

The Increasing Vulnerability of Older Americans: Evidence From the Bankruptcy Court

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INTRODUCTION

Debt has become the common denominator of American life. From young people taking on student loans to older Americans struggling to pay for health care costs and prescription medications, anxiety over debt is now a constant companion. This year, more than a million families declared themselves unable to deal with their debts by filing for bankruptcy. Because bankruptcy is a public manifestation of the most extreme financial trouble, it offers one view of the economic health of Americans across the age spectrum.

This is the first report of data collected from the 2007 Consumer Bankruptcy Project (CBP). We have analyzed the age distribution of bankruptcy filers over the past sixteen years, and we present three crucial findings. Since 1991,

- Americans age fifty-five or older have experienced the sharpest increase in bankruptcy filings;

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- Americans age thirty-four or younger have experienced the greatest decrease in bankruptcy filings; and
- the influence of Baby Boomers on bankruptcy filings has moderated substantially.

The story from these data is one of rising financial risk with age. The average age for filing bankruptcy has increased, and the rate of bankruptcy filings among those ages sixty-five and older has more than doubled since 1991.¹

The implications of a sharp rise in the proportion of older Americans in bankruptcy are particularly problematic because, unlike their younger counterparts, older Americans typically have fewer years left in the full-time workforce. Consequently, they will have a far more difficult time recovering from financial collapse. Younger people may well have another thirty years or more in the workforce after their bankruptcy filings, years in which they can rebuild retirement accounts, pay off mortgages, set aside some savings, and otherwise reestablish their financial security. Some will take on a second job or return to school for additional training. Unfortunately, those options are typically closed to people in their later years, who find themselves with few assets and unmanageable debts.

The bankruptcy data may also signal a significant change for inter-generational familial economic relationships. Specifically, when young adults experience financial struggles, they often rely on their parents for help because parents usually have more assets and fewer expenses. But the bankruptcies of older Americans may signal the loss of intra-family safety nets for their children and grandchildren alike. These changes may alter traditional social structures, reducing the number of families who can manage periods of financial stress without turning to public resources.

The rising proportion of older Americans in bankruptcy may warn of other social and economic problems. Our previous research indicated that medical problems are implicated in many of the bankruptcies of senior citizens.² More recent issues, however, may foreshadow even greater numbers of bankruptcies among older debtors. The data we report on here were collected before the sharp reverses in the stock market that devastated many retirement plans. People who had assets to cushion the blow of rising housing costs or to deal with the unpaid portion of medical bills may now find themselves taking on debt, debt that makes them vulnerable for future bankruptcies. Even seniors with no investments in the stock market and homes

¹ The corresponding decline in filing rates among young Americans might signal better financial security than that enjoyed by their earlier counterparts. It is also useful to recall that student loans, a very common debt of young Americans, are non-dischargeable in bankruptcy if the loans are federally guaranteed or subsidized. However, the fact that previous generations show a sharp rise in filings among those in early middle age may signal instead that people are living with financial stress for years, putting off the day of reckoning in bankruptcy for as long as possible.

² E.g., Melissa Jacoby, et al., *Rethinking the Debates Over Health Care Financing: Evidence From the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375 (2001).

that are paid off may find themselves sharply constrained. For example, reports have surfaced about rising numbers of elderly who cannot move into retirement communities because they cannot sell their homes; as a result, retirement communities have too many vacancies and older people who need care facilities are stranded in their homes.³

In this paper we lay out a brief overview of the research design we used to collect and analyze the data about the ages of bankruptcy filers, followed by an explanation of how the data were potentially affected by the 2005 Amendments to the Bankruptcy Code. We then present our findings, first showing the change over time of the median age of debtors in bankruptcy compared with people in the population generally, then showing the age distribution of debtors in bankruptcy in 1991, 2001, and 2007.

I. METHODS AND SAMPLE

The data reported here come from three major bankruptcy studies: the 1991 Consumer Bankruptcy Project, the 2001 Consumer Bankruptcy Project, and the 2007 Consumer Bankruptcy Project. The 1991 CBP age data were collected from 2400 debtors in sixteen districts from five states: California, Illinois, Pennsylvania, Tennessee, and Texas.⁴ The 2001 CBP data came from 1247 debtors in five districts in the same five states.⁵

Space does not permit a detailed explanation of our methods and sample, but a few points are critical.⁶ Thanks to advances in technology, we have our first national random sample of debtors.⁷ In early 2007, we mailed questionnaires to 5251 Americans who had filed for bankruptcy within the previous month. We received 2435 responses. With a response rate of about fifty percent,⁸ we have increased confidence in the representativeness of our sample vis-a-vis the entire nation.

To measure age differences among those who file for bankruptcy, we count *all* debtors, whether they filed for bankruptcy singly or as part of a married couple in a joint petition. In 2007, twenty-nine percent of bankruptcy cases were joint petitions, declaring the bankruptcy of both husband

³ Caitlin McDevitt, *Ready to Move, Stuck in One Place*, NEWSWEEK, Oct. 27, 2008, at 12.

⁴ For a detailed discussion of the sample and survey techniques, see TERESA SULLIVAN, ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* 236–87 (2000).

⁵ A detailed description of this study is in ELIZABETH WARREN & AMELIA TYAGI, *THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS AND FATHERS ARE GOING BROKE* 181–89 (2003).

⁶ For a more detailed discussion of the methods used in the 2007 Consumer Bankruptcy Project, see Robert M. Lawless, et al., *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 387–98 (2008).

⁷ The national sample was made possible by the generous help of Mike Bickford and his colleagues at AACER (Automated Access to Court Electronic Records), an Oklahoma City based bankruptcy data and management company.

⁸ We mailed 5251 questionnaires; 275 were returned for bad addresses. Of the remaining 4976 respondents, 1.7% declined to participate and 49.4% failed to return the questionnaires.

and wife.⁹ This means that the 783,823 noncommercial bankruptcy cases filed that year represent about 1,011,132 adults.

We also situate these data within the context of other studies that are broadly consistent with our findings. Studies from the Office of the United States Trustee reported age distributions among Chapter 7 debtors whose cases were closed in 2000 that were similar to those we reported for debtors filing in 2001.¹⁰ Similarly, a study by the Administrative Office of the United States Courts compared filings between 1994 and 2002.¹¹ Those findings also support our earlier conclusions regarding age distributions among bankruptcy filers. The first age analysis of debtors after the 2005 amendments to the bankruptcy law, conducted by the Institute for Financial Literacy, was based on information gleaned from people completing pre-bankruptcy credit counseling.¹² These data suggested a substantial increase in the number of older filers, a point upon which we expand below. In general, the age distributions of bankrupt debtors that we report appear to be broadly consistent with other reports made in the same time frame.

II. THE FILING NUMBERS AND THE 2005 AMENDMENTS¹³

In the modern era of bankruptcy law, the 2005 Amendments¹⁴ stand out as the most contentious. The amendments were initially drafted by lobbyists for the consumer credit industry,¹⁵ which lobbied hard for several years before it was able to steer the bill into law.¹⁶ The amendments consumed more than 400 pages of almost impenetrable text, but their main thrust can be summarized: the laws imposed a number of new requirements on families

⁹ Data on joint filings were furnished from a proprietary data source by Mike Bickford of AACER. See *supra* note 7 and accompanying text.

¹⁰ Ed Flynn & Gordon Bermant, *Bankruptcy by the Numbers: Chapter 7 Debtors—from 19 to 92*, http://www.usdoj.gov/ust/eo/public_affairs/articles/docs/abi122002a.htm (last visited Nov. 29, 2008). The Flynn and Bermant study differs from our work in that it excluded Chapter 13 filers. Among Chapter 7 filers, it had only about a twenty percent response rate on age.

¹¹ John Golmant & Tom Ulrich, *Aging and Bankruptcy, The Baby Boomers Meet Up at the Bankruptcy Court*, ABI J., May 2007, at 26. The authors examine 600 cases filed between 1994 and 2002 from eighty-eight of ninety-four judicial districts, reporting a rise in the proportion of Baby Boomers and older filers.

¹² Leslie E. Linfield, *Who Went Bankrupt in 2006? A Demographic Analysis of American Debtors*, 2007 INST. FOR FIN. LITERACY, INC. 8 (2007). Linfield surveys 24,038 people who came to the Institute for Financial Literacy for the debt counseling or financial management instruction course required by the 2005 Amendments.

¹³ For a summary of the 2005 changes to the bankruptcy laws, see Robert Lawless & Elizabeth Warren, *Shrinking the Safety Net: The 2005 Changes in U.S. Bankruptcy Law* 1–15 (Ill. L. & Econ. Working Paper Series, Research Paper No. LE06-031), available at http://papers.ssrn.com/pape.tar?abstract_id=949629.

¹⁴ Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23.

¹⁵ Barry Rehfeld, *Top Creditor Lobbyist Tasseys Goes for Broke*, AM. BANKER, May 17, 2001, at 1.

¹⁶ Elizabeth Warren, *The Market for Data: The Changing Role of the Social Sciences in Changing the Law* (Fairchild Lecture), 2002 WIS. L. REV. 1 (2002).

seeking bankruptcy protection that drove up many costs. These included higher filing fees;¹⁷ more paperwork; new counseling requirements; new restrictions on debtors' lawyers; and, the centerpiece of the statute, a means test that would prohibit some families from filing in Chapter 7.

In anticipation of the 2005 amendments to the bankruptcy law, some consumers rushed in ahead of the effective date, and filings surpassed the two million mark that year. Once the new law went into effect, consumer bankruptcy filings dropped even more precipitously than they had risen. By 2007, however, filings were on their way back up. The daily filing rate rose for most of the year, ending with 783,823 households in bankruptcy.¹⁸

We cannot know all the ramifications of such a major change in the law. It is possible that some age groups were disproportionately affected by the changes, although there is no obvious reason for why this would happen. The first analysis of post-2005 data suggests that those filing for bankruptcy look very much like those who have failed to file.¹⁹ Contrary to the promises of the amendments' proponents, there were no high-income debtors squeezed out of the system—largely because there had not been many high income debtors in the system to begin with. The drop in filings seems more directly related to the rising costs of filing and to the increased aggressiveness of debt collectors who reportedly tell people that bankruptcy has become illegal.²⁰ There is no reason to believe that this systematically affects filers of different ages across the country in different ways. Even so, we approach the post-2005 data with the caveat that changes in observed age distributions might somehow be related to changes in the law that differentially affected access to the bankruptcy system for different age groups.

There is one other substantial difficulty with pre- and post-2005 comparisons. The steady increases in the number of families filing for bankruptcy between 1991 and 2005 were consistent with other indicators of financial distress, such as increased consumer debt loads and credit card defaults, and rising costs of basic goods such as mortgages, health insurance, and child care.²¹ The sharp reversal in the number of bankruptcy filings in 2006 was not accompanied by any evidence that families were experiencing less financial strain. Indeed, both consumer debt and mortgage debt contin-

¹⁷ The increased costs are documented in Robert M. Lawless & Heather A. Miller, *The Rising Cost of Going Broke* (on file with the Harvard Law School Library).

¹⁸ Filings increased from 2629 per filing day in January 2007 to 3658 per filing day in December 2007. Filing data courtesy of AACER (on file with the authors).

¹⁹ Lawless et al., *supra* note 66, at 353.

²⁰ *Id.* at 381–83.

²¹ The amount of consumer credit as of February 2008 is reported in FEDERAL RESERVE STATISTICAL RELEASE, CONSUMER CREDIT (2008), <http://www.federalreserve.gov/releases/g19/Current>. The default rate on mainstream credit cards continues to increase. See Saul Hansell, *Credit Card Default Rate Is Climbing*, N.Y. TIMES, Mar. 18, 1997, at D1. Rates of home foreclosures have been at an all time high. See ForeclosurePulse Blog, Feb. Foreclosure Report: Are we at Bottom Yet?, <http://www.foreclosurepulse.com/archive/2008/03.aspx> (last visited Nov. 29, 2008).

ued to increase, and the number of families contacted by debt collectors remained high.

It is a reasonable inference that changes in the law—and the collateral impact of the changes, such as that stemming from news reports about the difficulty of filing for bankruptcy and rising attorneys' fees—sharply cut the number of filings. If the effects of the new law are felt evenly across age groups, then comparisons of the *proportional age distributions* in 1991, 2001, and 2007 are useful for understanding the distress among families, even if comparisons of the raw numbers of filings are distorted as an artifact of the legal change. The use of *filing rates*—numbers of filings per thousand people—is a control for the changes in the age composition of the U.S. population during this time.

III. WHO FILES FOR BANKRUPTCY?

As the elderly died, babies were born, and immigrants arrived, the U.S. population showed no abrupt age changes during the short period from 1991 to 2007. The median age of the entire population ticked up from 33.1 to 36.1, an increase of three years across this sixteen-year period.²² Census data cover all people, including children, so a direct comparison with the bankruptcy population is not easily made. Nonetheless, the direction and magnitude of the change in the national age figures provide some backdrop for evaluating the changes in the bankruptcy numbers.

The bankruptcy population has aged faster than the general U.S. population. As illustrated in Figure 1, in 1991 the median age for bankruptcy filers was 36.5.²³ By 2001, it had risen to 40.6. By 2007, the median age had reached 43—more than seven years above the median among those who filed in the early 1990s.²⁴ The increase in age of the median bankruptcy filer during the period from 1991 to 2007 is more than double the increase in median age across the U.S. population during that same period.²⁵

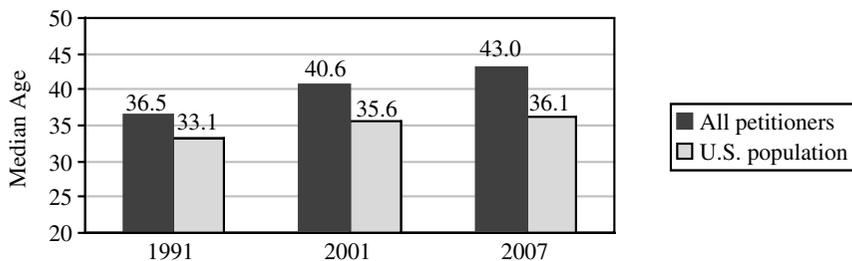
²² See U.S. Census, *Statistical Abstract of the United States, 1992*, at 15, tbl. 13; U.S. Census, *Statistical Abstract of the United States, 2002*, at 16–17, tbl. 14.

²³ See Teresa A. Sullivan, et al., *Young, Old, and In Between: Who Files for Bankruptcy?*, NORTON BANKRUPTCY LAW ADVISER, 9A, at 1–10. Here we report median ages for 1991 and 2001 samples.

²⁴ Although their reported age trends are similar, Golmant and Ulrich, *supra* note 11, report higher median filing ages in 1992 (37.7 years) and 2002 (41.4 years). It is not clear whether they included both first and second petitioners in their analysis, as we did. Wives are typically listed second on the petition and tend to be younger than their husbands. Therefore, we expect that calculations that include both first and second petitioners would reflect a modestly lower median petitioner age.

²⁵ The age distributions reported by the 2007 CBP and the Institute for Financial Literacy (IFL) are strikingly similar. The IFL collected age data in 2006 from 23,888 of the 24,038 people who enrolled in financial counseling or financial management instruction mandated by the 2005 amendments. The table below reports the age data for both the IFL and CBP 2007:

FIGURE 1. MEDIAN AGE, ALL PETITIONERS AND U.S. POPULATION, 1991, 2001, AND 2007²⁶



To provide a more nuanced picture of the aging of the bankrupt population, debtors were categorized into seven age groups, which are summarized in Table 1. As these figures illustrate, in 1991, 45.4% of all bankrupt debtors were under age thirty-five; by 2007, that proportion had dropped to 26.1%. This represents a 42% decline in the proportion of bankruptcy filers in this age group.

On the other end of the age spectrum, in 1991, only 8.2% of debtors were age fifty-five or older. By 2007, the proportion of bankrupt debtors age fifty-five or older had nearly tripled to 22.3%. As the last column of Table 1 makes apparent, the shift in the age distribution of filers has been pronounced. Of course, because older filers are a small portion of the total sample, any interpretation of these findings must be made with caution. But the fact remains that a much larger fraction of the people filing for bankruptcy were retirement age or older in 2007 than in 1991.²⁷

Study	<25	25-34	35-44	45-54	55-64	65+	Total
IFL	3.3	21.0	29.0	24.9	14.0	7.8	100.0
CBP 2007	4.2	21.9	28.1	23.5	15.3	7.0	100.0

Linfield, *supra* note 12, at 13.

²⁶ Consumer Bankruptcy Projects 1991, 2001, and 2007. Population Division, U.S. Census Bureau, Annual Estimates of the Population by Sex and Five-Year Age Groups for the United States: April 1, 2000 to July 1, 2007, May 1, 2008, <http://www.census.gov/popest/national/asrh/NC-EST2007/NC-EST2007-01.xls>.

²⁷ Table A-1 in the appendix provides total numbers of filers by age category.

TABLE 1. PERCENTAGE DISTRIBUTION OF ALL PETITIONERS AND RELATIVE PERCENTAGE CHANGE BY AGE CATEGORY, 1991, 2001, AND 2007²⁸

Age group	Sample Years			Relative percentage change, 1991–2007
	1991	2001	2007	
	------(percent)-----			
18–24	8.7	5.3	4.2	–51.7
25–34	36.7	26.1	21.9	–40.3
35–44	30.6	33.7	28.1	–8.2
45–54	15.8	23.2	23.5	+48.7
55–64	6.1	7.2	15.3	+150.8
65–74	1.8	3.0	5.0	+177.8
75 or older	0.3	1.5	2.0	+566.7
Total	100.0	100.0	100.0	

To be sure, the majority of filers are—and always have been—in their middle years. But the shifts at the two ends of the age spectrum have altered the overall composition of bankruptcy filers. As a group, the 2007 filers were considerably older than their 1991 counterparts.

IV. WHAT IS THE LIKELIHOOD OF FILING?

As we noted at the beginning of this analysis, the 2005 Amendments strongly influenced the total *number* of bankruptcy petitions filed in the United States. As Table 2 shows, the *rate* of bankruptcy filings was also affected. Specifically, the rate of filings per thousand Americans climbed from 6.5 in 1991 to 9.6 in 2001, but by 2007, the rates were less than half of the 2001 rates. We also report the filings per thousand of the population in each age group. These same data are summarized graphically in Figures 2 and 3.²⁹

²⁸ For the 1991 statistics, see CBP 1991, Administrative Office of the U.S. Courts, tbl. F-2, F2F, & F2E (12 months ending December 31, 1991), *available at* www.uscourts.gov/bnkrpctystats/Bk2002_1990Calendar.pdf; U.S. Census, Statistical Abstract of the U.S., 1992, page 15, tbl. 13. For the 2001 statistics, see CBP 2001, Administrative Office of the U.S. Courts, tbl. F-2, F2F, & F2E (12 months ending December 31, 2001), *available at* www.uscourts.gov/bnkrpctystats/Bk2002_1990Calendar.pdf; U.S. Census, Statistical Abstract of the U.S., 2002, 16–17, tbl. 14. For the 2007 statistics, see CBP 2007, Automated Access to Court Electronic Records (AACER), U.S. Census, *Monthly Population Estimates by Age, Sex, Race, and Hispanic Origin for the United States: April 1, 2000 to July 1, 2006*, May 17, 2007, <http://www.census.gov/popest/national/asrh/NC-EST2006-sa.html> (last visited Nov. 29, 2008).

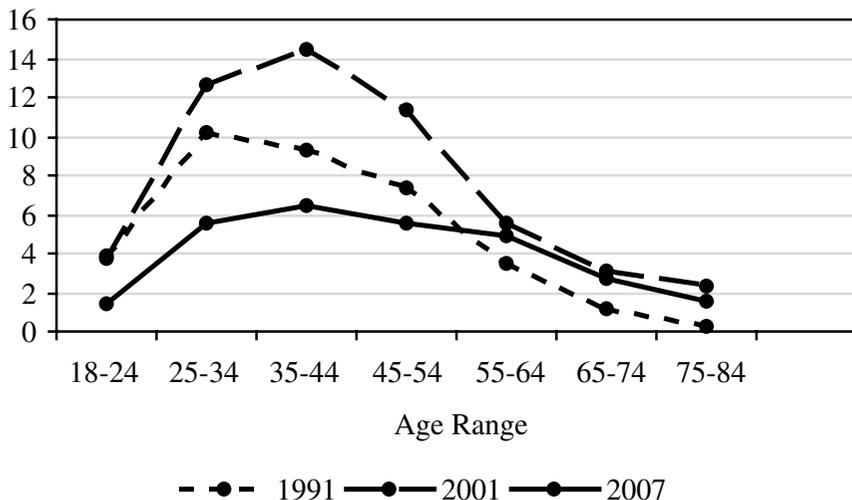
²⁹ Readers familiar with our 2001 article, Sullivan, et al., *supra* note 23, will note that rates of filing reported in the current article do not match exactly those reported in 2001. This is because we used calendar year, rather than fiscal year, statistics in our current calculations. The differences are minor and the trends remain the same.

TABLE 2. BANKRUPTCY FILING RATES PER 1,000 U.S. POPULATION, BY AGE CATEGORY, 1991, 2001, AND 2007³⁰

Sample years	Age group								Filing rate, all ages
	18-24	25-34	35-44	45-54	55-64	65-74	75-84	85+	
	------(rate per thousand)-----								
1991	3.9	10.2	9.3	7.3	3.5	1.2	0.3	*	6.5
2001	3.7	12.7	14.4	11.4	5.5	3.1	2.3	*	9.2
2007	1.4	5.5	6.5	5.5	4.9	2.7	1.6	*	4.6
Relative percentage change, 1991-2007	-64.1	-46.1	-30.1	-24.7	+40.0	+125.0	+433.3	*	-29.2

³⁰Rates shown by an asterisk were found to be negligible.

FIGURE 2. BANKRUPTCY FILING RATES PER 1,000 U.S. POPULATION, BY AGE CATEGORY, 1991, 2001, 2007³¹



The filing rates provide a critical snapshot of the financial vulnerability of Americans by age group and suggest that older Americans, now more than ever, are confronting serious financial challenges. For example, in 1991, Americans age eighteen to twenty-four filed for consumer bankruptcy

³⁰ CBPs, *supra* note 28.

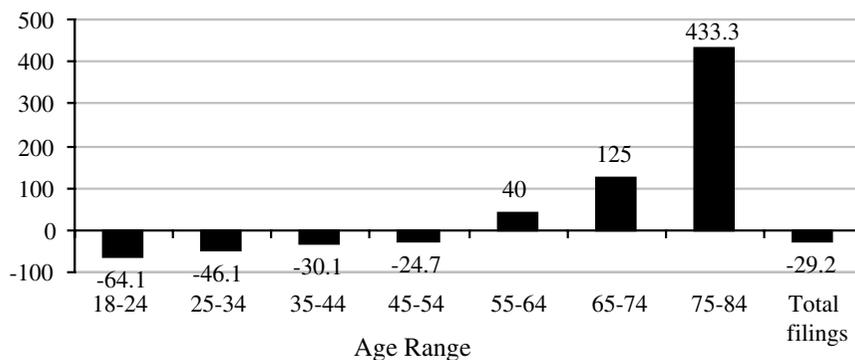
³¹ *Id.*

at a rate of 3.9 per thousand. By 2007, that rate had dropped by more than half, to 1.4 per thousand.³² While the 2005 Amendments affected all age groups, our data suggest that there was a relatively steeper drop-off in filings among younger groups of debtors than among older ones.

Although older Americans followed all other age groups with a contraction in filings from 2001 to 2007, the decrease in the wake of the 2005 Amendments was relatively small. Over the entire sixteen-year period from 1991 to 2007, the filing rates among debtors age fifty-five or older actually increased, so that by 2007, the number of older Americans per thousand filing for bankruptcy exceeded the filing rates for those same age groups in 1991. This is evident in Figure 2, where the 1991 and 2007 age lines cross.

Figure 3 illustrates the percent change in the rate of filing between 1991 and 2007. The results suggest that in the general population, younger Americans are notably less likely to file for bankruptcy than they were in the early 1990s. However, the rate of filing among older Americans, particularly those at or beyond retirement age, has increased sharply.

FIGURE 3. RELATIVE PERCENTAGE CHANGE IN FILING RATES, 1991–2007, BY AGE CATEGORY³³



There are a number of ways to combine the data to illustrate the changes among older Americans over time. Using the broadest grouping, ages fifty-five to eighty-four, the increased risk of bankruptcy is clear. In 1991, this age group comprised 8.2% of all filers. They experienced a filing rate of 1.97 per thousand Americans in that age group. In contrast, by 2007, this group comprised 22.3% of all filers. Compared only with those in the same age group, their filing rate was significantly higher at 3.5 per thousand.

³² One way to conceptualize the notion of rate is as follows: Using the 1991 rates, if a pool of 10,000 people were swimming in shark infested waters, thirty-nine of them would be eaten. In contrast, if we use the 2007 rates and again 10,000 people were swimming among sharks, only fourteen of them would be dined upon by our finned friends.

³³ Consumer Bankruptcy Projects, *supra* note 26.

For this age group, the change in filing rates represents an increase of 78%.³⁴ Among the subset of older Americans, those aged sixty-five to eighty-four, the change was even more pronounced. In 1991, this group composed 2.1% of all filers, with a filing rate of 0.88 per thousand among those in the same age group. By 2007, this age group had grown to 7% of all filers, with a filing rate of 2.2 per thousand among those in the same age group. This represents a rate increase of 150% for bankruptcy filings among Americans aged sixty-five to eighty-four.³⁵ Among the very oldest subset of filers, aged seventy-five to eighty-four, the proportion of filers increased from 1.8% in 1991 to 5.0% in 2007, and the filing rate per thousand in their age cohort increased from 0.3 to 1.6. As Table 3 shows, the rate filings for people aged seventy-five to eighty-four increased by 433.3%. All variations on these data show that since 1991, even when we control for growth among the elderly population, the bankruptcy risk for older Americans has increased substantially.

V. THE DECLINING INFLUENCE OF BABY BOOMERS

Social scientists' division of Americans into age cohorts has been popularized in the media, and despite the attention paid to Baby Boomers, they are just one of the named generations. We have adopted the widely used terms for the generations with accompanying birth dates as commonly used by demographers as follows:³⁶

Group	Birth year
Millennials	1982–
Gen X	1965–1981
Boomers	1946–1964
Silent	1925–1945
GI	1916–1924

Because of their unusually large numbers, Baby Boomers have driven many economic and social phenomena, so it is no surprise that they have also had a considerable role in the rates of bankruptcy filings. Their effects on bankruptcy, however, were due not just to their greater numbers, but also to a higher propensity to file for bankruptcy, at least in 1991 and 2001. As Table 3 illustrates, in 1991, Boomers were filing at a rate nearly twice that of any other group. And it was the Boomers who led the steep increase in bankruptcy filings from 1991 to 2001—filing at rates that far outstripped those of both their younger and older counterparts.

³⁴ This age grouping is not shown in Table 3, but it is derived from the same data.

³⁵ This age grouping is not shown in Table 3, but it is derived from the same data.

³⁶ Definitions and discussions of the different generations can be found in WILLIAM STRAUSS & NEIL HOWE, *GENERATIONS: THE HISTORY OF AMERICA'S FUTURE 1584–2069* (1991).

As bankruptcy filings declined following changes in the law, however, the rate of Boomer filings showed a more pronounced reversal, decreasing faster than the filing rates for either the younger Gen X or the older Silent generation. By 2007, Boomers had slipped into second place, filing at a rate that was substantially lower than that of their Gen X counterparts, the oldest of whom were entering their forties at the time. As Figure 4 illustrates, the impact of Boomers on bankruptcy filings has shrunk considerably.³⁷

TABLE 3: BANKRUPTCY FILING RATES PER 1,000 U.S. POPULATION, BY GENERATION, 1991, 2001, 2007³⁸

	Generation group					Rate of total filings
	Millennial*	Gen X	Boomer	Silent	GI	
	------(filing rates per thousand)-----					
1991	*	4.6	9.7	5.1	0.7	6.5
2001	*	10.7	12.4	4.4	2.5	9.6
2007	1.7	6.2	5.4	2.6	0.7	4.5

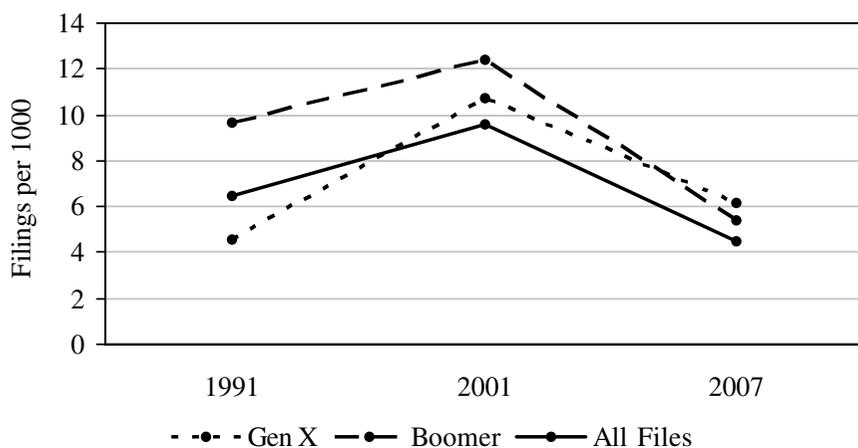
*Millennials were not yet adults in 1991 and 2001.

One way to understand this phenomenon is to measure the impact of the Boomers' much higher filing rates. For example, if, in 1991, the Boomers had the same bankruptcy filing rate as the overall rate per thousand adult Americans (6.5 per 1000), bankruptcy filings for that year would have fallen by 260,496. That would have resulted in an overall decrease of 21.8% of all petitions filed. Similarly, in 2001, the Boomers' filing rate (12.4 per 1000) resulted in 220,284 more people in bankruptcy than there would have been if Boomers had experienced the overall average rate of bankruptcy in that same year (9.6 per 1000). If those extra Boomer filings had not occurred in 2001, total bankruptcy filings would have dropped by 11.5%. By 2007, the trend is clear. If Boomers had filed at the same rate as all other debtors in 2007, there would have been 68,517 fewer people in bankruptcy. That would have decreased bankruptcy filings by only 6.1%. This strongly suggests that the Boomer influence is rapidly fading.

³⁷ The calculation in the text uses as the baseline the filing rate for all debtors. If the Boomers are removed from the average rate of filing, the differences are even more dramatic. In 1991, the overall bankruptcy filing rate would have fallen to 3.9 per thousand, and if that rate were applied to the Boomers, there would have been 316,731 fewer filings, or a 40% decline in filings. In 2001, the overall rate without the Boomers would have been 7.8 per thousand, and if Boomers had filed at the same rate, there would have been 361,391 fewer filers, or an 18.8% decline in filings. By 2007, excluding the Boomers from the rate calculation would reduce the overall rate to 3.7 per thousand; applying that rate to the Boomers would mean a reduction of 175,319 filers, or a 17.3% decline in filings.

³⁸ CBPs, *supra* note 28.

FIGURE 4. RATE OF BANKRUPTCY FILINGS PER 1,000 U.S. POPULATION, BY GEN XERS, BOOMERS, AND ALL FILERS, 1991, 2001, AND 2007³⁹



For years, commentators have celebrated and blamed Boomers for virtually every American phenomenon, including a staggering rise in bankruptcy filings. Now Boomers are aging, and the bankruptcy population is aging along with them. The award for the most filings no longer goes to the Boomers. Instead, Gen Xers in their late thirties and forties now supply the greatest number of filers.

However, the data hold a more subtle, and certainly more disturbing, clue to Americans' collective financial health. As in earlier years, the bulk of filers are in their middle ages—thirties and forties—but the ends of the age spectrum have changed considerably. Fewer young people file, while the rates among older filers have increased rapidly. The data suggest that older Americans across the board are under increasing financial stress.

CONCLUSION

The 2005 amendments to the Bankruptcy Code slashed consumer bankruptcy filings. Among all age groups, fewer people filed in 2007 than in 2001. But the overall decline should not mask important changes in the composition of the groups filing for bankruptcy.

The data reveal interesting changes at both ends of the age continuum. The rate at which younger Americans file for bankruptcy has steadily declined since the early 1990s. Two quite different scenarios could be driving these changes. Lower bankruptcy filing rates for younger people may be the result of healthier finances. If so, that is good news. But these bankruptcy

³⁹ CBPs, *supra* note 29.

data are consistent with a much darker scenario as well: young people may simply be juggling debt longer before they file for bankruptcy.⁴⁰ If that is the case, we can expect to see more bankruptcies on the horizon as these young people marry, have families, buy homes, and take on other obligations that leave them more vulnerable to financial stumbles.

But there is no ambiguity at the other end of the age spectrum. The economic news for seniors is consistently grim. Even following the changes in the law in 2005, bankruptcy filings among those age fifty-five or older have increased from their base rate in 1991 and already approach the filing levels in 2001. Age is increasingly associated with financial distress and with seeking protection from creditors through the bankruptcy courts.

These data warn of increasing financial pressure on families as they age. The data take on particular urgency in light of recent research suggesting a relationship between financial strain and health problems for older people, particularly indications that financial problems are linked with declining self-assessments of health, diminishing ability to care for oneself, and generalized demoralization.⁴¹ The rise in bankruptcy filings may pre-empt increased physical and psychological problems among older Americans.

Predictions always present opportunities for subsequent embarrassment, but in this case, we are quite confident in our prediction that the numbers of bankrupt seniors will continue to grow. Economic turmoil, instability in the stock market, cuts in social services, and ever rising health care costs hit seniors especially hard. With little or no time remaining for them to recoup through higher future earnings, bankruptcy may be little more than a tool to delay their downward economic slide. Even so, when the alternative is continued debt collection calls, foreclosures, and repossessions, older Americans may head to the bankruptcy courts in ever larger numbers.

Our objective with this paper has been to describe changes in the age demographics of those filing for consumer bankruptcy. In future publications, we plan to explore the role that rising medical costs and declining home values have played in bringing these families to financial collapse. For now, we focus on sounding the alarm about the shifting demographics of bankruptcy and the sharply declining fortunes of substantial numbers of seniors.

⁴⁰ See TAMARA DRAUT & JAVIER SILVA, DEMOS, GENERATION BROKE: THE GROWTH OF DEBT AMONG YOUNG AMERICANS (2004), available at <http://archive.demos.org/pub295.cfm>. The authors describe how, between 1992 and 2001, the average amount of debt held by young Americans increased by fifty-five percent.

⁴¹ See Ronald J. Angel, et al., *Financial Strain and Health Among Elderly Mexican-Origin Individuals*, 44 J. HEALTH SOC. BEHAV. 536 (2003).

APPENDIX

TABLE A-1. AGES OF FIRST- AND SECOND-NAMED PETITIONERS COMBINED, BY PERCENTAGES AND ESTIMATED TOTALS, 1991, 2001, AND 2007

Age	-----1991-----		-----2001-----		-----2007-----	
	Percent	Number	Percent	Number	Percent	Number
18-24	8.7%	103,746	5.3%	101,800	4.2%	42,468
25-34	36.7	437,643	26.1	501,315	21.9	221,438
35-44	30.6	364,901	33.7	647,293	28.1	284,127
45-54	15.8	188,413	23.2	445,614	23.5	237,616
55-64	6.1	72,742	7.2	138,294	15.3	154,703
65-74	1.8	21,465	3.0	57,623	5.0	50,557
75-84	0.3	3,577	1.5	28,811	2.0	20,223
85+	*	*	*	*	*	*
Total	100.0	1,192,487	100.0	1,920,750	100.0	1,011,132
N	3,298		1,503		2,789	

*The percentage of petitioners age eighty-five or older was negligible. The number is, however, included in the total number of petitioners.

Primary plus secondary, U.S. filings total people:

1991: 879,365 + 313,122 = 1,192,487 (calendar year ending December 31, 1991)

The total (1,192,487) is the sum of filings in nonbusiness Chapter 7 plus all Chapter 13 cases (879,365) corrected for total of joint nonbusiness filers (313,122) (Tables F2F and F2E from the U.S. Courts).

2001: 1,456,785 + 463,965 = 1,920,750 (calendar year ending December 31, 2001)

The total (1,920,750) is the sum of filings in nonbusiness Chapter 7 plus all Chapter 13 cases (1,456,785) corrected for total of joint nonbusiness filers (463,965) (Tables F2F and F2E from the U.S. Courts).

2007: 783,823 + 227,308 = 1,011,132 (calendar year ending December 31, 2007)

The total (1,011,132) is the sum of all nonbusiness filings for the year ending December 31, 2007 (783,823) plus estimated proportions of joint cases (29%) (227,308).

All data courtesy of AACER.

