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An Agricultural Law Research Article

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Adjustment of Debts of a Family Farmer**

by

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September 2005

www.NationalAgLawCenter.org

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The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 became law on April 20, 2005.¹ While much of the new law is directed toward consumer bankruptcy reform, it also includes a number of important changes to Chapter 12 of the Bankruptcy Code. This article discusses these changes.

Chapter 12 is made a permanent part of the Bankruptcy Code.

When Chapter 12 was first enacted in 1986, it was added as a temporary provision of the Bankruptcy Code.² It had a sunset provision that provided for repeal on October 1, 1993.³ It was renewed numerous times, each time as another temporary extension.⁴ Renewals, however, sometimes came months after Chapter 12 had sunset, creating frustrating gaps in its availability.⁵ Although there was bipartisan support for enacting Chapter 12 as a permanent part of the Bankruptcy Code, permanency became politically tied to the fortunes of the overall bankruptcy reform legislation as reform proponents sought the votes of farm state representatives.⁶ Consistent with this objective, the various versions of bankruptcy reform over the years have generally included a provision that would make Chapter 12 a permanent part of the Bankruptcy Code. Section 1001 of the 2005 Bankruptcy Act so

¹ The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (to be codified in scattered sections of 11 U.S.C.) (hereinafter, 2005 Bankruptcy Act).

² Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, tit. II, § 255, 100 Stat. 3088, 3105-3113 (1986) (codified at 11 U.S.C. §§ 1201 - 1231).

³ *Id.* at tit. III, § 302(f), 100 Stat. at 3124.

⁴ See, Jerome M. Stam & Bruce L. Dixon, *Farmer Bankruptcies and Farm Exits in the United States, 1899-2002*, ECONOMIC RESEARCH SERVICE, AGRICULTURE INFORMATION BULLETIN NO. AIB788, Appendix, *Legislative History of Chapter 12 Bankruptcy* at p.31-32 (March 2004); See also, Susan A. Schneider, *History of Chapter 12 Bankruptcy: On Again, Off Again*, AGRIC. L. UPDATE, Aug. 2001 at 1.

⁵ For example, Chapter 12 expired on October 1, 2001 but was not reenacted until Spring 2002. *Bankruptcy—Chapter 12 Reenactment*, Pub. L. 107-170, 116 Stat. 133 (2002).

⁶ “Chapter 12 is by no means a controversial issue. . . . For 5 years now, family farmers have been held hostage by the contentious debate surrounding the larger bankruptcy issue. For years they have been made to sit on pins and needles waiting to see if Congress will extend these protections for another few months until we reach the next legislative hurdle on the larger bankruptcy issue.” 148 CONG. REC. H6849 (daily ed. Oct. 1, 2002) (statement of Rep. Tim Holden) (D-Pa.).

provides.⁷ This amendment took effect on July 1, 2005, as the last temporary extension expired on June 30, 2005.⁸ As of that date, Chapter 12 will be a permanent part of the Bankruptcy Code, effective unless and until Congress makes any changes.

Chapter 12 eligibility is expanded.

Since its origin, Chapter 12 eligibility has been limited to “family farmers.”⁹ The 2005 Bankruptcy Act amends Chapter 12 eligibility standards, expanding Chapter 12 availability by expanding the Bankruptcy Code’s definition of “family farmer”¹⁰ and by extending eligibility to “family fishermen.” Four distinct eligibility changes are made. Each will become effective 180 days from enactment, or October 17, 2005.¹¹

First, the statutory maximum for debt is increased from \$1,500,000 to \$3,237,000.¹² This is the maximum total of aggregate debts that a farmer can have and be eligible for Chapter 12 relief. As this limit is strictly applied, the increase will enable significantly more farmers to be eligible.¹³ In addition to this immediate increase, the 2005 Bankruptcy Act also provides that the maximum amount will increase with the Consumer Price Index.¹⁴

Second, the new law amends the requirement that at least eighty percent of the farmer’s “aggregate, non-contingent, liquidated debts” arise out of the debtor’s farming operation.¹⁵ Under the new law, not less than fifty percent of the debt must arise out of the farming operation.¹⁶ This will also expand Chapter 12 eligibility, allowing farmers with significant debt that is not associated with farming, such as medical expenses or other business expenses, to retain their eligibility under Chapter 12.

Third, the farm income requirement is also liberalized to expand eligibility. Since its origin, Chapter 12 has required that more than fifty percent of the farmer’s income from the preceding taxable year must

⁷ 2005 Bankruptcy Act, *supra* note 1 at § 1001, 119 Stat. at 185-86.

⁸ Pub. L. 108-369, § 2(a), 118 Stat. 1749 (2004).

⁹ 11 U.S.C. § 109(f) (2000).

¹⁰ 11 U.S.C. § 101(18) (2000).

¹¹ 2005 Bankruptcy Act, *supra* note 1 at § 1501(a), 119 Stat. at 216.

¹² *Id.* at § 1004, 119 Stat. at 186 (to be codified at 11 U.S.C. § 101(18)(A) and (B)). The increase applies to both the eligibility requirements for an individual and for a family farm corporation or partnership.

¹³ See, *In re Cross Timbers Ranch, Inc.*, 151 B.R. 923, 925 (Bankr. W.D. Mo. 1993).

¹⁴ 2005 Bankruptcy Act, *supra* note 1 at § 1002, 119 Stat. at 18 (to be codified at 11 U.S.C. § 104(b)). The indexing applies to both the eligibility requirements for an individual and for a family farm corporation or partnership.

¹⁵ 11 U.S.C. § 101(18). Under either the previous law or the new Act, the percentage is assessed as of the date the case is filed.

¹⁶ 2005 Bankruptcy Act, *supra* note 1 at § 1004, 119 Stat. at 186 (to be codified at 11 U.S.C. § 101(18)). In computing this percentage under either the previous law or the new provision, the debtor can exclude the debt for a “principle residence” unless that debt arises out of the farming operation. *Id.*

come from farming.¹⁷ This eligibility requirement proved to be problematic for many farmers who tried to keep their operation afloat by taking on non-farm jobs or who were unable to obtain crop financing and rented out their land the year prior to filing.¹⁸ The 2005 Bankruptcy Act provides an alternative. Either the farmer can meet the fifty percent income requirement for the preceding taxable year or meet it in each of the second and third taxable years preceding the filing.¹⁹ This will not assist farmers who rely on non-farm income for an extended period of time, but it will allow those who rely on that income only the year before bankruptcy to look back to prior years for eligibility.

Fourth, family fisherman are defined and afforded Chapter 12 eligibility.²⁰ This definition mirrors the original requirements contained in the definition of family farmer. Family fisherman do not receive the expanded eligibility criteria that is afforded to family farmers but remain subject to the pre-reform

¹⁷ 11 U.S.C. § 101(18)(A) (2000). There is no comparable income requirement for family farm corporations or partnerships, although eighty percent of the value of the entity's assets must relate to the farming operation. 11 U.S.C. § 101(18)(B) (2000). There is no change to this provision in the 2005 Bankruptcy Act.

¹⁸ Although the circuits have developed different tests for assessing whether income is from a farming operation, cash rental income is problematic. The Seventh Circuit has adopted a strict risk-based test, holding that cash rent cannot be considered to be farm income. *Matter of Armstrong*, 812 F.2d 1024, 1027 (7th Cir.), cert. denied, 484 U.S. 925, 108 S.Ct. 287 (1987). A sharp dissent in *Armstrong* advocated a "totality of the circumstances" test. *Id.* at 1030-31 (opinion concurring in part and dissenting in part). The Eighth Circuit rejected both majority and dissent positions in *Armstrong*, holding that in order for cash rent to be income from farming, the farmer must maintain a significant degree of engagement in and a significant operational role in the production of the crops on the rented land. *Otoe County National Bank v. Easton*, (*In re Easton*), 883 F.2d 630, 634 (8th Cir. 1989) (stating that "[t]he proper characterization of that income turns, however, not upon any risk of non-payment Armstrong might have faced, nor upon the universe of the particular circumstances surrounding Armstrong's financial situation, but rather upon the extent to which the income in question bears the relation to his farming activities prescribed by the words of the statute.").

¹⁹ 2005 Bankruptcy Act, *supra* note 1, at § 1005, 119 Stat. at 186-87 (to be codified at 11 U.S.C. § 101(18)).

²⁰ 2005 Bankruptcy Act, *supra* note 1, at § 1007, 119 Stat. at 187-88 (codified at 11 U.S.C. § 101(19A)). A family fisherman is defined as "(A) an individual or individual and spouse engaged in a commercial fishing operation— (i) whose aggregate debts do not exceed \$1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and (ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or (B) a corporation or partnership— (i) in which more than 50 percent of the outstanding stock or equity is held by— (I) 1 family that conducts the commercial fishing operation; or (II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and (ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation; (II) its aggregate debts do not exceed \$1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and (III) if such corporation issues stock, such stock is not publicly traded."

income and debt standards in place for family farmers.²¹ However, although maximum aggregate debts are set at \$1,500,000.00, this amount will be indexed.²²

The definition of family fisherman applies to those “engaged in a commercial fishing operation.”²³ A commercial fishing operation is defined as:

- (A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or
- (B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A);²⁴

Thus, catfish farmers who meet the family fisherman eligibility requirements will be eligible for Chapter 12 relief as “family fisherman.” Under prior law, some courts assumed that they fit within the definition of family farmer under § 101(18),²⁵ but it now appears that they will be defined as fishermen instead of farmers and will not benefit from the expanded eligibility provisions associated with that category.²⁶

The priority of certain tax obligations is modified.

Under the new law, certain tax claims will no longer be given priority status.²⁷ A Chapter 12 debtor is allowed to treat a claim that is “owed to a government unit” as a result of the disposition of a farm asset as an unsecured claim, provided that the debtor receives a discharge.²⁸ This type of tax claim will not be entitled to § 507 priority.²⁹ Under the current law, taxes had priority status under § 507 and

²¹ *Id.*

²² *Id.* at § 1202, 119 Stat. at 193 (to be codified at 11 U.S.C. § 104).

²³ *Id.* at § 1007, 119 Stat. at 187-88 (to be codified at 11 U.S.C. § 101(19A)).

²⁴ *Id.* (to be codified at 11 U.S.C. § 101(7A)).

²⁵ See, e.g., *Watford v. Federal Land Bank of Columbia (In re Watford)*, 898 F.2d 1525, 1528-29 (11th Cir. 1990) (reversing lower court’s rejection of debtors’ eligibility for Chapter 12 and holding debtors’ intent to establish commercial catfish ponds on their farm land should have been considered in determining status as “family farmer”).

²⁶ This may present an odd dilemma in a state like Arkansas where farmers can have both traditional farming operations and catfish ponds. It is possible to imagine a situation where a farmer has fifty percent of his income from farming and fifty percent of his income from the catfish operation. This farmer would not technically fall within either the definition of “family farmer” or “family fisherman,” each of which require more than fifty percent income. Clearly, such an individual would be in the category of persons for which Chapter 12 was intended. The proper resolution of this dilemma would be to acknowledge that income from catfish farming should be considered either as farm income or as commercial fishing income, depending upon the circumstances.

²⁷ 2005 Bankruptcy Act, *supra* note 1, at § 1003, 119 Stat. at 186 (to be codified at 11 U.S.C. § 507).

²⁸ *Id.*

²⁹ *Id.* For a more complete discussion of this provision, see Neil E. Harl, Joseph E. Peiffer, and Roger McEowen, *Major Developments in Chapter 12 Bankruptcy*, 16 AGRICULTURAL LAW DIGEST 57 (Apr. 22, 2005).

had to be paid in full. The new provision took effect on the date of the enactment of the bill, April 20, 2005, but it does not apply to cases commenced before that date.³⁰

The retroactive assessment of disposable income is prohibited.

In Chapter 12, §1225 sets forth a listing of the plan confirmation requirements and provides that the court “shall confirm” the debtor’s plan if these requirements are met.³¹ Although creditors may object to plan provisions at a confirmation hearing, if the debtor’s plan treats their claims as required under §1225, the plan can be confirmed over their objections.³²

Like Chapter 13, Chapter 12 sets forth different requirements for the treatment of secured and unsecured claims.³³ The disposable income requirement appears as one of the protections that is afforded unsecured claimholders.³⁴ It requires that if either the trustee or an unsecured claimholder³⁵ objects to the debtor’s proposed plan, that plan must either provide for full payment of unsecured claims, or it must commit an amount of “projected disposable income” during the term of the plan to the payment of unsecured claims.³⁶ As it is generally unrealistic to consider payment of all unsecured claims, most plans will provide for the payment of a certain amount that is projected as disposable income over the term of the plan. If a creditor does not agree with the debtor’s projections, that creditor can raise objections at confirmation.³⁷

³⁰ *Id.* at § 1003(c), 119 Stat. at 186.

³¹ 11 U.S.C. § 1225(a) (2000). The judicial approval of confirmation plans is one of the aspects of Chapter 12 that is taken from the Chapter 13 model and that distinguishes Chapter 12 from Chapter 11. See, 11 U.S.C. § 1325(a) (2000) (providing for judicial confirmation of plans subject to very similar standards).

³² *Id.*

³³ 11 U.S.C. § 1225(a)(5) (2000); 11 U.S.C. § 1225(a)(5) (2000) (providing alternative requirements for the treatment of secured claims); and, 11 U.S.C. §§ 1225(a)(4),(b); §§ 1325(a)(4),(b) (2000) (providing for the treatment of unsecured claims).

³⁴ 11 U.S.C. § 1225(b) (2000); see also, 11 U.S.C. § 1325(b) (2000). Unsecured claimholders are also protected by a liquidation test that requires that the plan must provide them with at least the value they would receive in a Chapter 7 liquidation. 11 U.S.C. § 1225(a)(4) (2000).

³⁵ This provision may provide little protection to the traditional unsecured creditor such as a tradesman or input supplier. Because the Bankruptcy Code provides for the bifurcation of obligations owed to creditors into secured and unsecured claims, in many cases, a creditor who is secured, but whose security is insufficient in value to cover the debt will be the largest unsecured creditor. See, 11 U.S.C. § 506 (2000).

³⁶ 11 U.S.C. § 1225(b) (2000).

³⁷ Historically, creditors have been more likely to object to the debtor’s Chapter 12 plan under the feasibility requirement. 11 U.S.C. § 1225(a)(6) (2000). This requirement provides that the debtor must “be able to make all payments under the plan and to comply with the plan.” Creditors have frequently objected to the debtor’s cash flow projections, arguing that the debtor will not be able to make the promised payments and therefore the case should be dismissed. See, e.g., *In re Hopwood*, 124 B.R. 82, 86 (D. Mo. 1991) (affirming bankruptcy court finding that the debtor’s plan was feasible over the objection of a creditor who claimed that income projections were unrealistic). It would be inconsistent for such a creditor to also argue that the debtor was not projecting enough disposable income.

Despite the fact that this disposable income provision is a confirmation requirement, courts have interpreted the Chapter 12 “projected disposable income” requirement as allowing an unsecured creditor or the trustee to object to discharge on the grounds that all “actual” disposable income had not been paid to unsecured creditors, even though the projected amount was paid.³⁸ Courts addressing the same language under Chapter 13 have interpreted the “projected” requirement literally and have limited litigation to confirmation, with plan modification actions available to deal with any significant changes to disposable income that occur during the plan.³⁹

Allowing creditors to object to disposable income payments at discharge has been problematic for reorganizing debtors who hoped to successfully emerge from bankruptcy. It has forced farm debtors to go back and account for all income and expenses throughout the plan term, litigating a wide variety of issues, including whether expenses were actually “necessary for the continuation, preservation, and operation” of the farm.⁴⁰ As major undersecured creditors, as well as the Chapter 12 trustee,⁴¹ viewed discharge as their last chance to increase payments from the debtor, aggressive investigations have been conducted.⁴² Moreover, particularly harsh judicial rulings raised concerns that farmers’ otherwise successful reorganizations would fail due to the imposition of significant obligations at the end of the plan term.⁴³ There was also concern that farmers were not being left with sufficient liquid assets to keep the farm operating after discharge.⁴⁴

³⁸ See, e.g., *Rowley v. Yarnall*, 22 F.3d 190, 192-93 (8th Cir. 1994) (holding that a plain reading of the statutory language would yield “an absurd result” and reviewing the debtor’s actual income and expenses throughout the plan in response to an objection to discharge).

³⁹ *In re Anderson*, 21 F.3d 355, 357-8 (9th Cir. 1994) (stating that the “language of the statute is clear” and holding that the debtor cannot be forced to sign a promise to pay all actual disposable income as a confirmation requirement); *In re Bass*, 267 B.R. 812, 817-18 (Bankr. S.D. Ohio. 2001) (rejecting *Rowley* and stating that *Anderson* reflects the better statutory authority; holding that the debtor cannot be required to commit all actual disposable income in order to obtain confirmation).

⁴⁰ See, e.g., *In re Wood*, 122 B.R. 107, 115 (Bankr. Idaho 1990) (holding that the disposable income test requires the court to conduct a subjective analysis of the debtor’s expenditures to determine if they were reasonably necessary).

⁴¹ Chapter 12 is a self-funded system under which the trustee is compensated by taking a percentage of the payments that the debtor makes under the plan. A trustee may be entitled to up to ten percent of whatever can be recovered in an objection to discharge based on disposable income obligations. 28 U.S.C. § 586(e)(2) (2200).

⁴² See, e.g., *In re Wood*, 122 B.R. at 116 (categorizing trustee’s “microscopic examination” of debtor’s records as “extreme” and finding that no disposable income was owed). In *Wood*, the trustee claimed that the debtor owed over \$218,000 in disposable income. In reaching that sum, he included non-cash items such as depreciation deductions and a net operating loss carryover as items of income. *Id.*

⁴³ See, e.g., *Hammrich v. Lovald (In re Hammrich)*, 98 F.3d 388, 389 (8th Cir. 1996) (debtors required to pay \$95,885.86 in order to receive discharge); *Broken Bow Ranch v. Farmers Home Administration (In re Broken Bow)*, 33 F.3d 1005, 1007 (8th Cir. 1994) (debtors required to pay \$81,862.00 in order to receive discharge).

⁴⁴ See, e.g., *Hammrich* 98 F.3d at 390 (holding that the value of calves that were not yet ready for market were “marketable commodities” that should be included in disposable income calculations); *Broken Bow Ranch*, 33 F.3d at 1009 (holding that computation of disposable income can require debtor to obtain borrowed financing for crop input expenses).

Section 1006 of the new law, “Prohibition of Retroactive Assessment of Disposable Income,” appears to address these concerns.⁴⁵ It retains the “projected disposable income” language as part of the confirmation requirements and adds an additional alternative that the debtor can meet in order to achieve plan confirmation. The debtor’s plan can provide that the “value of property distributed under the plan . . . is not less than the debtor’s projected disposable income. . . .”⁴⁶

Even more significant, § 1006 of the new law amends § 1229, Modification of Plan after Confirmation, to restrict changes to the plan once it has been confirmed. The plan may not be modified to “increase the amount of any payment due before the plan as modified becomes the plan.”⁴⁷ Under this new provision, modifications will be allowed only to create new obligations for the future, capturing future income that is greater than that anticipated when the plan was originally confirmed.

Section 1006 also provides that no one but the debtor can call for any increase based on disposable income that would “increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor’s disposable income for such month.”⁴⁸ This provision also seems targeted in an attempt to prevent the court from being able to go back into the debtor’s past at a discharge hearing and impose a new obligation that is greater than what s/he can presently afford to pay from disposable income that month.

Finally, section 1006 provides that the plan may not be modified “in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.” This provision emphasizes the importance of allowing the debtor sufficient income for the continuation of the farming operation as is anticipated by the current definition of disposable income as not including expenditures necessary for the “continuation” and “preservation” of the farming operation.⁴⁹

These provisions appear to prohibit the type of retroactive accounting that has been undertaken by the courts at discharge when the courts have attempted to reconcile early projections with what the trustee or creditors argue is “actual” disposable income through litigation at discharge.⁵⁰ While proponents of the current judicial interpretation of an “actual” disposable income test may be dismayed, setting reasonable projections at confirmation will provide certainty to both creditors and the debtor.

⁴⁵ 2005 Bankruptcy Act, *supra* note 1, at § 1006, 119 Stat. at 187 (codified at 11 U.S.C. § 1225(b)).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 11 U.S.C. § 1225(b)(2) (2000) (excluding from the definition of disposable income that which is not reasonably necessary to be expended . . . for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor’s business.”).

⁵⁰ This issue has been complicated by the proposal and confirmation of plans that require the debtor to pay actual disposable income. Although these plans have been the direct result of judicial interpretation of the disposable income requirement as requiring actual accounting at discharge, if this is what the debtor’s plan provides, s/he will be bound to its terms regardless of the statutory change.

The changes to the disposable income and plan modification provisions will become effective 180 days after enactment, October 17, 2005.⁵¹

Domestic obligations are provided with additional protections.

The new law adds a number of new protections to encourage the payment of domestic support obligations, defined to include child support, alimony, and maintenance.⁵²

- It creates a new first priority status for prepetition unsecured claims for domestic support obligations. These obligations will receive top priority under § 507(a)(1)(B).⁵³
- The debtor will not be allowed to reduce the amount of a domestic support obligation that has § 507(a)(1)(B) priority unless the debtor's plan commits to paying all of the debtor's projected disposable income for a five year period.⁵⁴
- A new Chapter 12 confirmation requirement is added, requiring the debtor to be current on all postpetition domestic support obligations.⁵⁵
- Failure to pay a postpetition domestic support obligation will be grounds for dismissal of the bankruptcy.⁵⁶
- The debtor who has a domestic support obligation will not be entitled to a discharge unless s/he is current with respect to this obligation and files a certification to this fact. The obligations included in this requirement are all postpetition obligations and prepetition obligations, but only to the extent that they are provided for by the plan.⁵⁷

There is also a change made to § 1222 that appears intended to apply to domestic support obligations but that may have larger implications. A new provision is added to require that a Chapter 12 plan must "provide for the payment of interest accruing after the date of filing of the petition on unsecured claims that are nondischargeable under § 1228(a)."⁵⁸ A limitation is placed on this requirement so that interest is to be paid only to the extent that the debtor has disposable income available after providing for all allowed secured claims. Debts that are nondischargeable under § 1228(a) include not only domestic support obligations but also include debts provided for under § 1222(b)(5), § 1222(b)(9) or specified in § 523(a).⁵⁹

⁵¹ 2005 Bankruptcy Act, *supra* note 1, at §1501, 119 Stat. at 216.

⁵² 2005 Bankruptcy Act, *supra* note 1, at § 211, 119 Stat. at 50 (to be codified at 11 U.S.C. § 101(14A)).

⁵³ *Id.* at § 212, 119 Stat. at 51 (to be codified at 11 U.S.C. § 507(a)(1)).

⁵⁴ *Id.* at § 212, 119 Stat. at 52 (to be codified at 11 U.S.C. § 1222(b)).

⁵⁵ *Id.* § 213(5), 119 Stat. at 52-53 (to be codified at 11 U.S.C. § 1225(a)(7)).

⁵⁶ *Id.* at § 213(2), 119 Stat. at 52 (to be codified at 11 U.S.C. § 1208(c)(8)).

⁵⁷ *Id.* at § 213(6), 119 Stat. at 53 (to be codified at 11 U.S.C. § 1228(a)).

⁵⁸ *Id.* at § 213(4), 119 Stat. at 52 (to be codified at 11 U.S.C. § 1222(b)(11)).

⁵⁹ 11 U.S.C. § 1228(a) (2000).

Other miscellaneous reform provisions may impact future Chapter 12 cases.

This analysis focuses on the specific changes to Chapter 12. There are many general provisions of the 2005 Bankruptcy Act that do not change the provisions within Chapter 12 but that may, nevertheless, affect the filing or administration of a Chapter 12 bankruptcy. For example, there is a new requirement that provides that “an individual may not be a debtor” under title 11 unless such individual has received a briefing from an approved credit counseling agency outlining the opportunities available for credit counseling and assisting in a budgetary analysis.⁶⁰

Three exceptions to the credit counseling requirement are provided. It will not apply if the debtor resides in a district where the United States Trustee has determined that the approved nonprofit budget and credit counseling services are not reasonably able to provide adequate services under this requirement.⁶¹ It will also not apply if the debtor submits a certification that describes “exigent circumstances that merit a waiver” and states that the debtor requested credit counseling services from an approved agency but was unable to obtain the services within five days from the date of the request, and that is satisfactory to the court.⁶² There is an exception for debtors who are incapacitated, seriously disabled, or on active military duty in a combat zone.⁶³

Another general change that impacts Chapter 12 debtors is the increase in the duties of a debtor with respect to the information that must be provided. In addition to the bankruptcy schedules, an individual debtor will be required to provide additional financial information including:

- payment notices from employers received within sixty days before the bankruptcy filing;
- an itemized statement of monthly net income; and,
- a statement disclosing any reasonably anticipated increase in income or expenditures during the next year.⁶⁴

If requested by the United States Trustee or the trustee, the debtor will be required to produce proof of identification.⁶⁵

⁶⁰ 2005 Bankruptcy Act, *supra* note 1, at § 106(a), 119 Stat. at 37-38 (to be codified at 11 U.S.C. § 109(h)(2)). Credit counseling approval issues are found at § 106(e), 119 Stat. at 37-38 (to be codified at 11 U.S.C. § 111).

⁶¹ *Id.* (to be codified at 11 U.S.C. § 109(h)(2)(A)). The new law provides that such a determination will have to be reviewed annually. *Id.* (to be codified at 11 U.S.C. § 109(h)(2)(B)).

⁶² *Id.* (to be codified at 11 U.S.C. § 109(h)(3)).

⁶³ *Id.* (to be codified at 11 U.S.C. § 109(h)(4)). The Act defines incapacitated and disabled in a very limiting way.

⁶⁴ 2005 Bankruptcy Act, *supra* note 1, at §315(b), 119 Stat. at 89-92 (to be confided at 11 U.S.C. § 521(a)).

⁶⁵ *Id.* (to be codified at 11 U.S.C. § 521(h)).

Because of the sheer volume of the detailed changes set for in the 2005 Bankruptcy Act,⁶⁶ as well as the piecemeal drafting of the individual sections, all of the changes brought about by the Act may not be determined for some time. The section described above concerning the additional duties imposed upon debtors provides an example. This section in the Act is entitled, Giving Creditors Fair Notice in Chapters 7 and 13 Cases. Contained within this section, however, are the increased filing requirements in § 521 that apply to “debtors” and as such will apply to Chapter 12 debtors.⁶⁷ Within that very section, there are other requirements that apply only to “individual debtors” (including Chapter 12 debtors), requirements that apply only to debtors in chapters 7, 11, or 13, and requirements that apply to individual debtors in chapter 7 or 13. Debtors, trustees, and creditors alike will be well advised to work together to understand how the extensive and somewhat fragmented changes will impact future Chapter 12 bankruptcies.

⁶⁶ The official printing of the 2005 Bankruptcy Act is 512 pages in length. It is available online at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s256es.txt.pdf (using a search for S. 256 in the Library of Congress database at <http://thomas.loc.gov/>). It can also be accessed at the National Agricultural Law Center’s Bankruptcy Reading Room at <http://www.nationalaglawcenter.org/readingrooms/bankruptcy/>.

⁶⁷ 2005 Bankruptcy Act, *supra* note 1, at § 315, 119 Stat. at 88-92 (to be codified at 11 U.S.C. § 521).