

**List of 13 Potential Technical Amendments to the Bankruptcy Code After
Enactment of the
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
Not Included in H.R. 6198**

**National Bankruptcy Conference
October 1, 2010**

Section	Problem	Proposed Fix
1 § 103(k)	Various provisions of chapter 15 that apply to all cases were not picked up in Section 103(k).	(k) Chapter 15 applies only in a case under such chapter, except that— (1) sections 1505, 1513, and 1514, 1523, 1525 through 1529, 1531 and 1532 apply in all cases under this title; and (2) sections 1509 and 1524 apply applies whether or not a case under this title is pending.
2 § 362(b)(24)	This provision, which appears to be added to exempt certain transactions done without knowledge of the commencement of the case, is too broad for its purpose.	(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549(c).
3 § 366(c)(2)	Section 549(c) is a safe harbor for the type of transactions sought to be protected by paragraph (24), and limiting the exemption to transactions under that section preserves the addition's purpose and intent.	(2) Notwithstanding subsection (b), but s Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, . . .

- 4 § 503(b)(9) New administrative priority does not require that the debtor not have paid for the goods sold; possible interpretation would allow for double payment
- 5 § 521(a)(6) This section states that the stay terminates 45 days after the meeting of creditors; the coordinate subsection in Section 521, § 521(a)(2)(B), however, requires the redemption to be within 30 days of first date set for the meeting of creditors.
- 6 § 522(p) Statute refers to non-existent election.
- 7 § 522(q) Statute refers to non-existent election.
- 8 § 528(a)(1) Statute requires a written contract even if person does not retain the debt relief agency consulted.
- 9 § 546(c)(1) Current cross-reference in opening line is to 507(c), priority for tax overpayments. We think it is unlikely that this was the intended cross-reference, but are unsure what Congress was trying to accomplish instead. It is possible, but not obvious, that Congress may have intended to carve out 507(b), which deals in part with failed adequate protection. If that is the case, the 507(c) reference should
- (9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business, **and for which the purchase price has not been paid.**
- Either change Section 521(a)(2)(B) to 45 days; or change Section 521(a)(6) to 30 days.
- (p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, ~~as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, if under subsection (b) nonbankruptcy law supplies the law governing exemptions, a debtor may not exempt . . .~~
- (q)(1) ~~As a result of electing under subsection (b)(3)(A) to exempt property under State or local law if under subsection (b) nonbankruptcy law supplies the law governing exemptions, a debtor may not exempt any amount of an interest in property described in . . .~~
- (a) A debt relief agency shall—
- (1) **if an assisted person retains or employs an agency, then** not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person . . .
- (c)(1) Except as provided in subsection (d) of this section ~~and in section 507(e)~~, and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods . . .

be stricken and replaced with 507(b).

10 § 1125(f)(3)(A) Section 1125(f)(1) provides that a plan may be approved as providing adequate information in lieu of a disclosure statement, but the section never specifically authorizes conditional approval of a plan for this purpose. (3)(A) the court may conditionally approve a disclosure statement **or a plan as providing adequate information** subject to final approval after notice and a hearing;

11 §1129(a)(9)(B) Section omits various priority claims added by BAPCPA and prior legislation

(B) with respect to a class of claims of a kind specified in section 507(a)(31), 507(a)(4), 507(a)(5), 507(a)(6), ~~or 507(a)(7), 507(a)(8), 507(a)(9), or 507(a)(10)~~ of this title, each holder of a claim of such class will receive—

12 § 1129(a)(15)(A) The term "claim" at the end of the subparagraph should be qualified by "allowed" in the case of an individual debtor

(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—
(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the **allowed** amount of such claim; . . .

13 § 1129(a)(16) As written, this provision technically applies to all corporations, and should be revised to restrict its scope to non-profit entities as intended.

(16) **If the debtor is a corporation that is not a moneyed, business, or commercial corporation, all** transfers of property **of under** the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation.