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DOUBLE WHAMMY: HOW THE NEW CREDIT CARD NONDISCHARGEABILITY PROVISION AND THE NEW MEANS TEST HIT SINGLE MOTHERS OVER THE HEAD

BY HATTY YIP

INTRODUCTION

Laura Fogle is a nurse and single mother of two who blames her use of credit cards after cancer surgery for falling into deep debt. Ms. Fogle is broke, but soon after she filed for bankruptcy, she would receive “at least two or three new credit card offers—Citibank, MasterCard” every day. As shocking as this may sound, a bankrupt single mother is exactly the kind of person credit card companies want to target: “Under the new law, which the banking industry spent more than $100 million lobbying for, [the newly bankrupt] may be even more attractive because it makes it harder for them to escape new credit card debt.”

In a given year, more people will end up bankrupt than will suffer a heart attack, than will be diagnosed with cancer, or than will graduate from college. Among the hardest hit group are single mothers, even those who are middle-class with high salaries and good jobs. Warren and Tyagi estimate that “over the past twenty

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1 Timothy Egan, Newly Bankrupt Raking in Piles of Credit Offers, N.Y. TIMES, Dec. 11, 2005, § 1, at 1.
2 Id.
3 Id.
4 ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP 6 (2003). Elizabeth Warren is the Leo Gottlieb Professor of Law at Harvard Law School and a leading scholar in bankruptcy law. Amelia Warren Tyagi is Elizabeth Warren’s daughter and specializes in health care and public education. See id. at 255.
5 Id. at 9 (“Today’s middle-class single mothers have better legal protection, higher salaries, more child support, and more opportunities in the workplace than their divorced counterparts of a generation ago, yet they face a much greater likelihood of financial collapse.”).
years, the number of single mothers in bankruptcy has increased more than 600 percent."

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ["the new bankruptcy law"], which went into effect on October 17, 2005, creates some comprehensive changes to the bankruptcy system. The new bankruptcy law is "harsh, ambiguous in many aspects, and makes it harder for consumers who really need a fresh start from taking advantage of bankruptcy laws." More specifically, the change in the credit card nondischargeability provision under § 523(a)(2)(C) and the implementation of the new means test under § 707(b)(2) create additional barriers to all bankruptcy filers. As this article will illustrate, these two new provisions are double whammies for single mothers.

This article will show how the credit card nondischargeability provision under § 523(a)(2)(C) and the new means test provision under § 707(b)(2) in the new Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 adversely affects single mothers in their role as both creditors trying to collect domestic support obligations from their ex-

6 Id.
9 Pamela Yip, Bankruptcy Changes are Being Felt, DALLAS MORNING NEWS, Apr. 23, 2006, at C5.
12 See discussion infra Parts II.B-C, III.A-B.
husbands and as debtors trying to use bankruptcy to overcome financial difficulties. Specifically, Part II(A) of this article shows how single mothers are a category of debtors profoundly vulnerable to bankruptcy; Part II(B) explains the new means test provision; Part II(C) describes how credit card companies and their tactics push many debtors into bankruptcy and how the new credit card nondischargeability provision protects credit card companies while harming single mothers; Part III(A) illustrates how the new bankruptcy law hurts single mother creditors; Part III(B) shows how the new bankruptcy law creates multiple barriers for single mother debtors; and Part III(C) proposes certain solutions to alleviate the adverse effects of the new bankruptcy law on single mothers.

II. BACKGROUND

A. SINGLE MOTHERS AND BANKRUPTCY

Bankruptcy profoundly affects single mothers because single mothers are particularly vulnerable to financial problems. As Elizabeth Warren and Amelia Warren Tyagi put it: “Having a child is now the single best predictor that a woman will end up in financial collapse.”\textsuperscript{14} In fact, “[a] divorced woman raising a youngster is nearly three times more likely to file for bankruptcy than her single friend who never had children.”\textsuperscript{15} Statistics show that “[s]ingle mothers are now more likely than any other group to file for bankruptcy—more likely than the elderly, more likely than divorced men, more likely than minorities, and more likely than people living in poor neighborhoods,”\textsuperscript{16} and that “one in every 38 single mothers fil[e] for bankruptcy in a single year.”\textsuperscript{17} Single mothers constitute a category of people who are highly vulnerable to bankruptcy.

There is also an increasing trend of bankruptcy in single-mother families. Warren and Tyagi describe: “If current trends

\textsuperscript{14} WARREN \& TYAGI, supra note 4, at 6.
\textsuperscript{15} Id.
\textsuperscript{16} Id. at 104.
\textsuperscript{17} Id. at 105.
persist, more than one of every six single mothers will go bankrupt by the end of the decade.” 18 Moreover, “over the past twenty years, the number of single mothers in bankruptcy has increased more than 600 percent.” 19 Things seem to be getting worse as middle-class single mothers “are actually less secure than they were just twenty-five years ago.” 20

While some may believe that low-income single mothers or those single mothers who overspend are the only ones in danger of being bankrupt, the truth is that all single mothers, even those with decent incomes, will likely face financial problems. The “deadbeat dad” problem does not account for all financial distress because even though “[t]oday’s middle-class single mothers have better legal protection, higher salaries, more child support, and more opportunities in the workplace than their divorced counterparts of a generation ago...they face a much greater likelihood of financial collapse.” 21 Surprisingly, “single mothers who have been to college are actually more likely to end up bankrupt than their less educated sisters—nearly 60 percent more likely.” 22 Most of these women in bankruptcy are “a fairly representative cross-section of the American middle class.” 23 Thus, single mothers, even those who earn decent salaries, will be profoundly affected by the new bankruptcy law because so many of them will likely end up in bankruptcy.

The new bankruptcy law affects women in many ways. As Peter Alexander, Dean and Professor of Law at Southern Illinois University School of Law, puts it, “[t]he Bankruptcy Code is particularly harmful to women and children.” 24 Single mothers fall into the category most harmed by the new law since “[t]he individuals who will be harmed most by the new laws are families.

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18 Id. at 9.
19 Id.
20 Id. at 104.
21 Id. at 9.
22 Id. at 106.
particularly families struggling to make ends meet because they do not have adequate health insurance and have insurmountable medical bills; families whose primary breadwinner has been downsized out of a job; and families that are torn apart by divorce." Furthermore, since "women and children will find themselves in danger because the Bankruptcy Code will likely no longer be the safety net for the 'honest, but unfortunate,'" single mothers will find themselves adversely affected by the new bankruptcy law.

B. NEW MEANS TEST (§ 707(B))

One of the comprehensive changes in the new bankruptcy law is the implementation of a means test under § 707(b), which is applicable to chapter 7 bankruptcies. A chapter 7 bankruptcy is the classic "straight" or liquidation bankruptcy. The central idea behind a chapter 7 is to "liquidate property, distribute the proceeds, discharge the debts, and leave the debtor with a reason to keep working." All of the debtor's property is gathered and sold, and the proceeds are distributed to the creditors and the debtor can obtain a "fresh start" after the bankruptcy.

Under § 707(b)(1), which allows for dismissal of a case or conversion of a case from chapter 7 to chapter 11 or 13,

[a]fter notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any

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25 Id. at 572.
26 Id. at 583.
28 Id. at 150.
29 Id. at 149 ("A Trustee in Bankruptcy (TIB) is appointed to gather all the debtor's property, to sell it, and to distribute the proceeds to creditors. At the end of the process, the creditors have their proportional share of whatever the debtor had, and the debtor receives a discharge of the remaining outstanding debts.").
30 Id. at 123, 149 ("The debtor can get back to work or start a new business, flat broke and without much in the way of assets, but knowing that the benefits of tomorrow's hard work will not go to the creditors.").
party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter.\textsuperscript{31}

§ 707(b)(2)(A)(i) describes presumption of abuse and the new means test by stating:

> In considering...whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor’s current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—(I) 25 percent of the debtor’s nonpriority unsecured claims in the case, or $6,000, whichever is greater; or (II) $10,000.\textsuperscript{32}

The amended § 707(b) establishes multiple changes from the old provision. Under the old provision, only the court or the United States trustee could file a § 707(b) motion, whereas under the new bankruptcy law, any party in interest can request a dismissal or conversion unless the debtor is below the applicable state median income standard.\textsuperscript{33} The 2005 amendments also changed the standard of dismissal from "substantial abuse" to "abuse".\textsuperscript{34} Furthermore, the new amendments "eliminated the sentence that created a presumption in favor of granting chapter 7 relief to the debtor."\textsuperscript{35} Another change is that the court can now

\textsuperscript{33} COLLIER ON BANKRUPTCY ¶ 707.05 (15th ed. rev. 2006).
\textsuperscript{34} Id.
\textsuperscript{35} Id.
convert a chapter 7 case to chapter 11 or chapter 13 with the debtor’s consent.\textsuperscript{36}

The new means test affects the presumption and standard of abuse in a chapter 7 bankruptcy case. The new means test in § 707(b)(2) “create[s] a bright line test to determine whether a debtor’s chapter 7 case is to be presumed abusive for purposes of section 707(b).”\textsuperscript{37} The test is applied if the debtor’s current monthly income is above “the safe harbor amount set forth in § 707(b)(7).”\textsuperscript{38} These debtors will need to compute calculations using various monthly expenses and the Internal Revenue Standard standards and deduct certain expenses from their current monthly income.\textsuperscript{39} The means test works as follows:

If, after deduction of those expenses, the monthly amount deemed to be remaining, multiplied by 60, is either 1) greater than or equal to $6000 or 25 percent of the debtor’s nonpriority unsecured debts, whichever is greater or 2) greater than or equal to $10,000, then the case is presumed to be an abuse. If the case is presumed to be an abuse, the court may dismiss it under section 707(b) or, with the debtor’s consent, convert the case to chapter 13.\textsuperscript{40}

The means test negatively impacts debtors because it will exclude some debtors from chapter 7, depriving them of a fresh start, and will force others into a chapter 13 bankruptcy,\textsuperscript{41} where they will need to contribute their disposable income for a period up to 5 years.\textsuperscript{42} Thus, the new means test and new amendments to § 707(b) make it harder for certain debtors to file a chapter 7 bankruptcy and easier for the court or a party in interest to get a chapter 7 case dismissed or converted into a chapter 11 or 13 case.

\textsuperscript{36} Id.
\textsuperscript{37} Id.
\textsuperscript{38} Id.
\textsuperscript{39} Id.
\textsuperscript{40} Id.
\textsuperscript{41} See discussion infra pp. 25-26.
\textsuperscript{42} See discussion infra pp. 26-27.
C. CREDIT CARD COMPANIES AND BANKRUPTCY

Credit card companies are becoming more aggressive in soliciting clients, and credit card debt often leads debtors into bankruptcy. In a single year, more than five billion pre-approved credit card offers are sent to families, "totaling over $350,000 of credit per family." Credit card companies are more than willing to issue large lines of credits to people with moderate incomes. One example explains, "[t]his credit card company was willing to issue a credit line of up to $50,000--and was encouraging the customer to use that credit line quickly by transferring balances from other cards, enticing with a teaser rate--to someone who grosses only $30,000 a year." In another example, a 53 year old woman who voluntarily filed for chapter 13 bankruptcy had over a dozen credit cards and was carrying over $136,000 in credit card debt with a yearly income of $18,000. It is apparent that these actions by credit card companies eventually led to a rise in credit card debts and bankruptcies since there was an increase of 6,000 percent in credit card debts from 1968 to 2000.

Credit card companies have in the past pushed Congress for bankruptcy reform and continue to do so. The new, stricter nondischargeability provisions under the new bankruptcy law are a reflection of this. Section 523 lists exceptions to discharge, meaning that a discharge granted under § 727 and other provisions "will not discharge an individual debtor from the types of debts listed in section 523(a)." Exceptions to discharge "represent a

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43 WARREN & TYAGI, supra note 4, at 130.
45 Id.
46 WARREN & TYAGI, supra note 4, at 130 ("Credit card debt has increased accordingly: from less than $10 billion in 1968 (inflation adjusted) to more than $600 billion in 2000, an increase of more than 6000 percent.").
47 Clark, supra note 44, at 25 ("Credit card companies are still pressing Congress for bankruptcy reform, complaining that bankruptcy laws are to blame for the rise in the credit card default rates.").
49 COLLIER ON BANKRUPTCY, supra note 33, at ¶ 523.01.
national value judgment that certain debts stand above others, that they must be paid no matter how desperate the circumstances of the person.” Specifically relating to credit card companies is § 523(a), which states in pertinent parts:

(a) A discharge under section 727,...or 1328(b) of this title does not discharge an individual debtor from any debt—...(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition;...(C)(i) for purposes of subparagraph (A)—(I) consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and (II) cash advances aggregating more than $750 that are extensions of consumer credit under an open-end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable.\(^5\)

The new amendments to § 523(a)(2)(C) favor credit card companies because they make certain credit card related debts, that were previously dischargeable, non-dischargeable. Section 523(a)(2)(C) provides that consumer debts “exceeding $500 and owed to a single creditor by an individual debtor for ‘luxury goods or services’ incurred on or within 90 days before the order for relief”\(^6\) and “cash advances exceeding $750 that are extensions of consumer credit under an open-end credit plan obtained by an

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\(^5\) WARREN, supra note 23, at 30.
\(^6\) COLLIER ON BANKRUPTCY, supra note 33, at ¶ 523.08 (noting that “‘luxury goods or services’ do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor”).
individual debtor on or within 70 days before the order for relief" are presumed to be non-dischargeable.\textsuperscript{53} This presumption is rebuttable and "can be overcome by evidence that the debtor experienced a sudden change in circumstances or that the debtor did not contemplate filing a bankruptcy petition until after the transaction took place."\textsuperscript{54} Moreover, the presumption shifts "only the burden of going forward, and not the ultimate burden of proof, which remains on the creditor."\textsuperscript{55} Thus, by creating presumptions of nondischargeability of certain debts under the amended § 523(a)(2)(C), credit card companies are able to render more credit card debts non-dischargeable.

\textbf{III. ANALYSIS}

\textbf{A. SINGLE MOTHER CREDITORS}

Single mother creditors lose out from the new bankruptcy laws because the new credit card nondischargeability provisions make certain debt non-dischargeable, forcing single mothers to compete with credit card companies to get child support and alimony, and the increased priority granted to them means nothing if there is nothing left in the estate for them to recover.\textsuperscript{56} Single mother creditors are ex-wives of bankrupt men.\textsuperscript{57} As Warren explains, they "will be profoundly affected by the bankruptcy system even though they may avoid filing for bankruptcy themselves"\textsuperscript{58} because the new bankruptcy law will "affect their ability to collect alimony and child support."\textsuperscript{59} Even though men could also be recipients of alimony and child support, statistics show that women are often the ones who run into problems

\begin{footnotesize}
\textsuperscript{53} Id.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} The increased priority for unsecured claims for domestic support obligations gives essentially no advantage to single mothers since most chapter 7 cases are no-asset cases. See discussion infra pp. 17-18.
\textsuperscript{57} WARREN, supra note 23, at 32.
\textsuperscript{58} Id.
\textsuperscript{59} Id.
\end{footnotesize}
collecting when ex-spouses file bankruptcy. Therefore, single mother creditors constitute a category of people who will be adversely affected by the new bankruptcy laws.

The new credit card nondischargeability provisions under § 523(a)(2)(C) will force single mothers to compete with credit card companies. Previously, before the new amendments to the bankruptcy law, most credit card debts could be discharged in a chapter 7 case, making ex-husbands more able to pay his child support and alimony obligations. Under the amended § 523(a)(2)(C), if an ex-husband decides to buy a television worth $500 or more within 90 days of filing for bankruptcy, or if he takes out a cash advance of $750 or more within 70 days of filing for bankruptcy, these amounts would be presumed to be non-dischargeable. Even though prior domestic support obligations are also non-dischargeable under § 523(a)(5), meaning that exhusbands cannot discharge past due child support or alimony in bankruptcy, credit card companies are now also accorded special status and put on the same level as single mothers trying to collect domestic support obligations. Since domestic support obligations have the same status as credit card debts under § 523(a)(2)(C),

60 Id. ("But among those who owe child support, the overwhelming proportion of people in bankruptcy—like the overwhelming proportion in the population generally—are ex-husbands."); Id. ("In 2001, bankrupt men obligated to pay child support outnumbered women with similar obligations by 13 to 1, compared with a ratio of about 8 to 1 of men to women obligated to pay child support in the population generally. Men remain the focus of any discussion of support payments, even with the occasional reminder that the parent with the obligation could be a woman."); Id. at 34 ("In a world in which only 39% 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.").

61 Id. at 33 ("A man who can discharge most credit card debt, for example, is in a better position to pay his ex-wife because his disposable income increases. Bankruptcy may not make him any more eager to pay, but it makes him more able to pay."); WARREN & TYAGI, supra note 4, at 124 (stating that "single mothers were helped when their ex-husbands filed bankruptcy because these men could discharge credit card debts and use the money to catch up on their child support").


single mothers must compete with credit card companies to try to get their domestic support obligations.

Studies and statistics show that single mothers will likely be on the losing end of the bargain when forced to compete against big credit card companies. As Warren explains, "a woman trying to collect child support or alimony will find herself more often competing with MasterCard and Visa." Even though a single mother collecting domestic support obligations has certain legal advantages over credit card companies, like being able to garnish a larger portion of her ex-husband's wages, the credit card companies have more resources like "sophisticated collection departments, specialists to work with delinquents, and an expensive legal team." Ultimately, credit card companies do collect much more than single mothers as "credit card issuers collect more than 95% of everything that is owed to them on the first try" whereas "only about 39% of all women owed child support ever collect 100% of what they are owed." These credit card companies will "collect more from women, particularly from women who are heads of their own households, trying to provide for themselves and their children." These studies show that credit card companies will beat out single mothers in the race to collect debts.

Proponents of the new bankruptcy law will argue that other provisions, like the increased priority for unsecured claims for domestic support obligations, sufficiently protect single mother creditors. Under § 507(a)(1), single mother creditors with unsecured claims for domestic support obligations now have first priority, meaning that they will be paid first if there is money left over in the ex-husband's estate after other obligations are paid off. As comforting and pro-single mother creditors as this may

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64_WARREN, supra note 23, at 37._
65_Id._
66_Id._
67_Id._
68_Id. at 31._
69_See 11 U.S.C. § 507(a)(1) (2005)._70_WARREN, supra note 23, at 39 ("When a debtor filed for Chapter 7, secured creditors either seize their collateral or work out a payment plan with the debtor._
sound, this priority oftentimes in reality means nothing. Because the "priority provisions apply only when the Chapter 7 estate has some money to distribute" and "96.4% of all Chapter 7 case are no-asset cases, which means there are no assets to liquidate, no money in the estate, and nothing to distribute." Granting first priority to single mother creditors essentially means "a ticket to stand first in line to collect nothing." Thus, the new amendment to grant single mother creditors first priority in § 507(a)(1) gives almost no advantage to single mother creditors.

The new bankruptcy law adversely affects single mother creditors. Even though they receive higher priority under § 507(a)(1), realistically speaking, this higher priority means almost nothing. Furthermore, by allowing certain credit card debts to be non-dischargeable under § 523(a)(2)(C), the new amendments take away money that previously could be used to pay off domestic support obligations because certain credit card debts that could be discharged before are now not dischargeable and granted the same status as domestic support obligations, forcing single mother creditors to compete with well-resourced credit card companies. Therefore, the new bankruptcy law puts single mother creditors in a worse position than before.

B. SINGLE MOTHER DEBTORS

The new bankruptcy law adversely affects single mother debtors because the new means test provision kicks some single mothers who earn above the median income out of chapter 7 and forces others into chapter 13 and the credit card nondischargeability provisions make single mothers pay off certain debts. The remaining property is dealt with in the bankruptcy. State law permits debtors to exempt some items. Any property that is not exempt is turned over to a bankruptcy trustee for sale, and the proceeds are distributed among the creditors. The law establishes a priority for payment, with all creditors of one kind paid in full ahead of the next class of creditors. Once all priority creditors are paid in full, the remaining creditors—general unsecured creditors—receive a pro rata distribution of whatever is left.

\(^{71}\) Id. at 41.
\(^{72}\) Id.
\(^{73}\) Id.
debts that they would not have had to pay off before. Single mother debtors refer to single mothers who declare bankruptcy. The new bankruptcy law profoundly affects these women because they “disproportionately bear the brunt of higher costs, more restrictions and less protection from creditor abuses.”

Bankruptcy is often used to help single mothers in financial trouble get back on track. Single mothers declare bankruptcy so that “they can discharge certain debts, principally their credit card obligations, so that they can pay mortgage or rent, utility bills, tuition, and car payments, and buy food and clothing for themselves and their children.” Being able to discharge certain credit card debt provides a way for single mothers to get relief from some of their financial troubles: “the ability to discharge high interest credit card debt, outstanding hospital and doctor’s bills, and finance company loans is a godsend to someone so far in debt that she faces a downward spiral of missed payments, foreclosures, repossessions, penalties and compound interest from which she could never recover.” Bankruptcy helps single mothers in financial trouble regroup, clear out some debts, and move in the right track.

Like the ex-husbands who file for bankruptcy, single mothers who file will face harsher results under § 523(a)(2)(C). Under § 523(a)(2)(C), certain credit card debts and cash advances are presumed non-dischargeable in bankruptcy. If a single mother decides to buy a new television that costs $1,000 and files bankruptcy within ninety days of buying that television, the $1,000 debt she incurred would now be presumed to be non-dischargeable. It is true that this presumption can be rebutted by evidence of sudden change in circumstance or that debtor did not contemplate bankruptcy when the transaction took place. However, even if the single mother can present evidence to rebut the presumption, this

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74 WARREN, supra note 23, at 31.
75 Id. at 29 (“These women use the bankruptcy process to stabilize themselves financially.”).
76 Id.
77 Id. at 30.
79 COLLIER ON BANKRUPTCY, supra note 33, at ¶ 523.08.
provision means an increase in attorney’s cost, time, and hardship in filing the bankruptcy. As Bankruptcy Judge Maureen Tighe explains:

To the extent that lower income debtors, which are disproportionately single mothers, use bankruptcy petition preparers, or truly represent themselves, they will get caught more than debtors who have the means to consult attorneys. Most of the “traps” are manageable for debtors who obtain competent legal advice pre-petition. Low-income debtors get caught because no one warned them to either wait to file or not to do certain things before they file.80

On one level, § 523(a)(2)(C) will increase the amount of non-dischargeable debt and give credit card companies money that could be used to help a single mother keep current with her bills. On another level, even if a single mother rebuts the presumption under § 523(a)(2)(C) and successfully discharges the debt, the amendment makes going through bankruptcy more difficult for single mothers since they now have additional barriers to work through before obtaining relief. Therefore, § 523(a)(2)(C) is a lose-lose amendment for single mothers.

The new means test in § 707(b) creates another barrier to single mothers filing for bankruptcy. Under § 707(b)(2), a debtor’s chapter 7 case is presumed abusive if after deduction of certain monthly expenses allowed by statute from the debtor’s monthly income, the monthly amount deemed to be remaining, multiplied by 60, is either greater than or equal to $6,000 or 25 percent of the debtor’s non-priority unsecured debts, whichever is greater, or greater than or equal to $10,000.81 The means test is applied only if the debtor’s monthly income is above the safe harbor amount provided in § 707(b)(7).82 Section 707(b)(7) provides a safe harbor which prohibits the use of the means test if “the current monthly

80 Email from Hon. Maureen Tighe, United States Bankruptcy Court, Central District of California, to author (Mar. 28, 2006) (on file with author).
81 COLLIER ON BANKRUPTCY, supra note 33, at ¶ 707.05.
82 Id.
income of the debtor and the debtor’s spouse combined, multiplied by 12, is equal to or less than the median family income for a family the size of the debtor’s household as set forth in the statute.”

If middle class single mothers are susceptible to financial trouble and bankruptcy, then these single mothers with middle class incomes are more likely to be subjected to the means test. According to the Census Bureau, the median family income in California for 1 earner is $43,436 for 2005. This means that only single mothers who make less than $43,436 a year would be exempt from the means test. In relation to expenses, the local housing and utilities expense allowed for Los Angeles County, California is $1,216 for families with a mortgage or who rent. The national standard living expense for two people, a mother and a child, would be $825 based on a yearly income of $44,000 (which would put this debtor above the median income and subject her to means testing). Under the means test, if the mother has $100 or more of excess income left over each month, the court shall presume abuse. In such cases, where abuse is presumed and not rebutted, the court, the United States trustee or bankruptcy administrator, or any party in interest may dismiss the chapter 7

83 Id.
84 See supra Part II.A.
88 11 U.S.C. § 707(b)(2)(A)(i) (2005) (stating that “the court shall presume abuse exists if the debtor’s current monthly income reduced by amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of (I) 25 percent of the debtor’s nonpriority unsecured claims in the case, or $6,000, whichever is greater; or $10,000”). This means that if a debtor had $100 of excess monthly income after expense deductions, this would constitute $6,000 after multiplying $100 by 60 and thus would result in presumption of abuse under § 707(b)(2)(A)(i)(I).
bankruptcy case or convert the case to chapter 11 or 13 with the debtor's consent. More single mothers will not be able to declare chapter 7 bankruptcy as a result of the new means test provision.

Proponents of the new bankruptcy law will argue that the means test prevents bankruptcy abuse and that single mothers can always rebut the presumption of abuse. Section 707(b)(2)(B)(i)-(iv) allows a debtor to rebut the presumption of abuse established through the means test. The debtor can rebut the presumption of abuse by showing "special circumstances that justify additional expenses or a reduction in the income figure used." However, the debtor must also "itemize each adjustment to income or expenses and provide supporting documentation," "provide a 'detailed explanation' of why the adjustment is necessary and reasonable," and "certify 'under oath' that both the itemization and explanation are accurate." Further, the presumption will only be rebutted "if the reduction in income or additional expenses bring the debtor's deemed available income below the amount that would trigger the presumption." Section 707(b)(2)(b) clearly provides additional barriers to any single mother debtor who earns above the medium income and who may have more than $100 excess monthly income. Even though this presumption can be rebutted, the time, evidence, and attorney fees related to rebutting these presumptions can prove very costly to a single mother debtor.

One adverse effect on single mother debtors resulting from the new means test is the forcing of these debtors to convert to chapter 11 or chapter 13. The other option besides dismissal if a debtor fails the means test and filing is presumed to be abusive is to convert the case to chapter 11 or chapter 13. Chapter 13 is "used primarily by individual consumers to reorganize their financial affairs under a repayment plan that must be completed within three or five years" where a consumer has regular income and under a

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91 COLLIER ON BANKRUPTCY, supra note 33, at ¶ 707.05.
93 COLLIER ON BANKRUPTCY, supra note 33, at ¶ 707.05.
certain amount of debt. The debtor must be an "individual with regular income, meaning an "individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title." Being in chapter 13 means that the debtor must file a plan that provides for repayment of certain debts, including full payment of priority claims under § 507. Moreover, under certain circumstances, chapter 13 requires a five year plan, meaning that a single mother may be required to contribute her disposable income for a five year period rather than the three year period common under the old bankruptcy law.

For a single mother debtor whose bankruptcy filing is presumed to be abusive under § 707(b)(2) and qualifies to be a debtor under chapter 13, converting her chapter 7 case to chapter 13 may be her only option of gaining protection under the bankruptcy system, but she now must contribute a portion of her monthly income to pay off her debts, whereas chapter 7 may allow her to discharge some of her debts outright.

By forcing single mother debtors into chapter 13, the new means test deprives single mothers of the fresh start previously available to them when they filed for chapter 7 under the old law. Even if a single mother is eligible for chapter 13 and converts her case, if she falls within the category of debtors subject to a five year plan, she will need to contribute a portion of her disposable income for a five year period. Previously, a debtor's plan would be over in

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96 COLLIER ON BANKRUPTCY, supra note 33, at ¶ 109.06.  
98 COLLIER ON BANKRUPTCY, supra note 33, at ¶ 1322.17(1)(a)-(c); see also 11 U.S.C. § 1322 and § 1325(b)(4) (2005); WARREN & WESTBOOK, supra note 27, at 314 ("Those debtors who have income in excess of the applicable median suffer...adverse consequences. First, they must propose to keep paying for five years under their Chapter 13 plan, rather than the three-year minimum required of below-median debtors.").  
100 COLLIER ON BANKRUPTCY, supra note 33, at ¶ 1325.08.
three years,\textsuperscript{101} but now, with the new bankruptcy law, the single mother would have to keep paying off her plan for two additional years. Therefore, by forcing single mothers into chapter 13, the new means test forces certain single mothers to give up more disposable income and stay in bankruptcy for two more years.

Another effect of the new means test is dismissal of a single mother debtor's chapter 7 case. If the single mother debtor fails the means test and fails to rebut the presumption of abuse, her case can be dismissed by the court.\textsuperscript{102} For single mothers who do not have "regular income" and therefore do not qualify for chapter 13 bankruptcy,\textsuperscript{103} dismissal is likely. Dismissal of a chapter 7 case means denial of bankruptcy to the single mother debtor. These single mothers will essentially be kicked out of the bankruptcy system and left to fend off her creditors herself without help from the bankruptcy system. This can prove fatal to single mothers hoping to use bankruptcy to get back on track financially since they can no longer use bankruptcy to stabilize their financial condition.\textsuperscript{104} Women who hope to use bankruptcy to try to support themselves and their children, survive unemployment, deal with medical bills, or put their lives in order will not be allowed this protection because she has $100 excess monthly income a month.\textsuperscript{105} Thus, the increased number of dismissals attributable to the new means test will prove detrimental to single mother debtors.

The new means test and credit card nondischargeability provisions greatly harms single mother debtors because they hinder single mothers from declaring bankruptcy without additional cost, time, and barriers.

\textsuperscript{101} Id.
\textsuperscript{104} WARREN, supra note 23, at 29 ("These women use the bankruptcy process to stabilize themselves financially.").
\textsuperscript{105} Id. at 38 ("[T]he growing number of women who will be debtors--women who are trying to support themselves and their children, stay in their homes, survive a period of unemployment, deal with an uninsured medical bill, and put their lives back in order--are simply ignored.").
C. Solutions

One possible solution that may alleviate some of the problems that the new bankruptcy law will likely create is to keep more data on women filing for bankruptcy. As Warren points out in her article, women filing for bankruptcy are often "invisible women". Warren notes that the government reports data on bankruptcy cases and not on the people filing for bankruptcy. Moreover, since men and women are lumped together into one category, there is no information or data about the sex of the filers or data showing bankruptcy filings in relation to men and women. The problem that this creates is that "there are no data to track the changes in the risks that men and women will file for bankruptcy." Keeping separate data for men and women bankruptcy filings may bring about the realization that there are many women, especially single mothers, who have trouble with the bankruptcy system. Furthermore, such data may also help reveal the potential problems in the new bankruptcy law and illustrate the negative effects these new amendments are having on single mothers. Keeping records and data will not solve the problems that the new bankruptcy law created, but it is a necessary step toward making people realize the negative effects the new bankruptcy law may be having on single mothers.

Another possible approach toward softening the blow on single mothers in relation to the new credit card nondischargeability provisions is stricter and more restrictions on credit card companies. It is ironic that credit card companies complain that they do not get repaid if a debtor goes into bankruptcy and discharges most of the credit card debts when credit card companies continually send out pre-approved offers.

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107 Id.
108 Id. ("[N]owhere in these reports is there any information about how many men and how many women filed for bankruptcy, this year or any year. This means that bankruptcy is about ‘debtors’ generically, not about ‘women’ and ‘men.’").
109 Id.
110 Warren & Tyagi, supra note 4, at 130.
It may be true that it is unfair that some debtors incur over $100,000 in credit card charges and then do not have to pay any of it when their bankruptcy case is discharged. But, when so many pre-approved offers are sent to people with minimal income, this result should be expected. Instead of making it harder for people, especially single mothers, to discharge certain credit card debts or cash advances, the focus should be on curbing credit card companies from sending out offers that often cause these debtors to fall into financial distress. Since the new bankruptcy law is already in effect and certain credit card debts are already deemed non-dischargeable, the next best thing that can be done at this point is putting stricter restrictions on credit card companies.

Finally, providing a means test exception for single mothers may be another solution to ameliorate the harshness of the new bankruptcy laws. With provisions in the bankruptcy code that favor credit card companies,111 the government,112 and condominium associations,113 it makes sense to have something in the code to help protect single mothers trying to raise children. Although such an exception is unlikely because opponents will argue that this will open up a floodgate of other exceptions, single mothers are the category of people who are harshly affected by the new bankruptcy laws. Helping single mothers obtain the financial help they deserve will not only help them, it will help their children, who have the potential to be the future leaders of our society or the future welfare recipients or criminals of tomorrow. Thus, an exception to the means test to allow single mothers more breathing room will help wipe out some of the barriers created by the new bankruptcy law and help our nation's future.

IV. CONCLUSION

The changes in the new bankruptcy law, specifically the credit card nondischargeability provision under § 523(a)(2)(C) and the new means test provision under § 707(b)(2) create additional barriers to single mother creditors and single mother debtors by

making it harder for them to obtain a fresh start under the bankruptcy system. On one end, single mother creditors must fight credit card companies for domestic support obligations and less money will be allocated to them with the implementation of these two provisions. On the other end, single mother debtors must tread through multiple barriers before they can go through with their chapter 7 bankruptcy, if they are lucky enough not to get forced into chapter 13 or kicked out of the system entirely. The double whammy these two provisions create hit single mothers involved with the bankruptcy system hard on the head. But hopefully, Congress will soon realize this and use better data collection, stricter provisions against credit card companies, or a new means test exception to soften the blow that single mothers will suffer.