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Effective Dates of the Bankruptcy Abuse Prevention and Consumer Protection Act

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Summary

The means test and consumer provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), P.L. 109-8, will become operative on October 17, 2005. Other provisions of the law, cited below, took effect on the date of enactment, April 20, 2005, or will take effect at another future date.

After many years of deliberation and debate, Congress passed major bankruptcy reform legislation, S. 256, 109th Cong., 1st Sess. (2005).¹ The Bankruptcy Abuse Prevention and Consumer Protection Act, P.L. 109-8, was presented to President Bush and signed into law at approximately 2:45 P.M. on Wed., April 20, 2005.²

Section 1501 of the law provides:

(a) EFFECTIVE DATE- Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS-

(1) IN GENERAL- Except as otherwise provided in this Act and paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

(2) CERTAIN LIMITATIONS APPLICABLE TO DEBTORS- The amendments made by sections 308, 322, and 330 shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act.

¹ For more background, see CRS Report RL32765, *The "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" in the 109th Congress*, by (name redacted).

² See White House Press Release, *President Signs Bankruptcy Abuse Prevention, Consumer Protection Act* at [<http://www.whitehouse.gov/news/releases/2005/04/20050420-5.html>].

The general rule of construction for federal legislation is that a bill becomes law when signed by the President.³ Fractions of a day are not generally considered in determining when a law becomes effective.⁴ Clear and unambiguous statutory language provides that the general effective date is “180 days after the date of enactment”. Since enactment took place on April 20, 2005, the general effective date under § 1501 appears to be Monday, October 17, 2005.⁵

Many provisions of the law take effect on the date of enactment. Again, the effective date for these provisions is April 20, 2005. There is, however, decisional authority holding that a court may consider fractions of a day when to do so “becomes important to the ends of justice, or in order to decide upon conflicting interests[.]”⁶ Among the provisions taking effect on the date of enactment are:

- Sections 308 and 322 dealing with the homestead exemption;
- Section 330 dealing with a delay of discharge in specified pending proceedings;
- Section 1003 dealing with claims owed to governmental units in chapter 12;
- Section 1213 dealing with preference transactions that may benefit “insider” creditors;
- Section 1221 addressing transfers made by nonprofit charitable corporations;
- Section 1223 authorizing bankruptcy judgeships;
- Section 1234 dealing with involuntary bankruptcy;
- Title XIV, section 1401 through 1405 dealing with corporate bankruptcy abuse.

Sections 601 regarding collection of bankruptcy statistics, 603 governing audit procedures, and 1301 regarding amendments to the Truth in Lending Act are effective 18 months after enactment, which is October 20, 2006.⁷

Small business debtor reporting requirements under § 434 take effect 60 days after the promulgation of rules by the Supreme Court.

Finally, § 1001 pertaining to chapter 12 is made effective on a specific date, July 1, 2005, and §1404 regarding nondischargeable debt based on securities fraud is retroactive to a specified date, July 30, 2002.

³ 2 SUTHERLAND STATUTORY CONSTRUCTION § 33:6 (Norman Singer ed., 6th ed. 2001).

⁴ *Id.* at § 33:10.

⁵ Section 1501 provides that, in most cases, the amendments made by the law will apply to cases filed after enactment. This report does not track exceptions to the rule of general applicability, *i.e.*, those provisions that apply to pending cases.

⁶ *United States v. Will*, 440 U.S. 200, 485 (1980) at footnote 29, quoting *Louisville v. Savings Bank*, 104 U.S. 469 (1881).

⁷ Section 1301 takes effect either 18 months after enactment or 12 months after publication of regulations by the Federal Reserve Board.

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