

Recent Amendments to the U.S. Bankruptcy Code, and Other Updates

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Joseph Allen is the Assistant United Trustee in charge of the Buffalo, New York Office of the United States Trustee. The Office of the United States Trustee is an agency within the Department of Justice that oversees bankruptcy cases and the private panel of case trustees. Prior to his appointment in 2008 as Assistant United States Trustee, Mr. Allen was a partner in the Buffalo, New York office of Jaeckle Fleischmann & Mugel, LLP where he worked for 19 years. Mr. Allen practiced in the areas of bankruptcy law, workouts, secured transactions and commercial litigation. For 4 years Mr. Allen served as chairperson of his firm's litigation department. Mr. Allen has been listed in The Best Lawyers In America for bankruptcy and is AV rated by Martindale-Hubbell. Mr. Allen previously served as chair of the Commercial and Bankruptcy Law Committee of the Bar Association of Erie County. Mr. Allen received his A.B., cum laude, from Hamilton College and his J.D. from the University of Buffalo where he served as Note and Comment Editor for the Buffalo Law Review.

GARRY M. GRABER, ESQ.

Garry has more than 35 years of experience practicing bankruptcy, corporate restructuring, creditors' rights, financial services, commercial and corporate litigation, and general business law. He represents distressed business entities, their secured and unsecured creditors and their shareholders and principals inside and outside of bankruptcy, as well as creditors' committees, equity committees, trustees, examiners, and purchasers in bankruptcy and insolvency proceedings across the United States and in cross-border matters, primarily with Canada. He has also handled complex loan workout transactions, lender liability, director and officer liability, bank fraud, Uniform Commercial Code (UCC) and mortgage foreclosures, and other commercial and real estate litigation.

Garry exclusively practices U.S. law and is admitted to practice in Florida and New York.

Garry or one of his colleagues plays a major role in virtually every large Chapter 11 case filed in Upstate New York and many filed in the Southern District of New York and Delaware.

TAB 1

Recent Legislative Changes to Bankruptcy Law

“Coronavirus Aid, Relief, and Economic Security Act (CARES Act)” (enacted March 27, 2020)

- **Key Provisions Regarding the Bankruptcy Code: § 1113**
 - **Impact on Chapter 11 Filings: 1113(a):**
 - Amends 11 U.S.C. 1182(1) to increase the debt limit for a “small business debtor” under the recently added subchapter V to Chapter 11 (the Small Business Reorganization Act of 2019) from \$2,725,625 to \$7,500,000.
 - Previously, a qualifying “small business debtor” needed non-contingent, liquidated debts (secured and unsecured) totaling not more than \$2,725,625. [See 11 U.S.C. § 1182(1); 11 U.S.C. §101(51D)]. The CARES Act amended this to raise the threshold to \$7.5 million in debts, excluding insider and affiliate debt.
 - This change applies only to bankruptcy cases filed after the CARES Act because effective; Sunsets after one year
 - Interestingly the CARES Act does not amend the debt limit set forth in Section 101(51D) which defines “small business debtor” but revises the definition of “Debtor” in Section 1182. There may be further clarification needed on these dueling definitions of small business debtor. The CARES Act makes only technical revisions to Section 101(51D) regarding entities subject to the Securities Exchange Act of 1934 being excluded from being Subchapter 5 debtors.
 - **Impact on Chapter 7 and 13 Filings 1113(b):**
 - Amends the definition of “income” under section 101(10A)(B)(ii) to exclude coronavirus-related payments from the federal government [e.g. Stimulus payments]
 - Excludes coronavirus-related payments from “disposable income” under section 1325(b)(2).
 - Allows a debtor to request modification of a plan under section 1329(d)(1)(A) if the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the COVID-19 pandemic.
 - Debtors may also extend plan payments under the plan for up to seven years after the initial plan payment was due.
 - **Potential concern: how will “material financial hardship” be defined**
 - The changes to Chapter 7 and Chapter 13 filings apply in pending cases and will be applicable for one year after the CARES Act becomes effective.
- **Forms:**
 - **Form 101: Voluntary Petition for Individuals Filing for Bankruptcy**

- Line 13 is amended to reflect a new definition of “debtor” for determining eligibility to proceed under subchapter V of chapter 11
- https://www.uscourts.gov/sites/default/files/archive_0/B_101_2020-04.pdf
- **Form 201: Voluntary Petition for Non-Individuals Filing for Bankruptcy**
 - Line 8 is amended to reflect a new definition of “debtor” for determining eligibility to proceed under subchapter V of chapter 11
 - https://www.uscourts.gov/sites/default/files/archive_0/B_201_2020-04.pdf
- **Forms 122A-1, 122B, and 122C-1** – Line 10 in each is modified to exclude “payments made under the Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19)”
 - **122A-1: Chapter 7 Statement of Your Current Monthly Income**
https://www.uscourts.gov/sites/default/files/archive_0/B_122A-1_2020-04.pdf
 - **122B: Chapter 11 Statement of Your Current Monthly Income**
https://www.uscourts.gov/sites/default/files/archive_0/B_122B_2020-04.pdf
 - **122C-1: Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period**
https://www.uscourts.gov/sites/default/files/archive_0/B_122C-1_2020-04.pdf

CARES Act Article Links:

- HR Client Alert: <https://www.hodgsonruss.com/newsroom-publications-11914.html>
- Brief overview of changes: <https://www.natlawreview.com/article/cares-act-provides-additional-relief-to-consumer-debtors-bankruptcy>
- Longer look at changes: <https://www.jdsupra.com/legalnews/cares-act-guide-overview-of-key-73270/>
- An interesting look at how businesses who’ve filed chapter 11 are putting proceedings on hold: <https://www.jdsupra.com/legalnews/chapter-11-debtors-mothball-proceedings-93847/>

“Small Business Reorganization Act of 2019”

<https://www.congress.gov/116/plaws/publ54/PLAW-116publ54.pdf>

- Effective since February 2020
- Goal to make the process of filing for Chapter 11 reorganization more streamlined and affordable for small businesses
 - Creates a “middle ground” between Chapter 7 and Chapter 11 to allow debtors to retain control over their business operations, but not face the costs associated with Chapter 11
- Enacts new subchapter V for chapter 11 for small business debtors; applies in any Chapter 11 case of a small business debtor who elects to have it apply.

- Debt threshold for filing for relief is \$2,725,625. **CARES Act amended this to \$7,500,000 for one year** (will revert back to \$2,725,625 after one year)
- Key Provisions:
 - A Trustee will be appointed in every subchapter V case. This trustee will serve in a supervisory role and, generally, not be involved in operational aspects of the business. 11 U.S.C. §§ 1183-1184
 - Unsecured Creditor’s Committee will not be appointed unless ordered by the court for cause. 11 U.S.C. § 1102(a)(3)
 - Only the small business debtor may file a plan of reorganization. Must do so within 90-days of the petition date (court can extend “if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable”). Formal disclosure statement is not required for a plan—but plan will have to contain some similar information, like liquidation analysis and a projection of ability to make payments under the plan. 11 U.S.C. § 1189
 - A loan secured by the principal residence of the debtor may be modified by the plan if the proceeds of the loan were used for the small business. 11 U.S.C. § 1190
 - Court will confirm even over the objection of a non-accepting class of claimants. Even in a non- consensual confirmation an equity holder may retain its interest. The absolute priority rule which is a major consideration in avoiding a filing in small business have been removed. If the plan confirmation is non-consensual, the trustee will continue to serve (and be compensated) for the 3- to 5-year term of the plan. The debtor will make payments to the trustee, who will make distributions to claimants under the plan. 11 U.S.C. § 1191
 - Subchapter 5 debtors don’t have to pay quarterly UST fees. This is a significant cost in high volume low margin businesses such as gas stations. (JCT Powerpoint)

Additional resources summarizing the Small Business Reorganization Act

- <https://www.justice.gov/opa/pr/us-trustee-program-ready-implement-small-business-reorganization-act-2019>
- <https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html>
- <https://www.jdsupra.com/legalnews/cares-act-guide-overview-of-key-73270/>

“Family Farmer Relief Act of 2019” (H.R. 2336 – Enacted Aug. 23, 2019)

<https://www.congress.gov/116/plaws/publ51/PLAW-116publ51.pdf>

- Increased the debt limit for agricultural producers seeking to reorganize under Chapter 12 of the U.S. Bankruptcy Code from \$3,237,000 to \$10 million.
- ABI Article: <https://www.abi.org/newsroom/press-releases/president-signs-family-farmer-relief-act-into-law>

TAB 2

CARES Act - Bankruptcy Provisions - Section 1113

H. R. 748—30

(2) **TIMING OF PAYMENT.**—The Administrator shall begin making payments under paragraph (1) on a covered loan not later than 30 days after the date on which the first such payment is due.

(3) **APPLICATION OF PAYMENT.**—Any payment made by the Administrator under paragraph (1) shall be applied to the covered loan such that the borrower is relieved of the obligation to pay that amount.

(d) **OTHER REQUIREMENTS.**—The Administrator shall—

(1) communicate and coordinate with the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and State bank regulators to encourage those entities to not require lenders to increase their reserves on account of receiving payments made by the Administrator under subsection (c);

(2) waive statutory limits on maximum loan maturities for any covered loan durations where the lender provides a deferral and extends the maturity of covered loans during the 1-year period following the date of enactment of this Act; and

(3) when necessary to provide more time because of the potential of higher volumes, travel restrictions, and the inability to access some properties during the COVID-19 pandemic, extend lender site visit requirements to—

(A) not more than 60 days (which may be extended at the discretion of the Administration) after the occurrence of an adverse event, other than a payment default, causing a loan to be classified as in liquidation; and

(B) not more than 90 days after a payment default.

(e) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to limit the authority of the Administrator to make payments pursuant to subsection (c) with respect to a covered loan solely because the covered loan has been sold in the secondary market.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Administrator \$17,000,000,000 to carry out this section.

SEC. 1113. BANKRUPTCY.

(a) **SMALL BUSINESS DEBTOR REORGANIZATION.**—

(1) **IN GENERAL.**—Section 1182(1) of title 11, United States Code, is amended to read as follows:

“(1) **DEBTOR.**—The term ‘debtor’—

“(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor; and

“(B) does not include—

“(i) any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured

and unsecured debts in an amount greater than \$7,500,000 (excluding debt owed to 1 or more affiliates or insiders);

“(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

“(iii) any debtor that is an affiliate of an issuer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).”

(2) **APPLICABILITY OF CHAPTERS.**—Section 103(i) of title 11, United States Code, is amended by striking “small business debtor” and inserting “debtor (as defined in section 1182)”.

(3) **APPLICATION OF AMENDMENT.**—The amendment made by paragraph (1) shall apply only with respect to cases commenced under title 11, United States Code, on or after the date of enactment of this Act.

(4) **TECHNICAL CORRECTIONS.**—

(A) **DEFINITION OF SMALL BUSINESS DEBTOR.**—Section 101(51D)(B)(iii) of title 11, United States Code, is amended to read as follows:

“(iii) any debtor that is an affiliate of an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)).”

(B) **UNCLAIMED PROPERTY.**—Section 347(b) of title 11, United States Code, is amended by striking “1194” and inserting “1191”.

(5) **SUNSET.**—On the date that is 1 year after the date of enactment of this Act, section 1182(1) of title 11, United States Code, is amended to read as follows:

“(1) **DEBTOR.**—The term ‘debtor’ means a small business debtor.”

(b) **BANKRUPTCY RELIEF.**—

(1) **IN GENERAL.**—

(A) **EXCLUSION FROM CURRENT MONTHLY INCOME.**—Section 101(10A)(B)(ii) of title 11, United States Code, is amended—

(i) in subclause (III), by striking “; and” and inserting a semicolon;

(ii) in subclause (IV), by striking the period at the end and inserting “; and”; and

(iii) by adding at the end the following:

“(V) Payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19).”

(B) **CONFIRMATION OF PLAN.**—Section 1325(b)(2) of title 11, United States Code, is amended by inserting “payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19),” after “other than”.

(C) **MODIFICATION OF PLAN AFTER CONFIRMATION.**—Section 1329 of title 11, United States Code, is amended by adding at end the following:

“(d)(1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—

“(A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and

“(B) the modification is approved after notice and a hearing.

“(2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.

“(3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).”.

(D) APPLICABILITY.—

(i) The amendments made by subparagraphs (A) and (B) shall apply to any case commenced before, on, or after the date of enactment of this Act.

(ii) The amendment made by subparagraph (C) shall apply to any case for which a plan has been confirmed under section 1325 of title 11, United States Code, before the date of enactment of this Act.

(2) SUNSET.—

(A) IN GENERAL.—

(i) EXCLUSION FROM CURRENT MONTHLY INCOME.—Section 101(10A)(B)(ii) of title 11, United States Code, is amended—

(I) in subclause (III), by striking the semicolon at the end and inserting “; and”;

(II) in subclause (IV), by striking “; and” and inserting a period; and

(III) by striking subclause (V).

(ii) CONFIRMATION OF PLAN.—Section 1325(b)(2) of title 11, United States Code, is amended by striking “payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19),”.

(iii) MODIFICATION OF PLAN AFTER CONFIRMATION.—Section 1329 of title 11, United States Code, is amended by striking subsection (d).

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect on the date that is 1 year after the date of enactment of this Act.

SEC. 1114. EMERGENCY RULEMAKING AUTHORITY.

Not later than 15 days after the date of enactment of this Act, the Administrator shall issue regulations to carry out this title and the amendments made by this title without regard to the notice requirements under section 553(b) of title 5, United States Code.

TAB 3

Public Law 116–54
116th Congress

An Act

To amend chapter 11 of title 11, United States Code, to address reorganization of small businesses, and for other purposes.

Aug. 23, 2019
[H.R. 3311]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business
Reorganization
Act of 2019.
11 USC 101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Reorganization Act of 2019”.

SEC. 2. REORGANIZATION OF SMALL BUSINESS DEBTORS.

(a) **IN GENERAL.**—Chapter 11 of title 11, United States Code, is amended by adding at the end the following:

11 USC 1181
prec.

“SUBCHAPTER V—SMALL BUSINESS DEBTOR
REORGANIZATION

“§ 1181. Inapplicability of other sections

11 USC 1181.

“(a) **IN GENERAL.**—Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) of this title do not apply in a case under this subchapter.

“(b) **COURT AUTHORITY.**—Unless the court for cause orders otherwise, paragraphs (1), (2), and (4) of section 1102(a) and sections 1102(b), 1103, and 1125 of this title do not apply in a case under this subchapter.

“(c) **SPECIAL RULE FOR DISCHARGE.**—If a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title.

“§ 1182. Definitions

11 USC 1182.

“In this subchapter:

“(1) **DEBTOR.**—The term ‘debtor’ means a small business debtor.

“(2) **DEBTOR IN POSSESSION.**—The term ‘debtor in possession’ means the debtor, unless removed as debtor in possession under section 1185(a) of this title.

“§ 1183. Trustee

11 USC 1183.

“(a) **IN GENERAL.**—If the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in cases under this subchapter, and if such individual qualifies as a trustee under section 322 of this title, then that individual shall serve as trustee in any case under this subchapter. 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 trustee in the case, as necessary.

“(b) DUTIES.—The trustee shall—

“(1) perform the duties specified in paragraphs (2), (5), (6), (7), and (9) of section 704(a) of this title;

“(2) perform the duties specified in paragraphs (3), (4), and (7) of section 1106(a) of this title, if the court, for cause and on request of a party in interest, the trustee, or the United States trustee, so orders;

“(3) appear and be heard at the status conference under section 1188 of this title and any hearing that concerns—

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

“(B) confirmation of a plan filed under this subchapter;

“(C) modification of the plan after confirmation; or

“(D) the sale of property of the estate;

“(4) ensure that the debtor commences making timely payments required by a plan confirmed under this subchapter;

“(5) if the debtor ceases to be a debtor in possession, perform the duties specified in section 704(a)(8) and paragraphs (1), (2), and (6) of section 1106(a) of this title, including operating the business of the debtor;

“(6) if there is a claim for a domestic support obligation with respect to the debtor, perform the duties specified in section 704(c) of this title; and

“(7) facilitate the development of a consensual plan of reorganization.

“(c) TERMINATION OF TRUSTEE SERVICE.—

“(1) IN GENERAL.—If the plan of the debtor is confirmed under section 1191(a) of this title, the service of the trustee in the case shall terminate when the plan has been substantially consummated, except that the United States trustee may reappoint a trustee as needed for performance of duties under subsection (b)(3)(C) of this section and section 1185(a) of this title.

Deadline.

“(2) SERVICE OF NOTICE OF SUBSTANTIAL CONSUMMATION.—Not later than 14 days after the plan of the debtor is substantially consummated, the debtor shall file with the court and serve on the trustee, the United States trustee, and all parties in interest notice of such substantial consummation.

11 USC 1184.

“§ 1184. Rights and powers of a debtor in possession

“Subject to such limitations or conditions as the court may prescribe, 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 functions and duties, except the duties specified in paragraphs (2), (3), and (4) of section 1106(a) of this title, of a trustee serving in a case under this chapter, including operating the business of the debtor.

11 USC 1185.

“§ 1185. Removal of debtor in possession

“(a) IN GENERAL.—On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case, or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter.

“(b) REINSTATEMENT.—On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor in possession.

“§ 1186. Property of the estate

11 USC 1186.

“(a) INCLUSIONS.—If a plan is confirmed under section 1191(b) of this title, 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 that section that the debtor acquires after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first; and

“(2) earnings from services performed by the debtor after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first.

“(b) DEBTOR REMAINING IN POSSESSION.—Except as provided in section 1185 of this title, a plan confirmed under this subchapter, or an order confirming a plan under this subchapter, the debtor shall remain in possession of all property of the estate.

“§ 1187. Duties and reporting requirements of debtors

11 USC 1187.

“(a) FILING REQUIREMENTS.—Upon electing to be a debtor under this subchapter, the debtor shall file the documents required by subparagraphs (A) and (B) of section 1116(1) of this title.

“(b) OTHER APPLICABLE PROVISIONS.—A debtor, in addition to the duties provided in this title and as otherwise required by law, shall comply with the requirements of section 308 and paragraphs (2), (3), (4), (5), (6), and (7) of section 1116 of this title.

“(c) SEPARATE DISCLOSURE STATEMENT EXEMPTION.—If the court orders under section 1181(b) of this title that section 1125 of this title applies, section 1125(f) of this title shall apply.

Applicability.

“§ 1188. Status conference

11 USC 1188.

“(a) IN GENERAL.—Except as provided in subsection (b), not later than 60 days after the entry of the order for relief under this chapter, the court shall hold a status conference to further the expeditious and economical resolution of a case under this subchapter.

“(b) EXCEPTION.—The court may extend the period of time for holding a status conference under subsection (a) if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.

“(c) REPORT.—Not later than 14 days before the date of the status conference under subsection (a), the debtor shall file with the court and serve on the trustee and all parties in interest a report that details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization.

Deadline.

“§ 1189. Filing of the plan

11 USC 1189.

“(a) WHO MAY FILE A PLAN.—Only the debtor may file a plan under this subchapter.

“(b) DEADLINE.—The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension

Extension.

is attributable to circumstances for which the debtor should not justly be held accountable.

11 USC 1190.

“§ 1190. Contents of plan

“A plan filed under this subchapter—

“(1) shall include—

“(A) a brief history of the business operations of the debtor;

Analysis.

“(B) a liquidation analysis; and

“(C) projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization;

“(2) shall provide for the submission of all or such portion of the 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; and

“(3) notwithstanding section 1123(b)(5) of this title, may modify the rights of the holder of a claim secured only by a security interest in real property that is the principal residence of the debtor if the new value received in connection with the granting of the security interest was—

“(A) not used primarily to acquire the real property;

and

“(B) used primarily in connection with the small business of the debtor.

11 USC 1191.

“§ 1191. Confirmation of plan

“(a) TERMS.—The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title are met.

“(b) EXCEPTION.—Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs 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.

“(c) RULE OF CONSTRUCTION.—For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

“(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

Time periods.

“(2) As of the effective date of the plan—

“(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

“(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

“(3)(A)(i) The debtor will be able to make all payments under the plan; or

“(ii) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

“(B) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

“(d) DISPOSABLE INCOME.—For purposes of this section, the term ‘disposable income’ means the income that is received by the debtor and that is not reasonably necessary to be expended—

Definition.

“(1) for—

“(A) the maintenance or support of the debtor or a dependent of the debtor; or

“(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or

“(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

“(e) SPECIAL RULE.—Notwithstanding section 1129(a)(9)(A) of this title, a plan that provides for the payment through the plan of a claim of a kind specified in paragraph (2) or (3) of section 507(a) of this title may be confirmed under subsection (b) of this section.

“§ 1192. Discharge

11 USC 1192.

“If the plan of the debtor is confirmed under section 1191(b) of this title, as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, 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 in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, except any debt—

“(1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or

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

“§ 1193. Modification of plan

11 USC 1193.

“(a) MODIFICATION BEFORE CONFIRMATION.—The debtor may modify a plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of sections 1122 and 1123 of this title, with the exception of subsection (a)(8) of such section 1123. After the modification is filed with the court, the plan as modified becomes the plan.

“(b) MODIFICATION AFTER CONFIRMATION.—If a plan has been confirmed under section 1191(a) of this title, the debtor may modify the plan at any time after confirmation of the plan and before substantial consummation of the plan, but may not modify the plan so that the plan as modified fails to meet the requirements of sections 1122 and 1123 of this title, with the exception of subsection (a)(8) of such section 1123. The plan, as modified under this subsection, becomes the plan only if circumstances warrant the modification and the court, after notice and a hearing, confirms the plan as modified under section 1191(a) of this title.

“(c) CERTAIN OTHER MODIFICATIONS.—If a plan has been confirmed under section 1191(b) of this title, the debtor may modify the plan at any time within 3 years, or such longer time not to exceed 5 years, as fixed by the court, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1191(b) of this title. The 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 1191(b) of this title.

“(d) HOLDERS OF A CLAIM OR INTEREST.—If a plan has been confirmed under section 1191(a) of this title, any holder of a claim or interest that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless, within the time fixed by the court, such holder changes the previous acceptance or rejection of the holder.

11 USC 1194.

“§ 1194. Payments

“(a) RETENTION AND DISTRIBUTION BY TRUSTEE.—Payments and funds received by the trustee 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. If a plan is not confirmed, the trustee shall return any such payments to the debtor after deducting—

“(1) any unpaid claim allowed under section 503(b) of this title;

“(2) any payment made for the purpose of providing adequate protection of an interest in property due to the holder of a secured claim; and

“(3) any fee owing to the trustee.

“(b) OTHER PLANS.—If a plan is confirmed under section 1191(b) of this title, except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

“(c) PAYMENTS PRIOR TO CONFIRMATION.—Prior to confirmation of a plan, the court, after notice and a hearing, may authorize the trustee to make payments to the holder of a secured claim for the purpose of providing adequate protection of an interest in property.

11 USC 1195.

“§ 1195. Transactions with professionals

“Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title, by a debtor solely because that person holds a claim of less than \$10,000 that arose prior to commencement of the case.”.

11 USC 1101
prec.

(b) CLERICAL AMENDMENT.—The table of subchapters at the beginning of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

“SUBCHAPTER V—SMALL BUSINESS DEBTOR REORGANIZATION

“1181. Inapplicability of other sections.

“1182. Definitions.

“1183. Trustee.

“1184. Rights and powers of a debtor in possession.

“1185. Removal of debtor in possession.

“1186. Property of the estate.

“1187. Duties and reporting requirements of debtors.

“1188. Status conference.

“1189. Filing of the plan.

“1190. Contents of plan.

“1191. Confirmation of plan.

- “1192. Discharge.
- “1193. Modification of plan.
- “1194. Payments.
- “1195. Transactions with professionals.”.

SEC. 3. PREFERENCES; VENUE OF CERTAIN PROCEEDINGS.

(a) **PREFERENCES.**—Section 547(b) of title 11, United States Code, is amended by inserting “, based on reasonable due diligence in the circumstances of the case and taking into account a party’s known or reasonably knowable affirmative defenses under subsection (c),” after “may”.

(b) **VENUE OF CERTAIN PROCEEDINGS.**—Section 1409(b) of title 28, United States Code, is amended by striking “\$10,000” and inserting “\$25,000”.

SEC. 4. CONFORMING AMENDMENTS.

(a) **TITLE 11.**—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (51C), by inserting “and has not elected that subchapter V of chapter 11 of this title shall apply” after “is a small business debtor”; and

(B) in paragraph (51D)—

(i) in subparagraph (A)—

(I) by striking “or operating real property or activities incidental thereto” and inserting “single asset real estate”; and

(II) by striking “for a case in which” and all that follows and inserting “not less than 50 percent of which arose from the commercial or business activities of the debtor; and”; and

(ii) in subparagraph (B)—

(I) by striking the period at the end and inserting a semicolon;

(II) by striking “does not include any member” and inserting the following: “does not include—“(i) any member”; and

(III) by adding at the end the following:

“(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

“(iii) any corporation that—

“(I) is subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); and

“(II) is an affiliate of a debtor.”;

(2) in section 103—

(A) by redesignating subsections (i) through (k) as subsections (j) through (l), respectively; and

(B) by inserting after subsection (h) the following:

“(i) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 in which a small business debtor elects that subchapter V of chapter 11 shall apply.”;

(3) in section 322(a), by inserting “1183,” after “1163.”;

(4) in section 326—

(A) in subsection (a), by inserting “, other than a case under subchapter V of chapter 11” after “7 or 11”; and

(B) in subsection (b), by inserting “subchapter V of chapter 11 or” after “In a case under”;

(5) in section 347—

(A) in subsection (a)—

(i) by inserting “1194,” after “726,”; and

(ii) by inserting “subchapter V of chapter 11,” after “chapter 7,”; and

(B) in subsection (b), by inserting “1194,” after “1173,”;

(6) in section 363(c)(1), by inserting “1183, 1184,” after “1108,”;

(7) in section 364(a), by inserting “1183, 1184,” after “1108,”;

(8) in section 523(a), in the matter preceding paragraph (1), by inserting “1192” after “1141,”;

(9) in section 524—

(A) in subsection (a)—

(i) in paragraph (1), by inserting “1192,” after “1141,”; and

(ii) in paragraph (3), by inserting “1192,” after “523,”;

(B) in subsection (c)(1), by inserting “1192,” after “1141,”; and

(C) in subsection (d), by inserting “1192,” after “1141,”;

(10) in section 557(d)(3), by inserting “1183,” after “1104,”;

(11) in section 1102(a), by striking paragraph (3) and inserting the following:

“(3) Unless the court for cause orders otherwise, a committee of creditors may not be appointed in a small business case or a case under subchapter V of this chapter.”; and

(12) in section 1146(a), by inserting “or 1191” after “1129”.

(b) TITLE 28.—Title 28 United States Code, is amended—

(1) in section 586—

(A) in subsection (a)(3), by inserting “(including subchapter V of chapter 11)” after “7, 11”;

(B) in subsection (b), by inserting “subchapter V of chapter 11 or” after “cases under” the first place it appears;

(C) in subsection (d)(1), by inserting “subchapter V of chapter 11 or” after “cases under” each place that term appears; and

(D) in subsection (e)—

(i) in paragraph (1), by inserting “subchapter V of chapter 11 or” after “cases under”;

(ii) in paragraph (2), by inserting “subchapter V of chapter 11 or” after “cases under” each place that term appears; and

(iii) by adding at the end the following:

“(5) In the event that the services of the trustee in a case under subchapter V of chapter 11 of title 11 are terminated by dismissal or conversion of the case, or upon substantial consummation of a plan under section 1183(c)(1) of that title, the court shall award compensation to the trustee consistent with services performed by the trustee and the limits on the compensation of the trustee established pursuant to paragraph (1) of this subsection.”;

(2) in section 589b—

(A) in subsection (a)(1), by inserting “subchapter V of chapter 11 and” after “cases under”; and

(B) in subsection (d)—

(i) in the matter preceding paragraph (1), by inserting “subchapter V of chapter 11 and” after “trustees under”; and

(ii) in the undesignated matter following paragraph (8), by inserting “subchapter V of chapter 11 and” after “cases under”; and

(3) in section 1930(a)(6)(A), by inserting “, other than under subchapter V,” after “chapter 11 of title 11”.

SEC. 5. EFFECTIVE DATE.

11 USC 101 note.

This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

SEC. 6. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved August 23, 2019.

LEGISLATIVE HISTORY—H.R. 3311:

HOUSE REPORTS: No. 116–171 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 165 (2019):

July 23, considered and passed House.

Aug. 1, considered and passed Senate.



TAB 4

Public Law 116–51
116th Congress

An Act

To amend title 11, United States Code, with respect to the definition of “family farmer”.

Aug. 23, 2019
[H.R. 2336]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Family Farmer Relief Act of 2019”.

Family Farmer
Relief Act
of 2019.
11 USC 101 note.

SEC. 2. DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended by striking “\$3,237,000” each place that term appears and inserting “\$10,000,000”.

SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved August 23, 2019.

LEGISLATIVE HISTORY—H.R. 2336:

HOUSE REPORTS: No. 116–182 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 165 (2019):

July 25, considered and passed House.

Aug. 1, considered and passed Senate.



TAB 5

Fill in this information to identify your case:

United States Bankruptcy Court for the:

_____ District of _____
(State)

Case number (if known): _____ Chapter you are filing under:

Check if this is an amended filing

- Chapter 7
- Chapter 11
- Chapter 12
- Chapter 13

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy

04/20

The bankruptcy forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. For example, if a form asks, “Do you own a car,” the answer would be yes if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
1. Your full name Write the name that is on your government-issued picture identification (for example, your driver's license or passport). Bring your picture identification to your meeting with the trustee.	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)
2. All other names you have used in the last 8 years Include your married or maiden names.	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name

3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)

XXX - XX - _____
OR
9 XX - XX - _____

XXX - XX - _____
OR
9 XX - XX - _____

4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years

Include trade names and doing business as names

About Debtor 1:

I have not used any business names or EINs.

Business name

Business name

EIN

EIN

About Debtor 2 (Spouse Only in a Joint Case):

I have not used any business names or EINs.

Business name

Business name

EIN

EIN

5. Where you live

Number Street

City State ZIP Code

County

If your mailing address is different from the one above, fill it in here. Note that the court will send any notices to you at this mailing address.

Number Street

P.O. Box

City State ZIP Code

If Debtor 2 lives at a different address:

Number Street

City State ZIP Code

County

If Debtor 2's mailing address is different from yours, fill it in here. Note that the court will send any notices to this mailing address.

Number Street

P.O. Box

City State ZIP Code

6. Why you are choosing this district to file for bankruptcy

Check one:

- Over the last 180 days before filing this petition, I have lived in this district longer than in any other district.
- I have another reason. Explain.
(See 28 U.S.C. § 1408.)

Check one:

- Over the last 180 days before filing this petition, I have lived in this district longer than in any other district.
- I have another reason. Explain.
(See 28 U.S.C. § 1408.)

Part 2: Tell the Court About Your Bankruptcy Case

7. The chapter of the Bankruptcy Code you are choosing to file under

Check one. (For a brief description of each, see *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form 2010)). Also, go to the top of page 1 and check the appropriate box.

- Chapter 7
- Chapter 11
- Chapter 12
- Chapter 13

8. How you will pay the fee

- I will pay the entire fee when I file my petition.** Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
- I need to pay the fee in installments.** If you choose this option, sign and attach the *Application for Individuals to Pay The Filing Fee in Installments* (Official Form 103A).
- I request that my fee be waived** (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your petition.

9. Have you filed for bankruptcy within the last 8 years?

- No
- Yes. District _____ When _____ Case number _____
MM / DD / YYYY
- District _____ When _____ Case number _____
MM / DD / YYYY
- District _____ When _____ Case number _____
MM / DD / YYYY

10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate?

No

Yes. Debtor Relationship to you

District When Case number, if known

Debtor Relationship to you

District When Case number, if known

11. Do you rent your residence?

No. Go to line 12.

Yes. Has your landlord obtained an eviction judgment against you?

No. Go to line 12.

Yes. Fill out Initial Statement About an Eviction Judgment Against You (Form 101A) and file it as part of this bankruptcy petition.

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

No. Go to Part 4.

Yes. Name and location of business

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

Name of business, if any

Number Street

City State ZIP Code

Check the appropriate box to describe your business:

Health Care Business (as defined in 11 U.S.C. § 101(27A))

Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))

Stockbroker (as defined in 11 U.S.C. § 101(53A))

Commodity Broker (as defined in 11 U.S.C. § 101(6))

None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code, and are you a small business debtor or a debtor as defined by 11 U.S.C. § 1182(1)?

For a definition of small business debtor, see 11 U.S.C. § 101(51D).

If you are filing under Chapter 11, the court must know whether you are a small business debtor or a debtor choosing to proceed under Subchapter V so that it can set appropriate deadlines. If you indicate that you are a small business debtor or you are choosing to proceed under Subchapter V, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

No. I am not filing under Chapter 11.

No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.

Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I do not choose to proceed under Subchapter V of Chapter 11.

Yes. I am filing under Chapter 11, I am a debtor according to the definition in § 1182(1) of the Bankruptcy Code, and I choose to proceed under Subchapter V of Chapter 11.

Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

No

Yes. What is the hazard? _____

If immediate attention is needed, why is it needed? _____

For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?

Where is the property?

Number Street _____

City State ZIP Code _____

Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling**15. Tell the court whether you have received a briefing about credit counseling.**

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:

You must check one:

- I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

- I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

- I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

- I am not required to receive a briefing about credit counseling because of:

Incapacity. I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

Disability. My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.

Active duty. I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

About Debtor 2 (Spouse Only in a Joint Case):

You must check one:

- I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

- I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

- I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

- I am not required to receive a briefing about credit counseling because of:

Incapacity. I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

Disability. My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.

Active duty. I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have?

16a. Are your debts primarily consumer debts? Consumer debts are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

- No. Go to line 16b.
Yes. Go to line 17.

16b. Are your debts primarily business debts? Business debts are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.

- No. Go to line 16c.
Yes. Go to line 17.

16c. State the type of debts you owe that are not consumer debts or business debts.

17. Are you filing under Chapter 7?

No. I am not filing under Chapter 7. Go to line 18.

Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?

- Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?
No
Yes

18. How many creditors do you estimate that you owe?

- 1-49, 50-99, 100-199, 200-999, 1,000-5,000, 5,001-10,000, 10,001-25,000, 25,001-50,000, 50,001-100,000, More than 100,000

19. How much do you estimate your assets to be worth?

- \$0-\$50,000, \$50,001-\$100,000, \$100,001-\$500,000, \$500,001-\$1 million, \$1,000,001-\$10 million, \$10,000,001-\$50 million, \$50,000,001-\$100 million, \$100,000,001-\$500 million, \$500,000,001-\$1 billion, \$1,000,000,001-\$10 billion, \$10,000,000,001-\$50 billion, More than \$50 billion

20. How much do you estimate your liabilities to be?

- \$0-\$50,000, \$50,001-\$100,000, \$100,001-\$500,000, \$500,001-\$1 million, \$1,000,001-\$10 million, \$10,000,001-\$50 million, \$50,000,001-\$100 million, \$100,000,001-\$500 million, \$500,000,001-\$1 billion, \$1,000,000,001-\$10 billion, \$10,000,000,001-\$50 billion, More than \$50 billion

Part 7: Sign Below

For you

I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct.

If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11, 12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

X

Signature of Debtor 1

Executed on MM / DD / YYYY

X

Signature of Debtor 2

Executed on MM / DD / YYYY

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

X

Signature of Attorney for Debtor Date MM / DD / YYYY

Printed name

Firm name

Number Street

City State ZIP Code

Contact phone Email address

Bar number State

For you if you are filing this bankruptcy without an attorney

If you are represented by an attorney, you do not need to file this page.

The law allows you, as an individual, to represent yourself in bankruptcy court, but **you should understand that many people find it extremely difficult to represent themselves successfully. Because bankruptcy has long-term financial and legal consequences, you are strongly urged to hire a qualified attorney.**

To be successful, you must correctly file and handle your bankruptcy case. The rules are very technical, and a mistake or inaction may affect your rights. For example, your case may be dismissed because you did not file a required document, pay a fee on time, attend a meeting or hearing, or cooperate with the court, case trustee, U.S. trustee, bankruptcy administrator, or audit firm if your case is selected for audit. If that happens, you could lose your right to file another case, or you may lose protections, including the benefit of the automatic stay.

You must list all your property and debts in the schedules that you are required to file with the court. Even if you plan to pay a particular debt outside of your bankruptcy, you must list that debt in your schedules. If you do not list a debt, the debt may not be discharged. If you do not list property or properly claim it as exempt, you may not be able to keep the property. The judge can also deny you a discharge of all your debts if you do something dishonest in your bankruptcy case, such as destroying or hiding property, falsifying records, or lying. Individual bankruptcy cases are randomly audited to determine if debtors have been accurate, truthful, and complete. **Bankruptcy fraud is a serious crime; you could be fined and imprisoned.**

If you decide to file without an attorney, the court expects you to follow the rules as if you had hired an attorney. The court will not treat you differently because you are filing for yourself. To be successful, you must be familiar with the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules of the court in which your case is filed. You must also be familiar with any state exemption laws that apply.

Are you aware that filing for bankruptcy is a serious action with long-term financial and legal consequences?

- No
- Yes

Are you aware that bankruptcy fraud is a serious crime and that if your bankruptcy forms are inaccurate or incomplete, you could be fined or imprisoned?

- No
- Yes

Did you pay or agree to pay someone who is not an attorney to help you fill out your bankruptcy forms?

- No
- Yes. Name of Person _____

Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119).

By signing here, I acknowledge that I understand the risks involved in filing without an attorney. I have read and understood this notice, and I am aware that filing a bankruptcy case without an attorney may cause me to lose my rights or property if I do not properly handle the case.

X

X

Signature of Debtor 1

Signature of Debtor 2

Date MM / DD / YYYY

Date MM / DD / YYYY

Contact phone _____

Contact phone _____

Cell phone _____

Cell phone _____

Email address _____

Email address _____

Fill in this information to identify the case:

United States Bankruptcy Court for the:

_____ District of _____
(State)

Case number (if known): _____ Chapter _____

Check if this is an amended filing

Official Form 201

Voluntary Petition for Non-Individuals Filing for Bankruptcy

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name

2. All other names debtor used in the last 8 years

Include any assumed names, trade names, and *doing business* as names

3. Debtor's federal Employer Identification Number (EIN)

_____ - _____

4. Debtor's address

Principal place of business

Mailing address, if different from principal place of business

Number Street

Number Street

P.O. Box

City State ZIP Code

City State ZIP Code

Location of principal assets, if different from principal place of business

County

Number Street

City State ZIP Code

5. Debtor's website (URL)

6. Type of debtor

- Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))
- Partnership (excluding LLP)
- Other. Specify: _____

7. Describe debtor's business

A. *Check one:*

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Railroad (as defined in 11 U.S.C. § 101(44))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- Clearing Bank (as defined in 11 U.S.C. § 781(3))
- None of the above

B. *Check all that apply:*

- Tax-exempt entity (as described in 26 U.S.C. § 501)
- Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes> .

8. Under which chapter of the Bankruptcy Code is the debtor filing?

Check one:

- Chapter 7
- Chapter 9

Chapter 11. *Check all that apply:*

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

- The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, and it chooses to proceed under Subchapter V of Chapter 11. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- A plan is being filed with this petition.
- Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

Chapter 12

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

No

Yes. District _____ When _____ Case number _____
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District _____ When _____ Case number _____
MM / DD / YYYY

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

No

Yes. Debtor _____ Relationship _____

List all cases. If more than 1, attach a separate list.

District _____ When _____
MM / DD / YYYY

Case number, if known _____

11. Why is the case filed in this district?

Check all that apply:

Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?

No

Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

Why does the property need immediate attention? (*Check all that apply.*)

It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? _____

It needs to be physically secured or protected from the weather.

It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

Other _____

Where is the property?

Number _____ Street _____

City _____ State ZIP Code _____

Is the property insured?

No

Yes. Insurance agency _____

Contact name _____

Phone _____

Statistical and administrative information

13. Debtor's estimation of available funds

Check one:

- Funds will be available for distribution to unsecured creditors.
- After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

14. Estimated number of creditors

- | | | |
|----------------------------------|--|--|
| <input type="checkbox"/> 1-49 | <input type="checkbox"/> 1,000-5,000 | <input type="checkbox"/> 25,001-50,000 |
| <input type="checkbox"/> 50-99 | <input type="checkbox"/> 5,001-10,000 | <input type="checkbox"/> 50,001-100,000 |
| <input type="checkbox"/> 100-199 | <input type="checkbox"/> 10,001-25,000 | <input type="checkbox"/> More than 100,000 |
| <input type="checkbox"/> 200-999 | | |

15. Estimated assets

- | | | |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000 | <input type="checkbox"/> \$1,000,001-\$10 million | <input type="checkbox"/> \$500,000,001-\$1 billion |
| <input type="checkbox"/> \$50,001-\$100,000 | <input type="checkbox"/> \$10,000,001-\$50 million | <input type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000 | <input type="checkbox"/> \$50,000,001-\$100 million | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion |

16. Estimated liabilities

- | | | |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000 | <input type="checkbox"/> \$1,000,001-\$10 million | <input type="checkbox"/> \$500,000,001-\$1 billion |
| <input type="checkbox"/> \$50,001-\$100,000 | <input type="checkbox"/> \$10,000,001-\$50 million | <input type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000 | <input type="checkbox"/> \$50,000,001-\$100 million | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion |

Request for Relief, Declaration, and Signatures

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
MM / DD / YYYY

X

Signature of authorized representative of debtor

Printed name

Title

Debtor _____
Name

Case number (if known) _____

18. Signature of attorney

X

Signature of attorney for debtor

Date _____
MM / DD / YYYY

Printed name

Firm name

Number Street

City State ZIP Code

Contact phone

Email address

Bar number State

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

Check one box only as directed in this form and in Form 122A-1Supp:

- 1. There is no presumption of abuse.
- 2. The calculation to determine if a presumption of abuse applies will be made under *Chapter 7 Means Test Calculation* (Official Form 122A-2).
- 3. The Means Test does not apply now because of qualified military service but it could apply later.

Check if this is an amended filing

Official Form 122A-1

Chapter 7 Statement of Your Current Monthly Income

04/20

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known). If you believe that you are exempted from a presumption of abuse because you do not have primarily consumer debts or because of qualifying military service, complete and file *Statement of Exemption from Presumption of Abuse Under § 707(b)(2)* (Official Form 122A-1Supp) with this form.

Part 1: Calculate Your Current Monthly Income

1. **What is your marital and filing status?** Check one only.

- Not married.** Fill out Column A, lines 2-11.
- Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-11.
- Married and your spouse is NOT filing with you. You and your spouse are:**
 - Living in the same household and are not legally separated.** Fill out both Columns A and B, lines 2-11.
 - Living separately or are legally separated.** Fill out Column A, lines 2-11; do not fill out Column B. By checking this box, you declare under penalty of perjury that you and your spouse are legally separated under nonbankruptcy law that applies or that you and your spouse are living apart for reasons that do not include evading the Means Test requirements. 11 U.S.C. § 707(b)(7)(B).

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

	Column A Debtor 1	Column B Debtor 2 or non-filing spouse
2. Your gross wages, salary, tips, bonuses, overtime, and commissions (before all payroll deductions).	\$ _____	\$ _____
3. Alimony and maintenance payments. Do not include payments from a spouse if Column B is filled in.	\$ _____	\$ _____
4. All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support. Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Include regular contributions from a spouse only if Column B is not filled in. Do not include payments you listed on line 3.	\$ _____	\$ _____
5. Net income from operating a business, profession, or farm	Debtor 1	Debtor 2
Gross receipts (before all deductions)	\$ _____	\$ _____
Ordinary and necessary operating expenses	– \$ _____	– \$ _____
Net monthly income from a business, profession, or farm	\$ _____	\$ _____
		Copy here →
6. Net income from rental and other real property	Debtor 1	Debtor 2
Gross receipts (before all deductions)	\$ _____	\$ _____
Ordinary and necessary operating expenses	– \$ _____	– \$ _____
Net monthly income from rental or other real property	\$ _____	\$ _____
		Copy here →
7. Interest, dividends, and royalties	\$ _____	\$ _____

Column A Debtor 1 Column B Debtor 2 or non-filing spouse

8. Unemployment compensation

Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here:

For you \$ For your spouse \$

9. Pension or retirement income. Do not include any amount received that was a benefit under the Social Security Act. Also, except as stated in the next sentence, do not include any compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services.

\$ \$

10. Income from all other sources not listed above. Specify the source and amount. Do not include any benefits received under the Social Security Act; payments made under the Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19); payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism; or compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services.

\$ \$
\$ \$
+ \$ + \$

Total amounts from separate pages, if any.

11. Calculate your total current monthly income. Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.

\$ + \$ = \$
Total current monthly income

Part 2: Determine Whether the Means Test Applies to You

12. Calculate your current monthly income for the year. Follow these steps:

12a. Copy your total current monthly income from line 11. Copy line 11 here \$
Multiply by 12 (the number of months in a year). x 12
12b. The result is your annual income for this part of the form. 12b. \$

13. Calculate the median family income that applies to you. Follow these steps:

Fill in the state in which you live.
Fill in the number of people in your household.
Fill in the median family income for your state and size of household. 13. \$
To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

14. How do the lines compare?

14a. Line 12b is less than or equal to line 13. On the top of page 1, check box 1, There is no presumption of abuse. Go to Part 3. Do NOT fill out or file Official Form 122A-2.
14b. Line 12b is more than line 13. On the top of page 1, check box 2, The presumption of abuse is determined by Form 122A-2. Go to Part 3 and fill out Form 122A-2.

Debtor 1

First Name Middle Name Last Name

Case number (if known) _____

Part 3: Sign Below

By signing here, I declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

X _____
Signature of Debtor 1

X _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

Date _____
MM / DD / YYYY

If you checked line 14a, do NOT fill out or file Form 122A-2.

If you checked line 14b, fill out Form 122A-2 and file it with this form.

Fill in this information to identify your case:

Debtor 1 _____
 First Name Middle Name Last Name

Debtor 2 _____
 (Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
 (State)

Case number _____
 (if known)

Check if this is an amended filing

Official Form 122B

Chapter 11 Statement of Your Current Monthly Income

04/20

You must file this form if you are an individual and are filing for bankruptcy under Chapter 11. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Calculate Your Current Monthly Income

1. **What is your marital and filing status?** Check one only.

- Not married.** Fill out Column A, lines 2-11.
- Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-11.
- Married and your spouse is NOT filing with you.** Fill out Column A, lines 2-11.

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

Column A Debtor 1	Column B Debtor 2
----------------------	----------------------

- | | | |
|---|----------|----------|
| 2. Your gross wages, salary, tips, bonuses, overtime, and commissions (before all payroll deductions). | \$ _____ | \$ _____ |
| 3. Alimony and maintenance payments. Do not include payments from a spouse if Column B is filled in. | \$ _____ | \$ _____ |
| 4. All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support. Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Include regular contributions from a spouse only if Column B is not filled in. Do not include payments you listed on line 3. | \$ _____ | \$ _____ |

5. Net income from operating a business, profession, or farm	Debtor 1	Debtor 2		
	Gross receipts (before all deductions)	\$ _____	\$ _____	
	Ordinary and necessary operating expenses	- \$ _____	- \$ _____	
	Net monthly income from a business, profession, or farm	\$ _____	\$ _____	Copy here →

6. Net income from rental and other real property	Debtor 1	Debtor 2		
	Gross receipts (before all deductions)	\$ _____	\$ _____	
	Ordinary and necessary operating expenses	- \$ _____	- \$ _____	
	Net monthly income from rental or other real property	\$ _____	\$ _____	Copy here →

Column A Debtor 1

Column B Debtor 2

7. Interest, dividends, and royalties

\$ _____ \$ _____

8. Unemployment compensation

\$ _____ \$ _____

Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here:..... ↓

For you \$ _____

For your spouse..... \$ _____

9. Pension or retirement income. Do not include any amount received that was a benefit under the Social Security Act. Also, except as stated in the next sentence, do not include any compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or death of a member of the uniformed services. If you received any retired pay paid under chapter 61 of title 10, then include that pay only to the extent that it does not exceed the amount of retired pay to which you would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.

\$ _____ \$ _____

10. Income from all other sources not listed above. Specify the source and amount. Do not include any benefits received under the Social Security Act; payments made under the Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19); payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism; or compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If necessary, list other sources on a separate page and put the total below.

_____ \$ _____ \$ _____

_____ \$ _____ \$ _____

Total amounts from separate pages, if any. + \$ _____ + \$ _____

11. Calculate your total current monthly income. Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.

Boxed calculation: \$ _____ + \$ _____ = \$ _____

Total current monthly income

Part 2: Sign Below

By signing here, under penalty of perjury I declare that the information on this statement and in any attachments is true and correct.

X Signature of Debtor 1

X Signature of Debtor 2

Date MM / DD / YYYY

Date MM / DD / YYYY

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

Check as directed in lines 17 and 21:

According to the calculations required by this Statement:

- 1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).
- 2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).
- 3. The commitment period is 3 years.
- 4. The commitment period is 5 years.

Check if this is an amended filing

Official Form 122C-1

Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period

04/20

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Calculate Your Average Monthly Income

1. **What is your marital and filing status?** Check one only.
- Not married.** Fill out Column A, lines 2-11.
 - Married.** Fill out both Columns A and B, lines 2-11.

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

	Column A Debtor 1	Column B Debtor 2 or non-filing spouse												
2. Your gross wages, salary, tips, bonuses, overtime, and commissions (before all payroll deductions).	\$ _____	\$ _____												
3. Alimony and maintenance payments. Do not include payments from a spouse.	\$ _____	\$ _____												
4. All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support. Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Do not include payments from a spouse. Do not include payments you listed on line 3.	\$ _____	\$ _____												
5. Net income from operating a business, profession, or farm	<table border="0" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td style="background-color: #e0e0e0; padding: 2px;">Debtor 1</td> <td style="background-color: #e0e0e0; padding: 2px;">Debtor 2</td> </tr> <tr> <td>Gross receipts (before all deductions)</td> <td style="text-align: right;">\$ _____</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>Ordinary and necessary operating expenses</td> <td style="text-align: right;">- \$ _____</td> <td style="text-align: right;">- \$ _____</td> </tr> <tr> <td>Net monthly income from a business, profession, or farm</td> <td style="text-align: right;">\$ _____</td> <td style="text-align: right;">\$ _____</td> </tr> </table>			Debtor 1	Debtor 2	Gross receipts (before all deductions)	\$ _____	\$ _____	Ordinary and necessary operating expenses	- \$ _____	- \$ _____	Net monthly income from a business, profession, or farm	\$ _____	\$ _____
	Debtor 1	Debtor 2												
Gross receipts (before all deductions)	\$ _____	\$ _____												
Ordinary and necessary operating expenses	- \$ _____	- \$ _____												
Net monthly income from a business, profession, or farm	\$ _____	\$ _____												
	\$ _____	\$ _____												
6. Net income from rental and other real property	<table border="0" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <td style="background-color: #e0e0e0; padding: 2px;">Debtor 1</td> <td style="background-color: #e0e0e0; padding: 2px;">Debtor 2</td> </tr> <tr> <td>Gross receipts (before all deductions)</td> <td style="text-align: right;">\$ _____</td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td>Ordinary and necessary operating expenses</td> <td style="text-align: right;">- \$ _____</td> <td style="text-align: right;">- \$ _____</td> </tr> <tr> <td>Net monthly income from rental or other real property</td> <td style="text-align: right;">\$ _____</td> <td style="text-align: right;">\$ _____</td> </tr> </table>			Debtor 1	Debtor 2	Gross receipts (before all deductions)	\$ _____	\$ _____	Ordinary and necessary operating expenses	- \$ _____	- \$ _____	Net monthly income from rental or other real property	\$ _____	\$ _____
	Debtor 1	Debtor 2												
Gross receipts (before all deductions)	\$ _____	\$ _____												
Ordinary and necessary operating expenses	- \$ _____	- \$ _____												
Net monthly income from rental or other real property	\$ _____	\$ _____												
	\$ _____	\$ _____												

Column A Debtor 1	Column B Debtor 2 or non-filing spouse
----------------------	--

7. Interest, dividends, and royalties

\$ _____	\$ _____
----------	----------

8. Unemployment compensation

\$ _____	\$ _____
----------	----------

Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ↓

For you \$ _____

For your spouse \$ _____

9. Pension or retirement income. Do not include any amount received that was a benefit under the Social Security Act. Also, except as stated in the next sentence, do not include any compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If you received any retired pay paid under chapter 61 of title 10, then include that pay only to the extent that it does not exceed the amount of retired pay to which you would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.

\$ _____	\$ _____
----------	----------

10. Income from all other sources not listed above. Specify the source and amount. Do not include any benefits received under the Social Security Act; payments made under the Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19); payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism; or compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services. If necessary, list other sources on a separate page and put the total below.

_____ \$ _____

_____ \$ _____

\$ _____	\$ _____
\$ _____	\$ _____
+ \$ _____	+ \$ _____

Total amounts from separate pages, if any.

11. Calculate your total average monthly income. Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.

\$ _____	+	\$ _____	=	\$ _____
				Total average monthly income

Part 2: Determine How to Measure Your Deductions from Income

12. Copy your total average monthly income from line 11. \$ _____

13. Calculate the marital adjustment. Check one:

- You are not married. Fill in 0 below.
- You are married and your spouse is filing with you. Fill in 0 below.
- You are married and your spouse is not filing with you.

Fill in the amount of the income listed in line 11, Column B, that was NOT regularly paid for the household expenses of you or your dependents, such as payment of the spouse's tax liability or the spouse's support of someone other than you or your dependents.

Below, specify the basis for excluding this income and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page.

If this adjustment does not apply, enter 0 below.

_____ \$ _____

_____ \$ _____

_____ + \$ _____

Total

\$ _____	Copy here →	_____
----------	-------------	-------

14. **Your current monthly income.** Subtract the total in line 13 from line 12. \$ _____

15. **Calculate your current monthly income for the year.** Follow these steps:

15a. Copy line 14 here → \$ _____
 Multiply line 15a by 12 (the number of months in a year). **x 12**

15b. The result is your current monthly income for the year for this part of the form. \$ _____

16. **Calculate the median family income that applies to you.** Follow these steps:

16a. Fill in the state in which you live. _____

16b. Fill in the number of people in your household. _____

16c. Fill in the median family income for your state and size of household. \$ _____
 To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

17. **How do the lines compare?**

17a. Line 15b is less than or equal to line 16c. On the top of page 1 of this form, check box 1, *Disposable income is not determined under 11 U.S.C. § 1325(b)(3)*. **Go to Part 3.** Do NOT fill out *Calculation of Your Disposable Income* (Official Form 122C-2).

17b. Line 15b is more than line 16c. On the top of page 1 of this form, check box 2, *Disposable income is determined under 11 U.S.C. § 1325(b)(3)*. **Go to Part 3 and fill out Calculation of Your Disposable Income (Official Form 122C-2).** On line 39 of that form, copy your current monthly income from line 14 above.

Part 3: Calculate Your Commitment Period Under 11 U.S.C. § 1325(b)(4)

18. **Copy your total average monthly income from line 11.** \$ _____

19. **Deduct the marital adjustment if it applies.** If you are married, your spouse is not filing with you, and you contend that calculating the commitment period under 11 U.S.C. § 1325(b)(4) allows you to deduct part of your spouse's income, copy the amount from line 13.

19a. If the marital adjustment does not apply, fill in 0 on line 19a. - \$ _____

19b. **Subtract line 19a from line 18.** \$ _____

20. **Calculate your current monthly income for the year.** Follow these steps:

20a. Copy line 19b..... \$ _____
 Multiply by 12 (the number of months in a year). **x 12**

20b. The result is your current monthly income for the year for this part of the form. \$ _____

20c. Copy the median family income for your state and size of household from line 16c..... \$ _____

21. **How do the lines compare?**

Line 20b is less than line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 3, *The commitment period is 3 years.* Go to Part 4.

Debtor 1 _____
First Name Middle Name Last Name

Case number (if known) _____

Line 20b is more than or equal to line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 4, *The commitment period is 5 years*. Go to Part 4.

Part 4: Sign Below

By signing here, under penalty of perjury I declare that the information on this statement and in any attachments is true and correct.

X _____
Signature of Debtor 1

X _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

Date _____
MM / DD / YYYY

If you checked 17a, do NOT fill out or file Form 122C-2.

If you checked 17b, fill out Form 122C-2 and file it with this form. On line 39 of that form, copy your current monthly income from line 14 above.

TAB 6

State Mandated Forbearance and Bankruptcy Basics

April 2, 2020

Jim Thoman

New York Executive Order: Mandating Forbearance

- Mandates 90 day forbearance.
- Applies to lenders subject to New York Department of Financial Services.
- Any person or business suffering a financial hardship as a result of COVID-19 crises.
- Deemed an “unsafe and unsound” business practice for a bank to refuse to grant forbearance.

Forbearance Negotiation

- NY regulated lenders are required to provide 90 days forbearance.
- This is limited to exercising rights; waiver of payments is not required.
- Borrower's approach is constrained by ability to pay all principal and accrued interest at the end of 90 day mandatory forbearance period.
- Lenders do not want to have to recover collateral to repay loans.
- If a borrower was not in a workout situation prior to this emergency situation, we expect lenders will be flexible.
- Expect less cooperation from lender if loan was troubled prior to COVID emergency.

Why File for Bankruptcy Protection?

- Obtain benefits of the automatic stay *e.g.* stall a foreclosure
- Sale of Assets free and clear of liens, claims and encumbrances
- Restructure debt
- Obtain a “fresh start”/discharge debts

Chapter 7 – Liquidation

- Both entities and individuals may file for Chapter 7
- Chapter 7 Trustee is appointed to oversee the case
- Discharge for individual Chapter 7 debtors:
 - But not all debts are dischargeable, e.g. alimony, child support, certain taxes, school loans. *See* 11 U.S.C. § 523.
 - Court can deny discharge for cause. *See* 11 U.S.C. § 727(a).
- Means Test – failure leads to dismissal or conversion
 - Abuse is presumed if the debtor's aggregate current monthly income (minus certain expenses and multiplied by 60) is not less than the lesser of (i) 25% of the debtor's nonpriority unsecured debt, as long as that amount is at least \$7,700, whichever is greater or (ii) \$12,850. *See* 11 U.S.C. § 707(b).

Chapter 9 – Municipalities

- The chapter of the Bankruptcy Code providing for reorganization of municipalities
- “Municipality” is defined in the Bankruptcy Code as a “political subdivision or public agency or instrumentality of a State.” 11 U.S.C. § 101(40).
 - This includes cities and towns, as well as villages, counties, taxing districts, municipal utilities, and school districts but EXCLUDES States.
 - Detroit is a notable, recently filed Chapter 9 case. Puerto Rico notably is not.
 - OTB Corporation
- Municipality must be insolvent to qualify under Ch. 9

Chapter 11 - Reorganization

- The chapter of the Bankruptcy Code providing (generally) for reorganization
- Debtor and management remain in control
- Chapter 11 provides that a debtor may propose a plan of reorganization and pay creditors over time
- Usually involves a corporation or partnership
- Individuals may also seek relief under chapter 11

Subchapter 5 of Chapter 11

- Subchapter 5 was recently added to the Bankruptcy Code in February 2020.
- Designed to streamline “small business debtor” chapter 11 cases.
- Removes the requirement for a creditors committee.
- Adds a Subchapter 5 Trustee.
- Relaxes the rules required for confirmation of plan.
- CARES Act increased the debt limit for small business cases from \$2.7 million to \$7.5 million.
- Increased debt limit sunsets in one year.

Chapter 12 – Family Farmer or Fisherman

- The chapter of the Bankruptcy Code providing for adjustment of debtors of a “family farmer” or a “family fisherman”
 - These terms have a specific meaning in the Bankruptcy Code.
- Debt Requirements for Chapter 12:
 - The total debts (secured and unsecured) of the operation must not exceed \$10,000,000 (if a farming operation) or \$2044,225 (if a commercial fishing operation).
 - At least 50% (if farmer) or 80% (if fisherman) of such debts must be related to farming or fishing operation.

Chapter 13 - Adjustment of the Debts of an Individual with Regular Income

- The chapter of the Bankruptcy Code providing for adjustment of debts of an individual with regular income
- Chapter 13 allows a debtor to keep property and pay debts over time
- Means Test
 - Chapter 13 can only be used by individuals (or an individual and his/her spouse) with a “regular income” who have unsecured debts of less than \$419,275 and secured debts of less than \$1,257,850. *See* 11 U.S.C. §§ 101(27) and 109(e).

CARES Act: Revisions Applicable to Chapter 13

- “Current monthly income” definition is amended to exclude payments from Federal Government related to COVID-19 relief.
- COVID-19 relief payments also excluded from “disposable income” for purposes of calculating Chapter 13 monthly plan payments.
- Chapter 13 debtor who have already confirmed a plan may apply to Court to amend plans by alleging material financial hardship as a result of COVID-19 emergency.
- Amendments allow extension of plans beyond 5 year limitation to 7 years from first plan payment due under original plan.

Chapter 15 – Ancillary and Other Cross-Border Cases

- The chapter of the Bankruptcy Code dealing with cross-border insolvency
- If a bankruptcy case is pending in a foreign country, a foreign representative of the debtor in that case may file a “petition for recognition,” and upon issuance of an order granting recognition of that foreign main proceeding, certain provisions of the Bankruptcy Code apply. This is often sought to invoke the protections of the automatic stay.

Who's Who: The United States Trustee ("UST")

- The United States Trustee is a Department of Justice Official responsible for supervising the administration of bankruptcy cases in a particular region
- There are 21 regional U.S. Trustee Offices nationwide and an Executive Office for U.S. Trustees (EOUST) in Washington, DC.
- William Harrington is the United States Trustee for Region 2, which includes the WDNY.
 - Each city has its own Assistant UST
- Reviews filing application
- Acts like creditor's committee if one is not created
- Reviews fee applications

Who's Who: Chapter 7 Trustee

- When a chapter 7 petition is filed, the UST appoints an impartial case trustee to administer the case and liquidate the debtor's nonexempt assets
 - Chapter 7 trustees are local bankruptcy attorneys
 - Representative of the bankruptcy estate who exercises statutory powers, principally for the benefit of the unsecured creditors, under the general supervision of the court and the direct supervision of the US trustee.
 - The trustee is a private individual or corporation appointed by the US trustee.
- The trustee's responsibilities include reviewing the debtor's petition and schedules, bringing actions against creditors or the debtor to recover property of the bankruptcy estate and to liquidate property and make distributions to creditors.

Who's Who: Unsecured Creditors' Committee

- Only in Chapter 11s
- Appointed by the United States Trustee
- Ordinarily consists of unsecured creditors who hold the seven largest unsecured claims against the debtor but UCC represents the entire body of unsecured creditors in the case
- Duties and powers of a committee are set forth in 11 U.S.C. § 1103(c)
 - Sometimes tasked with recovering preferences/fraudulent conveyances

Who's Who: Other Players

- Chapter 11 Trustee
- Examiner
- Secured creditors
- Equity holders
 - Last in the priority scheme. Many plans do not provide for distribution to prepetition equity holders thereby eliminating “old equity.”
- Trade Vendors
- Principals of Debtor – separate representation

Executory Contract/Unexpired Lease

- Executory Contract: Generally includes contracts under which both parties to the agreement have duties remaining to be performed.
 - Key: If a contract is executory, a Debtor may assume or reject it in bankruptcy
- Unexpired Lease: a lease that is still in effect, i.e., it has not expired by its terms or by operation of law
 - Key: An unexpired lease may be a significant asset of an estate

Assumption and Rejection of Executory Contracts and Unexpired Leases

- Timing - *See* 11 U.S.C. § 365(d)(1) and (2).
 - Ch 7 – within 60 days after order for relief is entered (otherwise deemed rejected).
 - Ch 9, 11, 12, 13 – any time before confirmation of a plan but a contract party can request an earlier determination
 - Exception – nonresidential leases – within 120 days after order of relief or plan confirmation order (otherwise deemed rejected). Period can be extended 90 days for cause.
- Effects of Rejection
 - Rejection = breach of contract. *See* 11 U.S.C. § 365(g)(1).
 - Deemed breached immediately prior to petition date and creditor has prepetition general unsecured claim against debtor for damages (unless contract is assumed and then rejected, then creditor has admin claim for damages from time of rejection).
 - Large reduction in claims when dealing with long lease terms; driver for many retail bankruptcies.

Assumption and Rejection of Executory Contracts and Unexpired Leases (cont'd)

- Rejection Damages
 - Rejected lease – damages limited to the “rent reserved by such lease” without acceleration for the greater of (i) one year; or (ii) 15% of the remaining term of the lease, for up to three years. See 11 U.S.C. § 502(b)(6).
 - Rejected employment contract – damages limited to one year’s compensation (exclusive of any prepetition, pre-rejection damages/administrative priority claim).
- Assumption
 - If there has been a default, an executory contract or lease can only be assumed if debtor/trustee (i) cures defaults; (ii) compensates for actual pecuniary losses resulting from default; and (iii) provides adequate assurance of future performance.

Section 362: Automatic Stay

- Section 362 places an immediate and automatic stay on nearly all creditor actions to collect debts owed by debtor
- Stayed actions include:
 - Commencing or continuing any proceeding against the debtor
 - Collecting or recovering any pre-petition claim / judgment
 - Possessing any property of or from the estate
 - Creating, perfecting or enforcing most liens against property of the estate
 - Setting off any debt owed to the debtor pre-petition
 - Terminating any contract or lease with the debtor
 - *See 11 U.S.C. § 362(a).*

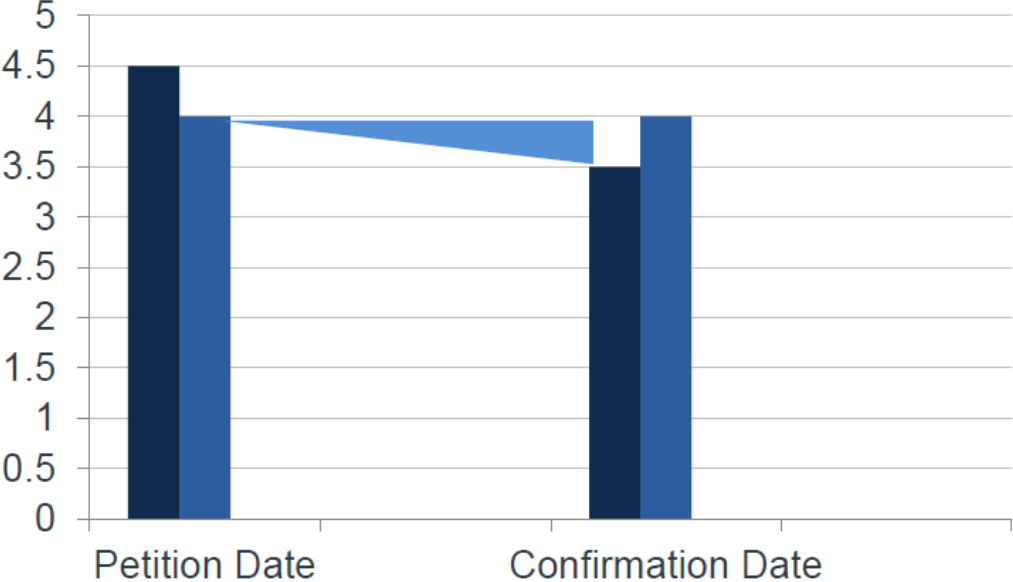
Section 362: Automatic Stay (cont'd)

- Actions not stayed include:
 - Various domestic relations actions
 - Acts to maintain perfection of security interest (or to perfect within 30 days of attachment)
 - Setoffs under certain financial contracts
 - Landlord's action to evict a holdover tenant of nonresidential real property
 - Acts in violation of stay can trigger actual and punitive damages
 - *See* 11 U.S.C. § 362(a).
- Acts in violation of stay can trigger actual and punitive damages
- Severing Debtor from state court litigation to proceed

Lifting the Automatic Stay

- The court shall grant relief from the automatic stay “for cause,” which includes the failure to provide “adequate protection” of a party’s interest in property for the duration of the stay. *See* 11 U.S.C. § 362(d)(1)
- “For cause”
 - Debtor has no equity in the property and the property is unnecessary for an effective reorganization. *See* 11 U.S.C. § 362(d)(2).
 - Under certain circumstances for a single asset real estate holding company. *See* 11 U.S.C. § 362(d)(3).
 - For secured creditors with an interest in real property where the court determines that the bankruptcy filing was part of a scheme to delay, hinder, and defraud creditors. *See* 11 U.S.C. § 362(d)(4).
- Lift stay to pursue insurance claims is typically granted

Secured Creditor Right to Adequate Protection



Adequate Protection
protects a secured creditor from the erosion of the value of its collateral below the amount of its claim during a bankruptcy case

- Collateral Value
- Claim Amount
- Adequate Protection

Types and Priority of Claims

- Priority of payment is set forth in 11 U.S.C. § 507.
- Absolute Priority Rule – creditors are ranked in order of priority according to the code; all claims in a more senior class must be paid in full before junior claims can recover.
 - Secured Claims
 - Priority Unsecured Claims
 - General Unsecured Claims
 - Equity Claims
- §510: Equitable Subordination – priority level for recovery of a claim can be reduced below the priority such claim would typically be entitled to for equitable reasons such as fraud by the claimant

Types and Priority of Claims (cont'd)

- **Super Priority Claims** – certain claims can be given super priority and are paid before other admin expenses *e.g.* DIP Financing *see* 11 U.S.C. § 364(c)
- **Secured Claim** - (i) an allowed claim, (ii) secured by a lien, (iii) on property in which the estate has an interest. *See* 11 U.S.C. § 506(a)(1).
 - A secured claim is secured **ONLY** to the extent of the value of the collateral
- **Priority Unsecured Claims** such as domestic support, admin expenses, taxes owed to the government
 - **Administrative Expense Claims** - Generally claims that arise post-petition (or shortly before).
 - Includes claims for wages and salaries, fees for attorneys and other professionals, value of goods delivered within 20 days of petition. *See* 11 U.S.C. § 503(b).
- **General Unsecured Claims**
- **Equity**

Proofs of Claim

- To receive a distribution, a creditor must file a proof of claim (and an equity holder must file a proof of interest).
 - Case other than in Ch. 11 Filing a proof of claim is a mandatory prerequisite for allowance of unsecured claims.
 - In Ch. 11, a creditor need not file a proof of claim if the claim is on debtor's schedules of liabilities. However, if the claim is listed incorrectly on the schedules, creditor must file a proof of claim.
- Timing
 - Ch 7 and 13 – proof of claim must be filed within 90 days after date of first creditors meeting.
 - Ch. 11 – court will fix a “bar date”; all proofs of claim must be filed by the Bar Date or will be subject to disallowance. *See* FRBP 3003.
 - **Do not miss the Bar Date!!**
- Claims are deemed allowed if no party objects to the proof of claim or objection is overruled. *See* 11 U.S.C. § 502.

Thank You

- Questions?