

Does the Math Check Out?

**Subtracting Chapter 13 and Chapter 7 and
Adding Chapter 10 under the Consumer
Bankruptcy Reform Act of 2020**

**ABI Consumer Bankruptcy Committee Webinar
December 17, 2020**

PANELISTS



Thomas A. Lee III, Moderator
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Hon. Bess M. Parrish Creswell
U.S. Bankruptcy Court
(M.D. Ala.)
Montgomery, AL

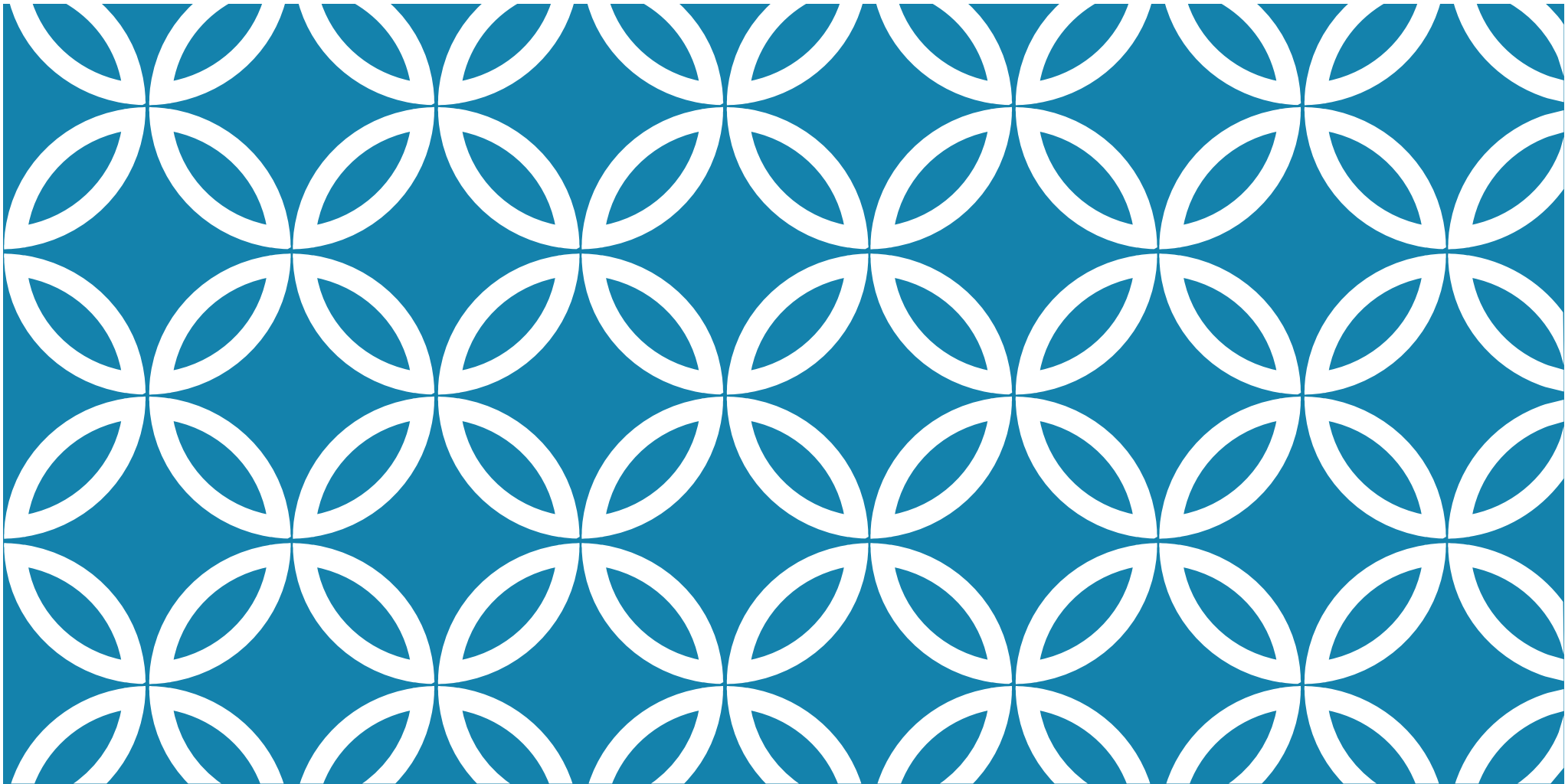


Nancy J. Whaley
Standing Chapter 13 Trustee
Atlanta, GA

AGENDA

- Policy Overview
- Chapter 10 Overview
- Trustee Overview
- Proposed Consumer Protection Changes
- Questions?

POLL QUESTION 1 - AUDIENCE



POLICY OVERVIEW

Hon. Bess M. Parrish Creswell

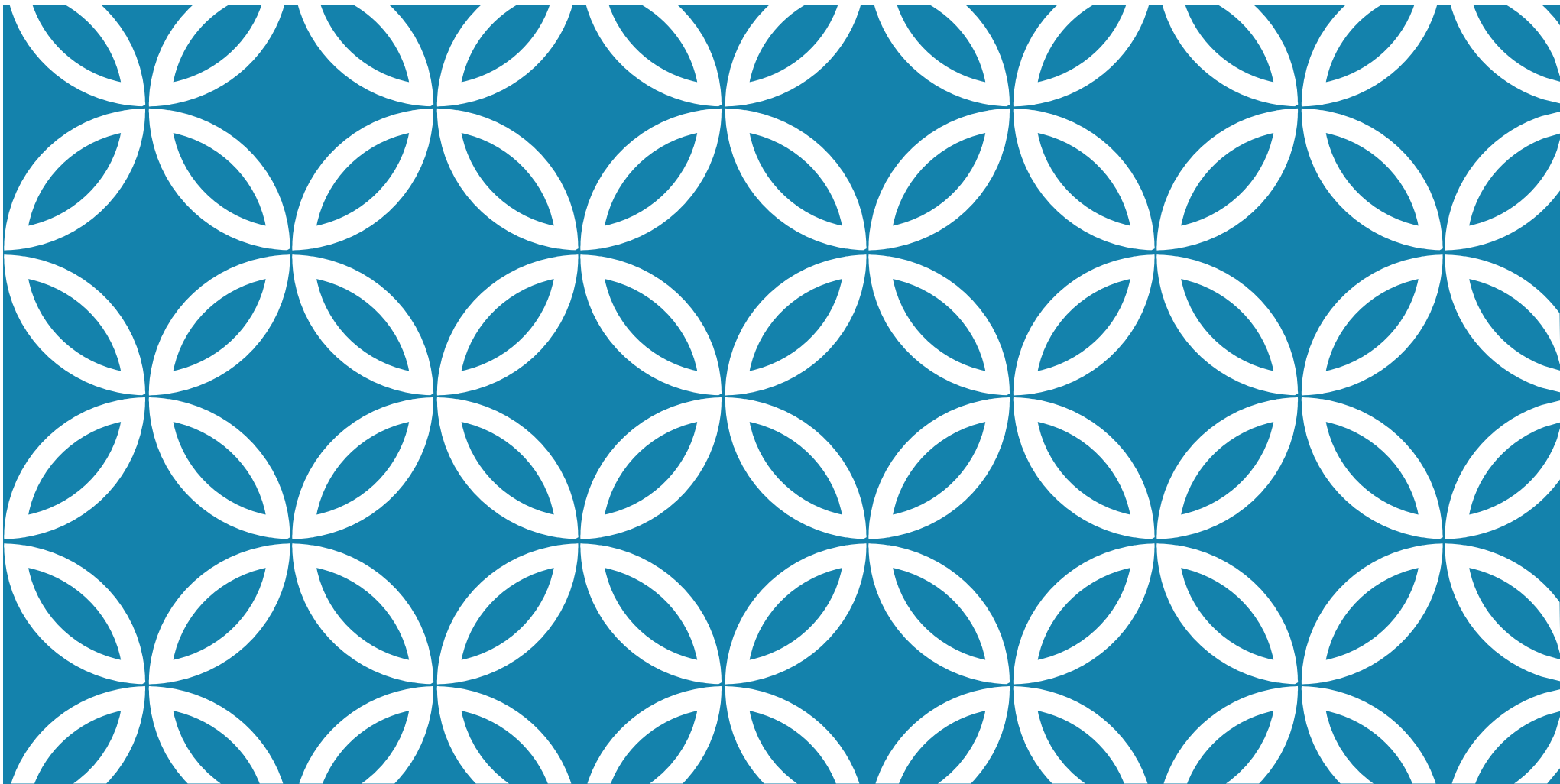
U.S. Bankruptcy Court (M.D. Ala.)
Montgomery, AL

STATED GOALS OF THE ACT

- Streamline the Bankruptcy Process and Make it Cheaper
 - Waives filing and administrative fees for some debtors
 - Repeals all of the BAPCA credit counseling requirements
 - Changes to discharge (immediate discharge if no minimum payment and discharge upon confirmation for debtors with minimum payment obligation)
- Provide Flexibility in Restructuring
 - Creates Multiple Options for Debtors – no-payment discharge, repayment plan, residence plan, and property plan
 - Increases federal exemptions and prohibits states from opting out of federal exemptions
- Correct the Preemption of State Usury and Consumer Protection Laws
 - Provides for modification of car loans to market value
 - Allows for discharge of student loan debt
 - Voids arbitration and joint action provisions upon plan confirmation

STATED GOALS OF THE ACT (CONT.)

- Balance Racially Disparate Outcomes in Bankruptcy Cases
 - Allows all debtors to pay attorney fees through a plan
 - Makes certain criminal fines and fees dischargeable
 - Makes certain civil rights violations nondischargeable
- Close Bankruptcy Loopholes for Wealthy
 - Removes the “actual intent to hinder, delay or defraud” language from 548(e)(1) to eliminate the self-settled trust loophole
 - Closes loophole for spendthrift trusts, with an exception for bona fide disability trusts
- Reduce Abusive Creditor Behavior
 - Authorizes courts to disallow claims if the claimholder or its assignor engages in inequitable conduct in general or if claimholder or its assignor violates creditor consumer laws in connection with the specific claim
 - Allows for costs, fees, and punitive damages if a claim filed in bad faith outside the applicable statutory of limitations period



CHAPTER 10 OVERVIEW

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SUBCHAPTER I - GENERAL PROVISIONS

- Section 1005 - Conversion or dismissal
 - Dismissal request by court, trustee, US trustee or other party in interest - notice and hearing required. Debtor has an absolute right.
 - Cause for dismissal -
 - Manifestly improper use of the bankruptcy system = abuse
- Section 1006 - Treatment of certain contracts and leases
 - Ipso facto clauses not applicable

SUBCHAPTER I - GENERAL PROVISIONS (CONT.)

- Section 1007 Treatment of rental purchase agreements
 - Very broad definition - personal property used for personal or household purpose (not including vehicle);
 - Stay is in place if debtor elects to retain property
- Section 1008 Obtaining Credit
 - Court approval is required for debt incurred outside the ordinary course of debtor's affairs;
 - All credit and debt not approved is void and there is a interest rate cap
- Section 1009 Stay of action against co-debtor
 - Becomes effective upon filing
 - Certain limitations

SUBCHAPTER II - PLANS

- Section 1021 - Filing of Plans

- There are basically four categories of cases:

1. 2) Repayment Plan (solely provides for the treatment of unsecured claims);
2. 3) Residence Plan (solely provides for treatment of claims secured by debtor's principle residence; and
3. 4) Property Plan (solely provides for treatment of claims secured by property that is not the debtors principal residence).
4. Discharge without a plan requires a minimum payment obligation of \$0 - and a discharge (pursuant to section 1031) is entered without filing a plan;

- Debtor may file one or more of the three plans and each plan may be handled separately for confirmation and discharge purposes (as well as revocation of confirmation and discharge)

SUBCHAPTER II - PLANS (CONT.)

■ INCOME EXAMPLE

- Median income is \$100,000:
- Income: <\$135,000 pays \$0.00
- \$145,000 pays \$1500 total or as little as \$42 a month for 36 months
- \$195,000 pays \$19,500 total or as little as \$542 a month for 36 month
- \$245,000 pays \$57,000 total or as little as \$1583 a month for 36 months
- Someone Earning \$300K would then pay \$139,500, consisting of \$57K from their \$245K of income and \$82,500 on their last \$55K of income, or \$3875 a month for 36 months. That's still only 16% of their gross income. (And does include deduction for expenses that cannot be reasonably avoided.)

SUBCHAPTER II - PLANS (CONT.)

- Section 1022 - Contents of Plan

- (a) Repayment Plans

- Deferred cash payments for a 36 month limitation or tendering exempt assets within 30 days of confirmation (unless otherwise ordered) due within 30 days (1025(b)(1)).
 - Assumption or rejection of executory contracts or leases (Section 365)
 - 523 claims may be paid through plan as long as all claims pursuant to 11 507 claims are paid at 100%, or they agree otherwise.
 - Request for tender by Trustee if liquidation is reasonably likely to produce a meaningful distribution to creditors (1022(a)(2)(B)); or
 - Installment redemption - an alternative to tender - debtor can propose to pay the Trustee through the plan in an amount equal to the value minus secured claims and exemptions (1022(a)(2)(B)).

SUBCHAPTER II - PLANS (CONT.)

- Section 1022 - Contents of Plan (cont.)

- (b) Residence Plans

- Plan may modify the rights of claim secured by the debtor's principal residence (1022(b)(1));
 - Plan may cure or waive cure within a reasonable time (1022(b)(2)) - subject to 1022 (d) - and may utilize the installment redemption as provided in 1022(a)(2)(B) . Plan may provide for the payment of any allowed secured claim secured by the debtor's principle residence (1022(b)(3));
 - Plan may authorize the sale of debtor's principal residence - later than 60 days and earlier than 180 days debtors principal residence (1022(b)(4)); Tendering of property - to the first lienholder, subject to all other junior lienholders (14 days to do so); if tender not timely accepted - debtor may sell the property, free and clear from liens and all liens will attach to the proceeds from the sale (after deducting all costs of Sale) (1022(b)(4)).

SUBCHAPTER II - PLANS (CONT.)

- Section 1022 - Contents of Plan (cont.)

- (c) Property Plans

- Plan may modify or leave unaffected, the rights of claim secured by property, other than the principal residence(1022(c)(1));
 - Plan may cure or waive cure within a reasonable time (1022(c)(2)) - subject to 1022 (d) and may utilize the installment redemption as provided in 1022(a)(2)(B).
 - Plan may provide for payment on any secured claim, that is not the debtor's principal residence (1022(c)(3))
 - Plan may provide for the treatment of the following as a holder of a secured claim: installment sales contract; lessor of a lease of personal property which extends beyond the economic life of property; or anyone who has a security interest in personal property (1022(c)(3))

SUBCHAPTER II - PLANS (CONT.)

- Section 1023- Plan Confirmation hearing
 - Objection= hearing; No objection= No hearing
 - Multiple plans under 1021- only one hearing is held for confirmation on all the plans; unless there were no objections or the court orders otherwise (1024 also allows a creditor to request all plans be heard together)

SUBCHAPTER II - PLANS (CONT.)

■ Section 1024 Confirmation of Plan

- Plan requirements: (plan complies with 1022(a)(1); Court fees paid; no bad faith - more than just the payment; feasibility; all post-petition DSO payments current; compensation paid to attorney is reasonable (1024(a)(1)-(6));
- Non-impaired creditor may not object to a residence plan or a repayment plan (Section 1124 determines if the creditor is impaired);
- Denial of confirmation is a final appealable order - debtor may propose another plan if the previous plan was denied;
- Multiple plans - creditor can request any and all plan confirmations be stayed until they all are confirmed;
- Interest Rates defined - similar duration and rate type

SUBCHAPTER II - PLANS (CONT.)

- Section 1024 Confirmation of Plan (cont.)

- Objections:

- Repayment Plan - Trustee or holder of an unsecured claim can object; plan will be confirmed if: debtor proposes the minimum payment obligation as provided in 1022(a)(1) or the court finds otherwise;
 - Residence Plan - holder of the allowed secured claim secured by the principal residence can file an objection (trustee cannot object). Plan will be confirmed if: holder retains their lien; value is not less than the allowed amount of the secured claim; equal monthly payments (except if a cure is proposed); plan default = default in the security agreement; default created if 120 days late on a plan payment or mortgage payment;

SUBCHAPTER II - PLANS (CONT.)

- Section 1024 Confirmation of Plan (cont.)
 - Residence Plan (cont.) - any judicial liens or statutory liens existing before filing cannot exercise any remedies unless there is a 120 day delinquency in the plan payments; the last payment secured claim is not later than 15 years from the date of confirmation of a residence plan or 5 years after the original maturity date of the loan; eligible for discharge.
 - Property Plan - holder of the claim secured by property that is not the principal residence may object (trustee cannot object) - plan will be confirmed if: holder retains their lien; value is not less than the allowed amount of the secured claim- unless motor vehicle was purchased within the 90 days period prior to the filing and the lien is PMSI; Distribution is not less than the value as provided in the allowed claim; payments on all claims are equal monthly payments; plan default = default in the security agreement; over 90 delinquency in plan payments creates a default;

SUBCHAPTER II - PLANS (CONT.)

- Section 1024 Confirmation of Plan (cont.)
 - Property Plan (cont.) - any judicial liens or statutory liens existing before filing cannot exercise any remedies unless there is a 90 day delinquency in the plan payments; last payment is not later than 5 years after confirmation or original maturity of the loan and the debt secured by the property plan was not previously provided for in a plan confirmed within 6 years of the date of this petition and completed; if the property securing the claim is for a motor vehicle - evidence of insurance must be provided and the motor vehicle must be regularly used as a means of transportation by the debtor or a debtor dependent or used similarly in the debtors business; if not a motor vehicle - the property is reasonably necessary for the support and maintenance of the debtor or dependent of the debtor or the property is reasonably necessary for the business of the debtor or debtor's dependent.

SUBCHAPTER II - PLANS (CONT.)

- Section 1025 Payments under a repayment plan
 - Trustee: collects and is accountable for future income; accepts and will be accountable for any property tendered by the debtor from un-exempt property; reduce to money and will be accountable for any property tendered by the debtor under the repayment plan as expeditiously as possible - as in the best interest of the interested parties;
 - Payments: Payments start 30 days after order for relief; commence the appropriate amount proposed; tender all property requested by the trustee for an unexempt property, unless redemption is chosen;
 - Trustee retains payment until plan is confirmed; once plan is confirmed - the trustee will distribute as soon as practicable - in accordance with the plan; if case dismissed - trustee funds are returned to debtor after 503 b claims.

SUBCHAPTER II - PLANS (CONT.)

- Section 1025 Payments under a repayment plan (cont.)
 - Trustee distributes to the creditors, in accordance with the repayment plan or the order confirming the repayment plan; Prohibition - 523 claim being paid though the plan is the last to be paid
 - Priority of Payments: 726 controls, except - administrative claims will be paid before or at the same time (attorneys fees); and the % fee fixed for the standing trustee under 28 USC section 586(e); avoidance actions - subject to exemptions - will be distributed according to the plan;
 - Enforcement of Obligations of Debtor: Obligations of debtor to pay under a repayment - only the Trustee can enforce the payment; 90 day delinquency requirement; repayment plan is deemed to be a simple contract and can be enforced with a garnishment; limited by inefficient enforcement - the costs would exceed the benefit; 2 year SOL from the 90 day delinquency; the Trustee may not assign his/her rights.

SUBCHAPTER II - PLANS (CONT.)

- Section 1026 - Payments under a residence plan or property plan
 - Payments are made by debtor in accordance with the plan; if a cure default is proposed, debtor may certify to the holder of the claim, the default has been cured - certification by debtor is presumptive evidence of cure.

SUBCHAPTER II - PLANS (CONT.)

- Section 1027 Protections of Lessors and purchase money lenders
 - Lease payments on personal property must be made timely, unless - the court orders otherwise; lease is rejected; debtor assumes lease; Insurance coverage - must be provided if required pursuant to the lease of purchase agreement and continue to provide evidence;

SUBCHAPTER II - PLANS (CONT.)

- Section 1028 - Effect of Confirmation
 - Confirmation binds the debtor and the creditor for which the plan provides;
Repayment Plan Injunction - 523 claims are enjoined from collecting when a plan is confirmed - until - when the plan payments are completed or the debtor is not more than 90 days delinquent under a repayment plan;
Residence Plan Injunction - injunction is in place against any debt being cured under 1022(b)(2) or property securing such debt - as long as the debtor is not more than 120 days delinquent under a repayment plan; Property Plan Injunction - injunction is in place against any debt being cured under 1022(c)(2) or property securing such debt - as long as the debtor is not more than 90 days delinquent under a repayment plan; party can request relief from the injunctions in the Residence Plan or the Property Plan; vesting of property - all property of the estate vests in the debtor upon confirmation and is free and clear of any claim or interest of any creditor holding a claim; Confirmation of a repayment plan does not impact the rights of any secured creditor that has not been avoided.

SUBCHAPTER II - PLANS (CONT.)

- Section 1028 - Effect of Confirmation (cont.)
 - Lien Created to Secure Repayment Plan Obligation
 - Confirmation of a Repayment Plan only gives the Trustee a lien to secure the minimum payment obligation; lien of the trustee has the same status, priority, rights and powers as any creditor as listed- very, very broad; line is not a garnishment as to the consumer credit protection act and does not take precedent over a DSO order; recordation of the lien - will be filed in the bankruptcy lien filing system maintained by the CBRA section 50; Residence plan and Property plan does not create a Trustee lien - all parties retain their lien; Ipso Facto provisions and arbitration provisions are void-once plan is confirmed

SUBCHAPTER II - PLANS (CONT.)

- Section 1029 - Modification of repayment plan
 - Repayment plan - after notice and a hearing - a plan may be modified when there is a material change in the financial condition of the debtor - after confirmation and substantial burden is created on the debtor or dependent of the debtor. Additional attorney's fees are possible - notice and a hearing would be required

SUBCHAPTER II - PLANS (CONT.)

- 1031- Discharge; scope and timing
 - Discharge is to be entered as follows: Repayment plan - after confirmation; No Minimum Payment Obligation - once the deadline to file a repayment plan expires - rule to be created by the judicial conference.
 - Exceptions: 6 year rule - discharge previously granted - under prior 727 and 1328; failure to tender property as required or executed waiver of discharge and hearing on the waiver; intent to hinder, delay or defraud officer of estate transferred removed mutilated etc. property within 1 year of filing or property after the filing; records purposely not preserved regarding financial condition or business transactions; any failure to explain loss of assets; refusal to obey court order, failure to testify after immunity granted, failure to testify unless assert self incrimination
- (Discharge violations can be brought as causes of action under State and Federal Law)

SUBCHAPTER III - DISCHARGE

- 1032 - Revocation of Discharge or order of Confirmation
 - Trustee, creditor, US Trustee can request; any time within 1 year after the entry of the confirmation order under 1024 or order of discharge under 1031;
 - Basis of revocation: confirmation or discharge was obtained through fraud; or refusal of debtor refusal to obey court order, failure to testify after immunity granted, failure to testify unless assert self incrimination
 - If court revokes an order of confirmation or order of discharge - case will be converted to a case as provided under 1005
- (Discharge violations can be brought as causes of action under State and Federal Law)

POLL QUESTION 2 — STUDENT LOAN DEBT

SUBCHAPTER V - LIMITED PROCEEDINGS

- Section 1051 Election of limited proceeding
 - Provides the ability to elect to handle certain secured debts as to specific property. If no election is made, it will proceed as a general proceeding limited proceeding will not apply. Choice must be made prior to filing. This election can be made if a previous case was dismissed.
- Section 1052 Effect of Limited proceeding
 - If debtor has elected - debtor shall: file a schedule listing the creditor of the affected property; property of the estate is limited to only the affected property; Debtor has specific rights and power of a trustee; debtor shall file one or more plans under 1021(a); must be done within 7 days of filing and if the court allows, no longer than 30 days; stay is only in effect against the specific creditor and property; limited filing information- current income and expenditures only; notice of filing only to affected party and the US Trustee

SUBCHAPTER V - LIMITED PROCEEDINGS (CONT.)

- Section 1053 Dismissal or conversion of Limited proceedings
 - Debtor may elect to dismiss or convert to a general proceeding - within 7 days of the earlier of failure to file a plan or failure to get a confirmed plan within 60 days of filing; Conversion by the debtor - 541 is applicable, as of the date of conversion and the stay is in full effect; notice is sent to all parties; date of conversion controls all deadlines; post-petition debts incurred prior to the conversion will be deemed as debts incurred prior to the original filing; valuations used in the limited proceeding can be used in the general proceeding; Dismissal by the court - trustee or the court can dismiss - notice and hearing required - grounds - relief would be manifestly improper use of the bankruptcy system.

ATTORNEYS FEES

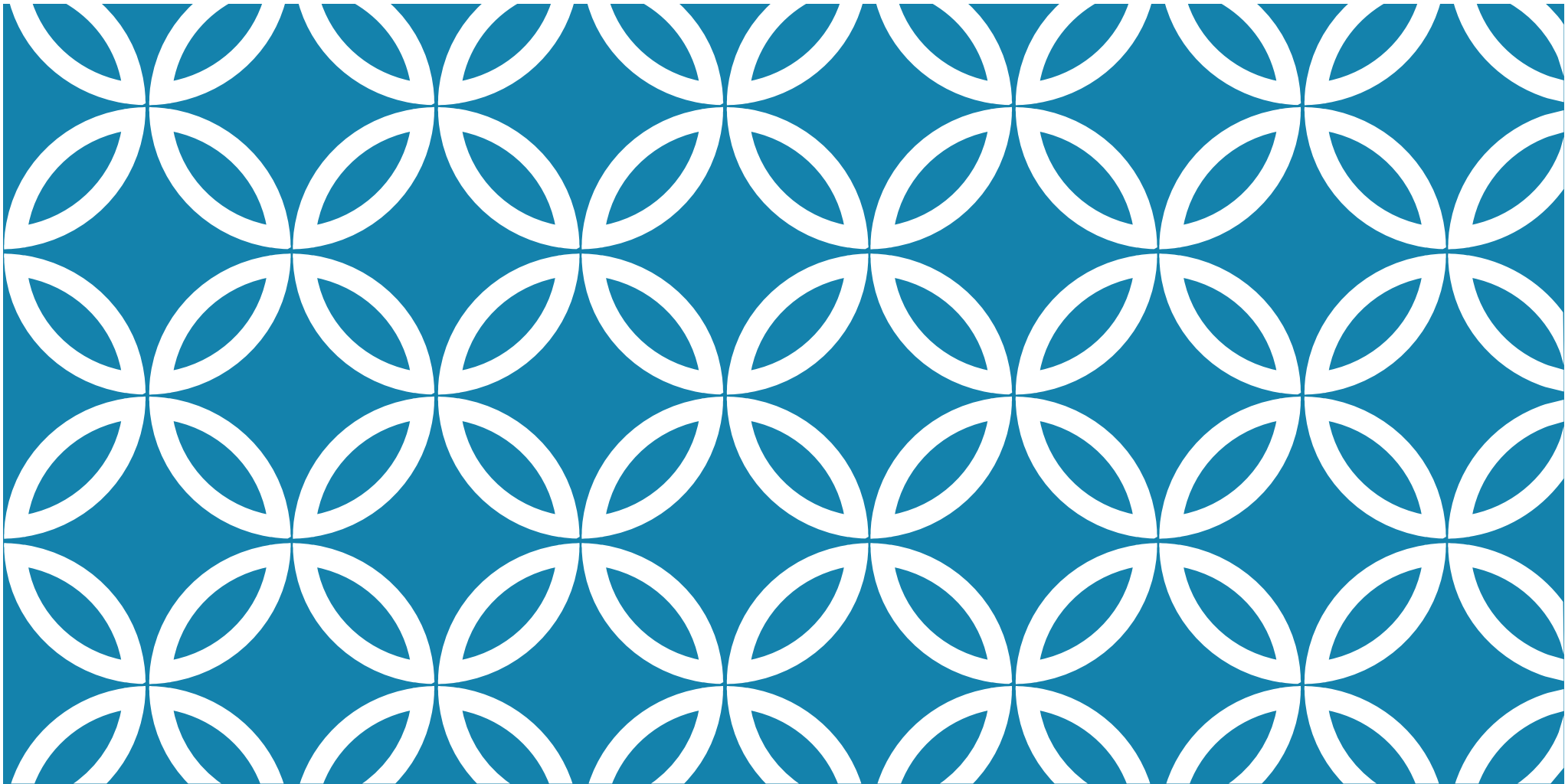
- Section 329 - Debtor's Transactions with Attorneys
 - Requirements: agreement between debtor and debtors attorney; agreement must have been within 90 days of the filing;
 - services provided or to be provided and the related fees and expenses; limited to attorney's fees and costs - specified in the agreement;
 - any adversary proceeding - where debtor is a party;
 - services beyond what were not reasonably anticipated at the time of the agreement; no interest, additional fees, costs of collection on installment payments if delay in payment or risk of non-payment;

ATTORNEYS FEES (CONT.)

- attorney has discussed the attorneys fees and expenses with the debtor and the consequence of the debtor filing a certification after full disclosure - debtor consents to the disclosure;
- attorney files a certification with the court that everything was discussed with the debtor and the enforcement of the agreement would not impose an undue hardship on the debtor or the debtor's dependents.

OTHER RELEVANT PROVISIONS

- Section 101 - Definitions
- Section 109 - Who may be a debtor
- Section 341 - meeting of Creditors and equity Security Holders



TRUSTEE OVERVIEW

Nancy J. Whaley

Standing Chapter 13 Trustee
Atlanta, GA

TITLE IV SECTION 402

- Chapter 10 Trustee and United States Trustee
 - The appointment of Trustees appears to be substantially the same in Chapter 10. There could be assistant UST acting as a Trustee, Standing Trustees and Panel Trustees.
 - Compensation: It appears that the compensation will be similar to a Chapter 13 Trustee's compensation except it changes the max to 1.25 x highest basic pay of Level IV of the Executive Schedule plus cash value of benefits rather than highest basic rate of a Level V.
 - However, the difference is how the income is generated in a Chapter 13 case. The max fee taken on receipts received under the plan remains at 10%
 - If the interpretation is correct that secured debt will be paid directly to the creditor, the only plan payments made to the Trustee will be for unsecured creditors pursuant to a repayment plan. It is doubtful that receipts received under a plan or property liquidated for the benefit of unsecured creditors only will be sufficient to pay the expenses of a Chapter 10 Trustee.

TITLE I: SUBCHAPTER II: SECTIONS 1022 AND 1025

- (a) Duties of Trustee

- Collect and account for any future income designated to a creditor under a repayment plan
- Accept and account for any property that is not exempt and reduce it to money to pay to creditors.
- Debtor may elect to redeem nonexempt property of the estate and pay to the trustee an amount equal to the value of the interest of the debtor in such property and the Trustee will pay these funds to creditors.

SUBCHAPTER II: SECTION 1025 (B)(2)

- Actions by the Trustee
 - Retention of Payments Pending Confirmation
 - Distribution of Payments under a repayment plan
 - Return funds to the Debtor less 503(b) expenses if case is dismissed or converted
 - Payments to Creditors by the Trustee under a repayment plan
 - Disburse any property recovered under 550
 - Enforcement of Obligations of Debtor
 - Solely by the Trustee except a holder of claim under 523 may enforce that debt
 - Trustee can take no action until after a 90 day delinquency
 - May only enforce as a “ simple contract under applicable nonbankruptcy law” e.g. subject to state garnishment laws
 - Does this mean we go to state court?

SUBCHAPTER II: SECTION 1025 AND 1028

- Cannot enforce if the costs of the enforcement would exceed reasonable recovery to creditors
- Statute of Limitations of 2 years from when the Trustee could have first brought the action
- Trustee cannot assign these rights to another party
- Request for Relief from Injunction can be brought by any party in interest.
 - Does this conflict with “only the Trustee can enforce default”?

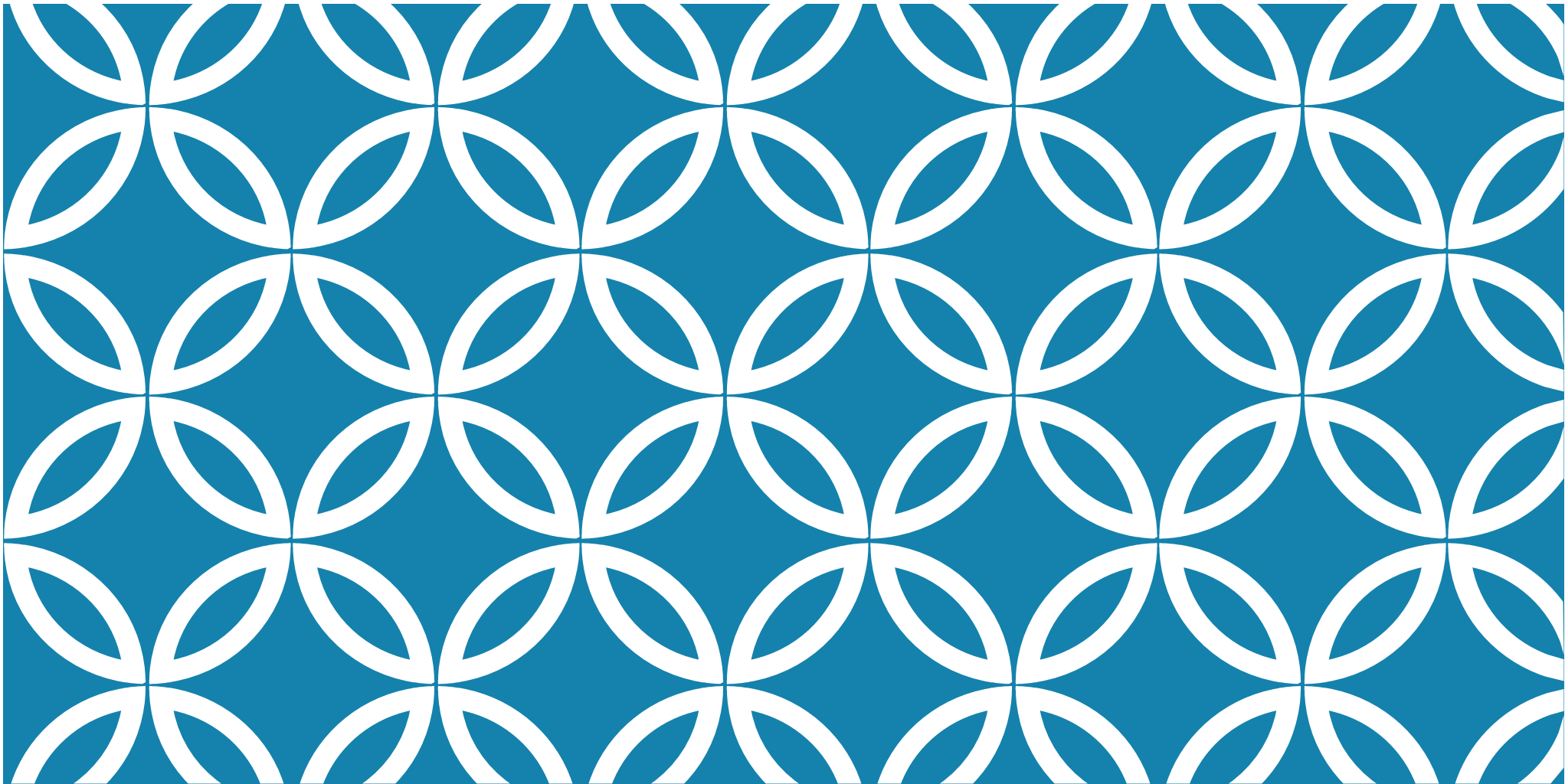
SUBCHAPTER II: SECTION 1028

- Liens created to secure a repayment plan
 - Confirmation creates a lien in favor of the Trustee in the amount of minimum payment obligation on any non-exempt property retained by the Debtor
 - This lien has priority over other liens but subordinate to a domestic support obligation
 - Record the lien in a bankruptcy lien filing system created and maintained by the UST

SECTION 341

■ Meeting of Creditors

- All meetings convened electronically and allow remote appearances of all parties
- Debtor shall not be required to appear in person if it would impose an unreasonable burden on the debtor and there is a rebuttable presumption that to attend in person is an unreasonable burden if the debtor lives more than 10 miles from where the 341 takes place
- The meeting shall be scheduled at a time to avoid conflicts with the Debtor's employment



PROPOSED CONSUMER PROTECTION CHANGES

Hon. Bess M. Parrish Creswell

U.S. Bankruptcy Court (M.D. Ala.)
Montgomery, AL

CONSUMER FINANCIAL PROTECTION AMENDMENTS

- CFPB has standing to appear and be heard on any issue in a bankruptcy case (Proposed Sect. 309)
- Consumer Financial Protection Act
 - Amended to include a violation of the discharge injunction as an unlawful act
 - Amended to create Consumer Bankruptcy Ombuds
 - Appointed by the Director of CFPB (in consultation with the Attorney General)
 - Provides assistance to individual debtors and resolves informal complaints
 - Compiles and analyzes data on consumer bankruptcy filings and make recommendations to the Director and Attorney General

CONSUMER FINANCIAL PROTECTION AMENDMENTS (CONT.)

- Fair Credit Reporting Act

- Limits reporting of bankruptcy cases by consumer reporting agency to those under 7 years from 10 years

- Fair Debt Collection Practices Act

- Includes as a violation of the FDCPA the filing of a claim in bankruptcy outside the applicable statute of limitations unless filed with a good faith belief that the applicable statute of limitation has not expired
- Includes as a violation of the FDCPA any act by a creditor to collect or attempt to collect a debt that has been discharged in bankruptcy except acceptance of a purely voluntary payment of debtor
- Increases the Minimum and Maximum Damages Awarded Under TILA, FCRA, ECOP, FDCPA, and EFA



POLL QUESTIONS 3 AND 4

QUESTIONS?

THIS IS NOT INTENDED TO PROVIDE LEGAL ADVICE

Consumer Bankruptcy Reform Act Summary

The *Consumer Bankruptcy Reform Act* will modernize the consumer bankruptcy system to make it easier for individuals and families forced into bankruptcy to get back on their feet.

I. Makes it easier and less expensive for financially-strapped families and individuals to get financial relief.

- Replaces chapter 7 and chapter 13 with chapter 10, a new consumer bankruptcy chapter, and provides two routes for individuals to file for bankruptcy:
 - **Route 1: No-payment discharge.** For low-income/low-asset filers with no minimum payment obligation, this option wipes out all unsecured debt except for certain categories of debt, such as child support or debts incurred by fraud. A minimum payment obligation arises for debtors with valuable assets available to pay creditors or with an annual income over 135% of the median income for the state and household size. Discharge has no impact on liens on property.
 - **Route 2: Debt-specific plans.** Creates bankruptcy plans that allow individuals to resolve the debts that are specific to them. Individuals can file one or more plans, and collection of debts are paused while the filer remains current on a plan.
 - **Repayment plan (for unsecured debt, like medical, credit card, and student loan debt):** Provides for payment of the filer's minimum payment obligation. Plans are repaid over the course of 3 years through a trustee, with the repayment obligation secured by a lien on the debtor's nonexempt property. Individuals with a minimum payment obligation must file a repayment plan to receive a discharge.
 - **Residence plan (for home mortgages):** Addresses mortgages on the individual's principal residence. Repaid directly by the debtor.
 - **Property plan (for secured debt other than home mortgages, like car loans):** Addresses property secured by a lien other than the individual's principal residence. Repaid directly by the debtor.
- Waives filing and administrative fees if household income is at or below 150% of the poverty line.
- Ends the pre-credit counseling requirement and allows filers to pay attorney's fees through a repayment plan.

II. Ensures that filers can care for themselves and their families during the bankruptcy process.

- **For renters:** Allows renters to continue in the lease of their principal place of residence without curing monetary defaults of less than six times their monthly rent.
- **For homeowners:**
 - Eliminates the ability of states to opt-out of federal exemptions and creates a new federal floor keyed to 50% of the Federal Housing Finance Agency (FHFA) conforming loan limit for the debtor's county of residence or a similar leasehold (or 75% of the conforming loan limit for debtors aged 65 or older). Creates an additional set of federal exemptions, including a generous \$35,000 wildcard exemption, which further protect debtors' key assets.
 - Allows filers with mortgages to sell encumbered property free and clear of any liens if the first lienholder refuses to take tender of the property, subject to junior liens.

- Allows filers to modify their mortgages based on the market value of the property, with interest rates reduced to achieve a sustainable debt-to-income ratio.
- **For car owners:** Ends the requirement that filers pay the full amount of the loan in order to keep their vehicle. Under the bill, individuals are required to pay only the liquidation value of secured claims like car loans (with an exception of cars purchased 90 days before bankruptcy).
- **For individuals with student loan debt:** Removes the provision that makes private and federal student loans nondischargeable, allowing these loans to be treated like most forms of consumer debt.

III. Helps address racial and gender disparities in the bankruptcy system.

- **Racial disparities:**
 - Makes certain criminal justice fines and fees dischargeable while preventing the discharge of debts stemming from civil rights violations.
 - Requires the collection of data on race, gender, and age when individuals file for bankruptcy.
- **Gender disparities:**
 - Moves to an income- and asset-only based (as opposed to expense-based) calculation of repayment ability and replaces many line-item exemptions with one lump-sum personal property exemption adjusted by the number of dependents, rather than number of bankruptcy filers.
 - Protects certain sources of income and assets traceable to them in bankruptcy, including alimony, child support income, the child tax credit, and the Earned Income Tax Credit (EITC).

IV. Closes loopholes that allow the wealthy to exploit the bankruptcy system and prevents corporate misconduct.

- **Eliminates loopholes that benefit wealthy filers:** Permanently closes the Millionaire's Loophole by eliminating the intent requirement to show that a self-settled trust in which the settlor is a beneficiary is a fraudulent transfer, and closes the loophole for spendthrift trusts, with carve outs for bona fide disability trusts.
- **Cracks down on predatory practices and holds corporate wrongdoers accountable:**
 - Disallows all claims if the claimholder or its assignor has violated a federal consumer financial law in regard to the debtor.
 - Expands the *Fair Debt Collection Practices Act* (FDCPA) to make it an unfair practice for a debt collector to sue or file a bankruptcy claim without an actual, reasonable, good faith belief that the debt is within the applicable statutory limitations period.
 - Makes a knowing collection or attempt to collect on a debt discharged in bankruptcy an unfair practice under the FDCPA, unless the debtor has voluntarily chosen to repay the debt without pressure from the collector; allows lawsuits against creditors and collectors who collect debts discharged in bankruptcy, including in class action lawsuits; and prevents creditors from pursuing these consumers in mandatory arbitration in matters related to the bankruptcy case.
 - Establishes a new Consumer Bankruptcy Ombuds at the Consumer Financial Protection Bureau (CFPB) to handle consumer bankruptcy complaints; expands the CFPB's supervisory authority to all lenders that make loans at over a 36% military APR rate, irrespective of size; and gives the CFPB supervision and enforcement authority for title 11 consumer cases by making title 11 an "enumerated consumer law."

WEBINAR FACULTY

John R. Bollinger is a shareholder with the Boleman Law Firm, P.C. and partner-in-charge of its Hampton, Va., office. The firm focuses exclusively in the area of consumer bankruptcy law and is the largest consumer bankruptcy practice in Virginia. He is a frequent speaker at local, regional and national organizations and is past president of the board of the Tidewater Bankruptcy Bar Association. He currently serves as Communications Manager for ABI's Consumer Bankruptcy Committee and is an editor for ABI's VOLO project. Mr. Bollinger has been recognized by *Super Lawyers* as a "Virginia Rising Star" in the area of Consumer Bankruptcy Law. He received his J.D. from the University of Richmond T.C. Williams School of Law.

Hon. Bess M. Parrish Creswell is Chief Judge of the U.S. Bankruptcy Court for the Middle District of Alabama in Montgomery, Ala., appointed on April 16, 2018. Prior to her appointment, she was a partner in Burr & Forman LLP's Creditors' Rights & Bankruptcy Group in Mobile, Ala., where she represented debtors, secured and unsecured creditors, creditor committees, and fiduciaries in workouts, debt restructuring, bankruptcy cases, financial transactions, and nonbankruptcy litigation. Prior to joining Burr & Forman, Judge Creswell practiced bankruptcy and financial restructuring at Alston & Bird LLP in Atlanta and clerked for Hon. C. Ray Mullins in the U.S. Bankruptcy Court for the Northern District of Georgia. She received her B.B.A. in 2001 from Campbell University, her M.B.A. from the Lundy-Fetterman School of Business, and her J.D. in 2004 from Wake Forest University School of Law.

Thomas A. Lee III is a managing partner with Becket & Lee LLP in Malvern, Pa., and focuses on client and industry relations, internal operations and analytics. He has represented creditors for more than 30 years and works extensively with trustees and other industry professionals, providing his expertise on bankruptcy-related projects of national significance. Mr. Lee is a frequently requested speaker at bankruptcy seminars and conferences for bankruptcy professionals, as well as for bankers and collectors. He previously practiced in the area of workers' compensation and other general practice matters in New Jersey until 1988, when he joined Milton Becket & Associates, which later became Becket & Lee. Mr. Lee is admitted to practice in New Jersey, Pennsylvania and Florida. He is a member of ABI and a former vice chair of its Consumer Bankruptcy Committee, and he is a member of the National Association of Bankruptcy Trustees (NABT), National Association of Chapter 13 Trustees (NACTT), National Creditors Bar Association (NCBA, formerly NARCA) and the Pennsylvania Bar Association. Mr. Lee received his undergraduate degree in 1983 from Villanova University and his J.D. in 1986 from Villanova University School of Law.

Nancy J. Whaley is an attorney at law serving as a chapter 12 and 13 trustee for the Northern District of Georgia in Atlanta. She is a Fellow of the American College of Bankruptcy and a former co-chair of ABI's Southeast Bankruptcy Workshop. Ms.

Whaley is a member of the Northern District of Georgia Bankruptcy Court's Bench and Bar Committee and served on the Executive Committee, and she co-chaired the Community Service Committee for the W. Homer Drake, Jr. Georgia Bankruptcy American Inn of Court. She also is a past chair of the Atlanta Bar Association's Bankruptcy Section and the Bankruptcy Section of the State Bar of Georgia. Ms. Whaley served as president of the Georgia Association for Women Lawyers and of the GAWL Foundation. She has also served on the State Bar of Georgia's Executive Committee, been a member of its Board of Governors and chaired its Finance Committee. Ms. Whaley is an active member in the Association of Chapter 12 Trustees and the National Association of Chapter 13 Trustees and is their representative to the Advisory Committee on Bankruptcy Rules. In addition, she serves on the NACTT Foundation Board. Ms. Whaley retired from the Air Force Reserve as a Lieutenant Colonel. She received her B.A. *cum laude* from Eureka College, where she was a Ronald Reagan Scholar, and her J.D. from Emory Law School.