## Can a defendant exclude plaintiff's medical bills that were discharged in bankruptcy or is that a violation of the collateral source rule?

How does the collateral source come into play?

- Defense position: This is not collateral source as bankruptcy discharges the debt by plaintiff's own act, not payment by a collateral source such as health insurance or medpay. The collateral source rule speaks to payment from a collateral source, whereas bankruptcy is a discharge

- Plaintiff position: The collateral source applies and the tortfeasor shouldn't be rewarded due to plaintiff's financial problems as law favors the victim rather than the wrongdoer

Barkley v. Wallace, 267 Va. 369 (2004)

FACTS:

- Plaintiff declared bankruptcy and medical bills were discharged. Plaintiff did not seek to recover medical bills, but rather sought to introduce bills for limited purpose of proving pain and suffering
- Circuit Court granted defendant's pre-trial motion and ruled that medical bills and expenses that were discharged in bankruptcy were inadmissible

HOLDING:

- Supreme Court reversed and remanded, but did not answer the collateral source question:
    - "We are not presented with and do not decide the question whether evidence of medical bills is admissible to recover the amount charged for such treatment when a plaintiff has obtained a discharge of those medical bills in bankruptcy proceedings."
    - Holding: "We decide only the issue whether the excluded evidence was admissible to prove the extent of Barkley's medical treatment to support non-monetary elements of her compensatory damages claim."

Remaining question: Can plaintiff recover the amount charged for the treatment when those bills have been discharged in bankruptcy:

Answer: Based on the majority of Circuit Court decisions the collateral source rule does not apply:

Defense favorable:

- Choice v. Kruse, 57 Va. Cir. 13 (Chesterfield 2001)
- Walker v. Long, 57 Va. Cir. 419 (Richmond 1993)
- Daniels v. Owens, 54 Va. Cir. 284 (Norfolk 2000)
- Hodges v. Perry, 46 Va. Cir. 570 (Albermarle 1997)
- Morganthal v. Piper, 38 Va. Cir. 354 (Virginia Beach 1996)

Plaintiff favorable:

- Dodd v. Lang, 71 Va. Cir. 235 (Roanoke 2006)
    - Circuit Court found bankruptcy discharge to be within the scope of collateral source rule. However, it was suggested that to keep the plaintiff from recovering a windfall, the Court can create a constructive trust where the health care providers could obtain pro rata shares
        - "Though the debt is legally discharged and the bankrupt is no longer legally obligated, he or she may still feel morally obligated and compelled to repay the debt."
    - Jury will get a special verdict form requiring separate findings as to special damages and general damages

....so the plaintiff still loses.

What if the case is in Federal Court?

- Payne v. Wyeth Pharms., Inc., 2008 U.S. Dist. LEXIS 91849 (E.D. Va. Nov 12, 2008)
    - Court ruled:
        - Plaintiff's medical bills discharged in bankruptcy are inadmissible to prove the amounts charged because Virginia's collateral source rule does not apply
        - Plaintiff's unlisted pre-bankruptcy amended pretention medical bills are inadmissible to prove the amounts charged
        - Plaintiff's medical bills are inadmissible to prove pain and suffering damages.

# Bankruptcy - Civil Practice Pointers

Personal Injury Plaintiff in Bankruptcy – Does Plaintiff have standing to pursue the claim? Is the statute of limitations tolled?

- Key Case: Kocher v. Campbell, 282 Va. 113, 712 S.E.2d 477 (2011)
  - Facts/Timeline:

    April 6, 2004 - Campbell was involved in motor vehicle accident.

    October 1, 2005 – Campbell filed a Chapter 7 petition; the filings make no mention of PI claim as an asset or exempt property.

    January 6, 2006 – Campbell received a standard discharge in bankruptcy

    February 3, 2006 – Campbell filed 1st PI complaint, which was never served and is later nonsuited.

    April 2006 – Campbell filed 2nd PI complaint. Kocher was served April 3, 2007 and moved for summary judgment on the ground that Campbell lacked standing as a result of bankruptcy.

    January 4, 2008 – Campbell nonsuited the 2nd PI action before the circuit court ruled on Kocher's motion.

    February 14, 2008 – Campbell's Bankruptcy Trustee, with Campbell's concurrence, obtained an order reopening the bankruptcy. Campbell then obtained leave to amend the schedules filed in October 2005 to include the personal injury claim as exempt property.

    May 27, 2008 – Campbell filed 3rd PI complaint. Kocher was served in March of 2009 and moved for summary judgment based on lack of standing and the statute of limitations.

    May 29, 2009 – Bankruptcy court entered an order holding that Campbell had properly exempted the PI cause of action.

    December 10, 2009 – The circuit court denied summary judgment and later certified the issue for an interlocutory appeal.
  - Holdings:
    - The cause of action became a part of the bankruptcy estate when the bankruptcy was filed, and Campbell lost standing to assert the cause of action from October 1, 2005 until May 29, 2009, when the bankruptcy court ordered the cause of action exempted.
    - The complaints filed in February 2006, April 2006 and May 2008 were legal nullities because they were filed by a party lacking legal standing. Johnston Memorial Hospital v. Bazemore, 277 Va. 308, 312, 672 S.E.2d 858, 860 (2009)
    - SOL expired April 6, 2006 – no case pending at that time and no tolling.
  - Pointers:
    - Be aware of the timing of filing your case. Best to file PI claim before petition for bankruptcy.
    - If bankruptcy is pending at time of filing, make sure the claim has been properly exempted from the bankruptcy estate.
    - If the claim is still part of the bankruptcy estate and SOL is approaching, make sure the trustee is aware and have the trustee file the claim on behalf of the bankruptcy estate to preserve the cause of action.

Statute of Limitations Issues – Assumption of Lease/Chapter 11 Reorganization

- Key Case: Restaurant Company v. United Leasing Corp., 271 Va. 529, 628 S.E.2d 520 (2006)
  - Facts/Timeline:
    1994 – Havana '59, Ltd opened a restaurant and leased equipment from United Leasing Corp. Havana's performance was guaranteed by Restaurant Co. and Rochelle Holding Co. ("the Sureties"). Havana suffered from financial difficulties and first defaulted in 1994. The default continued through at least 2002.

    October 1996 – Havana filed for Chapter 11 bankruptcy protection. Havana's filings listed the lease and the amount of the monthly payments. Havana indicated that it was current and would assume the lease in its entirety.

    September 1997 – The Reorganization Plan was confirmed. However, Havana's default continued.

    September 14, 2001 – Restaurant Co. filed a motion for judgment based on the initial default, asserting that Havana's recommitment to the leases were a complete recommitment including the guarantor's obligations. Sureties asserted the statute of limitations.

  - Holdings:
    - The assumption of the lease by the debtor-in-possession did not transform it into a new lease for the purpose of establishing the priority of payments from the bankruptcy estate, in the event that the reorganization is unsuccessful.
    - Similarly, the assumption of an unexpired lease is not equivalent to a new promise to pay.
    - The right to proceed against the Sureties is an independent obligation, which accrued upon the initial default in 1994. This right was not stayed or tolled by the underlying obligor's bankruptcy.
- Practice Pointers – Pursing the bankrupt debtor and pursuing that debtor's sureties are not the same thing. Pursing the sureties for claims based on the debtor's obligations is not barred by the bankruptcy stay.

Stay vs. Dismiss vs. Removed from the Docket

- Case: Rutter v. Oakwood Living Centers of Virginia, Inc. 282, Va. 4, 710 S.E.2d 460 (2011)
    - Wrongful Death action instituted against a senior living center and a company providing physical therapy services. The physical therapy defendant filed a notice of bankruptcy. In October 2000, the circuit court entered an order that removed the case from the docket with leave to counsel to place it back on the docket upon resolution of the bankruptcy proceeding. The order also stated that the action would be discontinued in three years if there had been no further order or proceeding.
    - Plaintiff continued discovery against the non-bankrupt senior living center, but the senior living center objected and filed a notice of the bankruptcy stay order. Thereafter, no action was taken until the senior living center moved to dismiss in 2009, more than 3 years after the initial removal from the docket.
    - After a hearing, the circuit court entered an order dismissing the complaint against Oakwood because it had been discontinued in October 2003 and had not be re-filed within the statute of limitations.
    - The Supreme Court of Virginia held that the circuit court could not treat the October 2000 order as a self-executing order prospectively discontinuing the action.
    - Ultimately, however, the appeal was dismissed for lack of jurisdiction because the 2009 order was only final as to the senior living center and there was no final order as to the bankrupt defendants, and the senior living center's interests were not severable from the other defendants.
- Practice Pointers:
    - When drafting an order staying a case, be clear that the case is stayed or dismissed.
    - Similarly, draft orders that are clear as to which parties remain in the case.
    - When there are co-defendants that against whom proceedings are not stayed, it may be in the plaintiff's best interest to sever the matter and seek a final order against the non-bankrupt defendants.

Litigation Tactics / Sanctions under Va. Code § 8.01-271.1

- Key Case: McNally v. Rey, 275 Va. 475, 659 S.E.2d 279 (2008)
    - Underlying case was a breach of contract claim. Trial scheduled for Nov. 15, 2006. Counsel for defendants files a petition for bankruptcy the evening before trial, and sends copies of the petition and electronic confirmation to plaintiff's counsel within one hour of filing. The plaintiff sought sanctions, including attorneys fees for preparing for the jury trial. Circuit court ultimately ordered defendant's attorney to pay the cost of the jury, which was ordered to be present for trial.
    - Supreme Court of Virginia reversed the sanction. Filing witness and exhibit list with knowledge that the client is contemplating bankruptcy is not a violation of § 8.01-271.1
- Practice pointer – No duty to disclose client's contemplated bankruptcy during litigation. In fact, to do so without the client's permission, is a violation of confidentiality.

- The court likely would have viewed this differently if there had been any appreciable delay between filing the petition for bankruptcy and advising opposing counsel and the court. Any filing, other than notice of the stay, after the petition likely violates § 8.01-271.1.

# CHAPTER 13—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE



SUBCHAPTER II—THE PLAN



**AMENDMENTS**

**2005**—Pub. L. 109–8, title VII, §716(b)(2), Apr. 20, 2005, 119 Stat. 130, added item 1308.

## SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

### §1301. Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—

(1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

(2) the plan filed by the debtor proposes not to pay such claim; or

(3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2645; Pub. L. 98–353, title III, §§313, 524, July 10, 1984, 98 Stat. 355, 388.)

#### HISTORICAL AND REVISION NOTES

#### LEGISLATIVE STATEMENTS

Section 1301 of the House amendment is identical with the provision contained in section 1301 of the House bill and adopted by the Senate amendment. Section 1301(c)(1) indicates that a basis for lifting the stay is that the debtor did not receive consideration for the claim by the creditor, or in other words, the debtor is really the "codebtor." As with other sections in title 11, the standard of receiving consideration is a general rule, but where two co-debtors have agreed to share liabilities in a different manner than profits it is the individual who does not ultimately bear the liability that is protected by the stay under section 1301.

#### SENATE REPORT NO. 95–989

Subsection (a) automatically stays the holder of a claim based on a consumer debt of the chapter 13 debtor from acting or proceeding in any way, except as authorized pursuant to subsections (b) and (c), against an individual or the property of an individual liable with the chapter 13 debtor, unless such codebtor became liable in the ordinary course of his business, or unless the case is closed, dismissed, or converted to another chapter.

Under the terms of the agreement with the codebtor who is not in bankruptcy, the creditor has a right to collect all payments to the extent they are not made by the debtor at the time they are due. To the extent to which a chapter 13 plan does not propose to pay a creditor his claims, the creditor may obtain relief from the court from the automatic stay and collect such claims from the codebtor. Conversely, a codebtor obtains the benefit of any payments made to the creditor under the plan. If a debtor defaults on scheduled payments under the plan, then the codebtor would be liable for the remaining deficiency; otherwise, payments not made under the plan may never be made by the codebtor. The obligation of the codebtor to make the creditor whole at the time payments are due remains.

The automatic stay under this section pertains only to the collection of a consumer debt, defined by section 101(7) of this title to mean a debt incurred by an individual primarily for a personal, family, or household

purpose. Therefore, not all debts owed by a chapter 13 debtor will be subject to the stay of the codebtor, particularly those business debts incurred by an individual with regular income, as defined by section 101(24) of this title, engaged in business, that is permitted by virtue of section 109(b) and section 1304 to obtain chapter 13 relief.

Subsection (b) excepts the giving of notice of dishonor of a negotiable instrument from the reach of the codebtor stay.

Under subsection (c), if the codebtor has property out of which the creditor's claim can be satisfied, the court can grant relief from the stay absent the transfer of a security interest in that property by the codebtor to the creditor. Correspondingly, if there is reasonable cause to believe that property is about to be disposed of by the codebtor which could be used to satisfy his obligation to the creditor, the court should lift the stay to allow the creditor to perfect his rights against such property. Likewise, if property is subject to rapid depreciation or decrease in value the stay should be lifted to allow the creditor to protect his rights to reach such property. Otherwise, the creditor's interest would be irreparably harmed by such stay. Property which could be used to satisfy the claim could be disposed of or encumbered and placed beyond the reach of the creditor. The creditor should be allowed to protect his rights to reach property which could satisfy his claim and prevent its erosion in value, disposal, or encumbrance.

**HOUSE REPORT NO. 95–595**

This section is new. It is designed to protect a debtor operating under a chapter 13 individual repayment plan case by insulating him from indirect pressures from his creditors exerted through friends or relatives that may have cosigned an obligation of the debtor. The protection is limited, however, to ensure that the creditor involved does not lose the benefit of the bargain he made for a cosigner. He is entitled to full compensation, including any interest, fees, and costs provided for by the agreement under which the debtor obtained his loan. The creditor is simply required to share with other creditors to the extent that the debtor will repay him under the chapter 13 plan. The creditor is delayed, but his substantive rights are not affected.

Subsection (a) is the operative subsection. It stays action by a creditor after an order for relief under chapter 13. The creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that has secured the debt, unless the individual became liable or secured the debt in the ordinary course of his business, or the case is closed, dismissed, or converted to chapter 7 or 11.

Subsection (b) permits the creditor, notwithstanding the stay, to present a negotiable instrument and to give notice of dishonor of the instrument, in order to preserve his substantive rights against the codebtor as required by applicable nonbankruptcy law.

Subsection (c) requires the court to grant relief from the stay in certain circumstances. The court must grant relief to the extent that the debtor does not propose to pay, under the plan, the amount owed to the creditor. The court must also grant relief to the extent that the debtor was really the codebtor in the transaction, that is, to the extent that the nondebtor party actually received the consideration for the claim held by the creditor. Finally, the court must grant relief to the extent that the creditor's interest would be irreparably harmed by the stay, for example, where the codebtor filed bankruptcy himself, or threatened to leave the locale, or lost his job.

**AMENDMENTS**

**1984**—Subsec. (c)(3). Pub. L. 98–353, §524, inserted "continuation of" after "by".
Subsec. (d). Pub. L. 98–353, §313, added subsec. (d).

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1302. Trustee

(a) If the United States trustee appoints an individual under section 586(b) of title 28 to serve as standing trustee in cases under this chapter and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. Otherwise, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as a trustee in the case.

(b) The trustee shall—

(1) perform the duties specified in sections 704(a)(2), 704(a)(3), 704(a)(4), 704(a)(5), 704(a)(6), 704(a)(7), and 704(a)(9) of this title;

(2) appear and be heard at any hearing that concerns—

(A) the value of property subject to a lien;

(B) confirmation of a plan; or
(C) modification of the plan after confirmation;

(3) dispose of, under regulations issued by the Director of the Administrative Office of the United States Courts, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act;
(4) advise, other than on legal matters, and assist the debtor in performance under the plan;
(5) ensure that the debtor commences making timely payments under section 1326 of this title; and
(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (d).

(c) If the debtor is engaged in business, then in addition to the duties specified in subsection (b) of this section, the trustee shall perform the duties specified in sections 1106(a)(3) and 1106(a)(4) of this title.
(d)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—
(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and
(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;
(B)(i) provide written notice to such State child support enforcement agency of such claim; and
(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and
(C) at such time as the debtor is granted a discharge under section 1328, provide written notice to such holder and to such State child support enforcement agency of—
(i) the granting of the discharge;
(ii) the last recent known address of the debtor;
(iii) the last recent known name and address of the debtor's employer; and
(iv) the name of each creditor that holds a claim that—
(I) is not discharged under paragraph (2) or (4) of section 523(a); or
(II) was reaffirmed by the debtor under section 524(c).

(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.
(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2645; Pub. L. 98–353, title III, §§314, 525, July 10, 1984, 98 Stat. 356, 388; Pub. L. 99–554, title II, §§228, 283(w), Oct. 27, 1986, 100 Stat. 3103, 3118; Pub. L. 103–394, title V, §501(d)(37), Oct. 22, 1994, 108 Stat. 4147; Pub. L. 109–8, title II, §219(d), Apr. 20, 2005, 119 Stat. 58; Pub. L. 111–327, §2(a)(39), Dec. 22, 2010, 124 Stat. 3561.)

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1302 of the House amendment adopts a provision contained in the Senate amendment instead of the position taken in the House bill. Sections 1302(d) and (e) are modeled on the standing trustee system contained in the House bill with the court assuming supervisory functions in districts not under the pilot program.

### SENATE REPORT NO. 95–989

The principal administrator in a chapter 13 case is the chapter 13 trustee. Experience under chapter XIII of the Bankruptcy Act [chapter 13 of former title 11] has shown that the more efficient and effective wage earner

programs have been conducted by standing chapter XIII trustees who exercise a broad range of responsibilities in both the design and the effectuation of debtor plans.

Subsection (a) provides administrative flexibility by permitting the bankruptcy judge to appoint an individual from the panel of trustees established pursuant to 28 U.S.C. §604(f) and qualified under section 322 of title 11, either to serve as a standing trustee in all chapter 13 cases filed in the district or a portion thereof, or to serve in a single case.

Subsection (b)(1) makes it clear that the chapter 13 trustee is no mere disbursing agent of the monies paid to him by the debtor under the plan [section 1322(a)(1)], by imposing upon him certain relevant duties of a liquidation trustee prescribed by section 704 of this title.

Subsection (b)(2) requires the chapter 13 trustee to appear before and be heard by the bankruptcy court whenever the value of property secured by a lien or the confirmation or modification of a plan after confirmation as provided by sections 1323–1325 is considered by the court.

Subsection (b)(3) requires the chapter 13 trustee to advise and counsel the debtor while under chapter 13, except on matters more appropriately left to the attorney for the debtor. The chapter 13 trustee must also assist the debtor in performance under the plan by attempting to tailor the requirements of the plan to the changing needs and circumstances of the debtor during the extension period.

Subsection (c) imposes on the trustee in a chapter 13 case filed by a debtor engaged in business the investigative and reporting duties normally required of a chapter 11 debtor or trustee as prescribed by section 1106(a)(3) and (4).

## HOUSE REPORT NO. 95–595

Subsection (d) gives the trustee an additional duty if the debtor is engaged in business, as defined in section 1304. The trustee must perform the duties specified in sections 1106(a)(3) and 1106(a)(4), relating to investigation of the debtor.

## REFERENCES IN TEXT

Chapter XIII of the Bankruptcy Act, referred to in subsec. (b)(3), is chapter XIII of act July 1, 1898, ch. 541, as added June 22, 1938, ch. 575, §1, 52 Stat. 930, which was classified to chapter 13 (§1001 et seq.) of former Title 11.

Sections 464 and 466 of the Social Security Act, referred to in subsec. (d)(1)(A)(i), are classified to sections 664 and 666, respectively, of Title 42, The Public Health and Welfare.

## AMENDMENTS

**2010**—Subsec. (b)(1). Pub. L. 111–327 substituted "704(a)(2), 704(a)(3), 704(a)(4), 704(a)(5), 704(a)(6), 704(a)(7), and 704(a)(9)" for "704(2), 704(3), 704(4), 704(5), 704(6), 704(7), and 704(9)".

**2005**—Subsec. (b)(6). Pub. L. 109–8, §219(d)(1), added par. (6).

Subsec. (d). Pub. L. 109–8, §219(d)(2), added subsec. (d).

**1994**—Subsec. (b)(3). Pub. L. 103–394 struck out "and" at end.

**1986**—Subsec. (a). Pub. L. 99–554, §228(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "If the court has appointed an individual under subsection (d) of this section to serve as standing trustee in cases under this chapter and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. Otherwise, the court shall appoint a person to serve as trustee in the case."

Subsec. (d). Pub. L. 99–554, §228(2), struck out subsec. (d) which read as follows: "If the number of cases under this chapter commenced in a particular judicial district so warrant, the court may appoint one or more individuals to serve as standing trustee for such district in cases under this chapter."

Subsec. (e). Pub. L. 99–554, §283(w), which directed the amendment of par. (1) by substituting "set for such individual" for "fix" could not be executed in view of the repeal of subsec. (e) by section 228(2) of Pub. L. 99–554. See 1984 Amendment note below.

Pub. L. 99–554, §228(2), struck out subsec. (e) which read as follows:

"(1) A court that has appointed an individual under subsection (d) of this section to serve as standing trustee in cases under this chapter shall set for such individual—

"(A) a maximum annual compensation, not to exceed the lowest annual rate of basic pay in effect for grade GS–16 of the General Schedule prescribed under section 5332 of title 5; and

"(B) a percentage fee, not to exceed ten percent, based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

"(2) Such individual shall collect such percentage fee from all payments under plans in the cases under this chapter for which such individual serves as standing trustee. Such individual shall pay annually to the Treasury—

"(A) any amount by which the actual compensation received by such individual exceeds five percent of all such payments made under plans in cases under this chapter for which such individual serves as standing trustee; and

"(B) any amount by which the percentage fee fixed under paragraph (1)(B) of this subsection for all

such cases exceeds—

"(i) such individual's actual compensation for such cases, as adjusted under subparagraph (A) of this paragraph; plus

"(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases."

**1984**—Subsec. (b)(1). Pub. L. 98–353, §314(1), substituted "704(7), and 704(9) of this title" for "and 704(8) of this title".

Subsec. (b)(2). Pub. L. 98–353, §314(2), struck out "and" at the end.

Subsec. (b)(3) to (5). Pub. L. 98–353, §525(a), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Pub. L. 98–353, §314(3), (4), substituted "; and" for the period at end of par. (3) and added par. (4).

Subsec. (e)(1). Pub. L. 98–353, §525(b)(1), which directed the amendment of par. (4) by substituting "set for such individual" for "fix" was executed to par. (1) as the probable intent of Congress.

Subsec. (e)(1)(A). Pub. L. 98–353, §525(b)(2), struck out "for such individual" after "a maximum annual compensation".

Subsec. (e)(2)(A). Pub. L. 98–353, §525(b)(3), substituted "received by" for "of", and "of all such payments made" for "upon all payments".

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Effective date and applicability of amendment by section 228 of Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 283 of Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1303. Rights and powers of debtor

Subject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2646.)

**HISTORICAL AND REVISION NOTES**

**LEGISLATIVE STATEMENTS**

Section 1303 of the House amendment specifies rights and powers that the debtor has exclusive of the trustees. The section does not imply that the debtor does not also possess other powers concurrently with the trustee. For example, although section 1323 is not specified in section 1303, certainly it is intended that the debtor has the power to sue and be sued.

**SENATE REPORT NO. 95–989**

A chapter 13 debtor is vested with the identical rights and powers, and is subject to the same limitations in regard to their exercise, as those given a liquidation trustee by virtue of section 363(b), (d), (e), (f), and (h) of title 11, relating to the sale, use or lease of property.

## §1304. Debtor engaged in business

(a) A debtor that is self-employed and incurs trade credit in the production of income from such

employment is engaged in business.

(b) Unless the court orders otherwise, a debtor engaged in business may operate the business of the debtor and, subject to any limitations on a trustee under sections 363(c) and 364 of this title and to such limitations or conditions as the court prescribes, shall have, exclusive of the trustee, the rights and powers of the trustee under such sections.

(c) A debtor engaged in business shall perform the duties of the trustee specified in section 704(a)(8) of this title.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2646; Pub. L. 98–353, title III, §§311(b)(2), 526, July 10, 1984, 98 Stat. 355, 389; Pub. L. 111–327, §2(a)(40), Dec. 22, 2010, 124 Stat. 3562.)

### HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1304(b) of the House amendment adopts the approach taken in the comparable section of the Senate amendment as preferable to the position taken in the House bill.

### SENATE REPORT NO. 95–989

Increased access to the simpler, speedier, and less expensive debtor relief provisions of chapter 13 is accomplished by permitting debtors engaged in business to proceed under chapter 13, provided their income is sufficiently stable and regular to permit compliance with a chapter 13 plan [section 101(24)] and that the debtor (or the debtor and spouse) do not owe liquidated, noncontingent unsecured debts of $50,000, or liquidated, noncontingent secured debts of $200,000 (§109(d)).

Section 1304(a) states that a self-employed individual who incurs trade credit in the production of income is a debtor engaged in business.

Subsection (b) empowers a chapter 13 debtor engaged in business to operate his business, subject to the rights, powers and limitations that pertain to a trustee under sections 363(c) and 364 of title 11, and subject to such further limitations and conditions as the court may prescribe.

Subsection (c) requires a chapter 13 debtor engaged in business to file with the court certain financial statements relating to the operation of the business.

### AMENDMENTS

**2010**—Subsec. (c). Pub. L. 111–327 substituted "704(a)(8)" for "704(8)".

**1984**—Subsec. (b). Pub. L. 98–353, §526, struck out the comma after "of the debtor".

Subsec. (c). Pub. L. 98–353, §311(b)(2), substituted "section 704(8)" for "section 704(7)".

### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1305. Filing and allowance of postpetition claims

(a) A proof of claim may be filed by any entity that holds a claim against the debtor—

(1) for taxes that become payable to a governmental unit while the case is pending; or

(2) that is a consumer debt, that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor's performance under the plan.

(b) Except as provided in subsection (c) of this section, a claim filed under subsection (a) of this section shall be allowed or disallowed under section 502 of this title, but shall be determined as of the date such claim arises, and shall be allowed under section 502(a), 502(b), or 502(c) of this title, or disallowed under section 502(d) or 502(e) of this title, the same as if such claim had arisen before the date of the filing of the petition.

(c) A claim filed under subsection (a)(2) of this section shall be disallowed if the holder of such claim knew or should have known that prior approval by the trustee of the debtor's incurring the obligation was practicable and was not obtained.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2647.)

### HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1305(a)(2) of the House amendment modifies similar provisions contained in the House and Senate

bills by restricting application of the paragraph to a consumer debt. Debts of the debtor that are not consumer debts should not be subjected to section 1305(c) or section 1328(d) of the House amendment.

Section 1305(b) of the House amendment represents a technical modification of similar provisions contained in the House bill and Senate amendment.

The House amendment deletes section 1305(d) of the Senate amendment as unnecessary. Section 502(b)(1) is sufficient to disallow any claim to the extent the claim represents the usurious interest or any other charge forbidden by applicable law. It is anticipated that the Rules of Bankruptcy Procedure may require a creditor filing a proof of claim in a case under chapter 13 to include an affirmative statement as contemplated by section 1305(d) of the Senate amendment.

**SENATE REPORT NO. 95–989**

Section 1305, exclusively applicable in chapter 13 cases, supplements the provisions of sections 501–511 of title 11, dealing with the filing and allowance of claims. Sections 501–511 apply in chapter 13 cases by virtue of section 103(a) of this title. Section 1305(a) provides for the filing of a proof of claim for taxes and other obligations incurred after the filing of the chapter 13 case. Subsection (b) prescribes that section 502 of title 11 governs the allowance of section 1305(a) claims, except that its standards shall be applied as of the date of allowance of the claim, rather than the date of filing of the petition. Subsection (c) requires the disallowance of a postpetition claim for property or services necessary for the debtor's performance under the plan, if the holder of the claim knew or should have known that prior approval by the trustee of the debtor's incurring of the obligation was practicable and was not obtained.

**HOUSE REPORT NO. 95–595**

Subsection (a) permits the filing of a proof of a claim against the debtor that is for taxes that become payable to a governmental unit while the case is pending, or that arises after the date of the filing of the petition for property or services that are necessary for the debtor's performance under the plan, such as auto repairs in order that the debtor will be able to get to work, or medical bills. The effect of the latter provision, in paragraph (2), is to treat postpetition credit extended to a chapter 13 debtor the same as a prepetition claim for purposes of allowance, distribution, and so on.

## §1306. Property of the estate

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2647; Pub. L. 99–554, title II, §257(u), Oct. 27, 1986, 100 Stat. 3116.)

**HISTORICAL AND REVISION NOTES**

**LEGISLATIVE STATEMENTS**

Section 1306(a)(2) adopts a provision contained in the Senate amendment in preference to a similar provision contained in the House bill.

**SENATE REPORT NO. 95–989**

Section 541 is expressly made applicable to chapter 13 cases by section 103(a). Section 1306 broadens the definition of property of the estate for chapter 13 purposes to include all property acquired and all earnings from services performed by the debtor after the commencement of the case.

Subsection (b) nullifies the effect of section 521(3), otherwise applicable, by providing that a chapter 13 debtor need not surrender possession of property of the estate, unless required by the plan or order of confirmation.

**AMENDMENTS**

**1986**—Subsec. (a). Pub. L. 99–554 inserted reference to chapter 12 in pars. (1) and (2).

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

## §1307. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

(b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

(c) Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees and charges required under chapter 123 of title 28;

(3) failure to file a plan timely under section 1321 of this title;

(4) failure to commence making timely payments under section 1326 of this title;

(5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;

(6) material default by the debtor with respect to a term of a confirmed plan;

(7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;

(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;

(9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);

(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or

(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

(d) Except as provided in subsection (f) of this section, at any time before the confirmation of a plan under section 1325 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 or 12 of this title.

(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

(f) The court may not convert a case under this chapter to a case under chapter 7, 11, or 12 of this title if the debtor is a farmer, unless the debtor requests such conversion.

(g) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2647; Pub. L. 98–353, title III, §§315, 527, July 10, 1984, 98 Stat. 356, 389; Pub. L. 99–554, title II, §§229, 257(v), Oct. 27, 1986, 100 Stat. 3103, 3116; Pub. L. 109–8, title II, §213(7), title VII, §716(c), Apr. 20, 2005, 119 Stat. 53, 130; Pub. L. 111–327, §2(a)(41), Dec. 22, 2010, 124 Stat. 3562.)

**HISTORICAL AND REVISION NOTES**

**LEGISLATIVE STATEMENTS**

Section 1307(a) is derived from the Senate amendment in preference to a comparable provision contained in the House bill.

**SENATE REPORT NO. 95–989**

Subsections (a) and (b) confirm, without qualification, the rights of a chapter 13 debtor to convert the case to a liquidating bankruptcy case under chapter 7 of title 11, at any time, or to have the chapter 13 case dismissed. Waiver of any such right is unenforceable. Subsection (c) specifies various conditions for the exercise of the power of the court to convert a chapter 13 case to one under chapter 7 or to dismiss the case. Subsection (d) deals with the conversion of a chapter 13 case to one under chapter 11. Subsection (e) prohibits conversion of the chapter 13 case filed by a farmer to chapter 7 or 11 except at the request of the debtor. No case is to be converted from chapter 13 to any other chapter, unless the debtor is an eligible debtor under the new chapter.

**HOUSE REPORT NO. 95–595**

Subsection (f) reinforces section 109 by prohibiting conversion to a chapter under which the debtor is not eligible to proceed.

**AMENDMENTS**

**2010**—Subsec. (c). Pub. L. 111–327, §2(a)(41)(A)(i), substituted "subsection (f)" for "subsection (e)" in introductory provisions.

Subsec. (c)(9), (10). Pub. L. 111–327, §2(a)(41)(A)(ii), (iii), substituted "521(a)" for "521".

Subsec. (d). Pub. L. 111–327, §2(a)(41)(B), substituted "subsection (f)" for "subsection (e)".

**2005**—Subsec. (c)(11). Pub. L. 109–8, §213(7), added par. (11).

Subsecs. (e) to (g). Pub. L. 109–8, §716(c), added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

**1986**—Subsec. (b). Pub. L. 99–554, §257(v)(1), inserted reference to section 1208 of this title.

Subsec. (c). Pub. L. 99–554, §229(1)(A), inserted "or the United States trustee" after "party in interest" in provisions preceding par. (1).

Subsec. (c)(9), (10). Pub. L. 99–554, §229(1)(B)–(D), added pars. (9) and (10).

Subsec. (d). Pub. L. 99–554, §257(v)(2), inserted reference to chapter 12.

Pub. L. 99–554, §229(2), inserted "or the United States trustee" after "party in interest".

Subsec. (e). Pub. L. 99–554, §257(v)(3), inserted reference to chapter 12.

**1984**—Subsec. (b). Pub. L. 98–353, §527(a), inserted a comma after "time".

Subsec. (c)(4). Pub. L. 98–353, §315(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 98–353, §§315(1), 527(b)(1), redesignated former par. (4) as (5) and inserted "a request made for" before "additional". Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 98–353, §315(1), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 98–353, §§315(1), 527(b)(2), redesignated former par. (6) as (7) and substituted "or" for "and". Former par. (7) redesignated (8).

Subsec. (c)(8). Pub. L. 98–353, §§315(1), 527(b)(3), redesignated former par. (7) as (8) and inserted "other than completion of payments under the plan" after "in the plan".

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Effective date and applicability of amendment by section 229 of Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 257 of Pub. L. 99–554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99–554.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1308. Filing of prepetition tax returns

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

(B) for any return that is not past due as of the date of the filing of the petition, the later of—

(i) the date that is 120 days after the date of that meeting; or

(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

(2) After notice and a hearing, and order entered before the tolling of any applicable filing period determined under paragraph (1), if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under paragraph (1) is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under paragraph (1) for—

(A) a period of not more than 30 days for returns described in paragraph (1)(A); and

(B) a period not to extend after the applicable extended due date for a return described in paragraph (1)(B).

(c) For purposes of this section, the term "return" includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.

(Added Pub. L. 109–8, title VII, §716(b)(1), Apr. 20, 2005, 119 Stat. 129; amended Pub. L. 111–327, §2(a)(42), Dec. 22, 2010, 124 Stat. 3562.)

**REFERENCES IN TEXT**

Section 6020 of the Internal Revenue Code of 1986, referred to in subsec. (c), is classified to section 6020 of Title 26, Internal Revenue Code.

**AMENDMENTS**

**2010**—Subsec. (b)(2). Pub. L. 111–327, §2(a)(42)(C), substituted "paragraph (1)" for "this subsection" wherever appearing in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 111–327, §2(a)(42)(A), substituted "paragraph (1)(A)" for "paragraph (1)".

Subsec. (b)(2)(B). Pub. L. 111–327, §2(a)(42)(B), substituted "paragraph (1)(B)" for "paragraph (2)".

**EFFECTIVE DATE**

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

## SUBCHAPTER II—THE PLAN

### §1321. Filing of plan

The debtor shall file a plan.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2648.)

**HISTORICAL AND REVISION NOTES**

**SENATE REPORT NO. 95–989**

Chapter 13 contemplates the filing of a plan only by the debtor.

## §1322. Contents of plan

(a) The plan—

(1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

(3) if the plan classifies claims, shall provide the same treatment for each claim within a particular class; and

(4) notwithstanding any other provision of this section, may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) provide for the payment of all or any part of any claim allowed under section 1305 of this title;

(7) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(8) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity;

(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and

(11) include any other appropriate provision not inconsistent with this title.

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 5 years.

(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.

(e) Notwithstanding subsection (b)(2) of this section and sections 506(b) and 1325(a)(5) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute "disposable income" under section 1325.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2648; Pub. L. 98–353, title III, §§316, 528, July 10, 1984, 98 Stat. 356, 389; Pub. L. 103–394, title III, §§301, 305(c), Oct. 22, 1994, 108 Stat. 4131, 4134; Pub. L. 109–8, title II, §§213(8), (9), 224(d), title III, §318(1), Apr. 20, 2005, 119 Stat. 53, 65, 93; Pub. L. 111–327, §2(a)(43), Dec. 22, 2010, 124 Stat. 3562.)

## ADJUSTMENT OF DOLLAR AMOUNTS

*For adjustment of certain dollar amounts specified in this section, that is not reflected in text, see Adjustment of Dollar Amounts note below.*

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1322(b)(2) of the House amendment represents a compromise agreement between similar provisions in the House bill and Senate amendment. Under the House amendment, the plan may modify the rights of holders of secured claims other than a claim secured by a security interest in real property that is the debtor's principal residence. It is intended that a claim secured by the debtor's principal residence may be treated with under section 1322(b)(5) of the House amendment.

Section 1322(c) adopts a 5-year period derived from the House bill in preference to a 4-year period contained in the Senate amendment. A conforming change is made in section 1329(c) adopting the provision in the House bill in preference to a comparable provision in the Senate amendment.

Tax payments in wage earner plans: The House bill provided that a wage earner plan had to provide that all priority claims would be paid in full. The Senate amendment contained a special rule in section 1325(c) requiring that Federal tax claims must be paid in cash, but that such tax claims can be paid in deferred cash installments under the general rules applicable to the payment of debts in a wage earner plan, unless the Internal Revenue Service negotiates with the debtor for some different medium or time for payment of the tax liability.

The House bill adopts the substance of the Senate amendment rule under section 1322(a)(2) of the House amendment. A wage earner plan must provide for full payment in deferred cash payments, of all priority claims, unless the holder of a particular claim agrees with a different treatment of such claim.

### SENATE REPORT NO. 95–989

Chapter 13 is designed to serve as a flexible vehicle for the repayment of part or all of the allowed claims of the debtor. Section 1322 emphasizes that purpose by fixing a minimum of mandatory plan provisions.

Subsection (a) requires that the plan submit whatever portion of the future income of the debtor is necessary to implement the plan to the control of the trustee, mandates payment in full of all section 507 priority claims,

and requires identical treatment for all claims of a particular class.

Subsection (b) permits a chapter 13 plan to (1) divide unsecured claims not entitled to priority under section 507 into classes in the manner authorized for chapter 11 claims; (2) modify the rights of holders of secured and unsecured claims, except claims wholly secured by real estate mortgages; (3) cure or waive any default; (4) propose payments on unsecured claims concurrently with payments on any secured claim or any other class of unsecured claims; (5) provide for curing any default on any secured or unsecured claim on which the final payment is due after the proposed final payment under the plan; (6) provide for payment of any allowed postpetition claim; (7) assume or reject any previously unrejected executory contract or unexpired lease of the debtor; (8) propose the payment of all or any part of any claim from property of the estate or of the debtor; (9) provide for the vesting of property of the estate; and (10) include any other provision not inconsistent with other provisions of title 11.

Subsection (c) limits the payment period under the plan to 3 years, except that a 4–year payment period may be permitted by the court.

## AMENDMENTS

**2010**—Subsec. (a). Pub. L. 111–327, §2(a)(43)(A), struck out "shall" after "plan" in introductory provisions.

Subsec. (a)(1) to (3). Pub. L. 111–327, §2(a)(43)(B)–(D), inserted "shall" before "provide".

Subsec. (a)(4). Pub. L. 111–327, §2(a)(43)(E), struck out "a plan" before "may provide".

**2005**—Subsec. (a)(4). Pub. L. 109–8, §213(8), added par. (4).

Subsec. (b)(10), (11). Pub. L. 109–8, §213(9), added par. (10) and redesignated former par. (10) as (11).

Subsec. (d). Pub. L. 109–8, §318(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years."

Subsec. (f). Pub. L. 109–8, §224(d), added subsec. (f).

**1994**—Subsecs. (c), (d). Pub. L. 103–394, §301, added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 103–394, §305(c), added subsec. (e).

**1984**—Subsec. (a)(2). Pub. L. 98–353, §528(a), inserted a comma after "payments".

Subsec. (b)(1). Pub. L. 98–353, §316, inserted "; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims".

Subsec. (b)(2). Pub. L. 98–353, §528(b)(1), inserted ", or leave unaffected the rights of the holders of any class of claims".

Subsec. (b)(4). Pub. L. 98–353, §528(b)(2), inserted "other" after "claim or any".

Subsec. (b)(7). Pub. L. 98–353, §528(b)(3), inserted "subject to section 365 of this title," before "provide", substituted ", rejection, or assignment" for "or rejection", and substituted "under such section" for "under section 365 of this title".

Subsec. (b)(8). Pub. L. 98–353, §528(b)(4), struck out "any" before "part of a claim".

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 301 of Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, and amendment by section 305(c) of Pub. L. 103–394 effective Oct. 22, 1994, and applicable only to agreements entered into after Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## ADJUSTMENT OF DOLLAR AMOUNTS

The dollar amounts specified in this section were adjusted by notices of the Judicial Conference of the United States pursuant to section 104 of this title as follows:

By notice dated Feb. 12, 2013, 78 F.R. 12089, effective Apr. 1, 2013, in subsec. (d), dollar amount "625" was adjusted to "675" each time it appeared. See notice of the Judicial Conference of the United States set out as a note under section 104 of this title.

By notice dated Feb. 19, 2010, 75 F.R. 8747, effective Apr. 1, 2010, in subsec. (d)(1)(C), (2)(C), dollar

amount "575" was adjusted to "625".

By notice dated Feb. 7, 2007, 72 F.R. 7082, effective Apr. 1, 2007, in subsec. (d), dollar amount "525" was adjusted to "575" each time it appeared.

## §1323. Modification of plan before confirmation

(a) The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1322 of this title.

(b) After the debtor files a modification under this section, the plan as modified becomes the plan.

(c) Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2649.)

### HISTORICAL AND REVISION NOTES

#### SENATE REPORT NO. 95–989

The debtor is permitted to modify the plan before confirmation without court approval so long as the modified plan, which becomes the plan on filing, complies with the requirements of section 1322.

The original acceptance or rejection of a plan by the holder of a secured claim remains binding unless the modified plan changes the rights of the holder and the holder withdraws or alters its earlier acceptance or rejection.

## §1324. Confirmation hearing

(a) Except as provided in subsection (b) and after notice, the court shall hold a hearing on confirmation of the plan. A party in interest may object to confirmation of the plan.

(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2649; Pub. L. 98–353, title III, §529, July 10, 1984, 98 Stat. 389; Pub. L. 99–554, title II, §283(x), Oct. 27, 1986, 100 Stat. 3118; Pub. L. 109–8, title III, §317, Apr. 20, 2005, 119 Stat. 92.)

### HISTORICAL AND REVISION NOTES

#### SENATE REPORT NO. 95–989

Any party in interest may object to the confirmation of a plan, as distinguished from merely rejecting a plan. An objection to confirmation is predicated on failure of the plan or the procedures employed prior to confirmation to conform with the requirements of chapter 13. The bankruptcy judge is required to provide notice and an opportunity for hearing any such objection to confirmation.

### AMENDMENTS

**2005**—Pub. L. 109–8 designated existing provisions as subsec. (a), substituted "Except as provided in subsection (b) and after" for "After", and added subsec. (b).

**1986**—Pub. L. 99–554 struck out "the" after "object to".

**1984**—Pub. L. 98–353 struck out "the" before "confirmation of the plan".

### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1325. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that—

(I) the holder of such claim retain the lien securing such claim until the earlier of—

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan;

(7) the action of the debtor in filing the petition was in good faith;

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan

will be applied to make payments to unsecured creditors under the plan.

(2) For purposes of this subsection, the term "disposable income" means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(3) Amounts reasonably necessary to be expended under paragraph (2), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(4) For purposes of this subsection, the "applicable commitment period"—

(A) subject to subparagraph (B), shall be—

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2649; Pub. L. 98–353, title III, §§317, 530, July 10, 1984, 98 Stat. 356, 389; Pub. L. 99–554, title II, §283(y), Oct. 27, 1986, 100 Stat. 3118; Pub. L. 105–183, §4(a), June 19, 1998, 112 Stat. 518; Pub. L. 109–8, title I, §102(g), (h), title II, §213(10), title III, §§306(a), (b), 309(c)(1), 318(2), (3), title VII, §716(a), Apr. 20, 2005, 119 Stat. 33, 53, 80, 83, 93, 129; Pub. L. 109–439, §2, Dec. 20, 2006, 120 Stat. 3285; Pub. L. 111–327, §2(a)(44), Dec. 22, 2010, 124 Stat. 3562.)

## ADJUSTMENT OF DOLLAR AMOUNTS

*For adjustment of certain dollar amounts specified in this section, that is not reflected in text, see Adjustment of Dollar Amounts note below.*

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1325(a)(5)(B) of the House amendment modifies the House bill and Senate amendment to significantly protect secured creditors in chapter 13. Unless the secured creditor accepts the plan, the plan must provide that the secured creditor retain the lien securing the creditor's allowed secured claim in addition to receiving value, as of the effective date of the plan of property to be distributed under the plan on account of the claim not less than the allowed amount of the claim. To this extent, a secured creditor in a case under chapter 13 is treated identically with a recourse creditor under section 1111(b)(1) of the House amendment except that the secured creditor in a case under chapter 13 may receive any property of a value as of the effective date of the plan equal to the allowed amount of the creditor's secured claim rather than being restricted to receiving deferred cash payments. Of course, the secured creditors' lien only secures the value of the collateral and to the extent property is distributed of a present value equal to the allowed amount of the creditor's secured claim the creditor's lien will have been satisfied in full. Thus the lien created under section 1325(a)(5)(B)(i) is effective only to secure deferred payments to the extent of the amount of the allowed secured claim. To the extent the deferred payments exceed the value of the allowed amount of the secured claim and the debtor subsequently defaults, the lien will not secure unaccrued interest represented in such deferred payments.

### SENATE REPORT NO. 95–989

The bankruptcy court must confirm a plan if (1) the plan satisfies the provisions of chapter 13 and other applicable provisions of title 11; (2) it is proposed in good faith; (3) [illegible] in the best interests of creditors [illegible] defined by subsection (a)(4) of Section 1325; (4) it has been accepted by the holder of each allowed secured claim provided for the plan or where the holder of any such secured claim is to receive value under the plan not less than the amount of the allowed secured claim, or where the debtor surrenders to the holder the collateral securing any such allowed secured claim; (5) the plan is feasible; and (6) the requisite fees and charges have been paid.

Subsection (b) authorizes the court to order an entity, as defined by Section 101(15), [illegible] any income of the debtor to the trustee. Any governmental unit is an entity subject to such an order.

### AMENDMENTS

**2010**—Subsec. (a). Pub. L. 111–327, §2(a)(44)(A), inserted "period" after "910-day" in concluding provisions.

Subsec. (b)(2)(A)(ii). Pub. L. 111–327, §2(a)(44)(B), inserted closing parenthesis after "548(d)(3)".

**2006**—Subsec. (b)(3). Pub. L. 109–439 inserted ", other than subparagraph (A)(ii) of paragraph (2)," after "under paragraph (2)" in introductory provisions.

**2005**—Subsec. (a). Pub. L. 109–8, §306(b), inserted concluding provisions at end "For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing."

Subsec. (a)(5)(B)(i). Pub. L. 109–8, §306(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the plan provides that the holder of such claim retain the lien securing such claim; and".

Subsec. (a)(5)(B)(iii). Pub. L. 109–8, §309(c)(1), added cl. (iii).

Subsec. (a)(7). Pub. L. 109–8, §102(g), added par. (7).

Subsec. (a)(8). Pub. L. 109–8, §213(10), added par. (8).

Subsec. (a)(9). Pub. L. 109–8, §716(a), added par. (9).

Subsec. (b)(1)(B). Pub. L. 109–8, §318(2), substituted "applicable commitment period" for "three-year period".

Pub. L. 109–8, §102(h)(1), inserted "to unsecured creditors" after "to make payments".

Subsec. (b)(2), (3). Pub. L. 109–8, §102(h)(2), added pars. (2) and (3) and struck out former par. (2) which read as follows: "For purposes of this subsection, 'disposable income' means income which is received by the debtor and which is not reasonably necessary to be expended—

"(A) for the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made; and

"(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business."

Subsec. (b)(4). Pub. L. 109–8, §318(3), added par. (4).

**1998**—Subsec. (b)(2)(A). Pub. L. 105–183 inserted before semicolon ", including charitable contributions

(that meet the definition of 'charitable contribution' under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made".

**1986**—Subsec. (b)(2)(A). Pub. L. 99–554 substituted "; and" for "; or".

**1984**—Subsec. (a). Pub. L. 98–353, §317(1), substituted "Except as provided in subsection (b), the" for "The".

Subsec. (a)(1). Pub. L. 98–353, §530, inserted "the" before "other".

Subsecs. (b), (c). Pub. L. 98–353, §317(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–183 applicable to any case brought under an applicable provision of this title that is pending or commenced on or after June 19, 1998, see section 5 of Pub. L. 105–183, set out as a note under section 544 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

**ADJUSTMENT OF DOLLAR AMOUNTS**

The dollar amounts specified in this section were adjusted by notices of the Judicial Conference of the United States pursuant to section 104 of this title as follows:

By notice dated Feb. 12, 2013, 78 F.R. 12089, effective Apr. 1, 2013, in subsec. (b), dollar amount "625" was adjusted to "675" each time it appeared. See notice of the Judicial Conference of the United States set out as a note under section 104 of this title.

By notice dated Feb. 19, 2010, 75 F.R. 8747, effective Apr. 1, 2010, in subsec. (b)(3), (4), dollar amount "575" was adjusted to "625".

By notice dated Feb. 7, 2007, 72 F.R. 7082, effective Apr. 1, 2007, in subsec. (b), dollar amount "525" was adjusted to "575" each time it appeared.

## §1326. Payments

(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

(A) proposed by the plan to the trustee;

(B) scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment; and

(C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

(3) Subject to section 363, the court may, upon notice and a hearing, modify, increase, or reduce

the payments required under this subsection pending confirmation of a plan.

(4) Not later than 60 days after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.

(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

(1) any unpaid claim of the kind specified in section 507(a)(2) of this title;

(2) if a standing trustee appointed under section 586(b) of title 28 is serving in the case, the percentage fee fixed for such standing trustee under section 586(e)(1)(B) of title 28; and

(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

(A) by prorating such amount over the remaining duration of the plan; and

(B) by monthly payments not to exceed the greater of—

(i) $25; or

(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

(d) Notwithstanding any other provision of this title—

(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior case under this title; and

(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2650; Pub. L. 98–353, title III, §§318(a), 531, July 10, 1984, 98 Stat. 357, 389; Pub. L. 99–554, title II, §§230, 283(z), Oct. 27, 1986, 100 Stat. 3103, 3118; Pub. L. 103–394, title III, §307, Oct. 22, 1994, 108 Stat. 4135; Pub. L. 109–8, title III, §309(c)(2), title XII, §1224, title XV, §1502(a)(10), Apr. 20, 2005, 119 Stat. 83, 199, 217.)

## ADJUSTMENT OF DOLLAR AMOUNTS

*For adjustment of certain dollar amounts specified in this section, that is not reflected in text, see Adjustment of Dollar Amounts note below.*

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1326(a)(2) of the House amendment adopts a comparable provision contained in the House bill providing for standing trustees.

### SENATE REPORT NO. 95–989

Section 1326 supplements the priorities provisions of section 507. Subsection (a) requires accrued costs of administration and filing fees, as well as fees due the chapter 13 trustee, to be disbursed before payments to creditors under the plan. Subsection (b) makes it clear that the chapter 13 trustee is normally to make distribution to creditors of the payments made under the plan by the debtor.

### HOUSE REPORT NO. 95–595

Subsection (a) requires that before or at the time of each payment any outstanding administrative expenses [and] any percentage fee due for a private standing chapter 13 trustee be paid in full.

### AMENDMENTS

**2005**—Subsec. (a). Pub. L. 109–8, §309(c)(2), amended subsec. (a) generally. Prior to amendment subsec. (a) read as follows:

"(a)(1) Unless the court orders otherwise, the debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed.

"(2) A payment made under this subsection shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as practicable. If a plan is not confirmed, the trustee shall return any such payment to the

debtor, after deducting any unpaid claim allowed under section 503(b) of this title."

Subsec. (b)(1). Pub. L. 109–8, §1502(a)(10), substituted "507(a)(2)" for "507(a)(1)".

Subsec. (b)(3). Pub. L. 109–8, §1224(1), added par. (3).

Subsec. (d). Pub. L. 109–8, §1224(2), added subsec. (d).

**1994**—Subsec. (a)(2). Pub. L. 103–394 inserted "as soon as practicable" before period at end of second sentence.

**1986**—Subsec. (a)(2). Pub. L. 99–554, §283(z), substituted "payment" for "payments" in last sentence.

Subsec. (b). Pub. L. 99–554, §230, amended subsec. (b) generally, substituting "586(b) of title 28" for "1302(d) of this title" and "586(e)(1)(B) of title 28" for "1302(e) of this title" in par. (2).

**1984**—Subsec. (a). Pub. L. 98–353, §318(a)(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 98–353, §318(a)(1), redesignated subsec. (a) as (b). Former subsec. (b) redesignated (c).

Subsec. (b)(2). Pub. L. 98–353, §531, inserted "of this title" after "1302(d)".

Subsec. (c). Pub. L. 98–353, §318(a)(1), redesignated former subsec. (b) as (c).

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Effective date and applicability of amendment by section 230 of Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 283 of Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

**ADJUSTMENT OF DOLLAR AMOUNTS**

The dollar amounts specified in this section were adjusted by notices of the Judicial Conference of the United States pursuant to section 104 of this title as follows:

By notice dated Feb. 12, 2013, 78 F.R. 12089, effective Apr. 1, 2013, in subsec. (b)(3), dollar amount "25" was adjusted to "25". See notice of the Judicial Conference of the United States set out as a note under section 104 of this title.

By notice dated Feb. 19, 2010, 75 F.R. 8747, effective Apr. 1, 2010, in subsec. (b)(3)(B), dollar amount "25" was adjusted to "25".

By notice dated Feb. 7, 2007, 72 F.R. 7082, effective Apr. 1, 2007, in subsec. (b)(3), dollar amount "25" was adjusted to "25".

## §1327. Effect of confirmation

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2650.)

**HISTORICAL AND REVISION NOTES**

**SENATE REPORT NO. 95–989**

Subsection (a) binds the debtor and each creditor to the provisions of a confirmed plan, whether or not the claim of the creditor is provided for by the plan and whether or not the creditor has accepted, rejected, or objected to the plan. Unless the plan itself or the order confirming the plan otherwise provides, confirmation is deemed to vest all property of the estate in the debtor, free and clear of any claim or interest of any creditor provided for by the plan.

## §1328. Discharge

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5);

(2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);

(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

(b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5) of this title; or

(2) of a kind specified in section 523(a) of this title.

(d) Notwithstanding any other provision of this section, a discharge granted under this section does not discharge the debtor from any debt based on an allowed claim filed under section 1305(a)(2) of this title if prior approval by the trustee of the debtor's incurring such debt was practicable and was not obtained.

(e) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

(1) such discharge was obtained by the debtor through fraud; and

(2) the requesting party did not know of such fraud until after such discharge was granted.

(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or

(2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

(g)(1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(2) Paragraph (1) shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

(1) section 522(q)(1) may be applicable to the debtor; and

(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2650; Pub. L. 98–353, title III, §532, July 10, 1984, 98 Stat. 389; Pub. L. 101–508, title III, §3007(b)(1), Nov. 5, 1990, 104 Stat. 1388–28; Pub. L. 101–581, §§2(b), 3, Nov. 15, 1990, 104 Stat. 2865; Pub. L. 101–647, title XXXI, §§3102(b), 3103, Nov. 29, 1990, 104 Stat. 4916; Pub. L. 103–394, title III, §302, title V, §501(d)(38), Oct. 22, 1994, 108 Stat. 4132, 4147; Pub. L. 109–8, title I, §106(c), title II, §213(11), title III, §§312(2), 314(b), 330(d), title VII, §707, Apr. 20, 2005, 119 Stat. 38, 53, 87, 88, 102, 126.)

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1328(a) adopts a provision contained in the Senate amendment permitting the court to approve a waiver of discharge by the debtor. It is anticipated that such a waiver must be in writing executed after the order for relief in a case under chapter 13.

### SENATE REPORT NO. 95–989

The court is to enter a discharge, unless waived, as soon as practicable after completion of payments under the plan. The debtor is to be discharged of all debts provided for by the plan or disallowed under section 502, except a debt provided for under the plan the last payment on which was not due until after the completion of the plan, or a debt incurred for willful and malicious conversion of or injury to the property or person of another.

Subsection (b) is the successor to Bankruptcy Act Section 661 [section 1061 of former title 11]. This subsection permits the bankruptcy judge to grant the debtor a discharge at any time after confirmation of a plan, if the court determines, after notice and hearing, that the failure to complete payments under the plan is due to circumstances for which the debtor should not justly be held accountable, the distributions made to each creditor under the plan equal in value the amount that would have been paid to the creditor had the estate been liquidated under chapter 7 of title 11 at the date of the hearing under this subsection, and that modification of the plan is impracticable. The discharge granted under subsection (b) relieves the debtor from all unsecured debts provided for by the plan or disallowed under section 502, except nondischargeable debts described in section 523(a) of title 11 or debts of the type covered by section 1322(b)(5).

Subsection (d) excepts from any chapter 13 discharge a debt based on an allowed section 1305(a)(2) postpetition claim, if prior trustee approval of the incurring of the debt was practicable but was not obtained.

A chapter 13 discharge obtained through fraud and before the moving party gained knowledge of the fraud may be revoked by the court under subsection (e), after notice and hearing, at the request of any party in interest made within 1 year after the discharge was granted.

### AMENDMENTS

**2005**—Subsec. (a). Pub. L. 109–8, §330(d)(1), substituted "Subject to subsection (d), as" for "As" in introductory provisions.

Pub. L. 109–8, §314(b), added pars. (1) to (4) and struck out former pars. (1) to (3) which read as follows:

"(1) provided for under section 1322(b)(5) of this title;

"(2) of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title; or

"(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime."

Pub. L. 109–8, §213(11), inserted ", and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid" after "completion by the debtor of all payments under the plan" in introductory provisions.

Subsec. (a)(2). Pub. L. 109–8, §707, substituted "section 507(a)(8)(C) or in paragraph (1)(B), (1)(C)," for "paragraph".

Subsec. (b). Pub. L. 109–8, §330(d)(2), substituted "Subject to subsection (d), at" for "At" in introductory provisions.

Subsec. (f). Pub. L. 109–8, §312(2), added subsec. (f).

Subsec. (g). Pub. L. 109–8, §106(c), added subsec. (g).

Subsec. (h). Pub. L. 109–8, §330(d)(3), added subsec. (h).

**1994**—Subsec. (a)(2). Pub. L. 103–394, §501(d)(38)(A), substituted "(5), (8), or (9)" for "(5) or (8)".

Subsec. (a)(3). Pub. L. 103–394, §501(d)(38)(B), struck out last par. (3). See 1990 Amendment note below.

Pub. L. 103–394, §302, inserted ", or a criminal fine," after "restitution".

**1990**—Subsec. (a)(1). Pub. L. 101–581, §3(1), and Pub. L. 101–647, §3103(1), made identical amendments striking "or" at end.

Subsec. (a)(2). Pub. L. 101–581, §3(2), and Pub. L. 101–647, §3103(2), made identical amendments substituting "; or" for period at end.

Pub. L. 101–581, §2(b), and Pub. L. 101–647, §3102(b), which directed identical insertions of "or 523(a)(9)" after "523(a)(5)", could not be executed because of prior amendment by Pub. L. 101–508. See below.

Pub. L. 101–508 substituted "paragraph (5) or (8) of section 523(a)" for "section 523(a)(5)".

Subsec. (a)(3). Pub. L. 101–581, §3(3), and Pub. L. 101–647, §3103(3), made identical amendments adding par. (3).

**1984**—Subsec. (e)(1). Pub. L. 98–353, §532(1), inserted "by the debtor" after "obtained".

Subsec. (e)(2). Pub. L. 98–353, §532(2), substituted "the requesting party did not know of such fraud until" for "knowledge of such fraud came to the requesting party".

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendments by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, with amendments by sections 106(c), 213(11), 312(2), 314(b), and 707 of Pub. L. 109–8 not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, and amendment by section 330(d) of Pub. L. 109–8 applicable with respect to cases commenced under this title on or after Apr. 20, 2005, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1990 AMENDMENT**

Amendment by Pub. L. 101–647 effective Nov. 29, 1990, but not applicable with respect to cases commenced under this title before Nov. 29, 1990, see section 3104 of Pub. L. 101–647, set out as a note under section 523 of this title.

Amendment by Pub. L. 101–581 effective Nov. 15, 1990, but not applicable with respect to cases commenced under this title before Nov. 15, 1990, see section 4 of Pub. L. 101–581, set out as a note under section 523 of this title.

Pub. L. 101–508, title III, §3007(b)(2), Nov. 5, 1990, 104 Stat. 1388–29, provided that: "The amendment made by paragraph (1) [amending this section] shall not apply to any case under the provisions of title 11, United States Code, commenced before the date of the enactment of this Act [Nov. 5, 1990]."

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1329. Modification of plan after confirmation

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by

the plan;

(2) extend or reduce the time for such payments;

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or

(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

(A) such expenses are reasonable and necessary;

(B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy; or

(ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance, who has similar income, expenses, age, and health status, and who lives in the same geographical location with the same number of dependents who do not otherwise have health insurance coverage; and

(C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title;

and upon request of any party in interest, files proof that a health insurance policy was purchased.

(b)(1) Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

(c) A plan modified under this section may not provide for payments over a period that expires after the applicable commitment period under section 1325(b)(1)(B) after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2651; Pub. L. 98–353, title III, §§319, 533, July 10, 1984, 98 Stat. 357, 389; Pub. L. 109–8, title [illegible], §102(i), title III, §318(4), Apr. 20, 2005, 119 Stat. 34, 94.)

## HISTORICAL AND REVISION NOTES

### SENATE REPORT NO. 95-989

At any time prior to the completion of payments under a confirmed plan, the plan may be modified, after notice and hearing, to change the amount of payments to creditors or a particular class of creditors and to extend or reduce the payment period. A modified plan may not contain any provision which could not be included in an original plan as prescribed by section 1322. A modified plan may not call for payments to be made beyond four years as measured from the date of the commencement of payments under the original plan.

### AMENDMENTS

**2005**—Subsec. (a)(4). Pub. L. 109–8, §102(i), added par. (4).

Subsec. (c). Pub. L. 109–8, §318(4), substituted "the applicable commitment period under section 1325(b)(1)(B)" for "three years".

**1984**—Subsec. (a). Pub. L. 98–353, §§319, 533(1), (2), inserted "of the plan" after "confirmation", substituted "such plan" for "a plan", and inserted provisions respecting requests by the debtor, the trustee, or the holder of an allowed unsecured claim for modification.

Subsec. (a)(3). Pub. L. 98–353, §533(3), substituted "plan to" for "plan, to".

### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1330. Revocation of an order of confirmation

(a) On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1325 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud.

(b) If the court revokes an order of confirmation under subsection (a) of this section, the court shall dispose of the case under section 1307 of this title, unless, within the time fixed by the court, the debtor proposes and the court confirms a modification of the plan under section 1329 of this title.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2651.)

### HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1331 of the House bill and Senate amendment is deleted in the House amendment.

Special tax provision: Section 1331 of title 11 of the House bill and the comparable provisions in sections 1322 and 1327(d) of the Senate amendment, pertaining to assessment and collection of taxes in wage earner plans, are deleted, and the governing rule is placed in section 505(c) of the House amendment. The provisions of both bills allowing assessment and collection of taxes after confirmation of the wage-earner plan are modified to allow assessment and collection after the court fixes the fact and amount of a tax liability, including administrative period taxes, regardless of whether this occurs before or after confirmation of the plan. The provision of the House bill limiting the collection of taxes to those assessed before one year after the filing of the petition is eliminated, thereby leaving the period of limitations on assessment of these nondischargeable tax liabilities the usual period provided by the Internal Revenue Code [Title 26].

### SENATE REPORT NO. 95–989

The court may revoke an order of confirmation procured by fraud, after notice and hearing, on application of a party in interest filed within 180 days after the entry of the order. Thereafter, unless a modified plan is confirmed, the court is to convert or dismiss the chapter 13 case as provided in section 1307.

# CHAPTER 11—REORGANIZATION

## SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.



## SUBCHAPTER II—THE PLAN

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Chapter 11 of the House amendment is derived in large part from chapter 11 as contained in the House bill. Unlike chapter 11 of the Senate amendment, chapter 11 of the House amendment does not represent an extension of chapter X of current law [chapter 10 of former title 11] or any other chapter of the Bankruptcy Act [former title 11]. Rather chapter 11 of the House amendment takes a new approach consolidating subjects dealt with under chapters VIII, X, XI, and XII of the Bankruptcy Act [chapters 8, 10, 11, and 12 of former title 11]. The new consolidated chapter 11 contains no special procedure for companies with public debt or equity security holders. Instead, factors such as the standard to be applied to solicitation of acceptances of a plan of reorganization are left to be determined by the court on a case-by-case basis. In order to insure that adequate investigation of the debtor is conducted to determine fraud or wrongdoing on the part of present management, an examiner is required to be appointed in all cases in which the debtor's fixed, liquidated, and unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed $5 million. This should adequately represent the needs of public security holders in most cases. However, in addition, section 1109 of the House amendment enables both the Securities and Exchange Commission and any party in interest who is creditor, equity security holder, indenture trustee, or any committee representing creditors or equity security holders to raise and appear and be heard on any issue in a case under chapter 11. This will enable the bankruptcy court to evaluate all sides of a position and to determine the public interest. This approach is sharply contrasted to that under chapter X of present law in which the public interest is often determined only in terms of the interest of public security holders. The advisory role of the Securities and Exchange Commission will enable the court to balance the needs of public security holders against equally important public needs relating to the economy, such as employment and production, and other factors such as the public health and safety of the people or protection of the national interest. In this context, the new chapter 11 deletes archaic rules contained in certain chapters of present law such as the requirement of an approval hearing and the prohibition of prepetition solicitation. Such requirements were written in an age before the enactment of the Trust Indenture Act [15 U.S.C. 77aaa et seq.] and the development of securities laws had occurred. The benefits of these provisions have long been outlived but the detriment of the provisions served to frustrate and delay effective reorganization in those chapters of the Bankruptcy Act in which such provisions applied. Chapter 11 thus represents a much needed revision of reorganization laws. A brief discussion of the history of this important achievement is useful to an appreciation of the monumental reform embraced in chapter 11.

Under the existing Bankruptcy Act [former title 11] debtors seeking reorganization may choose among three reorganization chapters, chapter X, chapter XI, and chapter XII [chapters 10, 11, and 12 of former title 11]. Individuals and partnerships may file under chapter XI or, if they own property encumbered by mortgage liens, they may file under chapter XII. A corporation may file under either chapter X or chapter XI, but is ineligible to file under chapter XII. Chapter X was designed to facilitate the pervasive reorganization of

corporations whose creditors include holders of publicly issued debt securities. Chapter XI, on the other hand, was designed to permit smaller enterprises to negotiate composition or extension plans with their unsecured creditors. The essential differences between chapters X and XI are as follows. Chapter X mandates that, first, an independent trustee be appointed and assume management control from the officers and directors of the debtor corporation; second, the Securities and Exchange Commission must be afforded an opportunity to participate both as an adviser to the court and as a representative of the interests of public security holders; third, the court must approve any proposed plan of reorganization, and prior to such approval, acceptances of creditors and shareholders may not be solicited; fourth, the court must apply the absolute priority rule; and fifth, the court has the power to affect, and grant the debtor a discharge in respect of, all types of claims, whether secured or unsecured and whether arising by reason of fraud or breach of contract.

The Senate amendment consolidates chapters X, XI, and XII [chapters 10, 11, and 12 of former title 11], but establishes a separate and distinct reorganization procedure for "public companies." The special provisions applicable to "public companies" are tantamount to the codification of chapter X of the existing Bankruptcy Act and thus result in the creation of a "two-track system." The narrow definition of the term "public company" would require many businesses which could have been rehabilitated under chapter XI to instead use the more cumbersome procedures of chapter X, whether needed or not.

The special provisions of the Senate amendment applicable to a "public company" are as follows:

(a) Section 1101(3) defines a "public company" as a debtor who, within 12 months prior to the filing of the petition, had outstanding $5 million or more in debt and had not less than 1000 security holders;

(b) Section 1104(a) requires the appointment of a disinterested trustee irrespective of whether creditors support such appointment and whether there is cause for such appointment;

(c) Section 1125(f) prohibits the solicitation of acceptances of a plan of reorganization prior to court approval of such plan even though the solicitation complies with all applicable securities laws;

(d) Section 1128(a) requires the court to conduct a hearing on any plan of reorganization proposed by the trustee or any other party;

(e) Section 1128(b) requires the court to refer any plans "worthy of consideration" to the Securities and Exchange Commission for their examination and report, prior to court approval of a plan; and

(f) Section 1128(c) and section 1130(a)(7) requires the court to approve a plan or plans which are "fair and equitable" and comply with the other provisions of chapter 11.

The record of the Senate hearings on S. 2266 and the House hearings on H.R. 8200 is replete with evidence of the failure of the reorganization provisions of the existing Bankruptcy Act [former title 11] to meet the needs of insolvent corporations in today's business environment. Chapter X [chapter 10 of former title 11] was designed to impose rigid and formalized procedures upon the reorganization of corporations and, although designed to protect public creditors, has often worked to the detriment of such creditors. As the House report has noted:

The negative results under chapter X [chapter 10 of former title 11] have resulted from the stilted procedures, under which management is always ousted and replaced by an independent trustee, the courts and the Securities and Exchange Commission examine the plan of reorganization in great detail, no matter how long that takes, and the court values the business, a time consuming and inherently uncertain procedure.

The House amendment deletes the "public company" exception, because it would codify the well recognized infirmities of chapter X [chapter 10 of former title 11], because it would extend the chapter X approach to a large number of new cases without regard to whether the rigid and formalized procedures of chapter X are needed, and because it is predicated upon the myth that provisions similar to those contained in chapter X are necessary for the protection of public investors. Bankruptcy practice in large reorganization cases has also changed substantially in the 40 years since the Chandler Act [June 22, 1938, ch. 575, 52 Stat. 883, amending former title 11] was enacted. This change is, in large part, attributable to the pervasive effect of the Federal securities laws and the extraordinary success of the Securities and Exchange Commission in sensitizing both management and members of the bar to the need for full disclosure and fair dealing in transactions involving publicly held securities.

It is important to note that Congress passed the Chandler Act [June 22, 1938, ch. 575, 52 Stat. 883, amending former title 11] prior to enactment of the Trust Indenture Act of 1939 [15 U.S.C. section 77aaa et seq.] and prior to the definition and enforcement of the disclosure requirements of the Securities Act of 1933 [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]. The judgments made by the 75th Congress in enacting the Chandler Act are not equally applicable to the financial markets of 1978. First of all, most public debenture holders are neither weak nor unsophisticated investors. In most cases, a significant portion of the holders of publicly issued debentures are sophisticated institutions, acting for their own account or as trustees for investment funds, pension funds, or private trusts. In addition, debenture holders, sophisticated, and unsophisticated alike, are represented by indenture trustees, qualified under section 77ggg of the Trust Indenture Act [probably should be "section 307" which is 15 U.S.C. 77ggg]. Given the high standard of care to which indenture trustees are bound, they are invariably active and sophisticated participants in efforts to rehabilitate corporate debtors in distress.

It is also important to note that in 1938 when the Chandler Act [June 22, 1938, ch. 575, 52 Stat. 883,

amending former title 11] was enacted, public investors commonly held senior, not subordinated, debentures and corporations were very often privately owned. In this environment, the absolute priority rule protected debenture holders from an erosion of their position in favor of equity holders. Today, however, if there are public security holders in a case, they are likely to be holders of subordinated debentures and equity and thus the application of the absolute priority rule under chapter X [chapter 10 of former title 11] leads to the exclusion, rather than the protection, of the public.

The primary problem posed by chapter X [chapter 10 of former title 11] is delay. The modern corporation is a complex and multifaceted entity. Most corporations do not have a significant market share of the lines of business in which they compete. The success, and even the survival, of a corporation in contemporary markets depends on three elements: First, the ability to attract and hold skilled management; second, the ability to obtain credit; and third, the corporation's ability to project to the public an image of vitality. Over and over again, it is demonstrated that corporations which must avail themselves of the provisions of the Bankruptcy Act [former title 11] suffer appreciable deterioration if they are caught in a chapter X proceeding for any substantial period of time.

There are exceptions to this rule. For example, King Resources filed a chapter X [chapter 10 of former title 11] petition in the District of Colorado and it emerged from such proceeding as a solvent corporation. The debtor's new found solvency was not, however, so much attributable to a brilliant rehabilitation program conceived by a trustee, but rather to a substantial appreciation in the value of the debtor's oil and uranium properties during the pendency of the proceedings.

Likewise, Equity Funding is always cited as an example of a successful chapter X [chapter 10 of former title 11] case. But it should be noted that in Equity Funding there was no question about retaining existing management. Rather, Equity Funding involved fraud on a grand scale. Under the House amendment with the deletion of the mandatory appointment of a trustee in cases involving "public companies," a bankruptcy judge, in a case like Equity Funding, would presumably have little difficulty in concluding that a trustee should be appointed under section 1104(6).

While I will not undertake to list the chapter X [chapter 10 of former title 11] failures, it is important to note a number of cases involving corporations which would be "public companies" under the Senate amendment which have successfully skirted the shoals of chapter X and confirmed plans of arrangement in chapter XI [chapter 11 of former title 11]. Among these are Daylin, Inc. ("Daylin") and Colwell Mortgage Investors ("Colwell").

Daylin filed a chapter XI [chapter 11 of former title 11] petition on February 26, 1975, and confirmed its plan of arrangement on October 20, 1976. The success of its turnaround is best evidenced by the fact that it had consolidated net income of $6,473,000 for the first three quarters of the 1978 fiscal year.

Perhaps the best example of the contrast between chapter XI and chapter X [chapters 11 and 10 of former title 11] is the recent case of *In re Colwell Mortgage Investors*. Colwell negotiated a recapitalization plan with its institutional creditors, filed a proxy statement with the Securities and Exchange Commission, and solicited consents of its creditors and shareholders prior to filing its chapter XI petition. Thereafter, Colwell confirmed its plan of arrangement 41 days after filing its chapter XI petition. This result would have been impossible under the Senate amendment since Colwell would have been a "public company."

There are a number of other corporations with publicly held debt which have successfully reorganized under chapter XI [chapter 11 of former title 11]. Among these are National Mortgage Fund (NMF), which filed a chapter XI petition in the northern district of Ohio on June 30, 1976. Prior to commencement of the chapter XI proceeding, NMF filed a proxy statement with the Securities and Exchange Commission and solicited acceptances to a proposed plan of arrangement. The NMF plan was subsequently confirmed on December 14, 1976. The Securities and Exchange Commission did not file a motion under section 328 of the Bankruptcy Act [section 728 of former title 11] to transfer the case to chapter X [chapter 10 of former title 11] and a transfer motion which was filed by private parties was denied by the court.

While there are other examples of large publicly held companies which have successfully reorganized in chapter XI [chapter 11 of former title 11], including Esgrow, Inc. (C.D.Cal. 73–02510), Sherwood Diversified Services Inc. (S.D.N.Y. 73–B–213), and United Merchants and Manufacturers, Inc. (S.D.N.Y. 77–B–1513), the numerous successful chapter XI cases demonstrate two points: first, the complicated and time-consuming provisions of chapter X [chapter 10 of former title 11] are not always necessary for the successful reorganization of a company with publicly held debt, and second, the more flexible provisions in chapter XI permit a debtor to obtain relief under the Bankruptcy Act [former title 11] in significantly less time than is required to confirm a plan of reorganization under chapter X of the Bankruptcy Act.

One cannot overemphasize the advantages of speed and simplicity to both creditors and debtors. Chapter XI [chapter 11 of former title 11] allows a debtor to negotiate a plan outside of court and, having reached a settlement with a majority in number and amount of each class of creditors, permits the debtor to bind all unsecured creditors to the terms of the arrangement. From the perspective of creditors, early confirmation of a plan of arrangement: first, generally reduces administrative expenses which have priority over the claims of unsecured creditors; second, permits creditors to receive prompt distributions on their claims with respect to which interest does not accrue after the filing date; and third, increases the ultimate recovery on creditor

claims by minimizing the adverse effect on the business which often accompanies efforts to operate an enterprise under the protection of the Bankruptcy Act [former title 11].

Although chapter XI [chapter 11 of former title 11] offers the corporate debtor flexibility and continuity of management, successful rehabilitation under chapter XI is often impossible for a number of reasons. First, chapter XI does not permit a debtor to "affect" secured creditors or shareholders, in the absence of their consent. Second, whereas a debtor corporation in chapter X [chapter 10 of former title 11], upon the consummation of the plan or reorganization, is discharged from all its debts and liabilities, a corporation in chapter XI may not be able to get a discharge in respect of certain kinds of claims including fraud claims, even in cases where the debtor is being operated under new management. The language of chapter 11 in the House amendment solves these problems and thus increases the utility and flexibility of the new chapter 11, as compared to chapter XI of the existing Bankruptcy Act [chapter 11 of former title 11].

Those who would urge the adoption of a two-track system have two major obstacles to meet. First, the practical experience of those involved in business rehabilitation cases, practitioners, debtors, and bankruptcy judges, has been that the more simple and expeditious procedures of chapter XI [chapter 11 of former title 11] are appropriate in the great majority of cases. While attempts have been made to convince the courts that a chapter X [chapter 10 of former title 11] proceeding is required in every case where public debt is present, the courts have categorically rejected such arguments. Second, chapter X has been far from a success. Of the 991 chapter X cases filed during the period of January 1, 1967, through December 31, 1977, only 664 have been terminated. Of those cases recorded as "terminated," only 140 resulted in consummated plans. This 21 percent success rate suggests one of the reasons for the unpopularity of chapter X.

In summary, it has been the experience of the great majority of those who have testified before the Senate and House subcommittees that a consolidated approach to business rehabilitation is warranted. Such approach is adopted in the House amendment.

Having discussed the general reasons why chapter 11 of the House amendment is sorely needed, a brief discussion of the differences between the House bill, Senate amendment, and the House amendment, is in order. Since chapter 11 of the House amendment rejects the concept of separate treatment for a public company, sections 1101(3), 1104(a), 1125(f), 1128, and 1130(a)(7) of the Senate amendment have been deleted.

**AMENDMENTS**

**2005**—Pub. L. 109–8, title III, §321(a)(2), title IV, §436(b), Apr. 20, 2005, 119 Stat. 95, 113, added items 1115 and 1116.

**1988**—Pub. L. 100–334, §2(c), June 16, 1988, 102 Stat. 613, added item 1114.

**1984**—Pub. L. 98–353, title III, §§514(b), 541(b), July 10, 1984, 98 Stat. 387, 391, added item 1113 and substituted "Implementation" for "Execution" in item 1142.

**1983**—Pub. L. 97–449, §5(a)(1), Jan. 12, 1983, 96 Stat. 2442, substituted "subtitle IV of title 49" for "Interstate Commerce Act" in item 1166.

# SUBCHAPTER I—OFFICERS AND ADMINISTRATION

## §1101. Definitions for this chapter

In this chapter—

(1) "debtor in possession" means debtor except when a person that has qualified under section 322 of this title is serving as trustee in the case;

(2) "substantial consummation" means—

(A) transfer of all or substantially all of the property proposed by the plan to be transferred;

(B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and

(C) commencement of distribution under the plan.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2626.)

**HISTORICAL AND REVISION NOTES**

**SENATE REPORT NO. 95–989**

This section contains definitions of three terms that are used in chapter 11. Paragraph (1) defines debtor in possession to mean the debtor, except when a trustee who has qualified in serving in the case.

Paragraph (2), derived from section 229a of current law [section 629(a) of former title 11], defines substantial consummation. Substantial consummation of a plan occurs when transfer of all or substantially all

of the property proposed by the plan to be transferred is actually transferred; when the debtor (or its successor) has assumed the business of the debtor or the management of all or substantially all of the property dealt with by the plan; and when distribution under the plan has commenced.

Paragraph (3) defines for purposes of Chapter 11 a public company to mean "a debtor who, within 12 months prior to the filing of a petition for relief under this chapter, had outstanding liabilities of $5 million or more, exclusive of liabilities for goods, services, or taxes and not less than 1,000 security holders." There are, as noted, special safeguards for public investors related to the reorganization of a public company, as so defined.

Both requirements must be met: liabilities, excluding tax obligations and trade liabilities, must be $5 million or more; and (2) the number of holders of securities, debt or equity, or both, must be not less than 1,000. The amount and number are to be determined as of any time within 12 months prior to the filing of the petition for reorganization.

## §1102. Creditors' and equity security holders' committees

(a)(1) Except as provided in paragraph (3), as soon as practicable after the order for relief under chapter 11 of this title, the United States trustee shall appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate.

(2) On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.

(3) On request of a party in interest in a case in which the debtor is a small business debtor and for cause, the court may order that a committee of creditors not be appointed.

(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders. The court may order the United States trustee to increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act), if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.

(b)(1) A committee of creditors appointed under subsection (a) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee, or of the members of a committee organized by creditors before the commencement of the case under this chapter, if such committee was fairly chosen and is representative of the different kinds of claims to be represented.

(2) A committee of equity security holders appointed under subsection (a)(2) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest amounts of equity securities of the debtor of the kinds represented on such committee.

(3) A committee appointed under subsection (a) shall—

(A) provide access to information for creditors who—

(i) hold claims of the kind represented by that committee; and

(ii) are not appointed to the committee;

(B) solicit and receive comments from the creditors described in subparagraph (A); and

(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2626; Pub. L. 98–353, title III, §499, July 10, 1984, 98 Stat. 384; Pub. L. 99–554, title II, §221, Oct. 27, 1986, 100 Stat. 3101; Pub. L. 103–394, title II, §217(b), Oct. 22, 1994, 108 Stat. 4127; Pub. L. 109–8, title IV, §§405, 432(b), Apr. 20, 2005, 119 Stat. 105, 110.)

### HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1102(a) of the House amendment adopts a compromise between the House bill and Senate amendment requiring appointment of a committee of creditors holding unsecured claims by the court; the

alternative of creditor committee election is rejected.

Section 1102(b) of the House amendment represents a compromise between the House bill and the Senate amendment by preventing the appointment of creditors who are unwilling to serve on a creditors committee.

## SENATE REPORT NO. 95–989

This section provides for the election and appointment of committees. Subsection (c) provides that this section does not apply in case of a public company, as to which a trustee, appointed under section 1104(a) will have responsibility to administer the estate and to formulate a plan as provided in section 1106(a).

There is no need for the election or appointment of committees for which the appointment of a trustee is mandatory. In the case of a public company there are likely to be several committees, each representing a different class of security holders and seeking authority to retain accountants, lawyers, and other experts, who will expect to be paid. If in the case of a public company creditors or stockholders wish to organize committees, they may do so, as authorized under section 1109(a). Compensation and reimbursement will be allowed for contributions to the reorganization pursuant to section 503(b) (3) and (4).

## HOUSE REPORT NO. 95–595

This section provides for the appointment of creditors' and equity security holders' committees, which will be the primary negotiating bodies for the formulation of the plan of reorganization. They will represent the various classes of creditors and equity security holders from which they are selected. They will also provide supervision of the debtor in possession and of the trustee, and will protect their constituents' interests.

Subsection (a) requires the court to appoint at least one committee. That committee is to be composed of creditors holding unsecured claims. The court is authorized to appoint such additional committees as are necessary to assure adequate representation of creditors and equity security holders. The provision will be relied upon in cases in which the debtor proposes to affect several classes of debt or equity holders under the plan, and in which they need representation.

Subsection (b) contains precatory language directing the court to appoint the persons holding the seven largest claims against the debtor of the kinds represented on a creditors' committee, or the members of a prepetition committee organized by creditors before the order for relief under chapter 11. The court may continue prepetition committee members only if the committee was fairly chosen and is representative of the different kinds of claims to be represented. The court is restricted to the appointment of persons in order to exclude governmental holders of claims or interests.

Paragraph (2) of subsection (b) requires similar treatment for equity security holders' committees. The seven largest holders are normally to be appointed, but the language is only precatory.

Subsection (c) authorizes the court, on request of a party in interest, to change the size or the membership of a creditors' or equity security holders' committee if the membership of the committee is not representative of the different kinds of claims or interests to be represented. This subsection is intended, along with the nonbinding nature of subsection (b), to afford the court latitude in appointing a committee that is manageable and representative in light of the circumstances of the case.

## REFERENCES IN TEXT

Section 3(a)(1) of the Small Business Act, referred to in subsec. (a)(4), is classified to section 632(a)(1) of Title 15, Commerce and Trade.

## AMENDMENTS

**2005**—Subsec. (a)(3). Pub. L. 109–8, §432(b), inserted "debtor" after "small business".

Subsec. (a)(4). Pub. L. 109–8, §405(a), added par. (4).

Subsec. (b)(3). Pub. L. 109–8, §405(b), added par. (3).

**1994**—Subsec. (a). Pub. L. 103–394 substituted "Except as provided in paragraph (3), as" for "As" in par. (1) and added par. (3).

**1986**—Subsec. (a). Pub. L. 99–554, §221(1), amended subsec. (a) generally, substituting "chapter 11 of this title, the United States trustee shall appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate" for "this chapter, the court shall appoint a committee of creditors holding unsecured claims" in par. (1) and "United States trustee" for "court" in par. (2).

Subsec. (c). Pub. L. 99–554, §221(2), struck out subsec. (c) which read as follows: "On request of a party in interest and after notice and a hearing, the court may change the membership or the size of a committee appointed under subsection (a) of this section if the membership of such committee is not representative of the different kinds of claims or interests to be represented."

**1984**—Subsec. (b)(1). Pub. L. 98–353 substituted "commencement of the case" for "order for relief".

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of

Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Effective date and applicability of amendment by Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1103. Powers and duties of committees

(a) At a scheduled meeting of a committee appointed under section 1102 of this title, at which a majority of the members of such committee are present, and with the court's approval, such committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.

(b) An attorney or accountant employed to represent a committee appointed under section 1102 of this title may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case. Representation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest.

(c) A committee appointed under section 1102 of this title may—

(1) consult with the trustee or debtor in possession concerning the administration of the case;

(2) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(3) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan;

(4) request the appointment of a trustee or examiner under section 1104 of this title; and

(5) perform such other services as are in the interest of those represented.

(d) As soon as practicable after the appointment of a committee under section 1102 of this title, the trustee shall meet with such committee to transact such business as may be necessary and proper.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2627; Pub. L. 98–353, title III, §§324, 500, July 10, 1984, 98 Stat. 358, 384.)

**HISTORICAL AND REVISION NOTES**

**SENATE REPORT NO. 95–989**

This section defines the powers and duties of a committee elected or appointed under section 1102.

Under subsection (a) the committee may, if authorized by the court, employ one or more attorneys, accountants, or other agents to represent or perform services for the committee. Normally one attorney should suffice; more than one may be authorized for good cause. The same considerations apply to the services of others, if the need for any at all is demonstrated.

Under subsections (c) and (d) the committee, like any party in interest, may confer with the trustee or debtor regarding the administration of the estate; may advise the court on the need for a trustee under section 1104(b). The committee may investigate matters specified in paragraph (2) of subsection (c), but only if authorized by the court and if no trustee or examiner is appointed.

**HOUSE REPORT NO. 95–595**

Subsection (a) of this section authorizes a committee appointed under section 1102 to select and authorize the employment of counsel, accountants, or other agents, to represent or perform services for the committee. The committee's selection and authorization is subject to the court's approval, and may only be done at a meeting of the committee at which a majority of its members are present. The subsection provides for the

employment of more than one attorney. However, this will be the exception, and not the rule; cause must be shown to depart from the normal standard.

Subsection (b) requires a committee's counsel to cease representation of any other entity in connection with the case after he begins to represent the committee. This will prevent the potential of severe conflicts of interest.

Subsection (c) lists a committee's functions in a chapter 11 case. The committee may consult with the trustee or debtor in possession concerning the administration of the case, may investigate the acts, conduct, assets, liabilities and financial condition of the debtor, the operation of the debtor's business, and the desirability of the continuance of the business, and any other matter relevant to the case or to the formulation of a plan. The committee may participate in the formulation of a plan, advise those it represents of the committee's recommendation with respect to any plan formulated, and collect and file acceptances. These will be its most important functions. The committee may also determine the need for the appointment of a trustee, if one has not previously been appointed, and perform such other services as are in the interest of those represented.

Subsection (d) requires the trustee and each committee to meet as soon as practicable after their appointments to transact such business as may be necessary and proper.

**AMENDMENTS**

**1984**—Subsec. (b). Pub. L. 98–353, §§324, 500(a), substituted "An attorney or accountant" for "A person", substituted "entity having an adverse interest" for "entity", and inserted provision that representation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest.

Subsec. (c)(3). Pub. L. 98–353, §500(b)(1), substituted "determinations" for "recommendations", and "acceptances or rejections" for "acceptances".

Subsec. (c)(4). Pub. L. 98–353, §500(b)(2), struck out "if a trustee or examiner, as the case may be, has not previously been appointed under this chapter in the case" after "section 1104 of this title".

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1104. Appointment of trustee or examiner

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

(b)(1) Except as provided in section 1163 of this title, on the request of a party in interest made not later than 30 days after the court orders the appointment of a trustee under subsection (a), the United States trustee shall convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee in the case. The election of a trustee shall be conducted in the manner provided in subsections (a), (b), and (c) of section 702 of this title.

(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election.

(B) Upon the filing of a report under subparagraph (A)—

(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

(ii) the service of any trustee appointed under subsection (a) shall terminate.

(C) The court shall resolve any dispute arising out of an election described in subparagraph (A).

(c) If the court does not order the appointment of a trustee under this section, then at any time before the confirmation of a plan, on request of a party in interest or the United States trustee, and

after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor, if—

(1) such appointment is in the interests of creditors, any equity security holders, and other interests of the estate; or

(2) the debtor's fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed $5,000,000.

(d) If the court orders the appointment of a trustee or an examiner, if a trustee or an examiner dies or resigns during the case or is removed under section 324 of this title, or if a trustee fails to qualify under section 322 of this title, then the United States trustee, after consultation with parties in interest, shall appoint, subject to the court's approval, one disinterested person other than the United States trustee to serve as trustee or examiner, as the case may be, in the case.

(e) The United States trustee shall move for the appointment of a trustee under subsection (a) if there are reasonable grounds to suspect that current members of the governing body of the debtor, the debtor's chief executive or chief financial officer, or members of the governing body who selected the debtor's chief executive or chief financial officer, participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or the debtor's public financial reporting.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2627; Pub. L. 99–554, title II, §222, Oct. 27, 1986, 100 Stat. 3102; Pub. L. 103–394, title II, §211(a), title V, §501(d)(30), Oct. 22, 1994, 108 Stat. 4125, 4146; Pub. L. 109–8, title IV, §§416, 442(b), title XIV, §1405, Apr. 20, 2005, 119 Stat. 107, 116, 215; Pub. L. 111–327, §2(a)(30), Dec. 22, 2010, 124 Stat. 3560.)

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1104 of the House amendment represents a compromise between the House bill and the Senate amendment concerning the appointment of a trustee or examiner. The method of appointment rather than election, is derived from the House bill; the two alternative standards of appointment are derived with modifications from the Senate amendment, instead of the standard stated in the House bill. For example, if the current management of the debtor gambled away rental income before the filing of the petition, a trustee should be appointed after the petition, whether or not postpetition mismanagement can be shown. However, under no circumstances will cause include the number of security holders of the debtor or the amount of assets or liabilities of the debtor. The standard also applies to the appointment of an examiner in those circumstances in which mandatory appointment, as previously detailed, is not required.

### SENATE REPORT NO. 95–989

Subsection (a) provides for the mandatory appointment of a disinterested trustee in the case of a public company, as defined in section 1101(3), within 10 days of the order for relief, or of a successor, in the event of a vacancy, as soon as practicable.

Section 156 of chapter X ([former] 11 U.S.C. 516 [556]) requires the appointment of a disinterested trustee if the debtor's liabilities are $250,000 or over. Section 1104(a) marks a substantial change. The appointment of a trustee is mandatory only for a public company, which under section 1101(3), has $5 million in liabilities, excluding tax and trade obligations, and 1,000 security holders. In view of past experience, cases involving public companies will under normal circumstances probably be relatively few in number but of vast importance in terms of public investor interest.

In case of a nonpublic company, the appointment or election of a trustee is discretionary if the interests of the estate and its security holders would be served thereby. A test based on probable costs and benefits of a trusteeship is not practical. The appointment may be made at any time prior to confirmation of the plan.

In case of a nonpublic company, if no trustee is appointed, the court may under subsection (c) appoint an examiner, if the appointment would serve the interests of the estate and security holders. The purpose of his appointment is specified in section 1106(b).

### HOUSE REPORT NO. 95–595

Subsection (a) of this section governs the appointment of trustees in reorganization cases. The court is permitted to order the appointment of one trustee at any time after the commencement of the case if a party in interest so requests. The court may order appointment only if the protection afforded by a trustee is needed and the costs and expenses of a trustee would not be disproportionately higher than the value of the protection afforded.

The protection afforded by a trustee would be needed, for example, in cases where the current management of the debtor has been fraudulent or dishonest, or has grossly mismanaged the company, or where the debtor's management has abandoned the business. A trustee would not necessarily be needed to investigate misconduct of former management of the debtor, because an examiner appointed under this section might well be able to serve that function adequately without displacing the current management. Generally, a trustee would not be needed in any case where the protection afforded by a trustee could equally be afforded by an examiner. Though the device of examiner appears in current chapter X [chapter 10 of former title 11], it is rarely used because of the nearly absolute presumption in favor of the appointment of a trustee. Its use here will give the courts, debtors, creditors, and equity security holders greater flexibility in handling the affairs of an insolvent debtor, permitting the court to tailor the remedy to the case.

The second test, relating to the costs and expenses of a trustee, is not intended to be a strict cost/benefit analysis. It is included to require the court to have due regard for any additional costs or expenses that the appointment of a trustee would impose on the estate.

Subsection (b) permits the court, at any time after the commencement of the case and on request of a party in interest, to order the appointment of an examiner, if the court has not ordered the appointment of a trustee. The examiner would be appointed to conduct such an investigation of the debtor as is appropriate under the particular circumstances of the case, including an investigation of any allegations of fraud, dishonesty, or gross mismanagement of the debtor of or by current or former management of the debtor. The standards for the appointment of an examiner are the same as those for the appointment of a trustee: the protection must be needed, and the costs and expenses must not be disproportionately high.

By virtue of proposed 11 U.S.C. 1109, an indenture trustee and the Securities and Exchange Commission will be parties in interest for the purpose of requesting the appointment of a trustee or examiner.

Subsection (c) directs that the United States trustee actually select and appoint the trustee or examiner ordered appointed under this section. The United States trustee is required to consult with various parties in interest before selecting and appointing a trustee. He is not bound to select one of the members of the panel of private trustees established under proposed 28 U.S.C. 586(a)(1) which exists only for the purpose of providing trustees for chapter 7 cases. Neither is he precluded from selecting a panel member if the member is qualified to serve as chapter 11 trustee. Appointment by the United States trustee will remove the court from the often criticized practice of appointing an officer that will appear in litigation before the court against an adverse party.

## AMENDMENTS

**2010**—Subsec. (a). Pub. L. 111–327, §2(a)(30)(A), inserted "or" at end of par. (1), substituted a period for "; or" at end of par. (2), and struck out par. (3) which read as follows: "if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate."

Subsec. (b)(2)(B)(ii). Pub. L. 111–327, §2(a)(30)(B), substituted "subsection (a)" for "subsection (d)".

**2005**—Subsec. (a)(3). Pub. L. 109–8, §442(b), added par. (3).

Subsec. (b). Pub. L. 109–8, §416, designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 109–8, §1405, added subsec. (e).

**1994**—Subsec. (b). Pub. L. 103–394, §211(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 103–394, §211(a)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103–394, §§211(a)(1), 501(d)(30), redesignated subsec. (c) as (d) and inserted comma after "interest".

**1986**—Subsecs. (a), (b). Pub. L. 99–554, §222(1), (2), inserted "or the United States trustee" after "party in interest".

Subsec. (c). Pub. L. 99–554, §222(3), substituted "the United States trustee, after consultation with parties in interest shall appoint, subject to the court's approval, one disinterested person other than the United States trustee to serve" for "the court shall appoint one disinterested person to serve".

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1405 of Pub. L. 109–8 effective Apr. 20, 2005, and applicable only with respect to cases commenced under this title on or after Apr. 20, 2005, see section 1406 of Pub. L. 109–8, set out as a note under section 507 of this title.

Amendment by sections 416 and 442(b) of Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Effective date and applicability of amendment by Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

## §1105. Termination of trustee's appointment

At any time before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court may terminate the trustee's appointment and restore the debtor to possession and management of the property of the estate and of the operation of the debtor's business.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2628; Pub. L. 98–353, title III, §501, July 10, 1984, 98 Stat. 384; Pub. L. 99–554, title II, §223, Oct. 27, 1986, 100 Stat. 3102.)

**HISTORICAL AND REVISION NOTES**

**SENATE REPORT NO. 95–989**

This section authorizes the court to terminate the trustee's appointment and to restore the debtor to possession and management of the property of the estate and to operation of the debtor's business. Section 1104(a) provides that this section does not apply in the case of a public company, for which the appointment of a trustee is mandatory.

**HOUSE REPORT NO. 95–595**

This section authorizes the court to terminate the trustee's appointment and to restore the debtor to possession and management of the property of the estate, and to operation of the debtor's business. This section would permit the court to reverse its decision to order the appointment of a trustee in light of new evidence.

**AMENDMENTS**

**1986**—Pub. L. 99–554 inserted "or the United States trustee" after "party in interest".

**1984**—Pub. L. 98–353 substituted "estate and of the" for "estate, and".

**EFFECTIVE DATE OF 1986 AMENDMENT**

Effective date and applicability of amendment by Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1106. Duties of trustee and examiner

(a) A trustee shall—

(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), (11), and (12) of section 704(a);

(2) if the debtor has not done so, file the list, schedule, and statement required under section 521(a)(1) of this title;

(3) except to the extent that the court orders otherwise, investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(4) as soon as practicable—

(A) file a statement of any investigation conducted under paragraph (3) of this subsection, including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate; and

(B) transmit a copy or a summary of any such statement to any creditors' committee or equity security holders' committee, to any indenture trustee, and to such other entity as the court

designates;

(5) as soon as practicable, file a plan under section 1121 of this title, file a report of why the trustee will not file a plan, or recommend conversion of the case to a case under chapter 7, 12, or 13 of this title or dismissal of the case;

(6) for any year for which the debtor has not filed a tax return required by law, furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the condition of the debtor's books and records and the availability of such information;

(7) after confirmation of a plan, file such reports as are necessary or as the court orders; and

(8) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).

(b) An examiner appointed under section 1104(d) of this title shall perform the duties specified in paragraphs (3) and (4) of subsection (a) of this section, and, except to the extent that the court orders otherwise, any other duties of the trustee that the court orders the debtor in possession not to perform.

(c)(1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (a)(8) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

(ii) include in the notice required by clause (i) the address and telephone number of such State child support enforcement agency;

(B)(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice required by clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 1141, provide written notice to such holder and to such State child support enforcement agency of—

(i) the granting of the discharge;

(ii) the last recent known address of the debtor;

(iii) the last recent known name and address of the debtor's employer; and

(iv) the name of each creditor that holds a claim that—

(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

(II) was reaffirmed by the debtor under section 524(c).

(2)(A) The holder of a claim described in subsection (a)(8) or the State child enforcement support agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2628; Pub. L. 98–353, title III, §§311(b)(1), 502, July 10, 1984, 98 Stat. 355, 384; Pub. L. 99–554, title II, §257(c), Oct. 27, 1986, 100 Stat. 3114; Pub. L. 103–394, title II, §211(b), Oct. 22, 1994, 108 Stat. 4125; Pub. L. 109–8, title II, §219(b), title IV, §446(c), title XI, §1105(b), Apr. 20, 2005, 119 Stat. 56, 118, 192; Pub. L. 111–327, §2(a)(31), Dec. 22, 2010, 124 Stat. 3560.)

## HISTORICAL AND REVISION NOTES

### SENATE REPORT NO. 95–989

Subsection (a) of this section prescribes the trustee's duties. He is required to perform the duties of a trustee in a liquidation case specified in section 704 (2), (4), (6), (7), (8), and (9). These include reporting and informational duties, and accountability for all property received. Paragraph (2) of this subsection requires the trustee to file with the court, if the debtor has not done so, the list of creditors, schedule of assets and liabilities, and statement of affairs required under section 521(1).

Paragraph (3) of S. 1106 requires the trustee to investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business, and the desirability of the continuance of the business, and any other matter relevant to the case or to the formulation of a plan. Paragraph (4) requires the trustee to report the results of his investigation to the court and to creditors' committees, equity security holders' committees, indenture trustees and any other entity the court designates.

Paragraph (5) requires the trustee to file a plan or to report why a plan cannot be formulated, or to recommend conversion to liquidation or to an individual repayment plan case, or dismissal. It is anticipated that the trustee will consult with creditors and other parties in interest in the formulation of a plan, just as the debtor in possession would.

Paragraph (6) [enacted as (7)] requires final reports by the trustee, as the court orders.

Subsection (b) gives the trustee's investigative duties to an examiner, if one is appointed. The court is authorized to give the examiner additional duties as the circumstances warrant.

Paragraphs (3), (4), and (5) of subsection (a) are derived from sections 165 and 169 of chapter X [sections 565 and 569 of former title 11].

## REFERENCES IN TEXT

Sections 464 and 466 of the Social Security Act, referred to in subsec. (c)(1)(A)(i), are classified to sections 664 and 666, respectively, of Title 42, The Public Health and Welfare.

## AMENDMENTS

**2010**—Subsec. (a)(1). Pub. L. 111–327, §2(a)(31)(A), substituted "704(a)" for "704".

Subsec. (a)(2). Pub. L. 111–327, §2(a)(31)(B), substituted "521(a)(1)" for "521(1)".

**2005**—Subsec. (a)(1). Pub. L. 109–8, §1105(b), substituted "(11), and (12)" for "and (11)".

Pub. L. 109–8, §446(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "perform the duties of a trustee specified in sections 704(2), 704(5), 704(7), 704(8), and 704(9) of this title;".

Subsec. (a)(8). Pub. L. 109–8, §219(b)(1), added par. (8).

Subsec. (c). Pub. L. 109–8, §219(b)(2), added subsec. (c).

**1994**—Subsec. (b). Pub. L. 103–394 substituted "1104(d)" for "1104(c)".

**1986**—Subsec. (a)(5). Pub. L. 99–554 inserted reference to chapter 12.

**1984**—Subsec. (a)(1). Pub. L. 98–353, §311(b)(1), substituted "704(5), 704(7), 704(8), and 704(9)" for "704(4), 704(6), 704(7) and 704(8)".

Subsec. (b). Pub. L. 98–353, §502, inserted ", except to the extent that the court orders otherwise,".

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## PAYMENT OF CERTAIN BENEFITS TO RETIRED FORMER EMPLOYEES

Pub. L. 99–500, §101(b) [title VI, §608], Oct. 18, 1986, 100 Stat. 1783–39, 1783–74, and Pub. L. 99–591, §101(b) [title VI, §608], Oct. 30, 1986, 100 Stat. 3341–39, 3341–74, as amended by Pub. L. 100–41, May 15, 1987, 101 Stat. 309; Pub. L. 100–99, Aug. 18, 1987, 101 Stat. 716; Pub. L. 100–334, §3(a), June 16, 1988, 102 Stat. 613, provided that:

"(a)(1) Subject to paragraphs (2), (3), (4), and (5), and notwithstanding title 11 of the United States Code, the trustee shall pay benefits to retired former employees under a plan, fund, or program maintained or established by the debtor prior to filing a petition (through the purchase of insurance or otherwise) for the purpose of providing medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death.

"(2) The level of benefits required to be paid by this subsection may be modified prior to confirmation of a

plan under section 1129 of such title if—

"(A) the trustee and an authorized representative of the former employees with respect to whom such benefits are payable agree to the modification of such benefit payments; or

"(B) the court finds that a modification proposed by the trustee meets the standards of section 1113(b)(1)(A) of such title and the balance of the equities clearly favors the modification.

If such benefits are covered by a collective bargaining agreement, the authorized representative shall be the labor organization that is signatory to such collective bargaining agreement unless there is a conflict of interest.

"(3) The trustee shall pay benefits in accordance with this subsection until—

"(A) the dismissal of the case involved; or

"(B) the effective date of a plan confirmed under section 1129 of such title which provides for the continued payment after confirmation of the plan of all such benefits at the level established under paragraph (2) of this subsection, at any time prior to the confirmation of the plan, for the duration of the period the debtor (as defined in such title) has obligated itself to provide such benefits.

"(4) No such benefits paid between the filing of a petition in a case covered by this section and the time a plan confirmed under section 1129 of such title with respect to such case becomes effective shall be deducted or offset from the amount allowed as claims for any benefits which remain unpaid, or from the amount to be paid under the plan with respect to such claims for unpaid benefits, whether such claims for unpaid benefits are based upon or arise from a right to future benefits or from any benefit not paid as a result of modifications allowed pursuant to this section.

"(5) No claim for benefits covered by this section shall be limited by section 502(b)(7) of such title.

"(b)(1) Notwithstanding any provision of title 11 of the United States Code, the trustee shall pay an allowable claim of any person for a benefit paid—

"(A) before the filing of the petition under title 11 of the United States Code; and

"(B) directly or indirectly to a retired former employee under a plan, fund, or program described in subsection (a)(1);

if, as determined by the court, such person is entitled to recover from such employee, or any provider of health care to such employee, directly or indirectly, the amount of such benefit for which such person receives no payment from the debtor.

"(2) For purposes of paragraph (1), the term 'provider of health care' means a person who—

"(A) is the direct provider of health care (including a physician, dentist, nurse, podiatrist, optometrist, physician assistant, or ancillary personnel employed under the supervision of a physician); or

"(B) administers a facility or institution (including a hospital, alcohol and drug abuse treatment facility, outpatient facility, or health maintenance organization) in which health care is provided.

"(c) This section is effective with respect to cases commenced under chapter 11, of title 11, United States Code, in which a plan for reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases that become subject to chapter 11, title 11, United States Code, after October 2, 1986 and before the date of the enactment of the Retiree Benefits Bankruptcy Protection Act of 1988 [June 16, 1988].

"(d) This section shall not apply during any period in which a case is subject to chapter 7, title 11, United States Code."

Similar provisions were contained in Pub. L. 99–656, §2, Nov. 14, 1986, 100 Stat. 3668, as amended by Pub. L. 100–41, May 15, 1987, 101 Stat. 309; Pub. L. 100–99, Aug. 18, 1987, 101 Stat. 716, and were repealed by Pub. L. 100–334, §3(b), June 16, 1988, 102 Stat. 614.

## §1107. Rights, powers, and duties of debtor in possession

(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.

(b) Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2628; Pub. L. 98–353, title III, §503, July 10, 1984, 98 Stat. 384.)

### HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

The House amendment adopts section 1107(b) of the Senate amendment which clarifies a point not covered by the House bill.

**SENATE REPORT NO. 95–989**

This section places a debtor in possession in the shoes of a trustee in every way. The debtor is given the rights and powers of a chapter 11 trustee. He is required to perform the functions and duties of a chapter 11 trustee (except the investigative duties). He is also subject to any limitations on a chapter 11 trustee, and to such other limitations and conditions as the court prescribes cf. *Wolf v. Weinstein*, 372 U.S. 633, 649–650 (1963).

**AMENDMENTS**

**1984**—Subsec. (a). Pub. L. 98–353 substituted "on a trustee serving in a case" for "on a trustee".

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1108. Authorization to operate business

Unless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor's business.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2629; Pub. L. 98–353, title III, §504, July 10, 1984, 98 Stat. 384.)

**HISTORICAL AND REVISION NOTES**

**LEGISLATIVE STATEMENTS**

The House amendment adopts section 1108 of the House bill in preference to the style of an identical substantive provision contained in the Senate amendment. Throughout title 11 references to a "trustee" is read to include other parties under various sections of the bill. For example, section 1107 applies to give the debtor in possession all the rights and powers of a trustee in a case under chapter 11; this includes the power of the trustee to operate the debtor's business under section 1108.

**SENATE REPORT NO. 95–989**

This section permits the debtor's business to continue to be operated, unless the court orders otherwise. Thus, in a reorganization case, operation of the business will be the rule, and it will not be necessary to go to the court to obtain an order authorizing operation.

**HOUSE REPORT NO. 95–595**

This section does not presume that a trustee will be appointed to operate the business of the debtor. Rather, the power granted to trustee under this section is one of the powers that a debtor in possession acquires by virtue of proposed 11 U.S.C. 1107.

**AMENDMENTS**

**1984**—Pub. L. 98–353 inserted ", on request of a party in interest and after notice and a hearing,".

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1109. Right to be heard

(a) The Securities and Exchange Commission may raise and may appear and be heard on any issue in a case under this chapter, but the Securities and Exchange Commission may not appeal from any judgment, order, or decree entered in the case.

(b) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2629.)

**HISTORICAL AND REVISION NOTES**

**LEGISLATIVE STATEMENTS**

Section 1109 of the House amendment represents a compromise between comparable provisions in the House bill and Senate amendment. As previously discussed the section gives the Securities and Exchange Commission the right to appear and be heard and to raise any issue in a case under chapter 11; however, the Securities and Exchange Commission is not a party in interest and the Commission may not appeal from any judgment, order, or decree entered in the case. Under section 1109(b) a party in interest, including the debtor, the trustee, creditors committee, equity securities holders committee, a creditor, an equity security holder, or an indentured trustee, may raise and may appear and be heard on any issue in a case under chapter 11. Section 1109(c) of the Senate amendment has been moved to subchapter IV pertaining to Railroad Reorganizations.

**SENATE REPORT NO. 95-989**

Subsection (a) provides, in unqualified terms, that any creditor, equity security holder, or an indenture trustee shall have the right to be heard as a party in interest under this chapter in person, by an attorney, or by a committee. It is derived from section 206 of chapter X ([former] 11 U.S.C. 606).

Subsection (b) provides that the Securities and Exchange Commission may appear by filing an appearance in a case of a public company and may appear in other cases if authorized or requested by the court. As a party in interest in either case, the Commission may raise and be heard on any issue. The Commission may not appeal from a judgment, order, or decree in a case, but may participate in any appeal by any other party in interest. This is the present law under section 208 of chapter X ([former] 11 U.S.C. 608).

**HOUSE REPORT NO. 95-595**

Section 1109 authorizes the Securities and Exchange Commission and any indenture trustee to intervene in the case at any time on any issue. They may raise an issue or may appear and be heard on an issue that is raised by someone else. The section, following current law, denies the right of appeal to the Securities and Exchange Commission. It does not, however, prevent the Commission from joining or participating in an appeal taken by a true party in interest. The Commission is merely prevented from initiating the appeal in any capacity.

## §1110. Aircraft equipment and vessels

(a)(1) Except as provided in paragraph (2) and subject to subsection (b), the right of a secured party with a security interest in equipment described in paragraph (3), or of a lessor or conditional vendor of such equipment, to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies, under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court.

(2) The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 if—

(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

(i) that occurs before the date of the order is cured before the expiration of such 60-day period;

(ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of—

(I) the date that is 30 days after the date of the default; or

(II) the expiration of such 60-day period; and

(iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such security agreement, lease, or conditional sale contract, if a cure is permitted under that agreement, lease, or contract.

(3) The equipment described in this paragraph—

(A) is—

(i) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a

debtor that, at the time such transaction is entered into, holds an air carrier operating certificate issued pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

(ii) a vessel documented under chapter 121 of title 46 that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that, at the time such transaction is entered into, holds a certificate of public convenience and necessity or permit issued by the Department of Transportation; and

(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

(4) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the approval of the court, to extend the 60-day period specified in subsection (a)(1).

(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(3), if at any time after the date of the order for relief under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession to the trustee.

(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(3), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

(d) With respect to equipment first placed in service on or before October 22, 1994, for purposes of this section—

(1) the term "lease" includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

(2) the term "security interest" means a purchase-money equipment security interest.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2629; Pub. L. 103–272, §5(c), July 5, 1994, 108 Stat. 1373; Pub. L. 103–394, title II, §201(a), Oct. 22, 1994, 108 Stat. 4119; Pub. L. 106–181, title VII, §744(b), Apr. 5, 2000, 114 Stat. 177; Pub. L. 109–304, §17(b)(2), Oct. 6, 2006, 120 Stat. 1707.)

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1110 of the House amendment adopts an identical provision contained in the House bill without modifications contained in the Senate amendment. This section protects a limited class of financiers of aircraft and vessels and is intended to be narrowly construed to prevent secured parties or lessors from gaining the protection of the section unless the interest of such lessor or secured party is explicitly enumerated therein. It should be emphasized that under section 1110(a) a debtor in possession or trustee is given 60 days after the order for relief in a case under chapter 11, to have an opportunity to comply with the provisions of section 1110(a).

During this time the automatic stay will apply and may not be lifted prior to the expiration of the 60-day period. Under section 1110(b), the debtor and secured party or lessor are given an opportunity to extend the 60-day period, but no right to reduce the period is intended. It should additionally be noted that under section 1110(a) the trustee or debtor in possession is not required to assume the executory contract or unexpired lease under section 1110; rather, if the trustee or debtor in possession complies with the requirements of section 1110(a), the trustee or debtor in possession is entitled to retain the aircraft or vessels subject to the normal requirements of section 365. The discussion regarding aircraft and vessels likewise applies with respect to railroad rolling stock in a railroad reorganization under section 1168.

### SENATE REPORT NO. 95–989

This section, to a large degree, preserves the protection given lessors and conditional vendors of aircraft to a certificated air carrier or of vessels to a certificated water carrier under section 116(5) and 116(6) of present Chapter X [section 516(5) and (6) of former title 11]. It is modified to conform with the consolidation of

Chapters X and XI [chapters 10 and 11 of former title 11] and with the new chapter 11 generally. It is also modified to give the trustee in a reorganization case an opportunity to continue in possession of the equipment in question by curing defaults and by making the required lease or purchase payments. This removes the absolute veto power over a reorganization that lessors and conditional vendors have under present law, while entitling them to protection of their investment.

The section overrides the automatic stay or any power of the court to enjoin taking of possession of certain leased, conditionally sold, or liened equipment, unless, the trustee agrees to perform the debtor's obligations and cures all prior defaults (other than defaults under ipso facto or bankruptcy clauses) within 60 days after the order for relief. The trustee and the equipment financer are permitted to extend the 60-day period by agreement. During the first 60 days, the automatic stay will apply to prevent foreclosure unless the creditor gets relief from the stay.

The effect of this section will be the same if the debtor has granted the security interest to the financer or if the debtor is leasing equipment from a financer that has leveraged the lease and leased the equipment subject to a security interest of a third party.

## AMENDMENTS

**2006**—Subsec. (a)(3)(A)(ii). Pub. L. 109–304 substituted "vessel documented under chapter 121 of title 46" for "documented vessel (as defined in section 30101(1) of title 46)".

**2000**—Pub. L. 106–181 amended section catchline and text generally, substituting present provisions consisting of subsecs. (a) to (d) for former subsecs. (a) to (c) which contained somewhat similar provisions.

**1994**—Pub. L. 103–394 amended section generally. Prior to amendment, section read as follows:

"(a) The right of a secured party with a purchase-money equipment security interest in, or of a lessor or conditional vendor of, whether as trustee or otherwise, aircraft, aircraft engines, propellers, appliances, or spare parts, as defined in section 40102(a) of title 49, or vessels of the United States, as defined in section 30101 of title 46, that are subject to a purchase-money equipment security interest granted by, leased to, or conditionally sold to, a debtor that is an air carrier operating under a certificate of convenience and necessity issued by the Secretary of Transportation, or a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, as the case may be, to take possession of such equipment in compliance with the provisions of a purchase-money equipment security agreement, lease, or conditional sale contract, as the case may be, is not affected by section 362 or 363 of this title or by any power of the court to enjoin such taking of possession, unless—

"(1) before 60 days after the date of the order for relief under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after such date under such security agreement, lease, or conditional sale contract, as the case may be; and

"(2) any default, other than a default of a kind specified in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract, as the case may be—

"(A) that occurred before such date is cured before the expiration of such 60-day period; and

"(B) that occurs after such date is cured before the later of—

"(i) 30 days after the date of such default; and

"(ii) the expiration of such 60-day period.

"(b) The trustee and the secured party, lessor, or conditional vendor, as the case may be, whose right to take possession is protected under subsection (a) of this section may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1) of this section."

Subsec. (a). Pub. L. 103–272 substituted "section 40102(a) of title 49" for "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)", "section 30101 of title 46" for "subsection B(4) of the Ship Mortgage Act, 1920 (46 U.S.C. 911(4))", and "Secretary of Transportation" for "Civil Aeronautics Board".

## EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as a note under section 106 of Title 49, Transportation.

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, with this section, as amended by section 201 of Pub. L. 103–394, applicable with respect to any lease, as defined by subsec. (c) of this section, entered into in connection with a settlement of any proceeding in any case pending under this title on Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

## ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References

to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

**AIRCRAFT EQUIPMENT SETTLEMENT LEASES**

Pub. L. 103–7, Mar. 17, 1993, 107 Stat. 36, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Aircraft Equipment Settlement Leases Act of 1993'.

"SEC. 2. TREATMENT OF AIRCRAFT EQUIPMENT SETTLEMENT LEASES WITH THE PENSION BENEFIT GUARANTY CORPORATION.

"In the case of any settlement of liability under title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.] entered into by the Pension Benefit Guaranty Corporation and one or more other parties, if—

"(1) such settlement was entered into before, on, or after the date of the enactment of this Act [Mar. 17, 1993],

"(2) at least one party to such settlement was a debtor under title 11 of the United States Code, and

"(3) an agreement that is entered into as part of such settlement provides that such agreement is to be treated as a lease,

then such agreement shall be treated as a lease for purposes of section 1110 of such title 11."

## §1111. Claims and interests

(a) A proof of claim or interest is deemed filed under section 501 of this title for any claim or interest that appears in the schedules filed under section 521(a)(1) or 1106(a)(2) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.

(b)(1)(A) A claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse, unless—

(i) the class of which such claim is a part elects, by at least two-thirds in amount and more than half in number of allowed claims of such class, application of paragraph (2) of this subsection; or

(ii) such holder does not have such recourse and such property is sold under section 363 of this title or is to be sold under the plan.

(B) A class of claims may not elect application of paragraph (2) of this subsection if—

(i) the interest on account of such claims of the holders of such claims in such property is of inconsequential value; or

(ii) the holder of a claim of such class has recourse against the debtor on account of such claim and such property is sold under section 363 of this title or is to be sold under the plan.

(2) If such an election is made, then notwithstanding section 506(a) of this title, such claim is a secured claim to the extent that such claim is allowed.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2630; Pub. L. 111–327, §2(a)(32), Dec. 22, 2010, 124 Stat. 3561.)

**HISTORICAL AND REVISION NOTES**

**LEGISLATIVE STATEMENTS**

A discussion of section 1111(b) of the House amendment is best considered in the context of confirmation and will therefore, be discussed in connection with section 1129.

**SENATE REPORT NO. 95–989**

This section dispenses with the need for every creditor and equity security holder to file a proof of claim or interest in a reorganization case. Usually the debtor's schedules are accurate enough that they will suffice to determine the claims or interests allowable in the case. Thus, the section specifies that any claim or interest included on the debtor's schedules is deemed filed under section 501. This does not apply to claims or interests that are scheduled as disputed, contingent, or unliquidated.

**AMENDMENTS**

**2010**—Subsec. (a). Pub. L. 111–327 substituted "521(a)(1)" for "521(1)".

## §1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

(1) the debtor is not a debtor in possession;

(2) the case originally was commenced as an involuntary case under this chapter; or

(3) the case was converted to a case under this chapter other than on the debtor's request.

(b)(1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

(2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that—

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

(3) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

(4) For purposes of this subsection, the term "cause" includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28;

(L) revocation of an order of confirmation under section 1144;

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan;

(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

(c) The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not a moneyed, business, or commercial corporation, unless the debtor requests such conversion.

(d) The court may convert a case under this chapter to a case under chapter 12 or 13 of this title only if—

(1) the debtor requests such conversion;

(2) the debtor has not been discharged under section 1141(d) of this title; and

(3) if the debtor requests conversion to chapter 12 of this title, such conversion is equitable.

(e) Except as provided in subsections (c) and (f), the court, on request of the United States trustee, may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate if the debtor in a voluntary case fails to file, within fifteen days after the filing of the petition commencing such case or such additional time as the court may allow, the information required by paragraph (1) of section 521(a), including a list containing the names and addresses of the holders of the twenty largest unsecured claims (or of all unsecured claims if there are fewer than twenty unsecured claims), and the approximate dollar amounts of each of such claims.

(f) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2630; Pub. L. 98–353, title III, §505, July 10, 1984, 98 Stat. 384; Pub. L. 99–554, title II, §§224, 256, Oct. 27, 1986, 100 Stat. 3102, 3114; Pub. L. 103–394, title II, §217(c), Oct. 22, 1994, 108 Stat. 4127; Pub. L. 109–8, title IV, §442(a), Apr. 20, 2005, 119 Stat. 115; Pub. L. 111–327, §2(a)(33), Dec. 22, 2010, 124 Stat. 3561.)

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1112 of the House amendment represents a compromise between the House bill and Senate amendment with respect to the factors constituting cause for conversion of a case to chapter 7 or dismissal. The House amendment combines two separate factors contained in section 1112(b)(1) and section 1112(b)(2) of the Senate amendment. Section 1112(b)(1) of the House amendment permits the court to convert a case to a case under chapter 7 or to dismiss the case if there is both a continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; requiring both factors to be present simultaneously represents a compromise from the House bill which eliminated both factors from the list of causes enumerated.

Sections 1112(c) and 1112(d) of the House amendment is derived from the House bill which differs from the Senate amendment only as a matter of style.

### SENATE REPORT NO. 95–989

This section brings together all of the conversion and dismissal rules for chapter 11 cases. Subsection (a) gives the debtor an absolute right to convert a voluntarily commenced chapter 11 case in which the debtor remains in possession to a liquidation case.

Subsection (b) gives wide discretion to the court to make an appropriate disposition of the case sua sponte or upon motion of a party in interest, or the court is permitted to convert a reorganization case to a liquidation case or to dismiss the case, whichever is in the best interest of creditors and the estate, but only for cause. Cause may include the continuing loss to or dimunition [sic] of the estate of an insolvent debtor, the absence of a reasonable likelihood of rehabilitation, the inability to effectuate a plan, unreasonable delay by the debtor that is prejudicial to creditors, failure to file a plan within the appropriate time limits, denial of confirmation and any opportunity to modify or propose a new plan, revocation of confirmation and denial of confirmation of a modified plan, inability to effectuate substantial consummation of a confirmed plan, material default by the debtor under the plan, and termination of the plan by reason of the occurrence of a condition specified in the plan. This list is not exhaustive. The court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases. The power of the court to act sua sponte should be used sparingly and only in emergency situations.

Subsection (c) prohibits the court from converting a case concerning a farmer or an eleemosynary institution to a liquidation case unless the debtor consents.

Subsection (d) prohibits conversion of a reorganization case to a chapter 13 case unless the debtor requests conversion and his discharge has not been granted or has been revoked.

Subsection (e) reinforces section 109 by prohibiting conversion of a chapter 11 case to a case under another chapter proceedings under which the debtor is not permitted to proceed.

**REFERENCES IN TEXT**

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (b)(4)(G), are set out in the Appendix to this title.

**AMENDMENTS**

**2010**—Subsec. (b)(1). Pub. L. 111–327, §2(a)(33)(A)(i), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause."

Subsec. (b)(2). Pub. L. 111–327, §2(a)(33)(A)(ii)(I), inserted introductory provisions and struck out former introductory provisions which read as follows: "The relief provided in paragraph (1) shall not be granted absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest objects and establishes that—".

Subsec. (b)(2)(B). Pub. L. 111–327, §2(a)(33)(A)(ii)(II), substituted "converting or dismissing the case" for "granting such relief".

Subsec. (e). Pub. L. 111–327, §2(a)(33)(B), substituted "521(a)" for "521".

**2005**—Subsec. (b). Pub. L. 109–8 added subsec. (b) and struck out former subsec. (b) which consisted of introductory provisions and pars. (1) to (10) relating to conversion of cases under this chapter to chapter 7 cases or dismissal for cause in the best interest of creditors and the estate.

**1994**—Subsec. (b). Pub. L. 103–394 inserted "or bankruptcy administrator" after "United States trustee".

**1986**—Subsec. (b). Pub. L. 99–554, §224(1)(A), inserted "or the United States trustee" after "party in interest".

Subsec. (b)(10). Pub. L. 99–554, §224(1)(B)–(D), added par. (10).

Subsec. (d). Pub. L. 99–554, §256, inserted reference to chapter 12 and added par. (3).

Subsecs. (e), (f). Pub. L. 99–554, §224(2), (3), added subsec. (e) and redesignated former subsec. (e) as (f).

**1984**—Subsec. (a)(2). Pub. L. 98–353, §505(a)(1), substituted "originally was commenced as an involuntary case" for "is an involuntary case originally commenced".

Subsec. (a)(3). Pub. L. 98–353, §505(a)(2), substituted "other than on" for "on other than".

Subsec. (b)(5). Pub. L. 98–353, §505(b)(1), inserted "a request made for" before "additional".

Subsec. (b)(8). Pub. L. 98–353, §505(b)(2), substituted "or" for "and".

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Effective date and applicability of amendment by section 224 of Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 256 of Pub. L. 99–554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99–554.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1113. Rejection of collective bargaining agreements

(a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, other than a trustee in a case covered by subchapter IV of this chapter and by title I of the Railway Labor Act, may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.

(b)(1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section "trustee" shall include a debtor in possession), shall—

(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

(2) the authorized representative of the employees has refused to accept such proposal without good cause; and

(3) the balance of the equities clearly favors rejection of such agreement.

(d)(1) Upon the filing of an application for rejection the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and representative agree.

(2) The court shall rule on such application for rejection within thirty days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the employees' representative may agree to. If the court does not rule on such application within thirty days after the date of the commencement of the hearing, or within such additional time as the trustee and the employees' representative may agree to, the trustee may terminate or alter any provisions of the collective bargaining agreement pending the ruling of the court on such application.

(3) The court may enter such protective orders, consistent with the need of the authorized representative of the employee to evaluate the trustee's proposal and the application for rejection, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.

(e) If during a period when the collective bargaining agreement continues in effect, and if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by a collective bargaining agreement. Any hearing under this paragraph shall be scheduled in accordance with the needs of the trustee. The implementation of such interim changes shall not render the application for rejection moot.

(f) No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section.

(Added Pub. L. 98–353, title III, §541(a), July 10, 1984, 98 Stat. 390.)

**REFERENCES IN TEXT**

The Railway Labor Act, referred to in subsec. (a), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended. Title I of the Railway Labor Act is classified principally to subchapter I (§151 et seq.) of chapter 8 of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

**EFFECTIVE DATE**

Pub. L. 98–353, title III, §541(c), July 10, 1984, 98 Stat. 391, provided that: "The amendments made by this section [enacting this section] shall become effective upon the date of enactment of this Act [July 10, 1984]; provided that this section shall not apply to cases filed under title 11 of the United States Code which were commenced prior to the date of enactment of this section."

## §1114. Payment of insurance benefits to retired employees

(a) For purposes of this section, the term "retiree benefits" means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title.

(b)(1) For purposes of this section, the term "authorized representative" means the authorized representative designated pursuant to subsection (c) for persons receiving any retiree benefits covered by a collective bargaining agreement or subsection (d) in the case of persons receiving retiree benefits not covered by such an agreement.

(2) Committees of retired employees appointed by the court pursuant to this section shall have the same rights, powers, and duties as committees appointed under sections 1102 and 1103 of this title for the purpose of carrying out the purposes of sections 1114 and 1129(a)(13) and, as permitted by the court, shall have the power to enforce the rights of persons under this title as they relate to retiree benefits.

(c)(1) A labor organization shall be, for purposes of this section, the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, unless (A) such labor organization elects not to serve as the authorized representative of such persons, or (B) the court, upon a motion by any party in interest, after notice and hearing, determines that different representation of such persons is appropriate.

(2) In cases where the labor organization referred to in paragraph (1) elects not to serve as the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, or in cases where the court, pursuant to paragraph (1) finds different representation of such persons appropriate, the court, upon a motion by any party in interest, and after notice and a hearing, shall appoint a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, from among such persons, to serve as the authorized representative of such persons under this section.

(d) The court, upon a motion by any party in interest, and after notice and a hearing, shall order the appointment of a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, to serve as the authorized representative, under this section, of those persons receiving any retiree benefits not covered by a collective bargaining agreement. The United States trustee shall appoint any such committee.

(e)(1) Notwithstanding any other provision of this title, the debtor in possession, or the trustee if one has been appointed under the provisions of this chapter (hereinafter in this section "trustee" shall include a debtor in possession), shall timely pay and shall not modify any retiree benefits, except that—

(A) the court, on motion of the trustee or authorized representative, and after notice and a hearing, may order modification of such payments, pursuant to the provisions of subsections (g) and (h) of this section, or

(B) the trustee and the authorized representative of the recipients of those benefits may agree to modification of such payments,

after which such benefits as modified shall continue to be paid by the trustee.

(2) Any payment for retiree benefits required to be made before a plan confirmed under section 1129 of this title is effective has the status of an allowed administrative expense as provided in section 503 of this title.

(f)(1) Subsequent to filing a petition and prior to filing an application seeking modification of the retiree benefits, the trustee shall—

(A) make a proposal to the authorized representative of the retirees, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (k)(3), the representative of the retirees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1), and ending on the date of the hearing provided for in subsection (k)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits.

(g) The court shall enter an order providing for modification in the payment of retiree benefits if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (f);

(2) the authorized representative of the retirees has refused to accept such proposal without good cause; and

(3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities;

except that in no case shall the court enter an order providing for such modification which provides for a modification to a level lower than that proposed by the trustee in the proposal found by the court to have complied with the requirements of this subsection and subsection (f): *Provided, however*, That at any time after an order is entered providing for modification in the payment of retiree benefits, or at any time after an agreement modifying such benefits is made between the trustee and the authorized representative of the recipients of such benefits, the authorized representative may apply to the court for an order increasing those benefits which order shall be granted if the increase in retiree benefits sought is consistent with the standard set forth in paragraph (3): *Provided further*, That neither the trustee nor the authorized representative is precluded from making more than one motion for a modification order governed by this subsection.

(h)(1) Prior to a court issuing a final order under subsection (g) of this section, if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim modifications in retiree benefits.

(2) Any hearing under this subsection shall be scheduled in accordance with the needs of the trustee.

(3) The implementation of such interim changes does not render the motion for modification moot.

(i) No retiree benefits paid between the filing of the petition and the time a plan confirmed under section 1129 of this title becomes effective shall be deducted or offset from the amounts allowed as claims for any benefits which remain unpaid, or from the amounts to be paid under the plan with respect to such claims for unpaid benefits, whether such claims for unpaid benefits are based upon or arise from a right to future unpaid benefits or from any benefits not paid as a result of modifications allowed pursuant to this section.

(j) No claim for retiree benefits shall be limited by section 502(b)(7) of this title.

(k)(1) Upon the filing of an application for modifying retiree benefits, the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and the authorized representative agree.

(2) The court shall rule on such application for modification within ninety days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the authorized representative may agree to. If the court does not rule on such application within ninety days after the date of the commencement of the

hearing, or within such additional time as the trustee and the authorized representative may agree to, the trustee may implement the proposed modifications pending the ruling of the court on such application.

(3) The court may enter such protective orders, consistent with the need of the authorized representative of the retirees to evaluate the trustee's proposal and the application for modification, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.

(l) If the debtor, during the 180-day period ending on the date of the filing of the petition—

(1) modified retiree benefits; and

(2) was insolvent on the date such benefits were modified;

the court, on motion of a party in interest, and after notice and a hearing, shall issue an order reinstating as of the date the modification was made, such benefits as in effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification.

(m) This section shall not apply to any retiree, or the spouse or dependents of such retiree, if such retiree's gross income for the twelve months preceding the filing of the bankruptcy petition equals or exceeds $250,000, unless such retiree can demonstrate to the satisfaction of the court that he is unable to obtain health, medical, life, and disability coverage for himself, his spouse, and his dependents who would otherwise be covered by the employer's insurance plan, comparable to the coverage provided by the employer on the day before the filing of a petition under this title.

(Added Pub. L. 100–334, §2(a), June 16, 1988, 102 Stat. 610; amended Pub. L. 109–8, title IV, §447, title XIV, §1403, Apr. 20, 2005, 119 Stat. 118, 215.)

**AMENDMENTS**

**2005**—Subsec. (d). Pub. L. 109–8, §447, substituted "order the appointment of" for "appoint" and inserted "The United States trustee shall appoint any such committee." at end.

Subsecs. (l), (m). Pub. L. 109–8, §1403, added subsec. (l) and redesignated former subsec. (l) as (m).

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by section 1403 of Pub. L. 109–8 effective Apr. 20, 2005, and applicable only with respect to cases commenced under this title on or after Apr. 20, 2005, see section 1406 of Pub. L. 109–8, set out as a note under section 507 of this title.

Amendment by section 447 of Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE**

Pub. L. 100–334, §4, June 16, 1988, 102 Stat. 615, provided that:

"(a) GENERAL EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act [enacting this section, amending section 1129 of this title, enacting provisions set out as a note under section 101 of this title, and amending and repealing provisions set out as notes under section 1106 of this title] shall take effect on the date of the enactment of this Act [June 16, 1988].

"(b) APPLICATION OF AMENDMENTS.—The amendments made by section 2 [enacting this section and amending section 1129 of this title] shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act [June 16, 1988]."

**PAYMENT OF CERTAIN BENEFITS TO RETIRED FORMER EMPLOYEES**

For payment of benefits by bankruptcy trustee to retired employees in enumerated circumstances with respect to cases commenced under this chapter in which a plan for reorganization had not been confirmed by the court and in which any such benefit was still being paid on October 2, 1986, and in cases that became subject to this chapter after October 2, 1986, and before June 16, 1988, see section 101(b) [title VI, §608] of Pub. L. 99–500, and Pub. L. 99–591, as amended, set out as a note under section 1106 of this title.

## §1115. Property of the estate

(a) In a case in which the debtor is an individual, property of the estate includes, in addition to the property specified in section 541—

(1) all property of the kind specified in section 541 that the debtor acquires after the

commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.

(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

(Added Pub. L. 109–8, title III, §321(a)(1), Apr. 20, 2005, 119 Stat. 94.)

**EFFECTIVE DATE**

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

## §1116. Duties of trustee or debtor in possession in small business cases

In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—

(A) its most recent balance sheet, statement of operations, cash-flow statement, and Federal income tax return; or

(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court, after notice and a hearing, waives that requirement upon a finding of extraordinary and compelling circumstances;

(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

(6)(A) timely file tax returns and other required government filings; and

(B) subject to section 363(c)(2), timely pay all taxes entitled to administrative expense priority except those being contested by appropriate proceedings being diligently prosecuted; and

(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.

(Added Pub. L. 109–8, title IV, §436(a), Apr. 20, 2005, 119 Stat. 112.)

**REFERENCES IN TEXT**

The Federal Rules of Bankruptcy Procedure, referred to in par. (4), are set out in the Appendix to this title.

**EFFECTIVE DATE**

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

# SUBCHAPTER II—THE PLAN

## §1121. Who may file a plan

(a) The debtor may file a plan with a petition commencing a voluntary case, or at any time in a voluntary case or an involuntary case.

(b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.

(c) Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if—

(1) a trustee has been appointed under this chapter;

(2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or

(3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.

(d)(1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

(e) In a small business case—

(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

(A) extended as provided by this subsection, after notice and a hearing; or

(B) the court, for cause, orders otherwise;

(2) the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief; and

(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—

(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

(B) a new deadline is imposed at the time the extension is granted; and

(C) the order extending time is signed before the existing deadline has expired.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2631; Pub. L. 98–353, title III, §506, July 10, 1984, 98 Stat. 385; Pub. L. 99–554, title II, §283(u), Oct. 27, 1986, 100 Stat. 3118; Pub. L. 103–394, title II, §217(d), Oct. 22, 1994, 108 Stat. 4127; Pub. L. 109–8, title IV, §§411, 437, Apr. 20, 2005, 119 Stat. 106, 113.)

### HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1121 of the House amendment is derived from section 1121 of the House bill; section 1121(c)(1) will be satisfied automatically in a case under subchapter IV of title 11.

### SENATE REPORT NO. 95–989

Subsection (a) permits the debtor to file a reorganization plan with a petition commencing a voluntary case or at any time during a voluntary or involuntary case.

Subsection (b) gives the debtor the exclusive right to file a plan during the first 120 days of the case. There are exceptions, however, enumerated in subsection (c). If a trustee has been appointed, if the debtor does not meet the 120-day deadline, or if the debtor fails to obtain the required consent within 180 days after the filing of the petition, any party in interest may propose a plan. This includes the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, and an indenture trustee. The list is not exhaustive. In the case of a public company, a trustee is appointed within 10 days of the petition. In such a case, for all practical purposes, any party in interest may file a plan.

Subsection (d) permits the court, for cause, to increase or reduce the 120-day and 180-day periods specified. Since, the debtor has an exclusive privilege for 6 months during which others may not file a plan, the granted extension should be based on a showing of some promise of probable success. An extension should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory.

**AMENDMENTS**

**2005**—Subsec. (d). Pub. L. 109–8, §411, designated existing provisions as par. (1), substituted "Subject to paragraph (2), on" for "On", and added par. (2).

Subsec. (e). Pub. L. 109–8, §437, added subsec. (e) and struck out former subsec. (e) which read as follows: "In a case in which the debtor is a small business and elects to be considered a small business—

"(1) only the debtor may file a plan until after 100 days after the date of the order for relief under this chapter;

"(2) all plans shall be filed within 160 days after the date of the order for relief; and

"(3) on request of a party in interest made within the respective periods specified in paragraphs (1) and (2) and after notice and a hearing, the court may—

"(A) reduce the 100-day period or the 160-day period specified in paragraph (1) or (2) for cause; and

"(B) increase the 100-day period specified in paragraph (1) if the debtor shows that the need for an increase is caused by circumstances for which the debtor should not be held accountable."

**1994**—Subsec. (e). Pub. L. 103–394 added subsec. (e).

**1986**—Subsec. (d). Pub. L. 99–554 inserted reference to subsection (b) of this section.

**1984**—Subsec. (c)(3). Pub. L. 98–353, §506(a), substituted "of claims or interests that is" for "the claims or interests of which are".

Subsec. (d). Pub. L. 98–353, §506(b), inserted "made within the respective periods specified in subsection (c) of this section".

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1122. Classification of claims or interests

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2631.)

**HISTORICAL AND REVISION NOTES**

**SENATE REPORT NO. 95–989**

This section codifies current case law surrounding the classification of claims and equity securities. It requires classification based on the nature of the claims or interests classified, and permits inclusion of claims or interests in a particular class only if the claim or interest being included is substantially similar to the other claims or interests of the class.

Subsection (b), also a codification of existing practice, contains an exception. The plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

## §1123. Contents of plan

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—

(1) designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507(a)(2), 507(a)(3), or 507(a)(8) of this title, and classes of interests;

(2) specify any class of claims or interests that is not impaired under the plan;

(3) specify the treatment of any class of claims or interests that is impaired under the plan;

(4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;

(5) provide adequate means for the plan's implementation, such as—

(A) retention by the debtor of all or any part of the property of the estate;

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;

(C) merger or consolidation of the debtor with one or more persons;

(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;

(E) satisfaction or modification of any lien;

(F) cancellation or modification of any indenture or similar instrument;

(G) curing or waiving of any default;

(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;

(I) amendment of the debtor's charter; or

(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;

(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends;

(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee; and

(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.

(b) Subject to subsection (a) of this section, a plan may—

(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(3) provide for—

(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and

(6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

(c) In a case concerning an individual, a plan proposed by an entity other than the debtor may not provide for the use, sale, or lease of property exempted under section 522 of this title, unless the debtor consents to such use, sale, or lease.

(d) Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2631; Pub. L. 98–353, title III, §507, July 10, 1984, 98 Stat. 385; Pub. L. 103–394, title II, §206, title III, §§304(h)(6), 305(a), title V, §501(d)(31), Oct. 22, 1994, 108 Stat. 4123, 4134, 4146; Pub. L. 109–8, title III, §321(b), title XV, §1502(a)(7), Apr. 20, 2005, 119 Stat. 95, 216.)

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1123 of the House amendment represents a compromise between similar provisions in the House bill and Senate amendment. The section has been clarified to clearly indicate that both secured and unsecured claims, or either of them, may be impaired in a case under title 11. In addition assumption or rejection of an executory contract under a plan must comply with section 365 of title 11. Moreover, section 1123(a)(1) has been substantively modified to permit classification of certain kinds of priority claims. This is important for purposes of confirmation under section 1129(a)(9).

Section 1123(a)(5) of the House amendment is derived from a similar provision in the House bill and Senate amendment but deletes the language pertaining to "fair upset price" as an unnecessary restriction. Section 1123 is also intended to indicate that a plan may provide for any action specified in section 1123 in the case of a corporation without a resolution of the board of directors. If the plan is confirmed, then any action proposed in the plan may be taken notwithstanding any otherwise applicable nonbankruptcy law in accordance with section 1142(a) of title 11.

### SENATE REPORT NO. 95–989

Subsection (a) specifies what a plan of reorganization must contain. The plan must designate classes of claims and interests, and specify, by class, the claims or interests that are unimpaired under the plan. Priority claims are not required to be classified because they may not have arisen when the plan is filed. The plan must provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a different, but not better, treatment of his claim or interest.

Paragraph (3) applies to claims, not creditors. Thus, if a creditor is undersecured, and thus has a secured claim and an unsecured claim, this paragraph will be applied independently to each of his claims.

Paragraph (4) of subsection (a) is derived from section 216 of chapter X [section 616 of former title 11] with some modifications. It requires the plan to provide adequate means for the plans execution. These means may include retention by the debtor of all or any part of the property of the estate, transfer of all or any part of the property of the estate to one or more entities, whether organized pre- or postconfirmation, merger or consolidation of the debtor with one or more persons, sale and distribution of all or any part of the property of the estate, satisfaction or modification of any lien, cancellation or modification of any indenture or similar instrument, curing or waiving of any default, extension of maturity dates or change in interest rates of securities, amendment of the debtor's charter, and issuance of securities.

Subparagraph (C), as it applies in railroad cases, has the effect of overruling *St. Joe Paper Co. v. Atlantic Coast Line R. R.*, 347 U.S. 298 (1954). It will allow the trustee or creditors to propose a plan of merger with another railroad without the consent of the debtor, and the debtor will be bound under proposed 11 U.S.C. 1141(a). See Hearings, pt. 3, at 1616. "Similar instrument" referred to in subparagraph (F) might include a deposit with an agent for distribution, other than an indenture trustee, such as an agent under an agreement in a railroad conditional sale or lease financing agreement.

Paragraphs (5) and (6) and subsection (b) are derived substantially from Section 216 of Chapter X ([former] 11 U.S.C. 616). Paragraph (5) requires the plan to prohibit the issuance of nonvoting equity securities, and to provide for an appropriate distribution of voting power among the various classes of equity securities. Paragraph (6) requires that the plan contain only provisions that are consistent with the interests of creditors

and equity security holders, and with public policy with respect to the selection of officers, directors, and trustees, and their successors.

Subsection (b) specifies the matters that the plan may propose. The plan may impair or leave unimpaired any claim or interest. The plan may provide for the assumption or rejection of executory contracts or unexpired leases not previously rejected under section 365. The plan may also provide for the treatment of claims by the debtor against other entities that are not settled before the confirmation of the plan. The plan may propose settlement or adjustment of any claim or equity security belonging to the estate, or may propose retention and enforcement of such claim or interest by the debtor or by an agent appointed for that purpose.

The plan may also propose the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of the sale among creditors and equity security holders. This would be a liquidating plan. The subsection permits the plan to include any other appropriate provision not inconsistent with the applicable provisions of the bankruptcy code.

Subsection (c) protects an individual debtor's exempt property by prohibiting its use, sale, or lease under a plan proposed by someone other than the debtor, unless the debtor consents.

**AMENDMENTS**

**2005**—Subsec. (a)(1). Pub. L. 109–8, §1502(a)(7), substituted "507(a)(2), 507(a)(3)" for "507(a)(1), 507(a)(2)".

Subsec. (a)(8). Pub. L. 109–8, §321(b), added par. (8).

**1994**—Subsec. (a)(1). Pub. L. 103–394, §§304(h)(6), 501(d)(31), substituted "507(a)(8) of this title," for "507(a)(7) of this title".

Subsec. (b)(5), (6). Pub. L. 103–394, §206, added par. (5) and redesignated former par. (5) as (6).

Subsec. (d). Pub. L. 103–394, §305(a), added subsec. (d).

**1984**—Subsec. (a). Pub. L. 98–353, §507(a)(1), in provisions preceding par. (1) substituted "Notwithstanding any otherwise applicable nonbankruptcy law, a" for "A".

Subsec. (a)(1). Pub. L. 98–353, §507(a)(2), inserted a comma after "classes of claims" and substituted "507(a)(7) of this title," for "507(a)(6) of this title".

Subsec. (a)(3). Pub. L. 98–353, §507(a)(3), struck out "shall" before "specify the treatment".

Subsec. (a)(5). Pub. L. 98–353, §507(a)(4), substituted "implementation" for "execution".

Subsec. (a)(5)(G). Pub. L. 98–353, §507(a)(5), inserted "of" after "waiving".

Subsec. (b)(2). Pub. L. 98–353, §507(b), substituted "rejection, or assignment" for "or rejection", and "under such section" for "under section 365 of this title".

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by sections 206, 304(h)(6), and 501(d)(31) of Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, and amendment by section 305(a) of Pub. L. 103–394 effective Oct. 22, 1994, and applicable only to agreements entered into after Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1124. Impairment of claims or interests

Except as provided in section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan—

(1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title or of a kind that section 365(b)(2) expressly does not require to be cured;

(B) reinstates the maturity of such claim or interest as such maturity existed before such

default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;

(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and

(E) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2633; Pub. L. 98–353, title III, §508, July 10, 1984, 98 Stat. 385; Pub. L. 103–394, title II, §213(d), Oct. 22, 1994, 108 Stat. 4126; Pub. L. 109–8, title III, §328(b), Apr. 20, 2005, 119 Stat. 100.)

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1124 of the House amendment is derived from a similar provision in the House bill and Senate amendment. The section defines the new concept of "impairment" of claims or interests; the concept differs significantly from the concept of "materially and adversely affected" under the Bankruptcy Act [former title 11]. Section 1124(3) of the House amendment provides that a holder of a claim or interest is not impaired, if the plan provides that the holder will receive the allowed amount of the holder's claim, or in the case of an interest with a fixed liquidation preference or redemption price, the greater of such price. This adopts the position contained in the House bill and rejects the contrary standard contained in the Senate amendment.

Section 1124(3) of the House amendment rejects a provision contained in section 1124(3)(B)(iii) of the House bill which would have considered a class of interest not to be impaired by virtue of the fact that the plan provided cash or property for the value of the holder's interest in the debtor.

The effect of the House amendment is to permit an interest not to be impaired only if the interest has a fixed liquidation preference or redemption price. Therefore, a class of interests such as common stock, must either accept a plan under section 1129(a)(8), or the plan must satisfy the requirements of section 1129(b)(2)(C) in order for a plan to be confirmed.

A compromise reflected in section 1124(2)(C) of the House amendment indicates that a class of claims is not impaired under the circumstances of section 1124(2) if damages are paid to rectify reasonable reliance engaged in by the holder of a claim or interest arising from the prepetition breach of a contractual provision, such as an ipso facto or bankruptcy clause, or law. Where the rights of third parties are concerned, such as in the case of lease premises which have been rerented to a third party, it is not intended that there will be adequate damages to compensate the third party.

### SENATE REPORT NO. 95–989

The basic concept underlying this section is not new. It rests essentially on Section 107 of Chapter X ([former] 11 U.S.C. 507), which states that creditors or stockholders or any class thereof "shall be deemed to be 'affected' by a plan only if their or its interest shall be materially and adversely affected thereby."

This section is designated to indicate when contractual rights of creditors or interest holders are not materially affected. It specifies three ways in which the plan may leave a claim or interest unimpaired.

First, the plan may propose not to alter the legal, equitable, or contractual rights to which the claim or interest entitled its holder.

Second, a claim or interest is unimpaired by curing the effect of a default and reinstating the original terms of an obligation when maturity was brought on or accelerated by the default. The intervention of bankruptcy and the defaults represent a temporary crisis which the plan of reorganization is intended to clear away. The holder of a claim or interest who under the plan is restored to his original position, when others receive less or get nothing at all, is fortunate indeed and has no cause to complain. Curing of the default and the assumption of the debt in accordance with its terms is an important reorganization technique for dealing with a particular class of claims, especially secured claims.

Third, a claim or interest is unimpaired if the plan provides for their payment in cash. In the case of a debt liability, the cash payment is for the allowed amount of the claim, which does not include a redemption premium. If it is an equity security with a fixed liquidation preference, such as a preferred stock, the allowed amount is such liquidation preference, with no redemption premium. With respect to any other equity security, such as a common stock, cash payment must be equal to the "value of such holder's interest in the debtor."

Section 1124 does not include payment "in property" other than cash. Except for a rare case, claims or interests are not by their terms payable in property, but a plan may so provide and those affected thereby may accept or reject the proposed plan. They may not be forced to accept a plan declaring the holders' claims or

interests to be "unimpaired."

## HOUSE REPORT NO. 95–595

This section is new. It is designed to indicate when contractual rights of creditors or interest holders are not materially affected. The section specifies three ways in which the plan may leave a claim or interest unimpaired.

First, the plan may propose not to alter the legal, equitable, or contractual rights to which the claim or interest entitled its holder.

Second, the plan is permitted to reinstate a claim or interest and thus leave it unimpaired. Reinstatement consists of curing any default (other than a default under an ipso facto or bankruptcy clause) and reinstatement of the maturity of the claim or interest. Further, the plan may not otherwise alter any legal, equitable, or contractual right to which the claim or interest entitles its holder.

Third, the plan may leave a claim or interest unimpaired by paying its amount in full other than in securities of the debtor, an affiliate of the debtor participating in a joint plan, or a successor to the debtor. These securities are excluded because determination of their value would require a valuation of the business being reorganized. Use of them to pay a creditor or equity security holder without his consent may be done only under section 1129(b) and only after a valuation of the debtor. Under this paragraph, the plan must pay the allowed amount of the claim in full, in cash or other property, or, in the case of an equity security, must pay the greatest of any fixed liquidation preference to which the terms of the equity security entitle its holder, any fixed price at which the debtor, under the terms of the equity security may redeem such equity security, and the value, as of the effective date of the plan, of the holder's interest in the debtor. The value of the holder's interest need not be determined precisely by valuing the debtor's business if such value is clearly below redemption or liquidation preference values. If such value would require a full-scale valuation of the business, then such interest should be treated as impaired. But, if the debtor corporation is clearly insolvent, then the value of the common stock holder's interest in the debtor is zero, and offering them nothing under the plan of reorganization will not impair their rights.

"Value, as of the effective date of the plan," as used in paragraph (3) and in proposed 11 U.S.C. 1179(a)(7)(B), 1129(a)(9), 1129(b), 1172(2), 1325(a)(4), 1325(a)(5)(B), and 1328(b), indicates that the promised payment under the plan must be discounted to present value as of the effective date of the plan. The discounting should be based only on the unpaid balance of the amount due under the plan, until that amount, including interest, is paid in full.

## AMENDMENTS

**2005**—Par. (2)(A). Pub. L. 109–8, §328(b)(1), inserted "or of a kind that section 365(b)(2) expressly does not require to be cured" before semicolon at end.

Par. (2)(D), (E). Pub. L. 109–8, §328(b)(2)–(4), added subpar. (D) and redesignated former subpar. (D) as (E).

**1994**—Par. (3). Pub. L. 103–394 struck out par. (3) which read as follows: "provides that, on the effective date of the plan, the holder of such claim or interest receives, on account of such claim or interest, cash equal to—

"(A) with respect to a claim, the allowed amount of such claim; or

"(B) with respect to an interest, if applicable, the greater of—

"(i) any fixed liquidation preference to which the terms of any security representing such interest entitle the holder of such interest; or

"(ii) any fixed price at which the debtor, under the terms of such security, may redeem such security from such holder."

**1984**—Par. (2)(A). Pub. L. 98–353, §508(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "cures any such default, other than a default of a kind specified in section 365(b)(2) of this title, that occurred before or after the commencement of the case under this title;".

Par. (3)(B)(i). Pub. L. 98–353, §508(2), substituted "or" for "and".

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section

552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1125. Postpetition disclosure and solicitation

(a) In this section—

(1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information; and

(2) "investor typical of holders of claims or interests of the relevant class" means investor having—

(A) a claim or interest of the relevant class;

(B) such a relationship with the debtor as the holders of other claims or interests of such class generally have; and

(C) such ability to obtain such information from sources other than the disclosure required by this section as holders of claims or interests in such class generally have.

(b) An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information. The court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets.

(c) The same disclosure statement shall be transmitted to each holder of a claim or interest of a particular class, but there may be transmitted different disclosure statements, differing in amount, detail, or kind of information, as between classes.

(d) Whether a disclosure statement required under subsection (b) of this section contains adequate information is not governed by any otherwise applicable nonbankruptcy law, rule, or regulation, but an agency or official whose duty is to administer or enforce such a law, rule, or regulation may be heard on the issue of whether a disclosure statement contains adequate information. Such an agency or official may not appeal from, or otherwise seek review of, an order approving a disclosure statement.

(e) A person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title, or that participates, in good faith and in compliance with the applicable provisions of this title, in the offer, issuance, sale, or purchase of a security, offered or sold under the plan, of the debtor, of an affiliate participating in a joint plan with the debtor, or of a newly organized successor to the debtor under the plan, is not liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan or the offer, issuance, sale, or purchase of securities.

(f) Notwithstanding subsection (b), in a small business case—

(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28; and

(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than 25 days before the date of the hearing on confirmation of the plan; and

(C) the hearing on the disclosure statement may be combined with the hearing on confirmation

of a plan.

(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2633; Pub. L. 98–353, title III, §509, July 10, 1984, 98 Stat. 385; Pub. L. 103–394, title II, §217(e), Oct. 22, 1994, 108 Stat. 4127; Pub. L. 109–8, title IV, §§408, 431, title VII, §717, Apr. 20, 2005, 119 Stat. 106, 109, 131.)

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1125 of the House amendment is derived from section 1125 of the House bill and Senate amendment except with respect to section 1125(f) of the Senate amendment. It will not be necessary for the court to consider the report of the examiner prior to approval of a disclosure statement. The investigation of the examiner is to proceed on an independent basis from the procedure of the reorganization under chapter 11. In order to ensure that the examiner's report will be expeditious and fair, the examiner is precluded from serving as a trustee in the case or from representing a trustee if a trustee is appointed, whether the case remains in chapter 11 or is converted to chapter 7 or 13.

### SENATE REPORT NO. 95–989

This section extends disclosure requirements in connection with solicitations to all cases under chapter 11. Heretofore this subject was dealt with by the Bankruptcy Act [former title 11] mainly in the special contexts of railroad reorganizations and chapter X [chapter 10 of former title 11] cases.

Subsection (a) defines (1) the subject matter of disclosure as "adequate information" and relates the standard of adequacy to an (2) "investor typical of holders or claims or interests of the relevant class." "Investor" is used broadly here, for it will almost always include a trade creditor or other creditors who originally had no investment intent or interest. It refers to the investment-type decision by those called upon to accept a plan to modify their claims or interests, which typically will involve acceptance of new securities or of a cash payment in lieu thereof.

Both the kind and form of information are left essentially to the judicial discretion of the court, guided by the specification in subparagraph (a)(1) that it be of a kind and in sufficient detail that a reasonable and typical investor can make an informed judgment about the plan. The information required will necessarily be governed by the circumstances of the case.

Reporting and audit standards devised for solvent and continuing businesses do not necessarily fit a debtor in reorganization. Subsection (a)(1) expressly incorporates consideration of the nature and history of the debtor and the condition of its books and records into the determination of what is reasonably practicable to supply. These factors are particularly pertinent to historical data and to discontinued operations of no future relevance.

A plan is necessarily predicated on knowledge of the assets and liabilities being dealt with and on factually supported expectations as to the future course of the business sufficient to meet the feasibility standard in section 1130(a)(11) of this title. It may thus be necessary to provide estimates or judgments for that purpose. Yet it remains practicable to describe, in such detail as may be relevant and needed, the basis for the plan and the data on which supporters of the plan rely.

Subsection (b) establishes the jurisdiction of the court over this subject by prohibiting solicitation of acceptance or rejection of a plan after the commencement of the case, unless the person solicited receives, before or at the time of the solicitation, a written disclosure statement approved by the court, after notice and hearing, as containing adequate information. As under present law, determinations of value, by appraisal or otherwise, are not required if not needed to accomplish the purpose specified in subsection (a)(1).

Subsection (c) requires that the same disclosure statement be transmitted to each member of a class. It recognizes that the information needed for an informed judgment about the plan may differ among classes. A class whose rights under the plan center on a particular fund or asset would have no use for an extensive description of other matters that could not affect them.

Subsection (d) relieves the court of the need to follow any otherwise applicable Federal or state law in determining the adequacy of the information contained in the disclosure statement submitted for its approval. It authorizes an agency or official, Federal or state, charged with administering cognate laws so preempted to advise the court on the adequacy of proposed disclosure statement. But they are not authorized to appeal the court's decision.

Solicitations with respect to a plan do not involve just mere requests for opinions. Acceptance of the plan vitally affects creditors and shareholders, and most frequently the solicitation involves an offering of securities in exchange for claims or interests. The present bankruptcy statute [former title 11] has exempted such

offerings under each of its chapters from the registration and disclosure requirements of the Securities Act of 1933 [15 U.S.C. 77a et seq.], an exemption also continued by section 1145(a)(2) of this title. The extension of the disclosure requirements to all chapter 11 cases justifies the coordinate extension of these exemptions. By the same token, no valid purpose is served not to exempt from the requirements of similar state laws in a matter under the exclusive jurisdiction of the Federal bankruptcy laws.

Subsection (e) exonerates any person who, in good faith and in compliance with this title, solicits or participates in the offer, issuance, sale or purchase, under the plan, of a security from any liability, on account of such solicitation or participation, for violation of any law, rule, or regulation governing the offer, issuance, sale, or purchase of securities. This exoneration is coordinate with the exemption from Federal or State registration or licensing requirements provided by section 1145 of this title.

In the nonpublic case, the court, when approving the disclosure statement, has before it the texts of the plan, a proposed disclosure document, and such other information the plan proponents and other interested parties may present at the hearing. In the final analysis the exoneration which subsection (e) grants must depend on the good faith of the plan proponents and of those who participate in the preparation of the disclosure statement and in the solicitation. Subsection (e) does not affect civil or criminal liability for defects and inadequacies that are beyond the limits of the exoneration that good faith provides.

Section 1125 applies to public companies as well, subject to the qualifications of subsection (f). In case of a public company no solicitations of acceptance is permitted unless authorized by the court upon or after approval of the plan pursuant to section 1128(c). In addition to the documents specified in subsection (b), subsection (f) requires transmission of the opinion and order of the court approving the plan and, if filed, the advisory report of the Securities and Exchange Commission or a summary thereof prepared by the Commission.

## HOUSE REPORT NO. 95–595

This section is new. It is the heart of the consolidation of the various reorganization chapters found in current law. It requires disclosure before solicitation of acceptances of a plan or reorganization.

Subsection (a) contains two definitions. First, "adequate information" is defined to mean information of a kind, and insufficient detail, as far as is reasonably practical in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan. Second, "investor typical of holders of claims or interests of the relevant class" is defined to mean an investor having a claim or interest of the relevant class, having such a relationship with the debtor as the holders of other claims or interests of the relevant class have, and having such ability to obtain information from sources other than the disclosure statement as holders of claims or interests of the relevant class have, and having such ability to obtain information from sources other than the disclosure statement as holders of claims or interests of the relevant class have. That is, the hypothetical investor against which the disclosure is measured must not be an insider if other members of the class are not insiders, and so on. In other words, the adequacy of disclosure is measured against the typical investor, not an extraordinary one.

The Supreme Court's rulemaking power will not extend to rulemaking that will prescribe what constitutes adequate information. That standard is a substantive standard. Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case, such as the cost of preparation of the statements, the need for relative speed in solicitation and confirmation, and, of course, the need for investor protection. There will be a balancing of interests in each case. In reorganization cases, there is frequently great uncertainty. Therefore the need for flexibility is greatest.

Subsection (b) is the operative subsection. It prohibits solicitation of acceptances or rejections of a plan after the commencement of the case unless, at the time of the solicitation or before, there is transmitted to the solicitee the plan or a summary of the plan, and a written disclosure statement approved by the court as containing adequate information. The subsection permits approval of the statement without the necessity of a valuation of the debtor or an appraisal of the debtor's assets. However, in some cases, a valuation or appraisal will be necessary to develop adequate information. The court will be able to determine what is necessary in light of the facts and circumstances of each particular case.

Subsection (c) requires that the same disclosure statement go to all members of a particular class, but permits different disclosure to different classes.

Subsection (d) excepts the disclosure statements from the requirements of the securities laws (such as section 14 of the 1934 Act [15 U.S.C. 78n] and section 5 of the 1933 Act [15 U.S.C. 77e]), and from similar State securities laws (blue sky laws, for example). The subsection permits an agency or official whose duty is to administer or enforce such laws (such as the Securities and Exchange Commission or State Corporation Commissioners) to appear and be heard on the issue of whether a disclosure statement contains adequate information, but the agencies and officials are not granted the right of appeal from an adverse determination in any capacity. They may join in an appeal by a true party in interest, however.

Subsection (e) is a safe harbor provision, and is necessary to make the exemption provided by subsection

(d) effective. Without it, a creditor that solicited an acceptance or rejection in reliance on the court's approval of a disclosure statement would be potentially liable under antifraud sections designed to enforce the very sections of the securities laws from which subsection (d) excuses compliance. The subsection protects only persons that solicit in good faith and in compliance with the applicable provisions of the reorganization chapter. It provides protection from legal liability as well as from equitable liability based on an injunctive action by the SEC or other agency or official.

**AMENDMENTS**

**2005**—Subsec. (a)(1). Pub. L. 109–8, §717, inserted "including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case," after "records," and substituted "such a hypothetical investor" for "a hypothetical reasonable investor typical of holders of claims or interests".

Pub. L. 109–8, §431(1), inserted before semicolon "and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information".

Subsec. (f). Pub. L. 109–8, §431(2), added subsec. (f) and struck out former subsec. (f) which read as follows: "Notwithstanding subsection (b), in a case in which the debtor has elected under section 1121(e) to be considered a small business—

"(1) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

"(2) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement as long as the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed at least 10 days prior to the date of the hearing on confirmation of the plan; and

"(3) a hearing on the disclosure statement may be combined with a hearing on confirmation of a plan."

Subsec. (g). Pub. L. 109–8, §408, added subsec. (g).

**1994**—Subsec. (f). Pub. L. 103–394 added subsec. (f).

**1984**—Subsec. (a)(1). Pub. L. 98–353, §509(a)(1), inserted ", but adequate information need not include such information about any other possible or proposed plan".

Subsec. (a)(2)(B). Pub. L. 98–353, §509(a)(2), inserted "the" after "with".

Subsec. (a)(2)(C). Pub. L. 98–353, §509(a)(3), inserted "of" after "holders".

Subsec. (d). Pub. L. 98–353, §509(b), inserted "required under subsection (b) of this section" and ", or otherwise seek review of,".

Subsec. (e). Pub. L. 98–353, §509(c), inserted "acceptance or rejection of a plan" after "solicits", and "solicitation of acceptance or rejection of a plan or" after "governing".

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1126. Acceptance of plan

(a) The holder of a claim or interest allowed under section 502 of this title may accept or reject a plan. If the United States is a creditor or equity security holder, the Secretary of the Treasury may accept or reject the plan on behalf of the United States.

(b) For the purposes of subsections (c) and (d) of this section, a holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this title is deemed to have accepted or rejected such plan, as the case may be, if—

(1) the solicitation of such acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or

(2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125(a) of this title.

(c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

(d) A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

(e) On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title.

(f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

(g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2634; Pub. L. 98–353, title III, §510, July 10, 1984, 98 Stat. 386.)

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1126 of the House amendment deletes section 1126(e) as contained in the House bill. Section 105 of the bill constitutes sufficient power in the court to designate exclusion of a creditor's claim on the basis of a conflict of interest. Section 1126(f) of the House amendment adopts a provision contained in section 1127(f) of the Senate bill indicating that a class that is not impaired under a plan is deemed to have accepted a plan and solicitation of acceptances from such class is not required.

### SENATE REPORT NO. 95–989

Subsection (a) of this section permits the holder of a claim or interest allowed under section 502 to accept or reject a proposed plan of reorganization. The subsection also incorporates a provision now found in section 199 of chapter X [section 599 of former title 11] that authorizes the Secretary of the Treasury to accept or reject a plan on behalf of the United States when the United States is a creditor or equity security holder.

Subsection (b) governs acceptances and rejections of plans obtained before commencement of a reorganization for a nonpublic company. Paragraph (3) expressly states that subsection (b) does not apply to a public company.

Prepetition solicitation is a common practice under chapter XI [chapter 11 of former title 11] today, and chapter IX [chapter 9 of former title 11] current makes explicit provision for it. Section 1126(b) counts a prepetition acceptance or rejection toward the required amounts and number of acceptances only if the solicitation of the acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation. If there is not any such applicable law, rule, or regulation, then the acceptance or rejection is counted only if it was solicited after disclosure of adequate information, to the holder, as defined in section 1125(a)(1). This permits the court to ensure that the requirements of section 1125 are not avoided by prepetition solicitation.

Subsection (c) specifies the required amount and number of acceptances for a class of creditors. A class of creditors has accepted a plan if at least two-thirds in amount and more than one-half in number of the allowed claims of the class that are voted are cast in favor of the plan. The amount and number are computed on the basis of claims actually voted for or against the plan, not as under chapter X [chapter 10 of former title 11] on the basis of the allowed claims in the class. Subsection (f) excludes from all these calculations claims not voted in good faith, and claims procured or solicited not in good faith or not in accordance with the provisions of this title.

Subsection (c) requires that the same disclosure statement be transmitted to each member of a class. It recognizes that the information needed for an informed judgment about the plan may differ among classes. A

class whose rights under the plan center on a particular fund or asset would have no use for an extensive description of other matters that could not affect them.

Subsection (d) relieves the court of the need to follow any otherwise applicable Federal or state law in determining the adequacy of the information contained in the disclosure statement submitted for its approval. It authorizes an agency or official, Federal or state, charged with administering cognate laws so pre-empted to advise the court on the adequacy of proposed disclosure statement. But they are not authorized to appeal the court's decision.

Solicitations with respect to a plan do not involve just mere requests for opinions. Acceptance of the plan vitally affects creditors and shareholders, and most frequently the solicitation involves an offering of securities in exchange for claims or interests. The present Bankruptcy Act [former title 11] has exempted such offerings under each of its chapters from the registration and disclosure requirements of the Securities Act of 1933 [15 U.S.C. 77a et seq.], an exemption also continued by section 1145 of this title. The extension of the disclosure requirements to all chapter 11 cases is justified by the integration of the separate chapters into the single chapter 11. By the same token, no valid purpose is served by failing to provide exemption from the requirements of similar state laws in a matter under the exclusive jurisdiction of the Federal bankruptcy laws.

Under subsection (d), with respect to a class of equity securities, it is sufficient for acceptance of the plan if the amount of securities voting for the plan is at least two-thirds of the total actually voted.

Subsection (e) provides that no acceptances are required from any class whose claims or interests are unimpaired under the plan or in the order confirming the plan.

Subsection (g) provides that any class denied participation under the plan is conclusively deemed to have rejected the plan. There is obviously no need to submit a plan for a vote by a class that is to receive nothing. But under subsection (g) the excluded class is like a class that has not accepted, and is a dissenting class for purposes of confirmation under section 1130.

**AMENDMENTS**

**1984**—Subsec. (b)(2). Pub. L. 98–353, §510(a), substituted "1125(a)" for "1125(a)(1)".

Subsec. (d). Pub. L. 98–353, §510(b), inserted a comma after "such interests".

Subsec. (f). Pub. L. 98–353, §510(c), substituted ", and each holder of a claim or interest of such class, are conclusively presumed" for "is deemed", "solicitation" for "solicititation", and "interests" for "interest".

Subsec. (g). Pub. L. 98–353, §510(d), substituted "receive or retain any property" for "any payment or compensation".

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1127. Modification of plan

(a) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.

(b) The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title.

(c) The proponent of a modification shall comply with section 1125 of this title with respect to the plan as modified.

(d) Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

(e) If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time period for such payments; or

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

(f)(1) Sections 1121 through 1128 and the requirements of section 1129 apply to any modification under subsection (e).

(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125 as the court may direct, notice and a hearing, and such modification is approved.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2635; Pub. L. 98–353, title III, §511, July 10, 1984, 98 Stat. 386; Pub. L. 109–8, title III, §321(e), Apr. 20, 2005, 119 Stat. 96; Pub. L. 111–327, §2(a)(34), Dec. 22, 2010, 124 Stat. 3561.)

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1127(a) of the House amendment adopts a provision contained in the House bill permitting only the proponent of a plan to modify the plan and rejecting the alternative of open modification contained in the Senate amendment.

### SENATE REPORT NO. 95–989

Under subsection (a) the proponent may file a proposal to modify a plan prior to confirmation. In the case of a public company the modifying proposal may be filed prior to approval.

Subsection (b) provides that a party in interest eligible to file a plan may file instead of a plan a proposal to modify a plan filed by another. Under subsection (c) a party in interest objecting to some feature of a plan may submit a proposal to modify the plan to meet the objection.

After a plan has been confirmed, but before its substantial consummation, a plan may be modified by leave of court, which subsection (d) provides shall be granted for good cause. Subsection (e) provides that a proposal to modify a plan is subject to the disclosure requirements of section 1125 and as provided in subsection (f). It provides that a creditor or stockholder who voted for or against a plan is deemed to have accepted or rejected the modifying proposal. But if the modification materially and adversely affects any of their interests, they must be afforded an opportunity to change their vote in accordance with the disclosure and solicitation requirements of section 1125.

Under subsection (g) a plan, if modified prior to confirmation, shall be confirmed if it meets the requirements of section 1130.

### HOUSE REPORT NO. 95–595

Subsection (a) permits the proponent of a plan to modify it at any time before confirmation, subject, of course, to the requirements of sections 1122 and 1123, governing classification and contents of a plan. After the proponent of a plan files a modification with the court, the plan as modified becomes the plan, and is to be treated the same as an original plan.

Subsection (b) permits modification of a plan after confirmation under certain circumstances. The modification must be proposed before substantial consummation of the plan. The requirements of sections 1122 and 1123 continue to apply. The plan as modified under this subsection becomes the plan only if the court confirms the plan as modified under section 1129 and the circumstances warrant the modification.

Subsection (c) requires the proponent of a modification to comply with the disclosure provisions of section 1125. Of course, if the modification were sufficiently minor, the court might determine that additional disclosure was not required under the circumstances.

Subsection (d) simplifies modification procedure by deeming any creditor or equity security holder that has already accepted or rejected the plan to have accepted or rejected the modification, unless, within the time fixed by the court, the creditor or equity security holder changes this previous acceptance or rejection.

## AMENDMENTS

**2010**—Subsec. (f)(1). Pub. L. 111–327 substituted "subsection (e)" for "subsection (a)".

**2005**—Subsecs. (e), (f). Pub. L. 109–8 added subsecs. (e) and (f).

**1984**—Subsec. (a). Pub. L. 98–353, §511(a), inserted "of a plan" after "After the proponent", and "of such plan" after "modification".

Subsec. (b). Pub. L. 98–353, §511(b), substituted "circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title" for "the court, after notice and a hearing, confirms such plan, as modified, under section 1129 of this title, and circumstances warrant such modification".

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to

cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

## §1128. Confirmation hearing

(a) After notice, the court shall hold a hearing on confirmation of a plan.

(b) A party in interest may object to confirmation of a plan.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2635.)

**HISTORICAL AND REVISION NOTES**

**SENATE REPORT NO. 95–989**

[Section 1129 (enacted as section 1128)] Subsection (a) requires that there be a hearing in every case on the confirmation of the plan. Notice is required.

Subsection (b) permits any party in interest to object to the confirmation of the plan. The Securities and Exchange Commission and indenture trustees, as parties in interest under section 1109, may object to confirmation of the plan.

## §1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(2) The proponent of the plan complies with the applicable provisions of this title.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

(5)(A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

(8) With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

(13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

(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 amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

(16) All transfers of property 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 or trust.

(b)(1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

(c) Notwithstanding subsections (a) and (b) of this section and except as provided in section 1127(b) of this title, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144 of this title. If the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

(d) Notwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.

(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2635; Pub. L. 98–353, title III, §512, July 10, 1984, 98 Stat. 386; Pub. L. 99–554, title II, §§225, 283(v), Oct. 27, 1986, 100 Stat. 3102, 3118; Pub. L. 100–334, §2(b), June 16, 1988, 102 Stat. 613; Pub. L. 103–394, title III, §304(h)(7), title V, §501(d)(32), Oct.

22, 1994, 108 Stat. 4134, 4146; Pub. L. 109–8, title II, §213(1), title III, §321(c), title IV, §438, title VII, §710, title XII, §1221(b), title XV, §1502(a)(8), Apr. 20, 2005, 119 Stat. 52, 95, 113, 127, 196, 216; Pub. L. 111–327, §2(a)(35), Dec. 22, 2010, 124 Stat. 3561.)

## HISTORICAL AND REVISION NOTES

### LEGISLATIVE STATEMENTS

Section 1129 of the House amendment relates to confirmation of a plan in a case under chapter 11. Section 1129(a)(3) of the House amendment adopts the position taken in the Senate amendment and section 1129(a)(5) takes the position adopted in the House bill. Section 1129(a)(7) adopts the position taken in the House bill in order to insure that the dissenting members of an accepting class will receive at least what they would otherwise receive under the best interest of creditors test; it also requires that even the members of a class that has rejected the plan be protected by the best interest of creditors test for those rare cramdown cases where a class of creditors would receive more on liquidation than under reorganization of the debtor. Section 1129(a)(7)(C) is discussed in connection with section 1129(b) and section 1111(b). Section 1129(a)(8) of the House amendment adopts the provision taken in the House bill which permits confirmation of a plan as to a particular class without resort to the fair and equitable test if the class has accepted a plan or is unimpaired under the plan.

Section 1129(a)(9) represents a compromise between a similar provision contained in the House bill and the Senate amendment. Under subparagraph (A) claims entitled to priority under section 507(a)(1) or (2) are entitled to receive cash on the effective date of the plan equal to the amount of the claim. Under subparagraph (B) claims entitled to priority under section 507(a)(3), (4), or (5), are entitled to receive deferred cash payments of a present value as of the effective date of the plan equal to the amount of the claims if the class has accepted the plan or cash payments on the effective date of the plan otherwise. Tax claims entitled to priority under section 507(a)(6) of different governmental units may not be contained in one class although all claims of one such unit may be combined and such unit may be required to take deferred cash payments over a period not to exceed 6 years after the date of assessment of the tax with the present value equal to the amount of the claim.

Section 1129(a)(10) is derived from section 1130(a)(12) of the Senate amendment.

Section 1129(b) is new. Together with section 1111(b) and section 1129(a)(7)(C), this section provides when a plan may be confirmed, notwithstanding the failure of an impaired class to accept the plan under section 1129(a)(8). Before discussing section 1129(b) an understanding of section 1111(b) is necessary. Section 1111(b)(1), the general rule that a secured claim is to be treated as a recourse claim in chapter 11 whether or not the claim is nonrecourse by agreement or applicable law. This preferred status for a nonrecourse loan terminates if the property securing the loan is sold under section 363 or is to be sold under the plan.

The preferred status also terminates if the class of which the secured claim is a part elects application of section 1111(b)(2). Section 1111(b)(2) provides that an allowed claim is a secured claim to the full extent the claim is allowed rather than to the extent of the collateral as under section 506(a). A class may elect application of paragraph (2) only if the security is not of inconsequential value and, if the creditor is a recourse creditor, the collateral is not sold under section 363 or to be sold under the plan. Sale of property under section 363 or under the plan is excluded from treatment under section 1111(b) because of the secured party's right to bid in the full amount of his allowed claim at any sale of collateral under section 363(k) of the House amendment.

As previously noted, section 1129(b) sets forth a standard by which a plan may be confirmed notwithstanding the failure of an impaired class to accept the plan.

Paragraph (1) makes clear that this alternative confirmation standard, referred to as "cram down," will be called into play only on the request of the proponent of the plan. Under this cramdown test, the court must confirm the plan if the plan does not discriminate unfairly, and is "fair and equitable," with respect to each class of claims or interests that is impaired under, and has not accepted, the plan. The requirement of the House bill that a plan not "discriminate unfairly" with respect to a class is included for clarity; the language in the House report interpreting that requirement, in the context of subordinated debentures, applies equally under the requirements of section 1129(b)(1) of the House amendment.

Although many of the factors interpreting "fair and equitable" are specified in paragraph (2), others, which were explicated in the description of section 1129(b) in the House report, were omitted from the House amendment to avoid statutory complexity and because they would undoubtedly be found by a court to be fundamental to "fair and equitable" treatment of a dissenting class. For example, a dissenting class should be assured that no senior class receives more than 100 percent of the amount of its claims. While that requirement was explicitly included in the House bill, the deletion is intended to be one of style and not one of substance.

Paragraph (2) provides guidelines for a court to determine whether a plan is fair and equitable with respect to a dissenting class. It must be emphasized that the fair and equitable requirement applies only with respect to dissenting classes. Therefore, unlike the fair and equitable rule contained in chapter X [chapter 10 of former