bankruptcies, experts say

THE WALL STREET JOURNAL.

English Edition • May 4, 2020 | Print Edition | Video

Bankruptcy Lawyers Gear Up for Surge in Filings Due to Coronavirus Fallout

ALL BANKRUPTCY FILINGS AND UNEMPLOYMENT

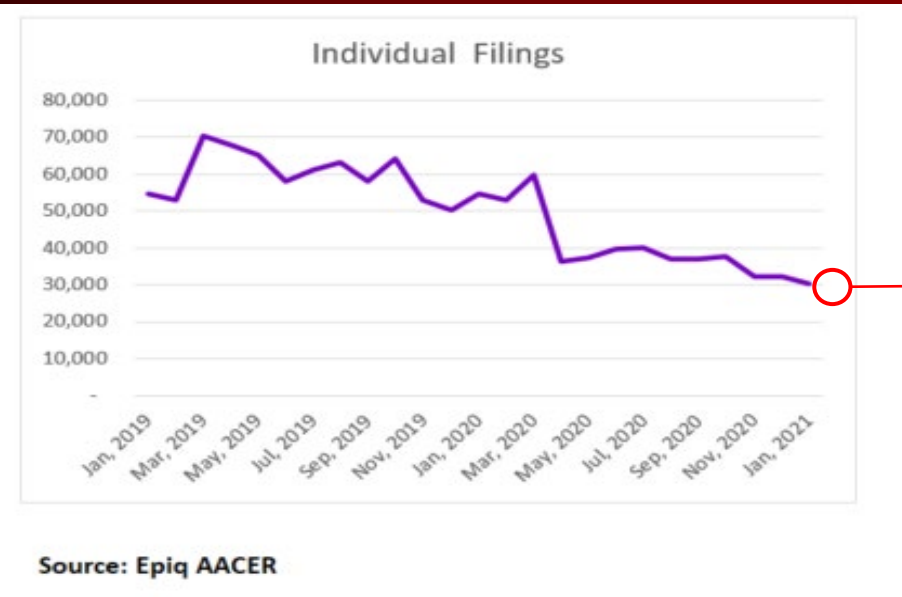


January
6.3%

32,307
BK's

New Bankruptcy Filings Source: Epiq AACER

JAN, 2019 THRU JAN, 2021 INDIVIDUAL NEW FILINGS BY MONTH



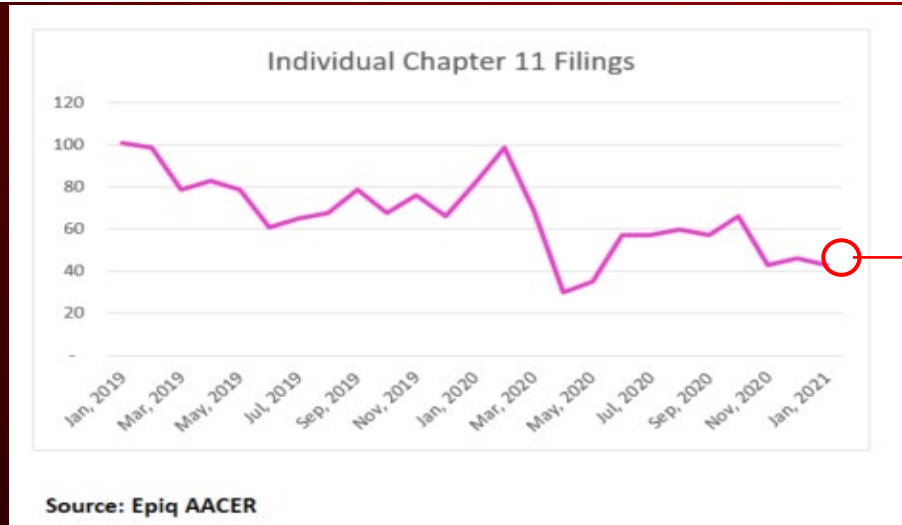
January

30,270



January

21,232



43



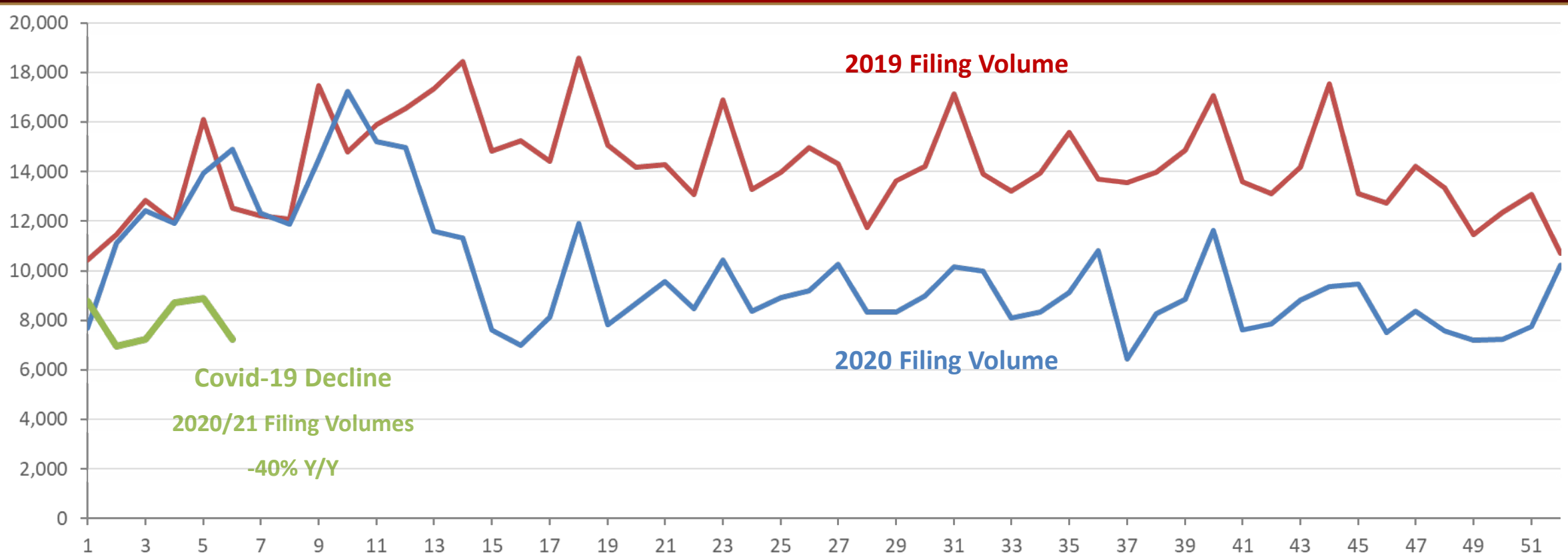
8,972

BANKRUPTCY GROWTH RATES

Short term decline in bankruptcy filings

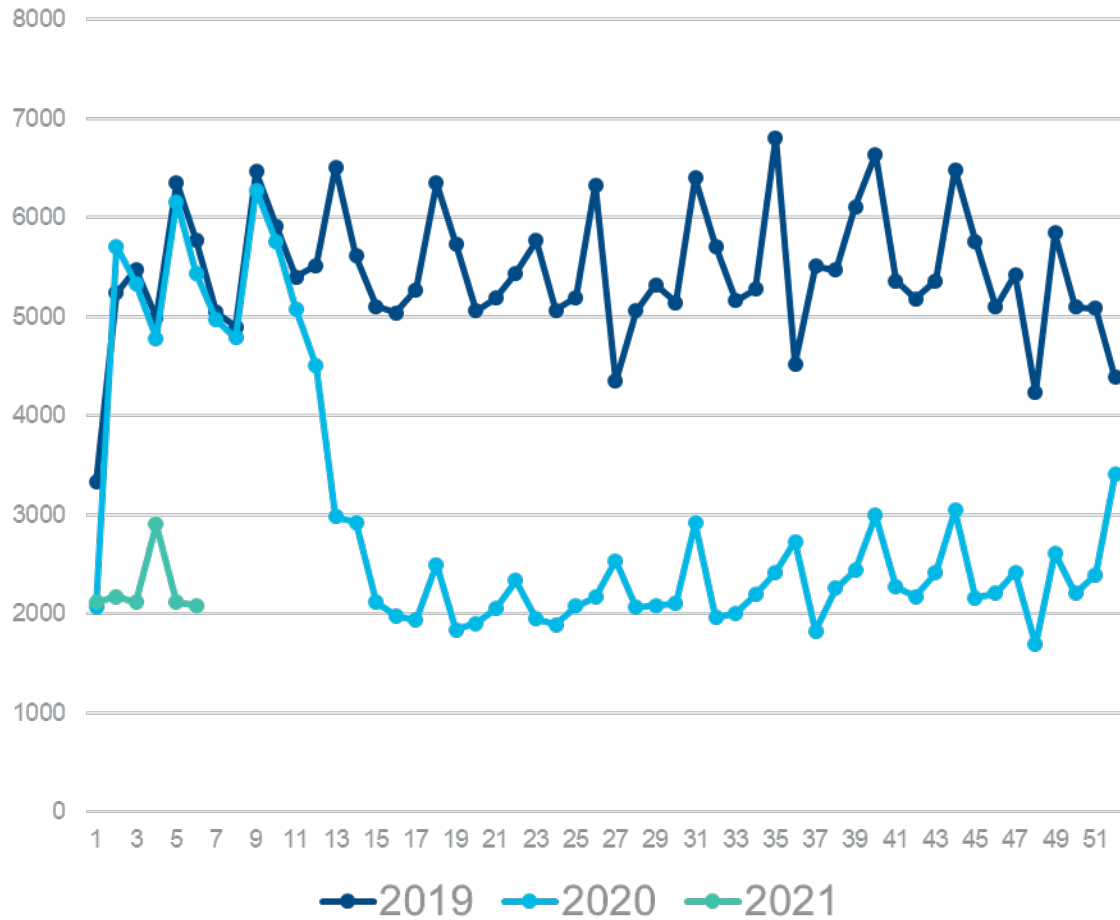


1. **Reduced collection activities** (foreclosures, repossessions, lawsuits)
2. **Government stimulus** (enhanced unemployment benefits and stimulus checks)
3. **Logistical challenges** with district courts, trustees, and attorneys
4. The optimism around a new political administration and potential new government relief for consumers has kept new filings historically low.

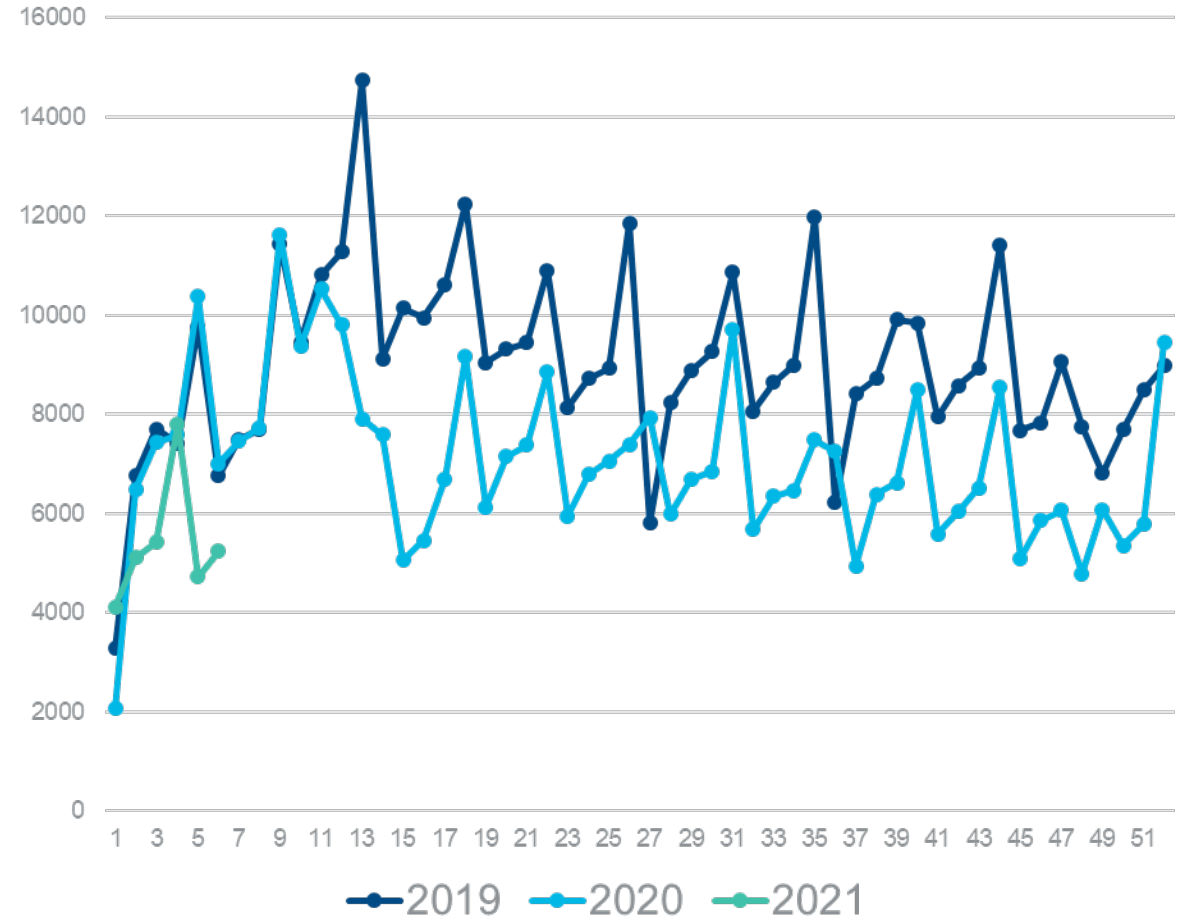


BANKRUPTCY BY CHAPTER

Chapter 13 New Filings (2019 – 2021)



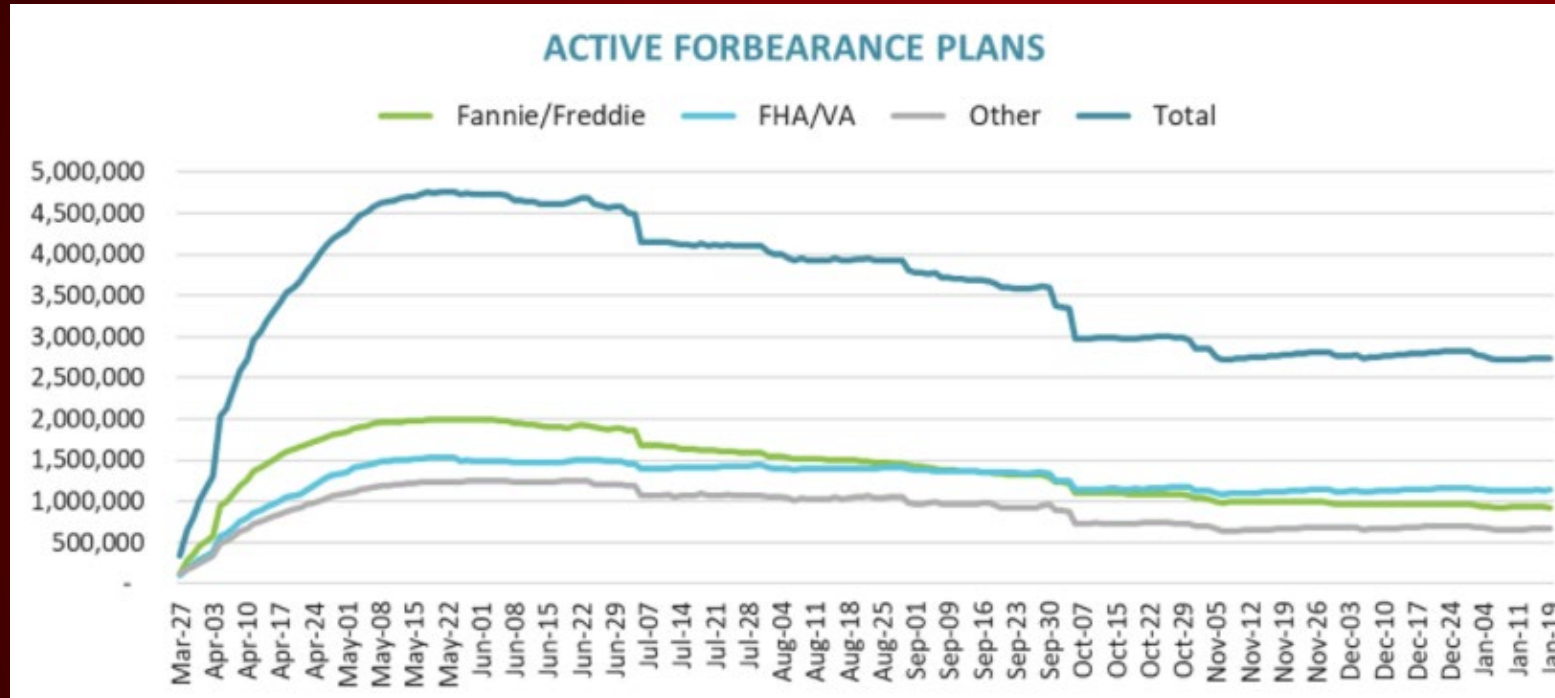
Chapter 7 New Filings (2019 - 2021)



RECENT CHAPTER 13 DATA

- Mortgage delinquency rates have increased from 2.31% to 2.81% during 2020
- Unemployment rate went from 3.5% in Feb. to a max of 14.7% in April, to a more manageable 6.7% as of Nov
- 2020 saw the lowest number of Chapter 13 filings since 1994 (when data first became published)

Source: Judge Anderson <https://considerchapter13.org/wp-content/uploads/2017/09/Lowest-Chapter-13-Filings-Since-Before-1994.pdf>



ACTIVE MORTGAGE FORBEARANCE PLANS

Source: ABI <https://www.abi.org/newsroom/chart-of-the-day/active-mortgage-forbearance-plans-increase-slightly-in-latest-week>

POLLING QUESTION

Certain Economists are predicting we will see record breaking Bankruptcy numbers beginning in the Third Quarter of 2021. Do you agree?

A. Yes

B. No

C. I left my crystal ball at home

CARES ACT – PUBLIC LAW 116-136

Foreclosure Moratoriums

Florida Executive Order
expired 10/1/2020

Fannie Mae/Freddie Mac
moratorium extended to
1/31/21

FHA/VA/USDA
moratorium extended to
2/28/2021

Forbearance §4022(b)

Federally backed loans only
(§4022(a)(2)):

Borrower entitled to 180 –
day forbearance upon
request if financial hardship

Borrower required to resume
monthly payments at end of
forbearance

Deferred payments must be
paid over time or as balloon
payment

No documentation required
to obtain forbearance

Second 180 – day forbearance
shall be extended upon
request of borrower

No adverse credit reporting,
late fees or additional interest

CARES ACT

- CARES Act set to sunset on March 27, 2021
- What are we seeing on the horizon for the CARES Act Extension?
- Will we still see Motions to Modify to extend the Plan term to 84 months post March sunset?

BANKRUPTCY ADMINISTRATION IMPROVEMENT ACT OF 2020

- This bill modifies administrative provisions related to the bankruptcy trustee system. Specifically, the bill (1) provides for the distribution of bankruptcy fees made to the U.S. Trustee System Fund for the costs of administering payments and trustee compensation, (2) establishes the Chapter 7 Trustee Fund and associated fees, and (3) extends the temporary office of bankruptcy judges in specified judicial districts.
- Signed into law on January 12, 2021
- Chapter 7 Trustees will now receive \$120 per case instead of \$60

CONSOLIDATED APPROPRIATION ACT (“CAA”)

- Section 320 discusses certain Bankruptcy Provisions related to PPP Loans
- Amends Section 364 to add (g)(1) The court, after notice and a hearing, may authorize a debtor in possession or a trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of this title to obtain a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), and such loan shall be treated as a debt to the extent the loan is not forgiven in accordance with section 7A of the Small Business Act or subparagraph (J) of such paragraph (37), as applicable, with priority equal to a claim of the kind specified in subsection (c)(1) of this section
- **EFFECTIVE DATE**—takes effect on the date on which the Administrator **submits** to the Director of the Executive Office for United States Trustees a written determination that, subject to satisfying any other eligibility requirements, any debtor in possession or trustee that is authorized to operate the business of the debtor subject to various code provisions

CARES FORBEARANCE CLAIMS - CAA

- Section 1001 – Bankruptcy Relief
- Adds section 501(f), authorizing the filing of supplemental proofs of claim after the conclusion of a CARES Act forbearance agreement
- Specifically, FILING OF PROOFS OF CLAIMS OR INTERESTS.—Section 501 is amended by adding
 - (f)(1) In this subsection—
 - (A) the term ‘CARES forbearance claim’ means a supplemental claim for the amount of a Federally backed mortgage loan or a Federally backed multifamily mortgage loan that was not received by an eligible creditor during the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057);
 - (B) the term ‘eligible creditor’ means a servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) with a claim for a Federally backed mortgage loan or a Federally backed multifamily mortgage loan of the debtor that is provided for by a plan under section 1322(b)(5);
 - (C) the term ‘Federally backed mortgage loan’ has the meaning given the term in section 4022(a) of the CARES Act (15 U.S.C. 9056(a))

CARES FORBEARANCE CLAIMS - CAA

- (B) If an underlying mortgage loan obligation has been modified or deferred by an agreement of the debtor and an eligible creditor of the mortgage loan in connection with a mortgage forbearance granted under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057) in order to cure mortgage payments forborne under the forbearance, the proof of claim filed under subparagraph (A) shall include—
 - (i) the relevant terms of the modification or deferral;
 - (ii) for a modification or deferral that is in writing, a copy of the modification or deferral; and
 - (iii) a description of the payments to be deferred until the date on which the mortgage loan matures.

A CARES forbearance claim shall be timely filed if the claim is filed before the date that is 120 days after the expiration of the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act.

Director’s Form 4100S was released on February 5, 2021 and expires on December 27, 2021. It is the official “Forbearance Claim form”.

Form 4100S

Supplemental Proof of Claim for CARES Forbearance Claim

02/21

This Supplemental Proof of Claim is filed in compliance with the requirements of 11 U.S.C. § 501(f)(1) as the Debtor was granted a forbearance under the CARES Act (15 U.S.C. § 9056 or 9057). "Creditor" in this form means "eligible creditor" under 11 U.S.C. § 501(f). File this form as a supplement to your proof of claim.

Name of creditor: _____

Court claim no. (if known):

Last 4 digits of any number you use to identify the debtor's account: _____

Part 1: Amount of Loan That Was Not Received During Forbearance Period

List of payments not received during forbearance period:

| | | | |
|-------------|---------------|-------------|---------------|
| Date: _____ | Amount: _____ | Date: _____ | Amount: _____ |
| Date: _____ | Amount: _____ | Date: _____ | Amount: _____ |
| Date: _____ | Amount: _____ | Date: _____ | Amount: _____ |
| Date: _____ | Amount: _____ | Date: _____ | Amount: _____ |
| Date: _____ | Amount: _____ | Date: _____ | Amount: _____ |
| Date: _____ | Amount: _____ | Date: _____ | Amount: _____ |

Total of payments due under the forbearance: _____

DISCHARGE UNDER CHAPTER 13 - CAA

- Amends 1328 and adds subsection (i)
- Court may grant Debtor a discharge **of debts dischargeable under subsection (a)** to a debtor who has not completed payments to the trustee or a creditor holding a security interest in the principal residence of the debtor if -
 - (1) the debtor defaults on not more than 3 monthly payments due on a residential mortgage under section 1322(b)(5) on or after March 13, 2020, to the trustee or creditor caused by a material financial hardship due, directly or indirectly, by the coronavirus disease 2019 (COVID-19) pandemic; or
 - (2)(A) the plan provides for the curing of a default and maintenance of payments on a residential mortgage under section 1322(b)(5); **and**
 - (B) the debtor has entered into a forbearance agreement or loan modification agreement with the holder or servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) of the mortgage described in subparagraph (A).

OTHER CHANGES TO NOTE UNDER CAA



(f) Executory Contracts and Unexpired Leases

Extends time to assume or reject



(g) Preferences - The trustee may not avoid a transfer under this section for—

A) a covered payment of rental arrearages; or

B) a covered payment of supplier arrearages

Sunsets two years after date of enactment



(h) Termination of Utility Services – amends §366

POLLING QUESTION

What percentage of Trustee's are Conduit vs. Non-Conduit?

- A. 62% conduit
- B. 57% conduit
- C. 35% conduit

ANSWER – B. 57%

Source and full list: https://considerchapter13.org/wp-content/uploads/2017/10/Conduit_Resource-Updated-10-20-17.pdf



FORBEARANCE



LOSS MITIGATION



WHERE TO STORE
INFORMATION



SUPPLEMENTAL
CLAIMS

CURRENT
CHALLENGES

FORBEARANCE CLAIMS

- **Are you required to file a Forbearance Claim?**
- **Should you file a Forbearance Claim?**
- **If so, when should the claim be filed?**
- **Where do you capture it in your System of Record?**
- **Should you file a supplemental claim for non-GSE loans?**

MOTION FOR RELIEF FROM STAY AND FORBEARANCES

- Absent a loan modification or deferral agreement, the Motion should include the unaddressed forbore amounts.
- Double check that fees and costs are not included in the calculation of the forbore portion of the Post-Petition delinquency.
- Expect most Motions to end in an Agreed Order / Stipulation. Neither courts nor trustees are keen on letting debtor's out of bankruptcy.
- Be on the look-out for individual jurisdictions additional requirements prior to Motion filing.
- If the Forbearance Claim was not filed pre-motion, it will likely be requested to be filed post-motion.

REVIEWING CHAPTER 13 PLANS

- Modifying the Plan for Supplemental & Forbearance Claims
- The Consolidated Appropriations Act amends 11 U.S.C. § 1329 to allow modification of a Chapter 13 plan to account for creditor CARES Forbearance Claims.
- This in addition to the previously allowed plan extension to 84 months.
- HOWEVER, this provision will sunset on December 27, 2021.
- If the Debtor fails to modify the plan 30 days after the date on which a creditor files a forbearance claim, any party in interest may request a modification of the plan to provide for the proof of claim.



WHERE DO WE GO FROM
HERE? THINGS TO KEEP
YOUR EYE ON

PRESIDENT BIDEN COVID RESPONSE

- Pres. Biden released his COVID response and relief plan, a \$1.9 trillion package
- Rental Assistance & Eviction Moratorium
- Provide \$30 billion in rental assistance, payment of utility bills and to assist state/local entities provide resources for those at risk of experiencing homelessness.
- Proposes to extend the federal eviction moratorium to September 30, as well as allow people with federally-guaranteed mortgages to apply for forbearance until September 30

CONSUMER BANKRUPTCY RELIEF ACT – SENATE BILL

- Replaces chapter 7 and chapter 13 with chapter 10, a new consumer bankruptcy chapter, and provides two routes for individuals to file for bankruptcy:
- **Route 1: No-payment discharge.** For low-income/low-asset filers with no minimum payment obligation, this option wipes out all unsecured debt except for certain categories of debt, such as child support or debts incurred by fraud. A minimum payment obligation arises for debtors with valuable assets available to pay creditors or with an annual income over 135% of the median income for the state and household size. Discharge has no impact on liens on property.
- **Route 2: Debt-specific plans.** Creates bankruptcy plans that allow individuals to resolve the debts that are specific to them. Individuals can file one or more plans, and collection of debts are paused while the filer remains current on a plan

CONSUMER BANKRUPTCY RELIEF ACT

- Ends the 910 day rule for valuation of vehicles for personal use and takes the time to 90 days before filing
- Removes the provision that makes private and federal student loans nondischargeable, allowing these loans to be treated like most forms of consumer debt
- Discharge available at Confirmation
- Maximum 36 month plan
- Debtor pays all secured loans direct
- Trustee only pays unsecured debts
- Amount to unsecureds will be determined by a formula and will only be required if a specific percentage above state's median income
- Allows for modification of mortgage debts on principal residence through a pre-packaged modification process (potentially market value at fixed interest rate)
- End “Zombie Mortgages” and allows for sale of encumbered property free and clear of any liens if the first lienholder refuses to take tender of the property, subject to junior liens.

Webinar Wrap-Up

Questions

If you have a question regarding today's presentation, please contact the ALFN or any of the presenters directly.

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Chapter 11 Plans and Confirmation; What Should a Creditor Know?

Thursday, March 18, 2021

12:00-1:15 PM Central Time (10:00-11:15 AM Pacific,
11:00-12:15 PM Mountain, 1:00-2:15 PM Eastern)

Hot Topics

Thursday, March 25, 2021

12:00-1:15 PM Central Time (10:00-11:15 AM Pacific,
11:00-12:15 PM Mountain, 1:00-2:15 PM Eastern)

Chapter 13 Best Practices

Wednesday, April 7, 2021

12-1:15 Central Time (10-11:15 Pacific, 11-12:15
Mountain, 1-2:15 Eastern)

Case Law Updates

Tuesday, March 23, 2021

12:00-1:15 PM Central Time (10:00-11:15 AM Pacific,
11:00-12:15 PM Mountain, 1:00-2:15 PM Eastern)

New Rule Changes & Where is the CFPB Going Under the New Administration

Tuesday, March 30, 2021

12:00-1:15 PM Central Time (10:00-11:15 AM Pacific,
11:00-12:15 PM Mountain, 1:00-2:15 PM Eastern)

Chapter 11 Basics for the Mortgage Lender

Friday, April 9, 2021

12:00-1:15 PM Central Time (10:00-11:15 AM Pacific,
11:00-12:15 PM Mountain, 1:00-2:15 PM Eastern)

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