Repairs to law needed

by The Milwaukee Journal Sentinel

Congress gave the credit card industry a big gift in 2005: a law requiring debtors to jump through more hoops to declare bankruptcy. In a new analysis, the Government Accountability Office, a congressional watchdog agency, says one of those hoops - a requirement that consumers get credit counseling before filing for bankruptcy - may not be working as the law, or the industry, intended.

The idea was to head off bankruptcy, but, as the GAO notes: "Anecdotal evidence suggests that by the time most consumers receive the pre-filing counseling, their financial situations are dire, leaving them with no viable alternative to bankruptcy."

That finding tends to vindicate critics of the bankruptcy law, us among them, who disputed the premise that many consumers filed for bankruptcy frivolously. In fact, consumers nearly always seek refuge in bankruptcy because of crushing debt, often brought on by huge medical bills, the loss of a job, a divorce or some other catastrophe.

The finding should give Congress impetus to review the bankruptcy law and make changes to ensure it's not overly burdensome for honest, hard-working people who find themselves in dire financial straits.

The GAO report does find that another new requirement - that filers take a two-hour financial-management course before being discharged of their debts - did fulfill its purpose of improving financial literacy.

The law triggered a run on bankruptcies just before it took effect in October 2005. Afterward, bankruptcy filings slowed drastically. But they have since picked up, though not to previous levels. The law pushed many debtors who were considering bankruptcy to file earlier than they would have. It's unclear whether the new law will keep filings from rebounding to the old levels.

There was concern that credit counselors affiliated with lenders would put borrowers on unfavorable repayment plans, but that doesn't appear to have happened, the GAO says, probably because of precautions written into the law.

Still, credit counselors, bankruptcy lawyers and others close to the situation believe that counseling stops only a minute fraction of clients from going on to file for bankruptcy. The GAO wants to check out that belief against hard data by having the Justice Department track and analyze the results of credit counseling - a good idea.

Eventually, Congress should probably discard the requirement for credit counseling as part of an overall fix of the bankruptcy law, as determined by future analysis.

The now Democratic-controlled Congress should also look at a related matter: the role the credit card companies themselves play in burgeoning consumer debt - particularly their practice of giving cards to people who can't afford them and charging super-high interest rates.

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