

# Bankruptcies and Rising Family Insecurity

By Alex Hertel-Fernandez

## The Problem

### **Families face growing economic insecurity.**

- Family income volatility increased during the Bush administration, with nearly one in 10 working-age individuals seeing their incomes fall by half or more during the early 2000s due to job loss and other causes.<sup>1</sup>
- Meanwhile, employers are offering less protection from economic insecurity, as companies slash health benefits<sup>2</sup> and replace traditional pensions with 401(k)-style plans that expose workers to investment and longevity risks.<sup>3</sup>
- The government safety net is also eroding, as an increasing share of the workforce is ineligible for unemployment insurance and other protections.<sup>4</sup>

### **Bankruptcies increased rapidly during the Bush administration.**

- Bankruptcies rose 60% over the first six years of the Bush administration, from 431 bankruptcies per 100,000 individuals in 2000 to 689 per 100,000 in 2005.<sup>5</sup>
- After Bush signed into law the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), which restricted the ability of individuals to declare bankruptcy, the number of people filing bankruptcy initially dropped, then started rising again. Bankruptcy rates have since doubled in 16 states since the passage of BAPCPA and many states are rapidly catching up to pre-BAPCPA levels.<sup>6</sup>
- The home foreclosure crisis has caused bankruptcies to spike, rising 29% in the last year.<sup>7</sup>

### **Bankruptcies are usually caused by events beyond the control of families and individuals.**

- Medical causes are cited as a reason in half of all bankruptcies, according to a study by a team of researchers from Harvard University and Ohio University.<sup>8</sup> Other common causes are job loss, divorce, and death of a breadwinner.<sup>9</sup>
- Contrary to claims that many bankruptcies are now “bankruptcies of convenience” rather than actual hardship, a Stanford Law Review study found that families who filed for bankruptcy in 2001 were in worse financial shape than their counterparts who filed 20 years earlier.<sup>10</sup>

### **Changes in lending practices have also contributed to an increase in bankruptcies.**

- Credit card companies have increased the availability of credit to higher-risk borrowers, relying on late penalties and other hidden fees to boost their bottom lines.<sup>11</sup>
- Families turned to high-cost home-secured loans and other borrowing to deal with stagnant wages and the increase in economic insecurity—leaving them with unmanageable debt burdens as the housing and labor markets slumped.<sup>12</sup>

## **What has President Bush done?**

**President Bush supported and signed the Bankruptcy Abuse Prevention and Consumer Protection Act, which made it more difficult for families and individuals file for bankruptcy.**

- The administration promoted BAPCPA as a way to encourage “personal responsibility,” even though the legislation made no distinction between responsible and irresponsible borrowers.<sup>13</sup>
- BAPCPA increased filing fees and included provisions that significantly raised the cost of attorney representation.<sup>14</sup>
- The law also increased repayments from bankrupt families and individuals to creditors by, among other things, making it harder to file Chapter 7 (“fresh start”) bankruptcy claims.

## **What has President Bush failed to do?**

**President Bush failed to help people overwhelmed by medical and other expenses get back on their feet.**

- Outcomes of Chapter 7 filers before the BAPCPA legislation were generally quite good. Nearly two-thirds of individuals reported stable or better financial situations after filing bankruptcy.<sup>15</sup> This social insurance function ought to be reinforced, not diminished.

**The administration should have clamped down on abusive lending practices that take advantage of distressed or unsophisticated borrowers.**

- The administration failed to support legislation like the “Credit Card Bill of Rights Act” that would curb abusive lending practices.

**President Bush failed to address the primary causes of financial distress.**

- The Bush administration should have sought ways to buffer families from income volatility rather than delaying an extension of unemployment insurance benefits.<sup>16</sup>

- The Bush administration should have encouraged employers to provide employee benefits that shield families from financial risks rather than favoring risky 401(k)s and health savings accounts.<sup>17</sup>
- And finally, it should have strengthened social insurance programs, instead of blocking the expansion of programs like the State Children's Health Insurance Program.

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<sup>1</sup> Jacob Hacker and Elisabeth Jacobs. "EPI Briefing paper #213: The Rising Instability of American Family Incomes, 1969-2004" *Economic Policy Institute*, May 29, 2008

<http://www.epi.org/content.cfm/bp213>.

<sup>2</sup> "Income, Poverty, and Health Insurance Coverage in the United States: 2007," *U.S. Census Bureau*, August 2008

<http://www.census.gov/prod/2008pubs/p60-235.pdf>

<sup>3</sup> Economic Policy Institute, "Retirement Security Issue Guide," September 2006.

[http://www.epi.org/Issueguides/retire/retirement\\_security\\_issue\\_guide-epi.pdf](http://www.epi.org/Issueguides/retire/retirement_security_issue_guide-epi.pdf)

<sup>4</sup> National Employment Law Project, "Changing Workforce, Changing Economy: State Unemployment Insurance Reforms for the 21<sup>st</sup> Century," 2004

<http://www.aecf.org/upload/PublicationFiles/FE3675K457.pdf>

<sup>5</sup> Author's own calculations from US Judiciary filing data, 1990-2007.

<sup>6</sup> Amanda Logan and Christian E. Weller. "Bankruptcies Back on the Wrong Track." Center for American Progress, June 2008

[http://www.americanprogress.org/issues/2008/06/bankruptcy\\_report.html](http://www.americanprogress.org/issues/2008/06/bankruptcy_report.html)

<sup>7</sup> Ben Rooney. "Bankruptcy filings surge to 1 million - up 29%" *CNN Money*, August 27, 2008

<http://money.cnn.com/2008/08/27/news/economy/bankruptcy/index.htm>

<sup>8</sup> Himmelstein, Warren, Thorne, and Woolhandler, "Illness and Injury as Contributors to Bankruptcy," *Health Affairs*, February 2, 2005

<http://content.healthaffairs.org/cgi/content/full/hlthaff.w5.63/DC1>

<sup>9</sup> Report of the National Association of Consumer Bankruptcy Attorneys, 2006.

<sup>10</sup> Teresa Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook. 2006. "Less Stigma or More Financial Distress: An Empirical Analysis of the Extraordinary Increase in Bankruptcy Filings." *Stanford Law Review*. 59(4):213-256.

[http://goliath.ecnext.com/coms2/gi\\_0199-6288433/Less-stigma-or-more-financial.html](http://goliath.ecnext.com/coms2/gi_0199-6288433/Less-stigma-or-more-financial.html)

<sup>11</sup> "Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers," *Government Accountability Office*, September, 2006

<http://www.gao.gov/new.items/d06929.pdf>

<sup>12</sup> See, for example, Kathy Chu, "Housing woes have domino effect; As crisis spreads, everyone will likely feel the pinch," *USA Today*, November 26, 2007; Gretchen Morgenson, "Given a Shovel, Digging Deeper Into Debt," *The New York Times*, July 20, 2008; and Organisation for Economic Co-Operation and Development, "Chapter 4: Household Debt," *OECD Economic Surveys—United States*, May 1, 2007; Steven Greenhouse, "Borrowers We Be," *The New York Times*, September 3, 2006.

<sup>13</sup> "President Signs Bankruptcy Abuse Prevention, Consumer Protection Act," White House press release, April 20, 2005.

<http://www.whitehouse.gov/news/releases/2005/04/20050420-5.html>

<sup>14</sup> United States Government Accountability Office, "Dollar Costs Associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005," June 2008.

<http://www.gao.gov/new.items/d08697.pdf>

<sup>15</sup> Porter and Thorne, "The Failure of Bankruptcy's Fresh Start," *Cornell Law Review*, Vol. 92, 2006.

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=894453](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=894453)

<sup>16</sup> Humberto Sanchez, "House Dems Will Keep Jobless Benefit Extension In Supp," *CongressDaily AM*, June 17, 2008.

<sup>17</sup> See, for example, Monique Morrissey, "Bush Administration Forces Companies to Negotiate Worse Benefits," EPI Policy Memorandum #113, May 5, 2006

<http://www.epi.org/content.cfm/pm113>

