Congress Must Prioritize Bankruptcy Reform

For many Americans, a reformed Bankruptcy Code that meets the scope of our current financial crisis will be the only way out of the COVID-19 recession.
THE WAVE OF BANKRUPTCIES IS COMING
A breakdown of data and evidence

Americans are in dire economic straits due to COVID-19 and the resulting recession it has created. Unemployment numbers have spiked to Great Depression levels and millions are struggling to get by while taking advantage of temporary benefits like mortgage forbearance or expanded unemployment insurance that may soon run out.

During past economic downturns, and most recently in 2008, many were forced to turn to bankruptcy. Because of the pandemic, coronavirus-related court closures have only temporarily delayed a wave of filings in the past several months. With no end to the health crisis in sight, we’re sitting on a ticking financial time bomb.

THE FINANCIAL PERIL FACING AMERICANS

11.1% national unemployment rate as of July 2020, which remains higher than at any point during the Great Recession.

17 straight weeks of more than 1 million first-time jobless claims.

32.5 million people currently claiming state or federal unemployment benefits.

$14.3 trillion total U.S. household debt as of Feb. 2020, an all-time high.
CIVILIAN UNEMPLOYMENT
Seasonally adjusted, 1990-2020

Note: Shaded areas represent recessions as determined by the National Bureau of Economic Research (NBER). An endpoint for the recession that began in February 2020 has not yet been determined. Data online at https://data.bls.gov/timeseries/LNS13000000.

U.S. BUREAU OF LABOR STATISTICS • bls.gov/cps

TOTAL DEBT BALANCE

Source: FRBNY Consumer Credit Panel/Equifax
Without decisive action, Americans who’ve lost jobs or businesses through no fault of their own will be mired in crippling amounts of debt they cannot possibly hope to repay. The long-term health and competitiveness of our economy will suffer, just as it did during the Great Recession. In a crisis of this magnitude, bankruptcy will be the only real solution for many families and small business owners who never dreamed they would need it.

Bankruptcy does not mean skirting one's financial obligations; instead it must be seen as a key part of the collective social safety net for those who have been dealt a bad hand. The availability of filing for bankruptcy is just as integral to surviving the recession for Americans as unemployment insurance, loan forbearance, Paycheck Protection Program (PPP) loans, and other relief measures.

Unfortunately, our Bankruptcy Code has not evolved to meet the needs of today’s consumers, or, more pointedly, to address today’s global crises. Whatever Congress’ intentions might have been in passing the Bankruptcy Abuse and Prevention Consumer Protection Act (BAPCPA) of 2005, it is clear that they did not anticipate the seismic economic shocks of the following 15 years. As a result, there remain substantial barriers to accessing bankruptcy relief that will make a quick and meaningful recovery unavailable to many families.

Bankruptcy reform is the fresh start America desperately needs. It’s a solution with bipartisan appeal that will serve the needs of Americans across the nation. Only if consumers and small businesses can be relieved of enormous unpayable debt burdens will they be able to purchase new goods and services to get the economy moving again. It’s time for Congress and the Administration to come together to make this a priority. Without this lifeline, millions of Americans could lose their homes, igniting a chain reaction that will slow or halt the recovery and cripple our economy for years to come.

STATES WITH THE HIGHEST AND LOWEST RATES OF MORTGAGES AT LEAST PAST 30 DAYS DUE

March, 2020

PROFILES OF ECONOMIC HARDSHIP

The average American and small business owners need help

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HOW CAN CONGRESS REFORM THE BANKRUPTCY CODE FOR THE BENEFIT OF CONSUMERS AND SMALL BUSINESS OWNERS

What exactly is needed

We need immediate and substantial amendments to our nation’s Bankruptcy Code. The National Association of Consumer Bankruptcy Attorneys (NACBA) and the National Consumer Law Center (NCLC) are calling on Congress and the Administration to address this issue now by reforming bankruptcy laws to provide relief from the COVID-19 recession. These provisions include:

Protect Homes by Increasing the Homestead Exemption: NACBA and NCLC recommend that Congress enact a $100,000 homestead exemption floor, applicable to all cases where the homestead exemption would otherwise be lower. Many individuals will be filing bankruptcy cases solely because of the pandemic and its effects. Debtors should not be forced to lose their homes due to a worldwide financial disaster that is far beyond their control.

Ensure Bankruptcy Filers Keep Their Tax Refunds and COVID Benefits: Congress should enact a $10,000 tax refund exemption and make clear that tax refunds are not disposable income in Chapter 13, especially since many debtors filing for bankruptcy due to COVID’s devastating financial effects will have worked only a partial year and will desperately need the substantial tax refunds that will result. Debtors should also be protected from trustees seizing COVID benefits that are essential to continued subsistence and often the only resource standing between them and deprivation.

Expand Access to Chapter 13 Bankruptcy and Increase Its Utility for Families Who Need It: The debt limits in Chapter 13 have not kept up with increasing home mortgage and student loan debt. Congress should expand access to Chapter 13 and improve its usefulness for debtors and small businesses by raising debt eligibility limits for filing and providing more flexible options for discharging debts or extending repayment plans. Chapter 13 can provide a method of reorganization for many small businesses that is much less expensive than Chapter 11. Chapter 13 debt limits should be doubled so that more families and small businesses are allowed to file Chapter 13 cases to resolve hardships caused by this crisis.

Protect Bankruptcy Debtors from Discrimination: In the initial days of attempting to obtain benefits afforded by the CARES Act, bankruptcy debtors were being told they could not receive benefits such as mortgage relief and small business loans because they were in bankruptcy. Bankruptcy Code section 525 should be amended to ensure that no entity can discriminate against past or current bankruptcy debtors in providing COVID-related assistance and stipulate that court approval is not required for a debtor to qualify for such assistance.

Provide Options to Debtors Who File for Chapter 13: Debtors filing for Chapter 13 bankruptcy need options to deal with mortgage payments when there has been forbearance on those payments. Mortgage servicers should be permitted to file a supplemental claim when there has been forbearance on mortgage payments during a Chapter 13 plan. The debtor can then request that the court modify the plan or order that the mortgage payments be deferred until the end of the mortgage period.
**Update the Bankruptcy Code to Provide Relief from Student Loan Debts:** Student loan debt has skyrocketed to $1.64 trillion. While many student loan borrowers have been able to keep up with their payments, a significant number of borrowers impacted by the pandemic have fallen into default and are unable to make meaningful payments. Restoration of full bankruptcy protections of all student loans would make these borrowers economically functional once again.

**WHO CAN SPEAK ON THIS IMPORTANCE OF THIS TOPIC**

*NACBA and NCLC Attorneys*

**Henry Sommer,**
Past president of NACBA, Editor-in-Chief of Collier on Bankruptcy, the nation’s leading bankruptcy treatise who has worked on bankruptcy legislation since 1980

**Ike Shulman,**
Co-founder and first president of NACBA, founding NACBA board member and is the NACBA legislative committee co-chair

**Ed Boltz,**
Past president of NACBA, serves on the NACBA board and has his own consumer practice

**Matt Mason,**
Past president of NACBA, serves on the NACBA board and is a member of the NACBA legislative committee

**John Rao,**
Attorney at the NCLC, past vice president of NACBA and serves on the NACBA board