

September 28, 2022

The Honorable Elizabeth Warren
United States Senate
317 Hart Senate Office Building
Washington DC 20510

Dear Senator Warren:

We are 86 law professors who specialize in bankruptcy and consumer law. We write to express our support for the Consumer Bankruptcy Reform Act of 2022. In the wake of the COVID-19 pandemic and the attendant inflation spike, providing effective and expeditious relief to struggling individuals and families has never been more important. Unfortunately, the existing consumer bankruptcy system is too expensive and too complex to serve this function. Its doors are often shut to people who need to file because they cannot afford to hire an attorney to help them. We support the Consumer Bankruptcy Reform Act because it will address these issues and other problems that plague the current consumer bankruptcy system.

The Bankruptcy Code is Outdated

Since the current Bankruptcy Code was enacted over forty years ago, the landscape of consumer finance has changed dramatically. Credit card debt has tripled. Capital markets financing of consumer debt now means that people often cannot renegotiate their debts with their lenders. Most borrowers must deal with the servicers of their car loans and home mortgages, rather than the lenders themselves. These servicers often do not have the authority or incentive to modify or adjust consumer debt. One in five households has medical debt and of bills that are sent to collection, more than half include medical debt. The Internet has transformed how people interact with their creditors and attorneys, and also with the courts. Technology has reduced the costs of harassing debtors. Today, debt collectors can use many forms of technology to hound people for debts that may be decades old, already paid, discharged, or barred by the statute of limitations. Streamlining people's path to debt relief is necessary to address the pervasiveness of consumer debt and the changing technology of debt collection.

Equal Access to Bankruptcy: Eliminating Chapter Choice

Perhaps the greatest source of inequality and expense in the consumer bankruptcy system is the two-chapter structure of the Bankruptcy Code. Forcing people to choose between a chapter 7 liquidation and a chapter 13 repayment plan produces both geographic and racial inequalities in the availability of effective relief. Geographically, the current structure has produced sizable differences around the country in the rates at which consumer debtors use chapter 7 and chapter 13. These differences endured even when bankruptcy filings decreased drastically in the wake of the COVID-19 pandemic. In 2021, only 6.5% of the bankruptcy cases in the Eastern District of Oklahoma were chapter 13 cases as compared to 79.4% of the cases in the Southern District of Georgia. The disparity itself is an indictment of a federal system that the Constitution directs to be "uniform."

The two-chapter structure also produces racial disparity. Black households are about twice as likely to file chapter 13 as compared to debtors of other races, regardless of where they live,

even after controlling for a multitude of financial, demographic, and legal factors. Chapter 13 is not a good choice for many of these debtors. Chapter 13 is far more expensive than chapter 7, and it takes years rather than months to complete a chapter 13 repayment plan and receive a bankruptcy discharge. The cost of a typical chapter 13 bankruptcy is \$3,800, as compared to the \$1,300 it costs for a typical chapter 7. Also, more than 50% of chapter 13 debtors do not receive a discharge because they are unable to complete the payments under their plan. The racial disparity in chapter choice is deeply troubling, especially because bankruptcy lawyers necessarily play a role in the chapter-choice decision.

The Consumer Bankruptcy Reform Act creates a new chapter 10 for individual bankruptcy filers that applies to all individual debtors with debts of less than \$7,500,000. For all such debtors, chapter 10 will operate as the single point of entry into the bankruptcy system, unless they choose to use chapter 11.

Equal Access to Bankruptcy: Paying the Attorney

The Consumer Bankruptcy Reform Act also creates a pathway for people to pay for their attorneys after they file bankruptcy. At present, because bankruptcy wipes out pre-petition debts, attorneys routinely demand payment upfront before filing a chapter 7. In contrast, chapter 13 provides a way for debtors to pay their attorneys through their repayment plans. This leads people without money to pay their attorneys up front to file chapter 13, sometimes solely so they can file bankruptcy with the help of an attorney. Not only are people forced into chapter 13, as noted above, they also must pay more to access bankruptcy. In addition, a debtor's inability to pay attorney's fees during the chapter 13 plan may result in the debtor not receiving a discharge.

The Consumer Bankruptcy Reform Act includes a procedure for debtors to pay their bankruptcy attorneys over time, without jeopardizing their discharge. This procedure ensures that attorneys are fairly compensated for their services—and thus will continue to provide those services—without letting the fees become an obstacle to access to justice.

Streamlining The Process: Reducing Paperwork and Providing an Immediate Discharge

Relief will be swift for most people who file under the Consumer Bankruptcy Reform Act's new chapter 10. Upon filing a chapter 10 petition, a debtor will receive a discharge. Debtors who have income or assets to pay creditors, however, will have a minimum payment obligation that they must satisfy over three years. For high income debtors, the minimum payment obligation is based on the amount by which the debtor's income exceeds a particular threshold. In addition, debtors who want to retain non-exempt assets must contribute the value of those assets as part of their minimum payment obligations. If debtors do not pay their minimum obligations, the bankruptcy trustee will be able to pursue them for nonpayment.

To identify debtors who have a minimum payment obligation, the Consumer Bankruptcy Reform Act streamlines debtor's disclosures. Debtors need only disclose information about assets and debts and submit basic documentation about income. Only high-income debtors, defined as debtors with income within 80% of the relevant threshold, will be required to submit more paperwork.

The new requirements eliminate useless paperwork and ineffective credit counseling that currently do little more than drive up costs. "Can pay" debtors still will be identified, but the many more "can't pay" debtors will obtain relief swiftly and inexpensively. In combination with

its simpler procedures, chapter 10's streamlined disclosures should reduce attorney's fees and provide better access to the bankruptcy system for those who need it.

Even for "can pay" debtors, the Consumer Bankruptcy Reform Act gets bankruptcy courts out of the business of making decisions best left to families by allowing debtors to decide how to allocate their assets and income to make their minimum payment obligations. Parents who want to sacrifice in some areas to meet their payment obligation so their children can play sports or take music lessons will not have to justify their decisions to judges. Debtors who want to keep certain assets can use income to meet their payment obligations. Debtors who are comfortable with parting with assets can give up their property to satisfy their payment obligations.

Discharging Student Loan Debt

Student loan debt is crushing households across the United States. Prior to 1976, student loans were fully dischargeable in bankruptcy. Since then, Congress has made student loan discharge difficult to attain by repeatedly amending the Bankruptcy Code, first to increase the time during which student loans were presumptively not dischargeable after first coming due and then to expand the types of student loans presumptively not dischargeable regardless of when they first came due.

The Consumer Bankruptcy Reform Act turns back the clock and makes student loans subject to the bankruptcy discharge. Debtors who can pay will not be able to walk away from their obligations—student loans or otherwise. But for debtors who cannot pay, allowing student debt relief will release people from the burden of student loans and will help the economy by freeing up income for productive investment, such as purchasing homes and starting families.

Tailored Relief: Saving the Home and the Car

For most people, their two most important assets are their homes and their cars. The current Bankruptcy Code provides little assistance. It prohibits residential mortgage modification, and provides no relief for people who have fallen behind on rent. If a debtor wants to keep a car, only two unattractive options are available: agree to pay more for the car than it is worth by reaffirming or pay the car's value in one lump sum.

Chapter 10 fixes these problems. First, it allows a debtor to tailor the consumer bankruptcy process by modifying only a residential mortgage or an auto loan, leaving other credit relations undisturbed. Second, it allows modification of a residential mortgage, treating the home mortgage like any other secured debt. Third, it allows a debtor to redeem a car over time. And fourth, for renters, it allows the discharge of up to 90 days back rent. Each of these changes will ensure that people can obtain a meaningful fresh start, without depriving the lenders of the value of their collateral.

Prohibiting Abusive Debt Collection Practices

Predatory lending and abusive debt collection practices occur across the country, including in bankruptcy courts. The Consumer Bankruptcy Reform Act tackles these abuses. It provides for the disallowance of claims if the underlying debt violates consumer financial protection laws, and it enables debtors to obtain compensation from creditors that harass them in violation of bankruptcy's discharge injunction. The Act also gives the Consumer Financial Protection Bureau a role in bankruptcy by allowing the Bureau to appear in bankruptcy cases and creating a process for informal resolution of complaints of individual debtors.

Although we have listed our titles and affiliations below, we speak for ourselves and not our institutions. Similarly, the signatures on this letter should not be understood as any individual's endorsement of every word of the bill now or after it is amended. The Consumer Bankruptcy Reform Act provides a thoughtful, workable, and comprehensive response to the problems that plague the current consumer bankruptcy system, which is why we support it.

Sincerely,

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