Around the Kitchen Table

> For the more than 1 million women who will go to the bankruptcy courts each year, there is no more important pending federal legislation than the bankruptcy bill. The economic survival of their families may well hang in the balance.

Bankruptcy: The New Women's Issue

by Prof. Elizabeth Warren

If the bankruptcy legislation that's currently being debated in the Senate (S.256) passes, it is women who disproportionately will bear the brunt of higher costs, more restrictions and less protection from creditor abuses. Women are now the largest demographic group in bankruptcy, outnumbering men by about 150,000 per year. More than a million women will find their way to the bankruptcy courts this year--more women than will graduate from four-year colleges, receive a diagnosis of cancer, or even file for divorce. The rapid rise of women in bankruptcy illustrates a shocking decline in the financial health of women who should be succeeding in our economy.

By the most overt criteria--education, employment, homeownership--the women who file for bankruptcy are, as a group, solidly middle-class. They are filing for bankruptcy after they have been laid off from work; after they--or their children--have had serious medical problems, or after their ex-husbands have quit paying child support. The women I've interviewed speak of trying to keep their families together, of holding down two jobs to try to save their homes, or of losing their jobs because they stayed home to care for a seriously ill child. By the time they file for bankruptcy, they owe, on average, more than their gross annual income in short-term, high-interest debt. On average, the people filing for bankruptcy would have to give every fifth paycheck to their creditors just to pay the interest on their outstanding loans.

How does current bankruptcy protection help women? By declaring bankruptcy, women can discharge certain debts, principally their credit card obligations, so that they can pay the mortgage or rent, utility bills, tuition, and car payments, and buy food and clothing for themselves and their children. For homeowners, bankruptcy provides a chance to stop a foreclosure temporarily, to catch up on back payments, and to get back on track with monthly payments. For those with cars, bankruptcy offers the opportunity to give back the car and eliminate the remaining debt or to make payments equal to the actual value of the car.

Bankruptcy, however, is hardly a complete economic renewal. A woman who owns a home will have to make all the payments, in full, plus penalties and interest, or lose the house. She will also have to continue making car payments if she hopes to keep her car. Taxes and student loans must be paid in full. And her credit will be damaged for years to come. Nonetheless, the ability to discharge high-interest credit card debt, outstanding medical bills, and finance company loans is a godsend to someone facing missed payments, foreclosures, repossessions, penalties and compound interest from which she could never recover.

What will happen if the banking lobby, at long last, has its day in Washington? While some of the bill's proposals are limited to those who earn more than the median family income in the United States, the overwhelming majority apply to every person--regardless of economic circumstances. So, for example, requirements deliberately designed to drive up the cost of bankruptcy--such as increased paperwork and new liability costs for bankruptcy attorneys--apply to every single case. Provisions increasing payback requirements and reducing the scope of the debt relief apply across the board in consumer cases, regardless of how little money the debtor makes or the reason for the bankruptcy filing.

So some women will be forced out of the system, unable to right themselves financially, living in a permanent state of past due notices, evictions and repossessions. Other women will make their way through a deliberately more complex maze of bankruptcy rules and regulations, paying more in legal fees and forced into more negotiations with their creditors. Those who complete a Chapter 7 (where all credit card debts are erased) will find that less of their debt will be discharged, which means that their post-bankruptcy position will not be as stable as it would have been under current law. Many of those who attempt to save a house in Chapter 13 (which involves repayment plans) will find that they are unable to confirm a more stringent plan, making them ineligible for protection. Still others will learn that they'll be bound to longer repayments of larger proportions of their modest incomes. The laws are gender-neutral, and the restrictions will apply to men as well as women, but the direct effects on more than a million women a year will be especially severe.

There is a second group of women that benefits from bankruptcy protection in its current form, even though they may avoid filing for bankruptcy themselves. They are the ex-wives of men who declare bankruptcy. As the law stands, women trying to collect support obligations need not worry that what is owed to them will be discharged in their ex-husbands' bankruptcies. And a man who can discharge most of his credit card debt is in a better position to pay his ex-wife. In a world in which only 39 percent of women collect all the child support owed to them, women need every available tool to help them collect and to help men get in a position where they can pay.

But the credit card companies would like more of their debt treated the same way as child support, alimony and taxes, and the proposed legislation takes a major step in that direction. In place of the carefully protected access to her ex-husband's post-bankruptcy income she now has, under the proposed legislation a woman trying to collect child support or alimony will find herself more often competing with MasterCard and Visa.

Radically altering the bankruptcy code will make matters far worse for women, but the fact is, simply maintaining it won't do anything to address the underlying problems driving women into debt and bankruptcy. Instead of following an agenda set by credit companies, our legislators could work on providing health insurance for children. If they did, hundreds of thousands of families would never file for bankruptcy. If states offered more generous unemployment benefits, bankruptcy filings would fall off sharply. If the Federal Reserve adopted more aggressive regulations over predatory mortgage financing, tens of thousands of families that file for bankruptcy to save their homes from unscrupulous lenders would be spared. And certainly if Congress restored the long-honored notion of limiting credit card interest rates, millions of households could pay down their debts over reasonable periods, without resorting to bankruptcy. But our legislators' priorities continue to be elsewhere, and the result is that women and families have had to weather ever more frequent economic storms on their own. Bankruptcy has therefore become a private social safety net, and unless they're planning to mend the public one, the Senate should not take that option away.

Resources:

The Bankruptcy Bill (Moving Ideas & Demos)

"Illness & Injury as Contributors to Bankruptcy" (Harvard Medical and Law Schools, Feb 2005)

"Credit Card Firms Won as Users Lost" (Los Angeles Times: March 4, 2005)

Solutions:

Restoring Borrower Security: Addressing the Debt Crisis in America (Demos)