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The Reintroduction of the Consumer Bankruptcy Reform Act: Throwing Debtors a Lifeline

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In an ideal world, the United States consumer bankruptcy system provides a “fresh start” to individuals who find themselves in financial distress for reasons beyond their control while also stimulating the economy by allowing debtors the ability to engage in transactions.[1] In reality, however, overly complex laws and procedures in the Bankruptcy Code[2] prevent this system from functioning at its full potential. Moreover, current procedural complications too often lead to significant racially disparate outcomes that disadvantage people of color.[3]

Many of these inequalities result from the current system’s requirement that individuals filing for bankruptcy[4] must choose between a Chapter 7 liquidation plan or a Chapter 13 repayment plan.[5] This choice is critical to the likelihood that debtors will have their debts discharged.[6] But because Chapter 7 has no provision for deferring payment of attorneys’ fees, consumers who are unable to save up for bankruptcy—disproportionately people of color—have no viable option other than Chapter 13, which is more costly and less likely to result in a discharge of debts than is its counterpart.[7] In addition, a “means test” must be passed in order to file under Chapter 7, further restricting eligibility.[8]

With the goal of reducing these disparities by simplifying the current procedures for filing for bankruptcy, Senator Elizabeth Warren (D-Mass.) and House Judiciary Committee Chairman Jerrold Nadler (D-N.Y.) reintroduced the Consumer Bankruptcy Reform Act[9] on September 28, 2022.[10] This legislation would replace the current two-chapter system with Chapter 10, a single point of entry into the bankruptcy system for all individual debtors with debts less than \$7.5 million.[11] This process makes the filing of bankruptcy more streamlined, equitable, and accessible for all by removing the significantly disparate results that Chapters 13 and 7 currently bring about.[12]

In addition, the bill would revise which types of debts can be discharged in bankruptcy.[13] For instance, the bill notably would permit the student-loan debt—currently deemed non-dischargeable—of debtors who cannot pay back their student loans to be dismissed with approval from a bankruptcy judge.[14] This student-debt provision would not only provide relief for individuals drowning in unpaid student loans, but also would stimulate the economy by allowing for more freedom to spend and invest productively.[15]

The Consumer Bankruptcy Reform Act of 2022 was originally introduced in 2020, but its progress stalled when it was faced with opposition in Congress by Republicans, who did not consider the reformation of the bankruptcy process to be a high priority.[16] The Act’s recent reintroduction is timely; student-loan debt is at an

all-time high and many of those who owe the most are also struggling the most to make ends meet in an economic environment in which inflation continues to skyrocket in the wake of the COVID-19 pandemic.[17] Moreover, with President Biden’s pausing of student-loan payments set to end on December 31, 2022,[18] Congress ought to seriously consider this bill in light of its promotion of equal access to the benefits of bankruptcy as well as its stimulation of economic engagement.[19]

[1] *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

[2] 11 U.S.C. § 101 (2022).

[3] Rory Van Loo, *A Tale of Two Debtors: Bankruptcy Disparities by Race*, 72 AL. L. REV. 231, 234-35 (2009).

[4] See Pamela Foohey, Robert M. Lawless & Deborah Thorne, *Portraits of Bankruptcy Filers*, 56 GA. L. REV. 573, 591 (2022) (explaining that Chapter 7 allows debtors to discharge unsecured debt through a liquidation of assets whereas Chapter 13 requires debtors to repay creditors over three to five years).

[5] Rory Van Loo, *A Tale of Two Debtors: Bankruptcy Disparities by Race*, 72 AL. L. REV. at 234 (explaining that part of the reason why fewer Black individuals who entered bankruptcy eventually obtain a discharge is because they choose Chapter 13 “with much higher frequency than did whites and Hispanics”).

[6] Pamela Foohey, Robert M. Lawless & Deborah Thorne, *Portraits of Bankruptcy Filers*, 56 GA. L. REV. at 641.

[7] *The Consumer Bankruptcy Reform Act of 2020*, AM. BANKING INST., <https://www.abi.org/feed-item/the-consumer-bankruptcy-reform-act-of-2020> (last visited Oct. 5, 2022).

[8] Pamela Foohey, Robert M. Lawless & Deborah Thorne, *Portraits of Bankruptcy Filers*, 56 GA. L. REV. at 592-593 (“Since 2005, with the enactment of BAPCPA, people must pass the “means test” to file under [C]hapter 7, which is meant to serve as an income screen that restricts eligibility to [C]hapter 7’s quick discharge”).

[9] Consumer Bankruptcy Reform Act, S. 4991, 116th Cong. § 101(a) (2020).

[10] *Sen. Warren and Rep. Nadler Reintroduce the Consumer Bankruptcy Reform Act*, WARREN SENATE (Sept. 28, 2022), <https://www.warren.senate.gov/newsroom/press-releases/senator-warren-and-representative-nadler-reintroduce-the-consumer-bankruptcy-reform-act>.

[11] *Id.*

[12] *Id.*

[13] Consumer Bankruptcy Reform Act, S. 4991, 116th Cong. § 104.

[14] Kristopher J. Brooks, *Elizabeth Warren wants to let people erase student debt by declaring bankruptcy*, CBS NEWS (Sept. 28, 2022), <https://www.cbsnews.com/news/elizabeth-warren-bill-student-loans-college-debt-bankruptcy-reform>.

[15] See Rory Van Loo, *A Tale of Two Debtors: Bankruptcy Disparities by Race*, 72 AL. L. REV. at 254 (describing how a “fresh start” when an individual’s life is turned upside down by unpredictable events creates an opportunity vital to their full participation in the American economy).

[16] Kristopher J. Brooks, *Elizabeth Warren wants to let people erase student debt by declaring bankruptcy*, CBS NEWS, (Sept. 28, 2022), <https://www.cbsnews.com/news/elizabeth-warren-bill-student-loans-college-debt-bankruptcy-reform>.

[17] *Id.*

[18] *COVID-19 Emergency Relief and Federal Student Aid*, STUDENT AID, <https://studentaid.gov/announcements-events/covid-19> (last visited Oct. 5, 2022).

[19] See Rory Van Loo, *A Tale of Two Debtors: Bankruptcy Disparities by Race*, 72 AL. L. REV. 254.