

**VBA BANKRUPTCY LAW SECTION  
BENCH-BAR BROWN BAG LUNCH MEETING**

*with Hon. Colleen A. Brown, U.S. Bankruptcy Judge*

**Held at the United States Bankruptcy Court, via Zoom  
Friday, February 19, 2021 ~ 12:00 to 1:00 PM**

**UPDATED AGENDA\***

1. A MOMENT OF SILENCE TO REMEMBER DOUG WOLINSKY WHOLE GROUP
  
2. INTRODUCTION OF NEW VBA BANKRUPTCY SECTION CO-CHAIRS JUDGE BROWN
  - Alexandra Edelman and Don Hayes – welcome Alex!
    - Nancy Geise rotated off and at the end of 2020,
    - Don Hayes will rotate off at the end of 2021, to make room for a new co-chair
  
3. CO-CHAIRS' CORNER DON HAYES & ALEX EDELMAN
  - a new, monthly segment of our BB meetings
  - Upcoming seminars this section, or members of this section, are presenting
    - VBA Mid-Year Mtg is 3/25/21-3/26/21 at the Equinox Manchester
  
4. COURT OPERATIONS TASK FORCE NEEDED JUDGE BROWN
  - Would focus on VTB's post-pandemic operations, and explore:
    - What have we learned about what can work in an emergency?
    - Which of the "new" procedures should continue? Under what circs?
  - TF to present a preliminary report at April 2021 BB meeting
  
5. TASK FORCE NEEDED TO UPDATE LOCAL RULES JUDGE BROWN
  - This would be a less comprehensive review than in the past
  - Focus would be integrating Standing Orders and procedural changes into VTB LRs
    - TF would also be charged with recommending whether any new LRs needed re SBRA and/or other recent (and permanent) Bk'cy Code amendments
    - Would also integrate any necessary corrections
    - Note: the most updated version of the LRs was recently posted on the VTB website
      - the 2017 Local Bankruptcy Rules now include changes made by 2018 SOs (with the redline & summary of changes since last revision still on website)
  - TF to present a preliminary report at April 2021 BB meeting
  
6. NEW FOLDER POSTED ON WEBSITE RE PANDEMIC RELIEF JUDGE BROWN
  - includes, in one place, all Standing Orders & Local Forms for special relief
  - <https://www.vtb.uscourts.gov/standing-orders-and-local-forms-authorizing-special-relief-during-pandemic>
  
7. NEW BANKRUPTCY LAW INCREASES CH 7 T FEES RAY OBUCHOWSKI
  - S 4996 Bk'cy Admin Improvement Act of 2020 (enacted 1/12/21)
  - Includes pay raise for ch 7 Ts (finally!), including fee waiver cases

8. 5 MINUTE BANKRUPTCY TAX TIP MELISSA RANALDO
- Clarifying the “new address” for IRS Bk’cy Specialists in Portsmouth, NH
    - does NOT replace the official address for the IRS (Philadelphia) in LRs
  - Portsmouth address is only for direct contact with Vt’s IRS Bk’cy Specialists
  - Official IRS address in Philadelphia remains address for noticing IRS on petitions, motions, APs etc.
9. SO # 21-01 RE NEW SECURITY DRIVEN PROCEDURES JUDGE BROWN
- Re the Filing, Svc, and Mgmt of Highly Sensitive Docs (“HSDs”), and
    - (1) Continuing Applicability of Vt LBRs 5003-4 & 9013-1(g),
    - (2) Unchanged Procedures for Non-HSDs that Merit Protection under §107
  - this is what triggered the OSCs re documents previously filed under seal  
*Attached: Standing Order # 21-01*
10. NEW BK’CY RELIEF PROVISIONS IN 2021 FEDERAL APPROPRIATIONS ACT / SO 21-02 JUDGE BROWN
- Key provisions include broader ch 13 discharge & ch 13 plan modification, availability of PPP funds to Sub-V Ds, changes to lease, preference & utility protections
  - SO 21-02 drafted to explain procedures for the changes that require new procedures  
*Attached: Standing Order # 21-02 w/ excerpts from the CAA  
and a separate summary of that relief (prepared by Judge Drain)*
11. 2021 BENCH BAR MEETING SCHEDULE: JUDGE BROWN
- All 2021 BB mtgs are set
    - Those scheduled for after 4/2/21 are scheduled to be held in person.
    - We will move them to a Zoom platform if the VTB remote hearing period is extended
      - April 6, 2021: Burlington
      - June 18, 2021: Rutland
      - Sept 28, 2021: Burlington
      - Nov 19, 2021: Rutland
12. NEW BUSINESS? THE GROUP
- Suggestions for topics / format for future BB meetings?
  - Discussion about current court and filing procedures?
  - CLE seminar suggestions?

ATTACHMENTS (3): Standing Order # 21-01;  
Standing Order # 21-02 w/excerpts of CAA as an attachment; and  
Summary of bankruptcy-related provisions in the CAA.

These Bench-Bar lunch meetings are coordinated by the Bankruptcy Court.  
One CLE credit is provided for attendance at each meeting.  
Contact Maria Dionne @ 802-657-6432 or [maria\\_dionne@vtb.uscourts.gov](mailto:maria_dionne@vtb.uscourts.gov) with any questions

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\* The original agenda is updated to add the excerpts of the new statute to SO # 21-02 and to list the summary of the bankruptcy-related provisions in the CAA as a separate attachment.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**

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**In re:**

**ESTABLISHMENT OF NEW SECURITY-DRIVEN  
PROCEDURES FOR THE FILING, SERVICE,  
AND MANAGEMENT OF HIGHLY SENSITIVE  
DOCUMENTS, AND AFFIRMANCE OF  
(i) CONTINUING APPLICABILITY OF  
VERMONT LOCAL BANKRUPTCY RULES  
5003-4 & 9013-1(g), AND  
(2) PROCEDURE FOR NON-HIGHLY SENSITIVE  
DOCUMENTS THAT MERIT § 107 PROTECTION**

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**STANDING ORDER # 21-01**

In response to recent disclosures of wide-spread breaches of both private sector and government computer systems, the federal courts are adding new security procedures to protect highly sensitive documents filed with the courts, effective immediately. See, e.g., General Order #95 entered in this District on January 13, 2021. In an effort to ensure the proper level of security for confidential and highly sensitive documents filed in this Court, **THE COURT FINDS** the following procedures strike the appropriate balance between public access and security.

**THE COURT FURTHER FINDS** that, pursuant to 11 U.S.C. § 105(a), Fed. R. Civ. P. 5(d)(3)(A) and Fed. R. Bankr. P. 7005, good cause exists to require all parties to file highly sensitive documents outside of the Court's electronic filing system.

**THEREFORE, IT IS HEREBY ORDERED** that, effective as of the date of this Order and until such time as the Court orders otherwise, the filing of highly sensitive documents shall be subject to the procedures and requirements set forth below. This Standing Order supersedes any and all inconsistent provisions in existing local rules or other standing orders of this Court.

**1. Documents Subject to this General Order**

Subject to approval by the Court in accordance with the procedures set forth below, a document may be deemed a highly sensitive document if:

- a. it contains classified information or information that could harm national security, or
- b. its disclosure could reasonably be expected to cause exceptionally grave damage or injury to any person, entity, or institution.

**2. Motions to Treat a Document as a Highly Sensitive Document**

- a. A party seeking to treat a document as a highly sensitive document shall file a motion explaining why the document constitutes a highly sensitive documents but shall not file a copy of the proposed highly sensitive document, with the motion, on the Court’s electronic filing system.
- b. To the extent service is required, the moving party shall serve the highly sensitive document by any manner specified in Fed. R. Civ. P. 5(b)(2), other than through the Court’s electronic filing system.
- c. The moving party shall hand deliver or mail the motion, with a proposed order and the proposed highly sensitive document, to the Clerk’s office in hard copy format. The hard copies shall be in a sealed envelope marked “HIGHLY SENSITIVE DOCUMENT.”
- d. The proposed order must provide for the retrieval or disposal of the highly sensitive document on either a date certain, the occurrence of some specified event, or at the conclusion of the matter.
- e. Upon entry of an Order that the document constitutes a highly sensitive document, and a specific time for its release or disposal, the Clerk will maintain the highly sensitive document in a secure paper filing system or a secure standalone computer system that is not connected to any network.

**3. Removal of All Previously Sealed Documents from the Electronic Filing System**

The Clerk shall, as soon as practicable, remove all previously sealed documents from the Court’s electronic filing system and maintain them in a secure paper filing system or a secure standalone computer system that is not connected to any network.

**4. Motions to Release or Dispose of Documents Previously Filed Under Seal**

Any attorney or party who obtained an Order granting a motion to file a document under seal, and whose document remains under seal at this time, is encouraged to file a motion or stipulation seeking an Order determining that the document they filed

- a. is actually a highly sensitive document and should be retained on paper as set forth above;
- b. is sufficiently protected in the electronic filing system, through the date the Order sealing the document will expire by its own terms; or
- c. is no longer in need of protection and may be released to the public record at this time; or
- d. is no longer necessary and may be destroyed at this time.

**5. Process Unchanged for Non-Highly Sensitive Documents which Need Protection**

Parties should continue to use the procedures set forth in Fed. R. Bankr. P. 9018, Vt. LBR 5003-4, and Vt. LBR 9013-1(g) for non-highly sensitive documents that merit protection under 11 U.S.C. § 107(b) or (c).

**SO ORDERED.**

January 15, 2021  
Burlington, Vermont

  
\_\_\_\_\_  
Colleen A. Brown  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**

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**In re:**

**A Temporary Modification of Local Procedures to Implement Some of the Bankruptcy Relief Enacted in the Budget Consolidated Appropriations Act, 2021, to:**

- (i) Modify the Scope of the Discharge for Certain Chapter 13 Debtors, under New Vt. LBR.4004-2(e);**
- (ii) Expand the Opportunities for Chapter 13 Debtors to Modify Plans, under Vt. LBR. 3015-8(b)(4);**
- (iii) Extend Time for Certain Debtors to Assume, or Perform the Terms of, Certain Unexpired Leases, under New Vt. LBR 6006-2; and**
- (iv) Ensure Continued Utility Service to Individual Debtors, Without Previously Required Assurance of Payment, under New Vt. LBR 4001-3(d).**

**STANDING ORDER  
# 21-02**

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The Further Consolidated Appropriations Act, 2021 (Pub. L. 116-260) (the “CCA”), which was signed into law on December 27, 2020, included several provisions that temporarily created or expanded bankruptcy relief, in response to the direct and grave financial impact of the pandemic on individuals. This Standing Order is entered to articulate the new procedures a debtor or creditor must use to obtain some of those categories of relief. [New text is underlined.]

**1. PROVISIONS TO MODIFY THE SCOPE OF THE DISCHARGE FOR CERTAIN CHAPTER 13 DEBTORS**

The CCA creates a new § 1328(i), which allows the court, after notice and hearing, to grant a discharge to a chapter 13 debtor who hasn’t completed making plan mortgage payments in the principal residence if

- (1) the debtor has defaulted on no more than 3 monthly payments and such defaults are caused by COVID-related financial hardships, or
- (2) the plan provides for the curing of defaults and maintenance of mortgage payments under § 1322(b)(5), or
- (3) the debtor has entered into a forbearance agreement or loan modification with the mortgage holder or servicer.

To request this type of discharge, a debtor must file a motion on 14 days’ notice, setting forth satisfaction of the criteria set for in § 1328(i), using the new event for this purpose in CM/ECF, and may use the default procedure. See CCA div. FF tit. 10, § 1001(b).

The Court temporarily adds a **Vt. LBR LR 4004-2(e)**, effective through the sunset date of December 27, 2021, to create a clear procedure for chapter 13 debtors to obtain this relief:

(e) **Affirmation of Compliance and Motion for Entry of Discharge Order, For Relief Under § 1328(i).**

In order to obtain a discharge under § 1328(i) of the Bankruptcy Code, chapter 13 debtors must affirm they are in compliance with CCA div. FF, tit. 10, § 1001(b), in their motion requesting the entry of a discharge order.

- (1) **Content of the Motion.** In the motion, debtors must affirm they have fully complied with the terms of the confirmed plan, other than
  - (A) having not made all mortgage payments due on the debtors' principal residence due to COVID-related hardships; and
  - (B) either (i) having defaulted on 3 or fewer monthly mortgage payments, or (ii) if the plan provides for the curing of defaults, having entered into a forbearance agreement or loan modification with the mortgage holder or servicer.
- (2) **Filing of the Motion.** Debtors shall use the new event in CM/ECF called Motion for Discharge under § 1328(i) and file the motion with a proposed order (also available in CM/ECF), a notice of motion (which may be under the default procedure and give at least 14 days' notice), and a certificate of service.
- (3) **Service of the Motion.** Debtors shall serve the chapter 13 trustee, the mortgage lender(s) that hold liens on the debtors' principal residence and any other party with an interest in the debtors' principal residence that will be affected by the mortgage default.

## 2. PROVISIONS TO EXPAND THE OPPORTUNITIES FOR CHAPTER 13 DEBTORS TO MODIFY PLANS

The CCA creates a new § 1329(e), which allows debtors to modify confirmed chapter 13 plans to account for a proof of claim filed by a mortgage lender or servicer under the § 501(f) [relating to debts arising as a result of a mortgage payment forbearance]. To request modification on this basis, debtors must file a motion on notice, and an opportunity for hearing, affirming they have satisfied the criteria set forth in § 1329(e). See CCA div. FF, tit.10 § 1001(e).

The Court temporarily modifies **Vt. LBR LR 3015-8(b)(4)**, effective through the sunset date of December 27, 2021, to articulate the procedure for chapter 13 debtors to obtain this relief:

- (b) **Content of a Motion to Modify Plan.** A motion to modify plan must clearly set forth:
- (1) the date of the plan confirmation,
  - (2) the specific provisions of the plan (identified by part or paragraph) being modified,
  - (3) the differing treatment of the affected parties under the proposed modified plan,
  - (4) the circumstances that created the need to modify the confirmed plan and, if the basis for modification is a late-filed claim asserting sums due based on a mortgage forbearance, stating the date of, parties to, and length of that forbearance, and
  - (5) the factors demonstrating that the proposed modified plan meets the requirements of the Bankruptcy Code.

Debtors may seek this relief through use of the default notice procedure, and should do so using the local form of order to modify (Local Form F-13).

### **3. PROVISIONS TO EXTEND TIME FOR CERTAIN DEBTORS TO ASSUME, OR PERFORM THE TERMS OF, CERTAIN UNEXPIRED LEASES**

If a debtor in a case filed under chapter 11 subchapter V is experiencing COVID-related hardship, the CCA’s amendment of § 365(d)(3) authorizes the Court to extend the time period for that debtor to perform under an unexpired lease of nonresidential real property for up to an additional 60 days (for a total of up to 120 days). Additionally, the CCA amends § 365(d)(4), to extend the time for any debtor (who is the lessee) to assume or reject an unexpired lease of nonresidential real property from 120 days to 210 days. See CCA div. FF, tit. 10, § 1001(f).

The Court temporarily adds a **Vt. LBR LR 6006-2**, effective through the sunset date of December 27, 2022, to articulate the procedures eligible debtors must follow in order to obtain this relief:

#### **Vt. LBR 6006-2 (Temporary). COVID-Based Rights Under Executory Contracts and Unexpired Leases.**

- (a) **To extend a subchapter V debtor’s time to perform an unexpired lease of nonresidential real property.** A subchapter V debtor may extend their time to perform an unexpired lease of nonresidential real property for up to an additional 60 days (for a total of 120 days) by filing a motion that demonstrates the debtor’s inability to perform was due to COVID-related hardship. The debtor shall serve notice of the motion on the case trustee, the other parties to the lease, any party with an interest in that nonresidential real property, and any other parties who have appeared in the case.
- (b) **To extend a debtor’s time to assume an unexpired lease of nonresidential real property.** A debtor who is a lessee under an unexpired lease of nonresidential real property may file a motion, using the default procedure, to extend the time for assuming that lease from 120 to 210 days after the order for relief. The debtor shall serve notice of that motion on the case trustee, the other parties to the lease, any party with an interest in that non-residential real estate, and any other parties who have appeared in the case.

### **4. PROVISION TO ENSURE UTILITY SERVICE TO INDIVIDUAL DEBTORS WITHOUT (PREVIOUSLY REQUIRED) ASSURANCE OF PAYMENT**

The CCA adds a **new § 366(d)**, which prohibits a utility from altering, refusing or discontinuing service to an individual debtor, notwithstanding the debtor’s failure to provide “adequate assurance of payment,” if the debtor pays the utility for service provided in the first 20 days of the case and subsequently pays, when due, the amount for continued service during the remainder of the case. See CCA div. FF, tit. 10, § 1001(h).

The Court temporarily adds a **VT LBR LR 4001-3(d)**, effective through the sunset date of December 27, 2021, to articulate the procedure the debtor and utility must follow to ensure this new relief is available and requirements for obtaining it are clear:

**Vt. LBR 4001-3(d) (Temporary). Individual Debtors’ Rights to Utility Service During Bankruptcy Case, Without Adequate Assurance of Payment.**

- (a) **Content of the Motion.** An individual debtor may file a motion on shortened notice, for an order that prohibits a utility from altering, refusing, or discontinuing the debtor’s utility service, even if the debtor does not provide “adequate assurance of payment,” as otherwise required under § 366, if the debtor:
- (i) pays the utility company for service provided in the first 20 days of the case, within seven (7) days of receipt of an invoice from the utility for the utility service provided during the first 20 days of the case; and
  - (ii) thereafter makes all payments, in full and by the due date, for utility service provided during the remaining times the case is pending.
- (b) **Service of Motion.** To effect sufficient service of this motion, the debtor
- (i) shall serve the utility, its attorney, the case trustee (or, if no trustee has been appointed in the case, then on the 20 largest unsecured creditors), and the U.S. trustee;
  - (ii) shall provide no less than 5 days’ notice of the hearing on the motion;
  - (iii) shall label the motion as an “Emergency Motion” and contact the courtroom deputy to arrange for a court hearing date, prior to filing the motion; and
  - (iv) shall file a notice of motion and proposed order with the motion.

IT IS HEREBY ORDERED these amendments to the Court’s Local Rules and procedure are effective immediately, on a temporary basis, through the December 27, 2021 or December 27, 2022 sunset dates specified, respectively, above.

SO ORDERED.

February \_\_, 2021  
Burlington, Vermont

\_\_\_\_\_  
Colleen A. Brown  
United States Bankruptcy Judge

**Bankruptcy Related Excerpts from The Consolidated Appropriations Act, 2021  
116 P.L. 260, 2020 Enacted H.R. 133, 116 Enacted H.R. 133, 134 Stat. 1182**

**DIVISION B - COMMERCE, JUSTICE, SCIENCE, AND  
RELATED AGENCIES APPROPRIATIONS ACT, 2021**

**TITLE II - DEPARTMENT OF JUSTICE, GENERAL ADMINISTRATION, SALARIES AND EXPENSES,  
UNITED STATES TRUSTEE SYSTEM FUND**

The United States Trustee System Fund

For necessary expenses of the United States Trustee Program, as authorized, \$232,361,000, to remain available until expended:

Provided, That, notwithstanding any other provision of law, deposits to the United States Trustee System Fund and amounts herein appropriated shall be available in such amounts as may be necessary to pay refunds due depositors: Provided further, That, notwithstanding any other provision of law, fees deposited into the Fund pursuant to section 589a(b) of title 28, USC (as limited by section 1004(b) of the Bankruptcy Judgeship Act of 2017 (division B of Public Law 115- 72)), shall be retained and used for necessary expenses in this appropriation and shall remain available until expended: Provided further, That to the extent that fees deposited into the Fund in fiscal year 2021, net of amounts necessary to pay refunds due depositors, exceed \$232,361,000, those excess amounts shall be available in future fiscal years only to the extent provided in advance in appropriations Acts: Provided further, That the sum herein appropriated from the general fund shall be reduced (1) as such fees are received during fiscal year 2021, net of amounts necessary to pay refunds due depositors, (estimated at \$318,000,000) and (2) to the extent that any remaining general fund appropriations can be derived from amounts deposited in the Fund in previous fiscal years that are not otherwise appropriated, so as to result in a final fiscal year 2021 appropriation from the general fund estimated at \$0.

**DIVISION E - FINANCIAL SERVICES AND GENERAL  
GOVERNMENT APPROPRIATIONS ACT, 2021**

**TITLE III - THE JUDICIARY**<sup>1</sup>

Courts Of Appeals, District Courts, and Other Judicial Services Salaries and Expenses

For the salaries of judges of the United States Court of Federal Claims, magistrate judges, and all other officers and employees of the Federal Judiciary not otherwise specifically provided for, necessary expenses of the courts, and the purchase, rental, repair, and cleaning of uniforms for Probation and Pre-trial Services Office staff, as authorized by law, \$5,393,701,000 (including the purchase of firearms and ammunition); of which not to exceed \$27,817,000 shall remain available until expended for space alteration projects and for furniture and furnishings related to new space alteration and construction projects.

In addition, there are appropriated such sums as may be necessary under current law for the salaries of circuit and district judges (including judges of the territorial courts of the United States), bankruptcy judges, and justices and judges retired from office or from regular active service.

**DIVISION N - ADDITIONAL CORONAVIRUS RESPONSE AND RELIEF**

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<sup>1</sup> 116 P.L. 260, 2020 Enacted H.R. 133, 116 Enacted H.R. 133, 134 Stat. 1182, 116 P.L. 260, 2020 Enacted H.R. 133, 116 Enacted H.R. 133, 134 Stat. 1182

**TITLE II-- ASSISTANCE TO INDIVIDUALS, FAMILIES, AND BUSINESSES,**  
**SUBTITLE B— COVID-RELATED TAX RELIEF ACT OF 2020**

**Sec. 272. Additional 2020 Recovery Rebates For Individuals**

(d) Administrative Provisions.--

(1) Exception from reduction or offset.--Any refund payable by reason of section 6428A(f) of the Internal Revenue Code of 1986 (as added by this section), or any such refund payable by reason of subsection (c) of this section, shall not be--

(A) subject to reduction or offset pursuant to section 3716 or 3720A of title 31, USC,

(B) subject to reduction or offset pursuant to subsection (c), (d), (e), or (f) of section 6402 of the Internal Revenue Code of 1986, or

(C) reduced or offset by other assessed Federal taxes that would otherwise be subject to levy or collection.

(2) Assignment of benefits.--

(A) In general.--The right of any person to any applicable payment shall not be transferable or assignable, at law or in equity, and no applicable payment shall be subject to, execution, levy, attachment, garnishment, or other legal process, or the operation of any bankruptcy or insolvency law.

**TITLE III - CONTINUING THE PAYCHECK PROTECTION PROGRAM**  
**AND OTHER SMALL BUSINESS SUPPORT.**

**Sec. 320. Bankruptcy Provisions.<sup>2</sup>**

(a) In General.--Section 364 of title 11, USC, is amended by adding at the end the following:

“(g)(1) The court, after notice and a hearing, may authorize a debtor in possession or a trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of this title to obtain a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), and such loan shall be treated as a debt to the extent the loan is not forgiven in accordance with section 7A of the Small Business Act or subparagraph (J) of such paragraph (37), as applicable, with priority equal to a claim of the kind specified in subsection (c)(1) of this section.

“(2) The trustee may incur debt described in paragraph (1) notwithstanding any provision in a contract, prior order authorizing the trustee to incur debt under this section, prior order authorizing the trustee to use cash collateral under section 363, or applicable law that prohibits the debtor from incurring additional debt.

“(3) The court shall hold a hearing within 7 days after the filing and service of the motion to obtain a loan described in paragraph (1). Notwithstanding the Federal Rules of Bankruptcy Procedure, at such hearing, the court may grant relief on a final basis.”.

(b) Allowance of Administrative Expenses.--Section 503(b) of title 11, USC, is amended--

(1) in paragraph (8)(B), by striking “and” at the end;

(2) in paragraph (9), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(10) any debt incurred under section 364(g)(1) of this title.”.

(c) Confirmation of Plan for Reorganization.--Section 1191 of title 11, USC, is amended by adding at the end the following:

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<sup>2</sup> 116 P.L. 260, 2020 Enacted H.R. 133, 116 Enacted H.R. 133, 134 Stat. 1182, 116 P.L. 260, 2020 Enacted H.R. 133, 116 Enacted H.R. 133, 134 Stat. 1182

“(f) Special Provision Related to COVID-19 Pandemic.-- Notwithstanding section 1129(a)(9)(A) of this title and subsection (e) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title may be confirmed under subsection (b) of this section if the plan proposes to make payments on account of such claim when due under the terms of the loan giving rise to such claim.”.

(d) Confirmation of Plan for Family Farmers and Fishermen.--Section 1225 of title 11, USC, is amended by adding at the end the following:

“(d) Notwithstanding section 1222(a)(2) of this title and subsection (b)(1) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title may be confirmed if the plan proposes to make payments on account of such claim when due under the terms of the loan giving rise to such claim.”.

(e) Confirmation of Plan for Individuals.--Section 1325 of title 11, USC, is amended by adding at the end the following:

“(d) Notwithstanding section 1322(a)(2) of this title and subsection (b)(1) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title may be confirmed if the plan proposes to make payments on account of such claim when due under the terms of the loan giving rise to such claim.”.

(f) Effective Date; Sunset.--

(1) Effective date.--The amendments made by subsections (a) through (e) shall--

(A) take effect on the date on which the Administrator submits to the Director of the Executive Office for United States Trustees a written determination that, subject to satisfying any other eligibility requirements, any debtor in possession or trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of title 11, USC, would be eligible for a loan under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)); and

(B) apply to any case pending on or commenced on or after the date described in subparagraph (A)

(2) Sunset.--

(A) In general.--If the amendments made by subsections (a) through (e) take effect under paragraph (1), effective on the date that is 2 years after the date of enactment of this Act--

(i) section 364 of title 11, USC, is amended by striking subsection (g);

(ii) section 503(b) of title 11, USC, is amended--

(I) in paragraph (8)(B), by adding “and” at the end;

(II) in paragraph (9), by striking “; and” at the end and inserting a period; and

(III) by striking paragraph (10);

(iii) section 1191 of title 11, USC, is amended by striking subsection (f);

(iv) section 1225 of title 11, USC, is amended by striking subsection (d); and

(v) section 1325 of title 11, USC, is amended by striking subsection (d).

(B) Applicability.--Notwithstanding the amendments made by subparagraph (A) of this paragraph, if the amendments made by subsections (a) through (e) take effect under paragraph (1) of this subsection, such amendments shall apply to any case under title 11, USC, commenced before the date that is 2 years after the date of enactment of this Act

...

#### **Sec. 479a. Discretion Of Student Financial Aid Administrators.**

...

(C) Eligibility.--If a student pursues provisional independent student status and is not determined to be an independent student by a financial aid administrator, such student shall only be eligible for a Federal Direct Unsubsidized Stafford Loan for that award year unless such student subsequently completes the Free Application for Federal Student Aid as a dependent student.

“(d) Adjustments to Assets or Income Taken Into Account.--A financial aid administrator shall be considered to be making a necessary adjustment in accordance with this section if--

“(1) the administrator makes adjustments excluding from family income or assets any proceeds or losses from a sale of farm or business assets of a family if such sale results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy or a voluntary or involuntary liquidation; or

“(2) the administrator makes adjustments for a condition of disability of a student, or in the case of a dependent student, the dependent student's parent or guardian, or in the case of an independent student, the independent student's dependent or spouse, so as to take into consideration the additional costs incurred as a result of such disability.

## **DIVISION FF – OTHER MATTERS**

### **TITLE X - BANKRUPTCY RELIEF**

#### **Sec. 1001. Bankruptcy Relief.**

##### **(a) Property of the Estate.--**

(1) In general.--Section 541(b) of title 11, United States Code, is amended--

(A) in paragraph (9), in the matter following subparagraph (B), by striking “or”;

(B) in paragraph (10)(C), by striking the period at the end and inserting “; or”; and

(C) by inserting after paragraph (10) the following:

“(11) recovery rebates made under section 6428 of the Internal Revenue Code of 1986.”.

(2) Sunset.--Effective on the date that is 1 year after the date of enactment of this Act, section 541(b) of title 11, United States Code, is amended--

(A) in paragraph (9), in the matter following subparagraph (B), by adding “or” at the end;

(B) in paragraph (10)(C), by striking “; or” and inserting a period; and

(C) by striking paragraph (11).

##### **(b) Discharge.--**

(1) In general.--Section 1328 of title 11, USC, is amended by adding at the end the following:

“(i) Subject to subsection (d), after notice and a hearing, the court may grant a discharge of debts dischargeable under subsection (a) to a debtor who has not completed payments to the trustee or a creditor holding a security interest in the principal residence of the debtor if--

“(1) the debtor defaults on not more than 3 monthly payments due on a residential mortgage under section 1322(b)(5) on or after March 13, 2020, to the trustee or creditor caused by a material financial hardship due, directly or indirectly, by the coronavirus disease 2019 (COVID-19) pandemic; or

“(2)(A) the plan provides for the curing of a default and maintenance of payments on a residential mortgage under section 1322(b)(5); and

“(B) the debtor has entered into a forbearance agreement or loan modification agreement with the holder or servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) of the mortgage described in subparagraph (A)).”.

(2) Sunset.--Effective on the date that is 1 year after the date of enactment of this Act, section 1328 of title 11, United States Code, is amended by striking subsection (i).

##### **(c) Protection Against Discriminatory Treatment.--**

(1) In general.--Section 525 of title 11, USC, is amended by adding at the end the following:

“(d) A person may not be denied relief under sections 4022 through 4024 of the CARES Act (15 U.S.C. 9056, 9057, 9058) because the person is or has been a debtor under this title.”.

(2) Sunset.--Effective on the date that is 1 year after the date of enactment of this Act, section 525 of title 11, United States Code, is amended by striking subsection (d).

##### **(d) CARES Forbearance Claims.--**

(1) Filing of proofs of claims or interests.--Section 501 of title 11, USC, is amended by adding at the end the following:

“(f)(1) In this subsection--

“(A) the term ‘CARES forbearance claim’ means a supplemental claim for the amount of a Federally backed mortgage loan or a Federally backed multifamily mortgage loan that was not received by an eligible creditor during the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057);

“(B) the term ‘eligible creditor’ means a servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) with a claim for a Federally backed mortgage loan or a Federally backed multifamily mortgage loan of the debtor that is provided for by a plan under section 1322(b)(5);

“(C) the term ‘Federally backed mortgage loan’ has the meaning given the term in section 4022(a) of the CARES Act (15 U.S.C. 9056(a)); and

“(D) the term ‘Federally backed multifamily mortgage loan’ has the meaning given the term in section 4023(f) of the CARES Act (15 U.S.C. 9057(f)).

“(2)(A) Only an eligible creditor may file a supplemental proof of claim for a CARES forbearance claim.

“(B) If an underlying mortgage loan obligation has been modified or deferred by an agreement of the debtor and an eligible creditor of the mortgage loan in connection with a mortgage forbearance granted under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057) in order to cure mortgage payments forborne under the forbearance, the proof of claim filed under subparagraph (A) shall include--

“(i) the relevant terms of the modification or deferral;

“(ii) for a modification or deferral that is in writing, a copy of the modification or deferral; and

“(iii) a description of the payments to be deferred until the date on which the mortgage loan matures.”.

(2) Allowance of claims or interests.--Section 502(b)(9) of title 11, USC, is amended to read as follows:

“(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) or under the Federal Rules of Bankruptcy Procedure, except that--

“(A) a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide;

“(B) in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required; and

“(C) a CARES forbearance claim (as defined in section 501(f)(1)) shall be timely filed if the claim is filed before the date that is 120 days after the expiration of the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057).”.

(3) Sunset.--Effective on the date that is 1 year after the date of enactment of this Act--

(A) section 501 of title 11, USC, is amended by striking subsection (f); and

(B) section 502(b)(9) of title 11, USC, is amended--

(i) in subparagraph (A), by adding “and” at the end;

(ii) in subparagraph (B), by striking “; and” and inserting a period; and

(iii) by striking subparagraph (C).

(e) Modification of Plan After Confirmation--

(1) In general.--Section 1329 of title 11, USC, is amended by adding at the end the following:

“(e)(1) A debtor of a case for which a creditor files a proof of claim under section 501(f) may file a request for a modification of the plan to provide for the proof of claim.

“(2) If the debtor does not file a request for a modification of the plan under paragraph (1) on or before the date that is 30 days after the date on which a creditor files a claim under section 501(f), after notice, the court, on a motion of the court or on a motion of the United States trustee, the trustee, a bankruptcy

administrator, or any party in interest, may request a modification of the plan to provide for the proof of claim."

(2) Sunset.--Effective on the date that is 1 year after the date of enactment of this Act, section 1329 of title 11, United States Code, is amended by striking subsection (e).

(f) Executory Contracts and Unexpired Leases--

(1) In general.--Section 365(d) of title 11, United States Code, is amended--

(A) in paragraph (3)--

(i) by inserting "(A)" after "(3)";

(ii) by inserting ", except as provided in subparagraph (B)" after "such 60-day period"; and

(iii) by adding at the end the following:

"(B) In a case under subchapter V of chapter 11, the time for performance of an obligation described in subparagraph (A) arising under any unexpired lease of nonresidential real property may be extended by the court if the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic until the earlier of--

"(i) the date that is 60 days after the date of the order for relief, which may be extended by the court for an additional period of 60 days if the court determines that the debtor is continuing to experience a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; or

"(ii) the date on which the lease is assumed or rejected under this section.

"(C) An obligation described in subparagraph (A) for which an extension is granted under subparagraph (B) shall be treated as an administrative expense described in section 507(a)(2) for the purpose of section 1191(e)."; and

(B) in paragraph (4), by striking "120" each place it appears and inserting "210".

(2) Sunset.--

(A) In general.--Effective on the date that is 2 years after the date of enactment of this Act, section 365(d) of title 11, USC, is amended--

(i) in paragraph (3)--

(I) by striking "(A)" after "(3)";

(II) by striking ", except as provided in subparagraph (B)" after "such 60-day period"; and

(III) by striking subparagraphs (B) and (C); and

(ii) in paragraph (4), by striking "210" each place it appears and inserting "120".

(B) Subchapter v cases filed before sunset.--

Notwithstanding the amendments made by subparagraph (A), the amendments made by paragraph (1) shall apply in any case commenced under subchapter V of chapter 11 of title 11, USC, before the date that is 2 years after the date of enactment of this Act.

(g) Preferences--

(1) In general.--Section 547 of title 11, USC, is amended--

(A) in subsection (b), in the matter preceding paragraph (1), by striking "and (i)" and inserting "(i), and (j)"; and

(B) by adding at the end the following:

"(j)(1) In this subsection:

"(A) The term 'covered payment of rental arrearages' means a payment of arrearages that--

"(i) is made in connection with an agreement or arrangement--

"(I) between the debtor and a lessor to defer or postpone the payment of rent and other periodic charges under a lease of nonresidential real property; and

"(II) made or entered into on or after March 13, 2020;

"(ii) does not exceed the amount of rental and other periodic charges agreed to under the lease of nonresidential real property described in clause (i)(I) before March 13, 2020; and

"(iii) does not include fees, penalties, or interest in an amount greater than the amount of fees, penalties, or interest--

“(I) scheduled to be paid under the lease of nonresidential real property described in clause (i)(I); or

“(II) that the debtor would owe if the debtor had made every payment due under the lease of nonresidential real property described in clause (i)(I) on time and in full before March 13, 2020.

“(B) The term ‘covered payment of supplier arrearages’ means a payment of arrearages that--

“(i) is made in connection with an agreement or arrangement--

“(I) between the debtor and a supplier of goods or services to defer or postpone the payment of amounts due under an executory contract for goods or services; and

“(II) made or entered into on or after March 13, 2020;

“(ii) does not exceed the amount due under the executory contract described in clause (i)(I) before March 13, 2020; and

“(iii) does not include fees, penalties, or interest in an amount greater than the amount of fees, penalties, or interest--

“(I) scheduled to be paid under the executory contract described in clause (i)(I); or

“(II) that the debtor would owe if the debtor had made every payment due under the executory contract described in clause (i)(I) on time and in full before March 13, 2020.

“(2) The trustee may not avoid a transfer under this section for--

“(A) a covered payment of rental arrearages; or

“(B) a covered payment of supplier arrearages.”.

(2) Sunset.--

(A) In general.--Effective on the date that is 2 years after the date of enactment of this Act, section 547 of title 11, USC, is amended--

(i) in subsection (b), in the matter preceding paragraph (1), by striking “, (i), and (j)” and inserting “and (i)”; and

(ii) by striking subsection (j).

(B) Cases filed before sunset.--Notwithstanding the amendments made by subparagraph (A), the amendments made by paragraph (1) shall apply in any case commenced under title 11, USC, before the date that is 2 years after the date of enactment of this Act.

(h) Termination of Utility Services.--

(1) In general.--Section 366 of title 11, USC, is amended by adding at the end the following:

“(d) Notwithstanding any other provision of this section, a utility may not alter, refuse, or discontinue service to a debtor who does not furnish adequate assurance of payment under this section if the debtor--

“(1) is an individual;

“(2) makes a payment to the utility for any debt owed to the utility for service provided during the 20-day period beginning on the date of the order for relief; and

“(3) after the date on which the 20-day period beginning on the date of the order for relief ends, makes a payment to the utility for services provided during the pendency of case when such a payment becomes due.”.

(2) Sunset.--Effective on the date that is 1 year after the date of enactment of this Act, section 366 of title 11, USC, is amended by striking subsection (d).

(i) Customs Duties.--

(1) In general.--Section 507(d) of title 11, United States Code, is amended--

(A) by striking “, (a)(8)”;

(B) by inserting “or subparagraphs (A) - (E) and (G) of subsection (a)(8)” after “(a)(9)”; and

(C) inserting “or subparagraph” after “such subsection”.

(2) Sunset.--Effective on the date that is 1 year after the date of enactment of this Act, section 507(d) of title 11, United States Code, is amended--

(A) by inserting “, (a)(8)” before “, or (a)(9)”;

(B) by striking “or subparagraphs (A) through (E) and (G) of subsection (a)(8)”; and

(C) by striking “or subparagraph” after “such subsection”.

**12.28.20:** A quick summary of the Bk'cy Code amendments in Appropriations Bill written by Hon. Robert Drain, SDNY:

- New § 541(b)(11) excludes from estate property “recovery rebates made under § 6428” of the Internal Revenue Code (COVID stimulus pmts for individuals under designated income levels) (1-year sunset).
- New § 1328(i) allows the court, after notice and hearing, to grant a discharge to a chapter 13 debtor who hasn't completed making plan mortgage pmts in the principal residence if (1) the debtor defaults on no more than 3 monthly pmts and such defaults are caused by COVID-related financial hardships, or (2) the plan provides for the curing of defaults and the debtor has entered into a forbearance agreement with the mortgage holder (1-year sunset).
- New § 525(d) provides that the benefits under §§ 4022-24 of the CARES Act (15 USC §§ 9056-58 (eviction and foreclosure moratoriums)) may not be denied to a debtor in bankruptcy (1-year sunset).
- New § 501(f) *inter alia* identifies the party who may file a proof of claim for unpaid mortgage pmts arising from the forbearance period given under the CARES Act (1-year sunset).
- § 502(b)(9) (which generally gives the Government additional time to file proofs of claim) is amended to give a creditor additional time to file a proof of claim for unpaid mortgage pmts arising from the forbearance period given under the CARES Act (1-year sunset).
- New § 1329(e) allows the modification of a confirmed chapter 13 plan to account for a proof of claim by a mortgage lender under new § 501(f) (1-year sunset).
- § 365(d)(3) is amended to permit the Court in a case under subchapter V of chapter 11 to extend the time period for the debtor to perform under an unexpired lease of nonresidential real property if the debtor is experiencing COVID-related financial hardship for up to an additional 60 days (for a total of up to 120 days) (2-year sunset).
- The deadline in § 365(d)(4) for the debtor's assumption of an unexpired lease of nonresidential real property (where the debtor is the lessee) is extended from 120 days to 210 days (2-year sunset).
- New § 547(j) exempts from avoidance as a preference certain prepetition pmts to commercial landlords and suppliers which were made as part of an agreement or arrangement to defer/postpone pmts after March 13, 2020 (2-year sunset).
- New § 366(d) prohibits a utility from altering/discontinuing services to an individual debtor notwithstanding the failure to provide adequate “assurance of pmt” under § 366 so long as the debtor pays the utility for service provided in the first 20 days of the case and subsequently pays the amount for continued service during the pendency of the case when it comes due (1-year sunset).
- § 507(d), which limits the priority rights of certain subrogees of priority claims, is amended to state that subrogees of certain custom duties under § 507(a)(8)(F) retain priority status (1-year sunset).