

***Marginal Successes, Revised Expectations, Broken Promises
– A Presidency in Review –***

**Part 5: No Bankruptcy Reform for Medically
Distressed Debtors**

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When an individual debtor files for protection from creditors under the U.S. Bankruptcy Code, his or her medical debts are typically included in Schedule F (Creditors Holding Unsecured Nonpriority Claims) of the petition as unsecured nonpriority obligations. Both before and after the BAPCPA went into effect in 2005, individual petitioners’ medical debts have been fully dischargeable in bankruptcy. Candidate Obama promised bankruptcy reform with the addition of a medical exemption that would supplement existing bankruptcy law.

**Obama Promised Reform: Amend the Bankruptcy Laws to Create a
Medical Exemption for Families**

On February 13, 2008, candidate Obama gave his “Keeping America’s Promise” speech to voters in Janesville, Wisconsin, in which he promised reform to the bankruptcy laws and increased protections for families whose personal bankruptcies were the result of high medical debts:

“When I’m President, we’ll reform our bankruptcy laws so that we give Americans who find themselves in debt a second chance... We’ll make sure that if you can demonstrate that you went bankrupt because of medical expenses, then you can relieve that debt and get back on your feet...”

How Many States Use the Federal Bankruptcy Exemptions?

Only 18 states allow the bankruptcy petitioner to choose between the federal or state exemptions.¹ Arizona, by contrast, is an *opt out* state along with the majority of jurisdictions.

¹ AK, AR, CT, HI, KY, MA, MI, MN, NH, NJ, NM, NY, PA, RI, TX, VT, WA, and WI.

Therefore, except for the infrequent case involving a duration of Arizona residency issue, cases filed in Arizona must apply our state's exemption laws (and non-bankruptcy federal laws) in place of the federal bankruptcy exemptions of 11 U.S.C. § 522(d). More specifically, Arizona's homestead exemption allows the debtor to claim up to \$150,000 in home equity on Schedule C (Property Claimed as Exempt) of the bankruptcy petition. A.R.S. § 33-1101.

Thus, for Arizona's bankruptcy petitioners and for petitioners in 31 other states, changes to the federal bankruptcy exemptions will have minimal effect because those exemptions are not claimable in *opt out* states. Amending 11 U.S.C. § 707(b), however, to make the Means Test less restrictive for high-income petitioners with excessive medical debts could have a significant impact on consumer debtors' filings. Doing so would keep more debtors in Chapter 7, instead of limiting their options to Chapter 11 or, more commonly, Chapter 13.

Where Is Congress on Bankruptcy Reform to Help Medically Distressed Debtors?

Medical Bankruptcy Reforms in the U.S. House of Representatives

Well into Obama's presidential campaign, on January 28, 2008, Rep. Carol Shea-Porter (D-NH) introduced the *Medical Bankruptcy Fairness Act of 2008* (H.R. 5138) to the 110th Congress with a single co-sponsor (Robert Wexler (D-FL)). The proposed legislation would have amended the U.S. Bankruptcy Code in two significant ways:

1. A "medical debt homeowner" who is a "medically distressed debtor" could elect a special federal homestead exemption of \$250,000 (cf. all other individual debtors would have available the current \$15,000 property exemption under 11 U.S.C. § 522(d)(1)).
2. Petitions filed by medically distressed debtors under Chapter 7 would be protected from the dismissal of their liquidation bankruptcy or the conversion of their case to a Chapter 11 or Chapter 13 because of presumed substantial abuse under the Means Test (amending 11 U.S.C. § 707(b)).

H.R. 5138 defined the "medically distressed debtor" as one who spent over 25% of his or her annual household income, or spent \$10,000 or more on unreimbursed medical expenses, or lived in any household in which one member experienced at least four weeks of lost income because of medical issues over the course of a year.

The *Medical Bankruptcy Fairness Act of 2008* also introduced the concept of an "economically distressed caregiver," someone whose income and employment opportunities were limited as a result of their assistance to a sick, infirm, or disabled "relative." That is, the financial problems of the caregiver were caused by the serious medical problems of the relative.

In 2008, Shea-Porter's H.R. 5138 was referred to committee, but never became law. Shea-Porter reintroduced the *Medical Bankruptcy Fairness Act of 2009* (H.R. 901) to the 111th Congress on February 4, 2009, with five democratic co-sponsors. H.R. 901 was also referred to committee and subsequently died.

Medical Bankruptcy Reforms in the U.S. Senate

On August 6, 2009, Senator Sheldon Whitehouse (D-RI) introduced the *Medical Bankruptcy Fairness Act of 2009* (S. 1624) with five democratic co-sponsors and one independent co-sponsor. The bill was referred to committee, but did not become law.

Broken Promise: No Reform for Debtors Who File for Bankruptcy Because of Medical Expenses

Individuals who file for bankruptcy protection because of excessive medical expenses – usually the result of uncontrollable events and circumstances – will get no special treatment under the U.S. Bankruptcy Code. The bankruptcy reforms that candidate Obama promised were, and are, still needed to help those individuals who struggle daily to pay for medical consultations, pharmaceuticals, tests, specialized surgeries and therapies, cancer treatments, and other necessary procedures. Obama's promised bankruptcy reforms could also help the caregivers who exhaust themselves and every resource they have available to provide essential care for family members with special needs, disabilities, and debilitating illnesses. Will President Obama place his influence behind such legislation while he campaigns for re-election?

Sources:

US Liberal Politics: [Obama Campaign Promises: The Economy for Middle-Class Americans](#)
American Presidency Project: [Obama Remarks in Janesville, WI: "Keeping America's Promise"](#) and [2008 Presidential Election Speeches and Remarks](#)
GovTrack.us: [S. 1624](#) and [H.R. 5138](#)
OpenCongress.org: [H.R. 5138 text](#)