
Luncheon:
Current Washington Developments
Affecting Consumer Bankruptcy

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+ Inside the Beltway Update:
Legislative & Regulatory
Developments Affecting
Consumer Bankruptcy

A faded, light grey background image of the United States Capitol building in Washington, D.C., showing its iconic dome and neoclassical architecture.

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ABI Northeast Consumer Forum
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** Views expressed are those of presenter, not the ABI.*



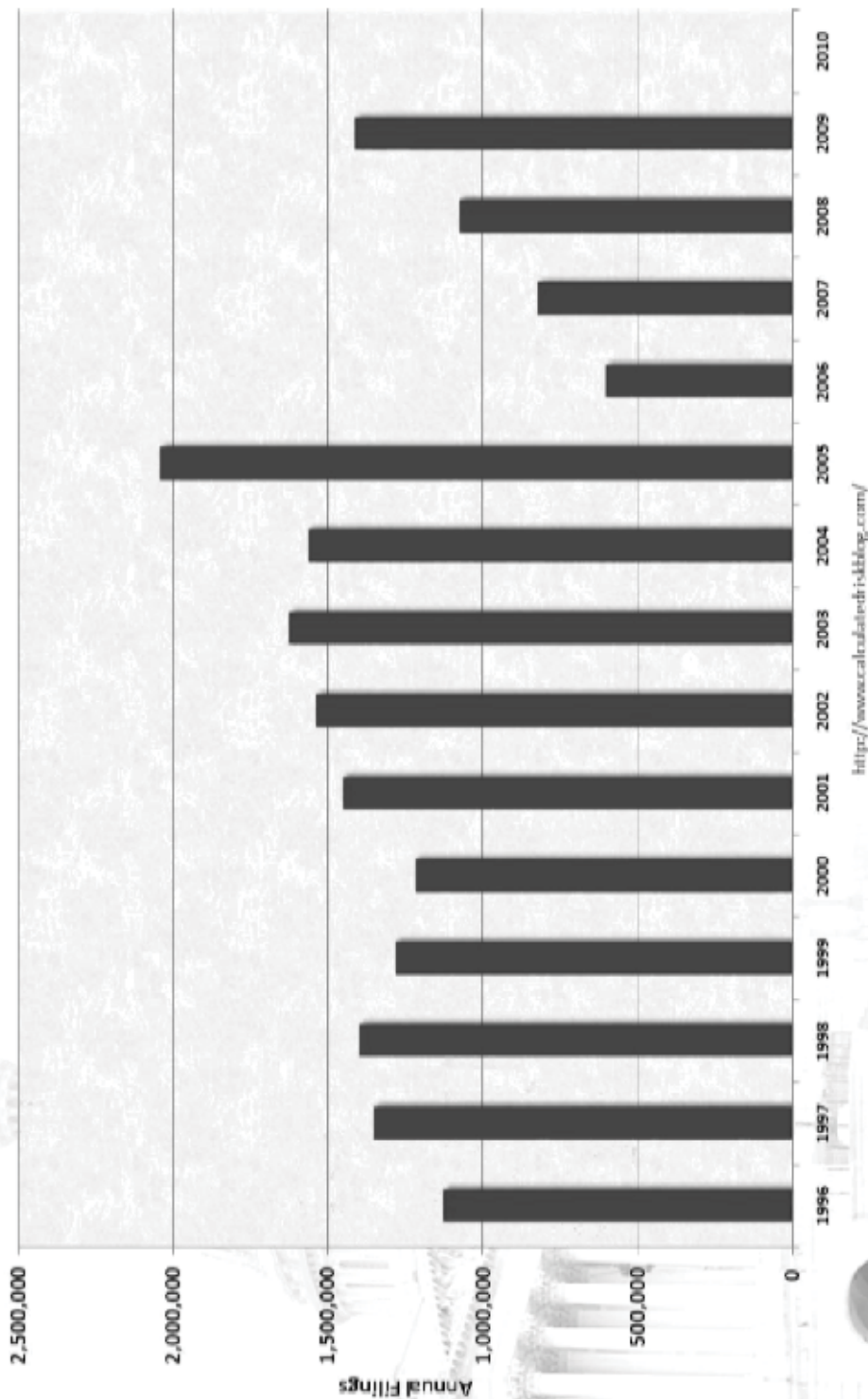
+ Elections Have Consequences

- Washington’s new agenda, orientation
 - “Never Let a Good Crisis Go to Waste”
 - Need for speed sacrifices transparency, regular order
 - New sources of power and influence; others on defensive
 - Activist government role has impact on businesses, consumers, debtors, creditors and stakeholders, in addition to U.S. taxpayers
 - Should some new government entity (Financial Services Oversight Council) monitor “systemic risk”? (H.R. 4173)
 - Enhanced resolution authority for FDIC to unwind a failed or failing financial institution, with taxpayer money (perpetuate TBTF?)
 - Bankruptcies at highest level (1.4 mill+) since 2005 (up 32% in `09).



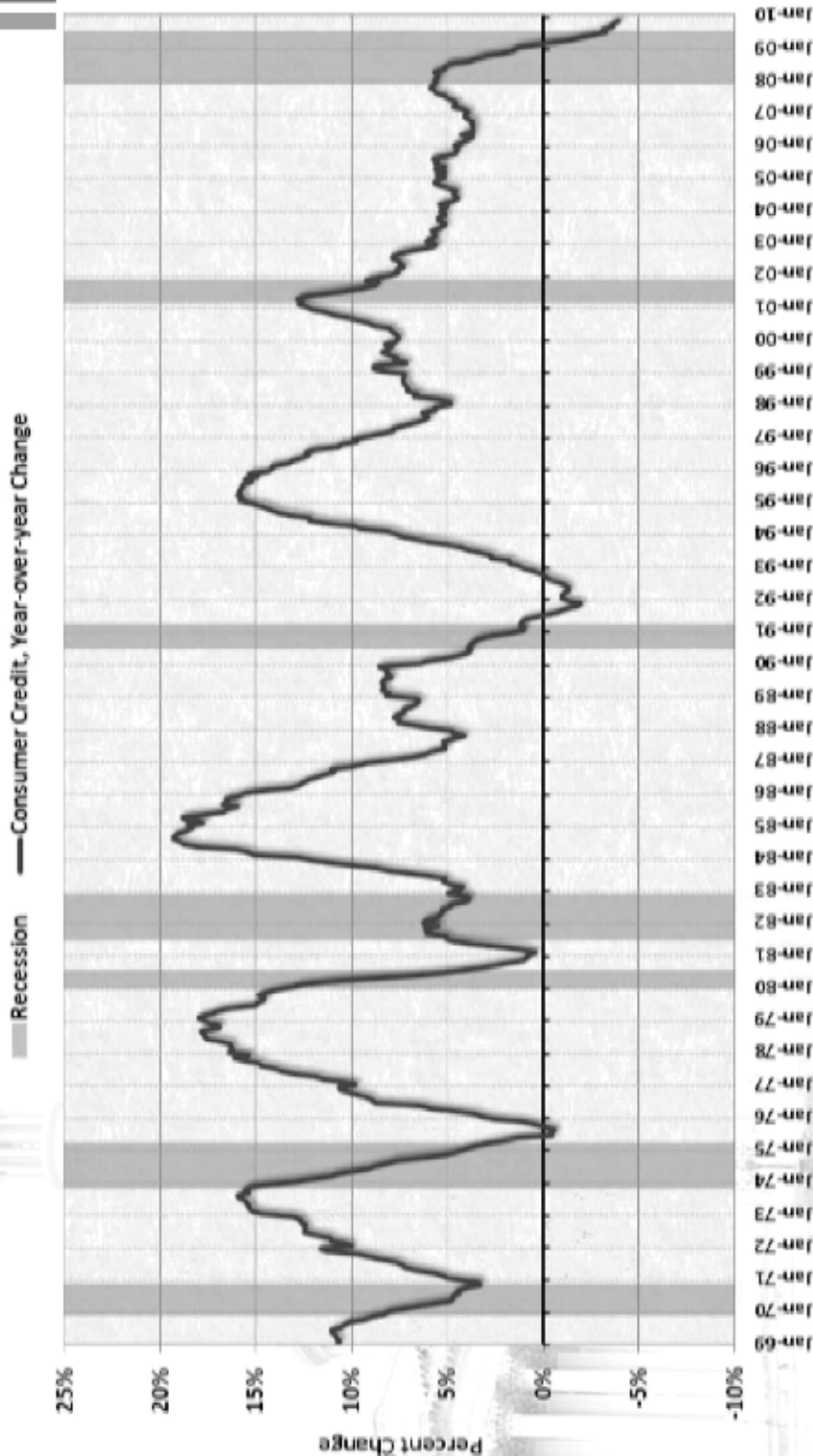


+ Non-Business Bankruptcy Filings





+ Consumer Credit, Source: Federal Reserve



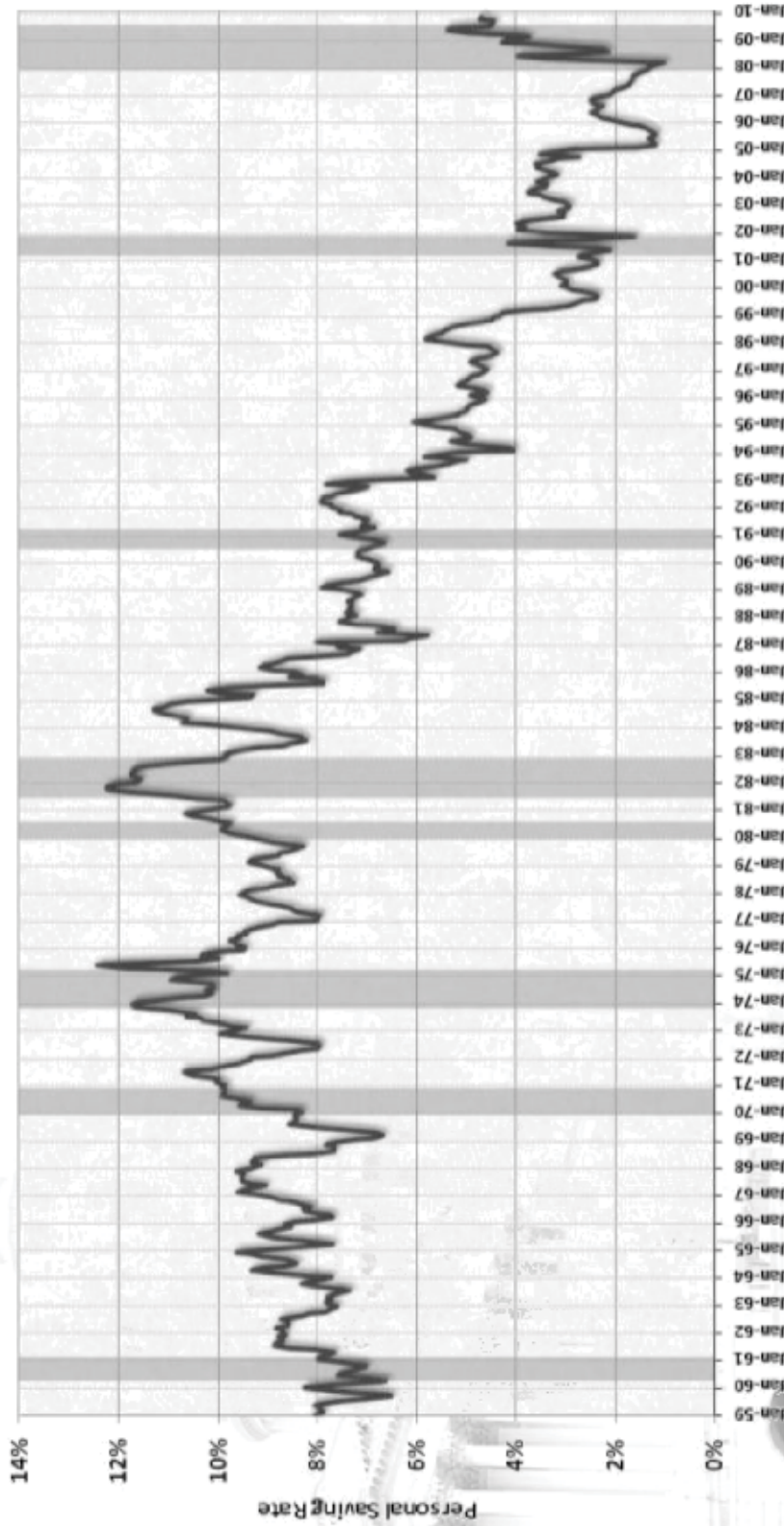
<http://www.calculatedriskblog.com/>



+ Personal Savings as a Percentage of Disposable Personal Income



■ Recessions — Personal saving rate, percent of DPI (3 month centered average)



<http://www.calculatedriskblog.com/>



+ Consumer Bankruptcy & Credit-Related Legislation

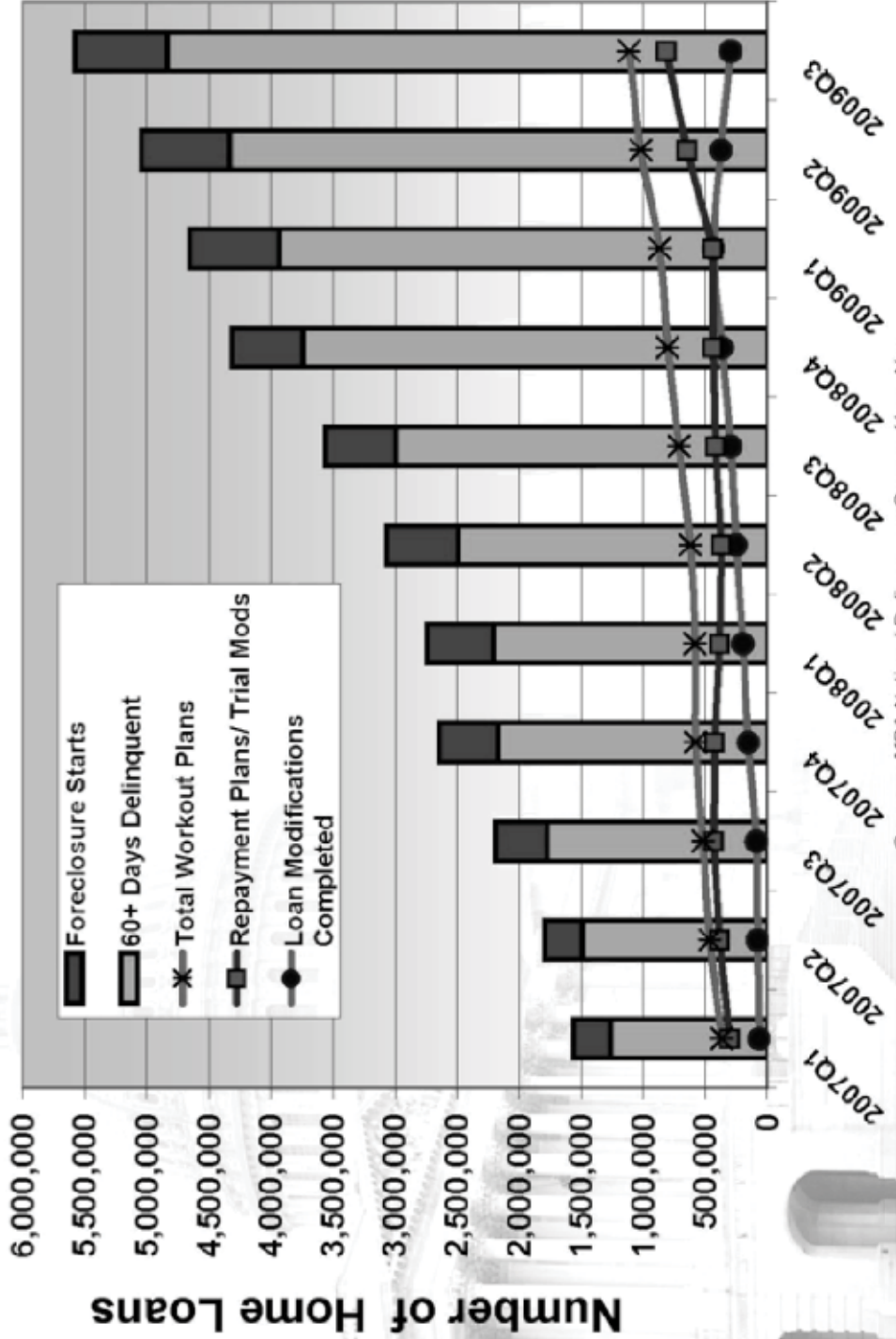


- Mortgage Modification in Chapter 13 (Conyers, H.R. 1106)
 - Foreclosure crisis continues to grow (Zandi: 4.9 mill F/C bet. '09-'11)
 - Government voluntary programs have largely failed.
 - Hope for Homeowners
 - Hope for Affordable Refinance Program (HARP)
 - Home Affordable Modifications Program (HAMP)
 - >1% of trial mods. convert to permanent HAMP modifications
 - H.R. 1106 passed House on March 5 (231-191), in housing bill.
 - Senate Amendment failed on April 3 (45-51 of 60 votes needed).
 - House Amendment failed on Dec. 11 (188-242), in financial services bill.
 - Why has the issue lost momentum? (see polling data)





+ Homes at Risk vs. Foreclosure Prevention Efforts





HONK

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+ Interest-only/ARM

Origins of the Next Wave of Foreclosures



Alternative Mortgage Instruments and Associated Initial Monthly Payments

Nontraditional Mortgage Features (Percent of ARM originations)

Mortgage Product	Initial Monthly Payment*	Payment as a Percentage of FRM	Interest Only			Extended Amortization			Negative Amortization	Pay-Option
			Subprime	Alt-A	Subprime	Alt-A	Alt-A			
Fixed-Rate mortgage (FRM)	\$1,079.19	100.0	0	3	0	0	0	---	---	
Adjustable-Rate mortgage (ARM)	903.50	83.7	0	8	0	0	0	---	---	
40-year amortization (ARM)	799.98	74.1	2	37	0	0	0	---	---	
Interest-only/ARM	663.00	61.4	5	48	0	0	0	19	11	
Negative amortization ARM	150.00	13.9	18	51	0	0	0	40	25	
Pay-option ARM	<150.00	<13.9	21	48	13	0	0	46	38	
			16	51	33	2	55	38		

* Assumes 6% interest rate for FRM and 4.42% for standard ARMs. House price of \$225,000 with 20% down payment.





+ Consumer Bankruptcy & Credit-Related Legislation

■ Consumer Financial Protection Agency (CFPA) (Durbin, S. 566; Frank, H.R. 3126; Wall St. Reform & Consumer Protection Act. H.R. 4173)

- Creates new independent Federal agency with broad powers to investigate and regulate terms and conditions of most financial products – mortgages, credit cards and loans etc. – with power to ban or limit products (e.g., payday loans, bank overdraft fees) and practices deemed dangerous to financial health of public. Would override “weaker” state laws, but states free to adopt “stricter” laws; no pre-emption creates “patchwork quilt.”
CFPA Director (Elizabeth Warren?) appointed by President.
 - exceptions for small community banks, auto dealers, credit unions
 - impact on access to consumer credit (already sharp pull-back in credit in 2009)
 - passed on party-line vote in House (12/11/09); fight in Senate to come



+ Consumer Bankruptcy & Credit-Related Legislation

- **Credit CARD Act (P.L. 111-24) – Signed May 22.**
 - Bans retroactive rate hikes; requires 45 day notice for rate increase; bans double-cycle billing.
 - Move up effective date (H.R. 3639) or fix moratorium on rate/fee hikes (S. 1927)
 - New tactics and fees developed to evade law’s intent
 - Note record credit card delinquencies
- **Relax BAPCPA Rules for High Medical Debt Filers. (H.R. 901 : S. 1624)**
 - Waive means test, credit counseling, create \$250,000 homestead exemption, more.
 - Not rolled into National Health Care Legislation



+ Consumer Bankruptcy & Credit-Related Legislation



- Adjustment in median family income (effective Nov. 1) impacts means test under BAPCPA.
- National Usury Ceiling (16%) on Credit Card Interest Rates (H.R. 4300)
- Student Lending & Bankruptcy.
- Interchange Legislation (retailers vs. credit cards on “swipe fee”).
- Ban on Mandatory Arbitration Provisions in Consumer Credit Agreements (S. 931).
- Limit on Bank Overdraft Fees (up 35% in two years to \$24B).



+ Supreme Court Bankruptcy Docket



- *Schwab v. Reilly* (3d Cir.) on scope of trustee’s power to sell assets claimed as fully exempt by debtor, without first objecting to debtor’s valuation (Argued 11/3).
- *Milavetz* (8th Cir.) regarding (a) BAPCPA’s “debt relief agency” provisions applicable to attorneys; (b) can BAPCPA constitutionally preclude attorney advice to incur more debt? (Argued 12/1).
- *Espinosa* (9th Cir.) on whether student loan debt may be discharged upon notice to creditor “by declaration” in Chapter 13 plan, or only through an adversary proceeding demonstrating undue hardship. (Argued 12/1).
- *Hamilton v. Lanning* (10th Cir.) to address circuit conflict over BAPCPA §1325(b) on whether – in calculating disposable income – court can consider evidence of future income (the “forward-looking” test) (To be argued 3/22/10).



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