

HIGHLIGHTS OF SMALL BUSINESS REORGANIZATION ACT OF 2019

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Overview

The Small Business Reorganization Act of 2019 enacts a new subchapter V of chapter 11 of the Bankruptcy Code, new §§ 1181 – 1195, and makes conforming amendments to several sections of Chapter 11. The statute takes effect on February 19, 2020, 180 days after the date of its enactment on August 23.

Subchapter V applies in cases in which a small business debtor elects its application. In the absence of an election, the existing provisions of chapter 11 (with some tweaks) that govern small business cases continue to apply.

Subchapter V resembles chapter 12 in some ways. Thus, it provides for a trustee in the case while leaving the debtor in possession of assets and control of the business. But it differs from chapter 12 in significant ways. For example, whereas chapter 12 confirmation standards are like those in chapter 13, subchapter V confirmation requirements incorporate most of the existing confirmation requirements in § 1129(a). Unlike Chapter 12, subchapter V does not provide for a codebtor stay.

Important features of the new subchapter V are:

- (1) No committee of unsecured creditors is appointed unless the court orders otherwise.
- (2) No disclosure statement is required, and § 1125 does not apply, unless the court orders otherwise.
- (3) The court may confirm a plan even if no impaired class accepts it.
- (4) The “fair and equitable” requirement for cramdown does not include the absolute priority rule. (The cramdown requirements for a secured creditor are unchanged.)
- (5) The debtor must file a plan within 90 days of the filing date, unless the court extends the time based on circumstances for which the debtor should not justly be held accountable. The existing requirements in a small business case that a plan be filed within 300 days of the filing date (§ 1121(e)) and that confirmation occur within 45 days of the filing of the plan (§ 1129(e)) do not apply in a subchapter V case.
- (6) A plan may modify a claim secured only by a security interest on the debtor’s principal residence if the new value received in connection with the granting of the security interest was not used primarily to acquire the property and was used primarily in connection with the small business of the debtor.

(7) Discharge.

(a) If the court confirms a consensual plan, the debtor receives a discharge under § 1141(d) upon confirmation. In the case of an individual, the § 1141(d) discharge does not discharge debts excepted under § 523(a). (§ 1141(d)(2)).

(b) If the court confirms a cramdown plan, the debtor does not receive a discharge until the debtor completes plan payments for a period of at least three years or such longer time not to exceed five years as the court fixes. The discharge in a cramdown case discharges the debtor from all debts specified in § 1141(d)(1)(A) and all other debts allowed under § 503 (administrative expenses), with the following exceptions:

(i) debts on which the last payment is due after the first three years of the plan or such longer time not exceeding five years as the court shall fix; and

(ii) debts excepted under § 523(a).

(c) The provision in in § 1141(d)(5) for delay of discharge in individual cases until completion of payments does not apply in a subchapter V case.

(8) The debtor does not pay U.S. Trustee fees.

Summary of New Subchapter V and Related Amendments

Application of Subchapter V; definition of small business debtor

Subchapter V applies in cases in which a small business debtor elects them. (Amended § 103(i)). The Act makes changes in the definition of "small business debtor" in § 101(51D)), discussed below. If a debtor does not elect application of subchapter V, the existing rules (modified slightly) for small business cases apply to a small business debtor. The statute does not state when or how the debtor makes the election.

A small business debtor must have "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 no more than \$ 2,725,625 (excluding debts owed to 1 or more affiliates or insiders)." (§ 101(51D(A)). Under the amended statute, 50 percent or more of this debt must arise from the commercial or business activities of the debtor. (This amended definition also applies in cases in which the debtor does not elect subchapter V.)

Under existing law, a debtor does not qualify as a small business debtor if the primary activity is the business of "owning or operating real property or activities incidental thereto." As amended, § 101(51D) deletes the quoted language and, instead, excludes only a debtor whose primary activity is owning or operating "single asset real estate."

No committee of unsecured creditors

Unless the court for cause orders otherwise, a committee of unsecured creditors will not be appointed. Sections 1102(a)(1), (2), and (4)¹ (dealing with appointment of committees) and § 1103 (powers and duties of committees) do not apply in a subchapter V case unless the court orders otherwise. (§ 1181(b)).

Subchapter V Trustee

Subchapter V provides for a trustee in all cases (§ 1183(a)). The trustee is a standing trustee (under provisions like those for chapter 12 trustees), if the U.S. Trustee has appointed one, or a disinterested person that the U.S. Trustee appoints. (§ 1183(a)). The court has no role in the appointment of the trustee.

The trustee's service is terminated if a consensual plan is confirmed under § 1191(a) upon its substantial consummation. (§ 1183(c)(1)). The U.S. Trustee may reappoint the trustee as needed for the performance of duties in connection with a postconfirmation modification.

If the court confirms a plan under the cramdown provisions of § 1191(b), the trustee continues to serve and makes payments to creditors under the plan, unless the plan or the order confirming the plan provides otherwise. (§ 1194(b)).

Debtor in possession

The trustee does not, however, take control or possession of assets and does not operate the business. The debtor, as debtor in possession: (1) remains in possession of assets of the estate and in control of business operations (§ 1186(b)); and (2) has the rights, powers, and duties of a trustee that a regular chapter 11 debtor in possession has. (§ 1184).

The court must terminate the debtor's status as debtor in possession for cause. (§ 1185(a)). Cause includes: (1) fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after commencement of the case; or (2) failure of the debtor to perform the obligations of the debtor under a confirmed plan. The court may reinstate the debtor in possession. (§ 1185(b)).

Duties of debtor in possession

Upon the filing of the case, the debtor must file documents required under § 1116(1)(A) and (B). (§ 1187(a)). Thus, the debtor must file with the petition the debtor's most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or a statement under

¹ Section 1102(a)(3) remains applicable, as amended. The revised statute provides, "Unless the court for cause orders otherwise, a committee of creditors may not be appointed in a small business case or in a case under subchapter V of this chapter." Existing § 1102(a)(3) provides that the court may order that a committee not be appointed upon request of a party in interest.

penalty of perjury that no balance sheet, statement of operations or cash-flow statement has been prepared and no federal tax return has been filed.

The debtor must also comply with the duties of a debtor in possession in small business cases specified in § 1116(2) – (7). (§ 1187(b)).² Thus, the debtor's senior management personnel and counsel must: (1) attend meetings scheduled by the court or the U.S. Trustee (including initial debtor interviews, scheduling conferences, and § 341 meetings, unless waived for extraordinary and compelling circumstances); (2) timely file all schedules and statements of financial affairs (unless the court after notice and a hearing grants an extension not to exceed 30 days after the order for relief, absent extraordinary and compelling circumstances); (3) file all postpetition financial and other reports required by the Bankruptcy Rules or local rule of the district court;³ (4) maintain customary and appropriate insurance; (5) timely file required tax returns and other government filings and pay all taxes entitled to administrative expense priority; (6) allow the U.S. trustee to inspect the debtor's business premises, books, and records.

A debtor in possession also has the duties of a trustee under § 1106(a), except those specified in paragraphs (2) (file required lists, schedules, and statements), (3) (conduct investigations) and (4) (report on investigations).

The duties under § 1106(a) include performing the duties of a trustee under paragraphs (2), (5), (7), (8), (9), (10), (11) and (12) of § 704(a). (§ 1106(a)(1)). These duties are: to be accountable for all property received; to examine and object to proofs of claim if a purpose would be served; to furnish information concerning the estate and its administration as requested by a party in interest, unless the court orders otherwise; to file reports; to make a report and file a final account of the administration of the estate with the court and the U.S. Trustee; to provide required notices with regard to domestic support obligations; to perform any obligations as the administrator of an employee benefit plan; and to use reasonable and best efforts to transfer patients from a health care business that is being closed.

Other applicable duties under § 1106(a) are the duties: to file tax returns for any year for which the debtor has not filed a tax return, § 1106(a)(6); to file postconfirmation reports as necessary or as the court orders, (a)(7); and to provide required notices with regard to any domestic support obligations, (a)(8).⁴

Trustee's duties

Section 1183(b) states the trustee's duties.

First, § 1183(b)(1) imposes certain duties of a trustee that are set forth in § 1183(b)(1) imposes certain duties of a trustee that are set forth in certain paragraphs of § 704(a). Thus, the trustee must be accountable for property received, § 704(a)(2); examine and object to proofs of claim if a purpose would be served, (a)(5); furnish information concerning the estate and its administration, unless the court

² It is unclear why § 1116 does not apply in subchapter V cases, § 1181(a), because § 1187(b) incorporates all of its requirements. Perhaps it is because § 1116 also applies to a trustee.

³ That is not a typo. The statute specifies local rule of the district court.

⁴ Section 1106(a)(5) is also a debtor duty under § 1184. Section 1106(a)(5) requires a debtor to file a plan under § 1121, but it is obviously inapplicable because (1) the subchapter V debtor must file a plan under § 1189, and (2) section 1181(a) makes § 1121 inapplicable in a subchapter V case.

orders otherwise, upon request of a party in interest, (a)(7); and file a final report and account with the court and U.S. Trustee, (a)(9). The trustee also has the § 704(a)(6) duty to object to the debtor's discharge, if advisable. Because subchapter V has no provisions for an objection to discharge, the only apparent basis for an objection to discharge is the failure of the debtor to complete payments under a cramdown plan, as later text discusses.

Second, the court may order the trustee to perform certain duties of a chapter 11 trustee under § 1106(a). (§ 1183(b)(2)). These are the duties: to investigate the debtor's acts, conduct, assets, liabilities, and financial condition, the operation of its business and the desirability of its continuance, and any other matter relevant to the case or to the formulation of a plan, § 1106(a)(3); to file a statement of any such investigation and transmit a copy or summary of it to designated entities, (a)(4); and to file postconfirmation reports as are necessary or as the court orders, (a)(7).

Third, the trustee must appear and be heard at the status conference (discussed below) and at any hearing that concerns the value of property subject to a lien, confirmation of a plan, modification of a plan after confirmation, or sale of property of the estate: (§ 1183(b)(3)).

Fourth, the trustee must ensure that the debtor commences making timely payments under a confirmed plan. (§ 1183(b)(4)).

Fifth, if the debtor ceases to be a debtor in possession, the trustee has the duties of a trustee under § 704(a)(8) (filing of certain reports relating to operation of the business) and paragraphs (1), (2), and (6) of § 1106(a). (§ 1183(b)(5)). Earlier text describing the duties of the debtor discussed duties under § 1106(a)(1). Section 1106(a)(2) requires the filing of lists, schedules, and statements if the debtor has not done so, and § 1106(a)(6) requires the filing of required tax returns for any year in which the debtor has not done so.

Sixth, the trustee must provide required notices regarding any domestic support obligations. (§ 1183(b)(6)).

Seventh, the trustee must facilitate the development of a consensual plan of reorganization. (§ 1183(b)(7)).

The trustee makes payments under a plan that is confirmed under the cramdown provisions of § 1181(b), unless the plan or the order confirming the plan provides otherwise. (§ 1194(b)). Later text discusses payments that the trustee may make.

Compensation of the trustee

For a standing trustee, amendments to § 326 require compensation under 28 U.S.C. § 586. Revised § 326(a) excludes a subchapter V trustee from the provisions allowing compensation of a chapter 11 trustee, and revised § 326(b) provides that the court may not allow compensation of a standing trustee in a subchapter V case.

Under amendments to 28 U.S.C. § 586(e), the U.S. Trustee program establishes the compensation for a standing trustee under subchapter V in the same manner it does for standing chapter 12 and 13 trustees. Existing provisions of 28 U.S.C. § 586(e) that apply in chapter 12 and 13 cases are extended to cover subchapter V standing trustees. Thus, the standing subchapter V trustee

receives a percentage fee (as fixed by the U.S. Trustee program) from all payments the trustee receives under the plan.

If the services of the trustee are terminated by dismissal or conversion of the case or upon substantial consummation of a consensual plan under § 1381(a) (as later text discusses, the trustee does not make payments under a consensual plan), new 28 U.S.C. § 586(e)(5) provides that the court “shall award compensation to the trustee consistent with the services performed by the trustee and the limits on the compensation of the trustee established pursuant to [28 U.S.C. § 586(e)(1)].” The limits require reference to the standing trustee’s maximum annual compensation, 28 U.S.C. § 586(e)(1)(A),⁵ and to the maximum percentage fee, 28 U.S.C. § 586(e)(1)(B).

The new statute does not address compensation of a subchapter V trustee who is not a standing trustee. Presumably such a trustee is entitled to compensation under § 330(a)(1). The Act does not extend the limitations in § 326(b) on compensation of a nonstanding trustee in a Chapter 12 or 13 cases (five percent of payments under the plan) to a nonstanding subchapter V trustee.

The trustee has oversight and monitoring duties and the right to be heard (§ 1183(b)) and may make disbursements to creditors (§ 1194), as later text explains.

Required status conference and debtor report

The court must hold a status conference within 60 days of the filing. (§ 1188(a)). The time may be extended based on circumstances for which the debtor should not justly be held accountable.

The debtor must file, and serve on the trustee and all parties in interest, a report at least 14 days before the status conference that details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization. (§ 1188(c)). As previous text notes, one of the trustee’s duties is to “facilitate the development of a consensual plan of reorganization.” (§ 1183(b)(7)).

Filing of plan; no disclosure statement unless the court orders otherwise

Only the debtor may file a plan. (§ 1189(a)). The deadline is 90 days after the order for relief. (§ 1189(b)). The court may extend the deadline if the need for extension is attributable to circumstances for which the debtor should not justly be held accountable. (*Id.*). Section 1193(a) permits preconfirmation modification of a plan.

The timing requirements in a small business case under existing law -- that a plan be filed within 300 days of the filing date (§ 1121(e)) and that confirmation occur within 45 days of the filing of the plan (§ 1129(e)) -- do not apply in a subchapter V case. (§ 1181(a)). They continue to apply in the case of a small business debtor who does not elect subchapter V.

The debtor does not have to file a disclosure statement unless the court orders otherwise because § 1125 does not apply unless the court orders otherwise. Section 1181(b).

⁵ Query whether, if the standing subchapter V trustee is also a standing chapter 12 or 13 trustee, the standing trustee’s maximum annual compensation is determined in the aggregate or with regard to each chapter?

Section 1187(c) states that, if the court orders the application of § 1125 such that a disclosure statement is required, § 1125(f) shall apply. Section 1125(f) permits the court: to determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary, § 1125(f)(1); to approve a disclosure statement submitted on standard forms approved by the court or adopted under 28 U.S.C. § 2075, § 1125(f)(2); and to conditionally approve disclosure statement subject to final approval after notice and hearing, which may be combined with the hearing on confirmation, § 1125(f)(3).

Contents of plan

Section 1122 (classification of claims and interests) and most of § 1123 (contents of plan) apply in subchapter V cases. Two provisions of § 1123 – (a)(8) and (c)(3) – do not apply. (§ 1181(a)).

Both excluded provisions apply only in individual cases. Section 1123(a)(8) requires the plan for an individual debtor to provide for payment to creditors of all or such portion of earnings from postpetition services or other future income as is necessary for the execution of the plan. Section 1123(c) prohibits a plan filed by an entity other than the debtor from providing for the use, sale, or lease of exempt property, unless the debtor consents.

Section 1123(a)(8) is replaced by a new provision in new § 1190, which contains additional provisions for the content of a plan. Section 1123(c) is superfluous in a subchapter V case because only the debtor can propose a plan.

Section 1190 states three provisions governing the content of the plan.

First, § 1190(1)⁶ requires the inclusion of information that would otherwise be included in a disclosure statement. Thus, the plan must include: (1) a brief history of the operations of the debtor; (2) a liquidation analysis; and (3) projections regarding the ability of the debtor to make payments under the proposed plan.

Second, § 1190(2) requires that the plan 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.” This provision replaces the similar rule in the inapplicable § 1121(a)(8).

Section 1190(2) raises interpretive issues. If a plan is consensual such that confirmation occurs under § 1191(a), § 1194, dealing with payments to creditors; does not contemplate that the trustee make the payments. Moreover, § 1183(c)(1) provides for termination of the trustee’s services upon substantial consummation of a consensual plan under § 1191(a). Under § 1101(2), “substantial consummation” occurs upon (among other things⁷) “commencement of distribution under the plan.” (§ 1101(2)(C)). Must a consensual plan provide for submission of future income to the trustee’s supervision and control when the trustee’s services will be terminated?

⁶ No apparent reason exists for using numbers for the subsections of this section instead of the customary lower-case letters.

⁷ Substantial consummation also requires transfer of all or substantially all of the property proposed by the plan to be transferred, § 1101(2)(A), and assumption by the debtor or by the successor to the debtor of the business or of the management of all or substantially all of the property dealt with by the plan, § 1101(2)(B).

The third content provision in § 1190(3) modifies the rule of § 1123(b)(5) that a plan may not modify the rights of a claim secured only by a security interest in real property that is the debtor's principal residence. Section 1190(3) permits modification of such a claim if the new value received in connection with the granting of the security interest was not used primarily to acquire the real property and was used primarily in connection with the small business of the debtor. A potential issue is whether this new exception to the anti-modification rule will apply when the debtor grants a security interest in the principal residence as additional collateral (perhaps in connection with a workout) but does not receive any new value.

Confirmation of the plan, effect of confirmation, and discharge

Section 1129(a) applies in a subchapter V case, other than paragraph (15), which states the projected disposable income rule for individual chapter 11 cases. A different projected disposable income rule, expanded to apply to all debtors, applies in the cramdown context, as discussed below.

Consensual plans confirmed under § 1191(a)

If the plan meets all of the requirements of § 1129(a), the court must confirm it under § 1191(a). If all those requirements are met, all classes of impaired creditors have accepted it. Thus, these materials refer to it as a consensual plan. (It is not a defined term.)

Confirmation of a consensual plan under § 1191(a) has important consequences.

First, as earlier text mentions, the services of the trustee are terminated upon substantial consummation, which under § 1101(2) generally occurs when payments commence. (§ 1183(c)).

Second, the discharge provisions of § 1141(d) apply upon confirmation of a consensual plan, except for paragraph (5). (§ 1181(a)). Section 1141(d)(5) provides for the delay of discharge in an individual case until the debtor has completed all payments under the plan. Because § 1141(d)(5) is inapplicable, any subchapter V debtor who obtains confirmation of a consensual plan under § 1191(a) receives a discharge upon confirmation.

Cramdown plans confirmed under § 1191(b)

Subchapter V revises the cramdown rules in chapter 11 cases for cases under subchapter V.

Under existing law, cramdown confirmation is possible under § 1129(b) notwithstanding the failure of all impaired classes to accept the plan, the confirmation requirement of § 1129(a)(8). Section 1129(b) cramdown is not available, however, if no impaired class has accepted the plan (the § 1129(a)(10) requirement).

In addition, if the nonaccepting class is the class of unsecured creditors, the absolute priority rule of § 1129(b)(2)(B) prohibits holders of equity interests from retaining their interests unless unsecured creditors receive full payment (subject to the new value exception). In an individual case,

most courts rule that the absolute priority prohibits the debtor from retaining property without payment in full to unsecured creditors.⁸

Subchapter V changes these rules. The starting point is that § 1129(b) does not apply. (§ 1181(a)). Instead, § 1191(b) states revised cramdown rules that (1) permit cramdown confirmation even if all impaired classes reject it and (2) eliminate the absolute priority rule.

The debtor may invoke new § 1191(b) when all confirmation requirements of § 1129(a) are met except those in paragraphs (8), (10), and (15). Thus, in addition to eliminating the (a)(8) requirement that all impaired classes accept the plan (which § 1129(b) does), new § 1191(b) eliminates the requirement of § 1129(a)(10) that at least one impaired class accept the plan.

Under the new cramdown rules in § 1191(b), if all other confirmation standards are met, the court must confirm a plan, on request of the debtor, if, with respect to each impaired class that has not accepted it, the plan does not discriminate unfairly and is fair and equitable.

It does not appear that the new statute effects any change in the unfair discrimination requirement.

Section 1191(c), however, applies a new "rule of construction" in subchapter V cases for the condition that a plan be "fair and equitable," thus replacing the definition in § 1129(b).

With regard to a class of secured claims, a subchapter V plan is "fair and equitable" if it meets the existing rules for secured claims stated in § 1129(b)(2)(A). Subchapter V thus does not change existing law with regard to secured claims, except that a secured creditor loses the ability to prevent confirmation if it controls the unsecured class because of a deficiency or if an unsecured class otherwise does not accept the plan.

Section 1191(c) does not state a fair and equitable rule specifically with regard to unsecured claims. Instead, it imposes a disposable income requirement, requires a feasibility finding, and requires that the plan provide appropriate remedies if payments are not made. Notably absent is the absolute priority rule.

The disposable income requirement is in § 1191(c)(2). The plan must provide that all of the projected disposable income of the debtor to be received in the 3-year period after the first payment under the plan is due, or in such longer period not to exceed five years as the court may fix, will be applied to make payments under the plan. (§ 1191(c)(2)(A)). Alternatively, the plan may provide that the value of property to be distributed under the plan within the 3-year or longer period that the court fixes is not less than the projected disposable income of the debtor. The statute contains no standards to govern how the court determines whether to extend the 3-year period.

Section 1191(d) defines disposable income as income that is received by the debtor and that is not "reasonably necessary to be expended" for these specified purposes:

-- the maintenance or support of the debtor or a dependent of the debtor (§ 1191(d)(1)(A)); or

⁸ This is not the time or the place to debate the wisdom or validity of this rule or possible ways for an individual property to retain property.

-- a domestic support obligation that first becomes payable after the date of the filing of the petition (§ 1191(d)(1)(B)); or

-- payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

Section 1191(c)(3) states a feasibility test as part of the "fair and equitable" analysis. The requirement is that the debtor will be able to make all payments under the plan (§ 1191(c)(3)(A)(i)) or that there is a reasonable likelihood that the debtor will be able to make all payments under the plan. (§ 1191(d)(1)(B)).

Section 1191(c)(3) further requires that the plan provide appropriate remedies to protect the holders of claims or interests if the debtor does not make the required plan payments. (§1191(c)(3)(B)).

The two § 1191(c)(3) provisions thus augment the more relaxed feasibility test than the confirmation standard set forth in § 1129(a)(11). Section 1129(a)(11) requires only that confirmation is not likely to be followed by liquidation or the need for further reorganization unless the plan proposes it.

Section 1191(e) permits confirmation of a plan under § 1191(b) that provides for payment through the plan of administrative expense claims and involuntary gap claims.

If the court confirms a plan under the cramdown provisions of § 1191(b), § 1194(b) requires the trustee to make payments under the plan, unless the plan or the order confirming the plan provides otherwise. The trustee's services do not terminate under § 1183(c) upon substantial consummation of a plan confirmed under § 1191(b) because it applies only to a plan confirmed under § 1191(a).

The statute provides no guidance as to the circumstances under which the court may confirm a plan or enter a confirmation plan that does not provide for the trustee to make payment. A potential issue is whether § 1194(b) requires the trustee to make maintenance payments on long-term debts secured by real estate.

Another consequence of cramdown confirmation under § 1191(b) is that § 1141(d) does not apply, except as provided in § 1192. Section 1192 delays discharge until the debtor completes payments due within the first three years of the plan, or such longer period not to exceed five years as the court may fix. A potential issue is whether the fixing of a longer period under this section occurs at the time of discharge or at the time of confirmation.

The discharge under § 1292 discharges the debtor from all debts provided in § 1141(d)(1)(A) and allowed administrative expenses and provided for in the plan, with two exceptions. First, it does not discharge any debt 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. Second, it does not discharge any debt excepted under § 523(a).

Postconfirmation modification of plan

Section 1193(b) permits modification of a plan after confirmation if the plan was confirmed under the consensual provisions of § 1191(a)(1). The modification must comply with applicable plan content requirements. The modified plan becomes the plan only if circumstances warrant the modification and the court confirms it under § 1191(a). The holder of any claim or interest who voted to accept or reject the confirmed plan is deemed to have voted the same way unless, within the time fixed by the court, the holder changes the vote. (§ 1193(d)).

If the plan has been confirmed under § 1191(b), the debtor may modify the plan at any time within 3 years, or such longer time not to exceed five years as the court fixes. The modified plan must meet the requirements of § 1191(b).

Payments by the trustee

Section 1194(a) deals with payments and funds received by the trustee prior to confirmation. It states that the trustee shall retain them until confirmation or denial of a plan. If a plan is confirmed, the trustee distributes the money in accordance with the plan. If the plan is not confirmed, the trustee must return any payments to the debtor after deducting any unpaid administrative expense allowed under § 503(b), any payment made for the purpose of providing adequate protection to the holder of a secured claim, and any fee owing to the trustee.

Section 1194(c) permits the court, after notice and a hearing, to authorize the trustee to make adequate protections to the holder of a secured claim.

In chapter 13 cases, § 1326(a)(2) contains provisions with the same effect as § 1194(a). They make sense in the chapter 13 context because under § 1326(a)(1) the debtor must make preconfirmation plan payments to the trustee, contractual payments to lessors of personal property, and adequate protection payments to holders of claims secured by purchase money security interests in personal property.

No such provisions exist in a subchapter V case. Nothing requires preconfirmation payments to the trustee, lessors, or secured creditors. The court may require adequate protection payments, of course, but nothing in subchapter V authorizes the court to require the debtor to make preconfirmation payments to the trustee. In the absence of a way that the trustee can obtain funds from the debtor prior to confirmation, it is unclear why § 1294 contains provisions for the trustee's disbursement of preconfirmation funds. Could one argue that the § 1294(a) and (c) provisions contemplate that the court may require a debtor to make preconfirmation payments to the trustee?

Transactions with professionals

Section 1195 modifies the disinterestedness requirement for the employment of professionals under § 327(a) by providing that a person is not disqualified solely because the professional holds a prepetition claim of less than \$ 10,000.

No U.S. Trustee Fees

28 U.S.C. § 1930(a)(6)(A) requires the quarterly payment of U.S. Trustee fees in chapter 11 cases based on disbursements in the case. The new law amends this subparagraph to except cases under subchapter V from this requirement.

Effective Date

The effective date of the new legislation is February 19, 2020, which is 180 days after its enactment on August 23, 2020, when the President signed it.

SBRA of 2019 § 5 provides, in full:

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

BAPCPA provided that most of its provisions did not apply “with respect to cases commenced [under the Bankruptcy Code] before the effective date of this Act.” Pub. L. 109-8, § 1501(b) (Apr. 20, 2005). No such provision exists in the SBRA. Query whether a debtor in a small business case filed before the effective date may elect subchapter V treatment in the case when the effective date arrives?

Small Business Reorganization Act of 2019
11 U.S.C. §§ 1181-1195

(Eff. Feb. 19, 2020)

The Big Takeaways

Who may be a small business debtor? SBRA requires at least 50% of small business debtor's debt to have arisen from commercial or business activities. Small business debtors must opt-in to Subchapter V by checking the appropriate box in Item 13 of a voluntary petition. See §§ 1182(1) and (2); § 101(51D)(A); and new § 103(i).

Mandatory status conference not later than 60 days after entry of order for relief, unless court deems a later status conference appropriate upon a finding that such extension is "attributable to circumstances for which the debtor should not justly be held accountable." See §§ 1188(a) and (b).

Debtor must file pre-status conference report at least 14 days before mandatory status conference. Report must detail the "efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization." See § 1188(c).

No Committees. Unless court orders otherwise. See § 1181(b) and amended § 1102(a)(3).

Standing Trustee in every small business debtor case. See § 1183(a).

Standing Trustee serves until substantial consummation of confirmed plan. See § 1183(c).

If debtor in possession removed for cause, Standing Trustee takes over. See § 1185 (removal of debtor) and § 1183(b)(5) (duties of Standing Trustee upon debtor's removal)

Standing Trustee is paid like current Ch. 12/13 trustees, under 28 U.S.C. § 586(e)(1). See amended § 326(b) and new 28 U.S.C. § 586(e)(5).

Standing Trustee makes all payments to creditors under the confirmed plan, unless plan or confirmation order otherwise provide. See § 1194.

Standing Trustee must: (a) appear at mandatory status conference; (b) facilitate the development of a consensual plan of reorganization; and (c) perform duties generally consistent with § 1302. See § 1183(b).

No quarterly UST fees. See amended 28 U.S.C. § 1930(a)(6)(A).

Post-petition property and earnings are property of the estate. See § 1186.

Debtors must comply with § 1116(1)(A) or (B) and with §§ 1116(2), (3), (4), (5), (6), and (7).
See §§ 1187(a) and (b).

No disclosure statement, unless the court orders otherwise. See §§ 1181(b) and 1187(c).
[Per § 1187(c), N.D. Cal. combined form Ch. 11 plan/DS and related procedures are still OK.]

Only debtor may file a plan. See § 1189(a).

Debtor must file a plan no more than 90 days after entry of order for relief, unless court extends deadline upon a finding that extension is “attributable to circumstances for which the debtor should not justly be held accountable.” See § 1189(b).

Plan can modify the rights of holders of claims secured by debtor’s principal residence IF:
(a) the debt was not used primarily to acquire that real property; **and** (b) the debt was used primarily in connection with debtor’s business. See § 1190(3).

No consenting impaired class needed for confirmation IF: (a) plan satisfies § 1129(a) [other than (a)(8), (a)(10), and (a)(15)]; (b) plan does not discriminate unfairly; **and** (c) plan is fair and equitable, as to each impaired, nonconsenting class. See §§ 1181(a) and 1191(b).

Absolute Priority Rule does not apply. See § 1181(a).

Plan is “fair and equitable” IF: (a) § 1129(b)(2)(A) satisfied; (b) provides for application of all debtor’s projected disposable income for 3 years beginning on date first payment is due (or up to 5 years, as ordered) to plan payments; **and** (c) debtor will be able to make all plan payments or reasonable likelihood that debtor will be able to make all plan payments. See § 1191(c).

Debtor’s counsel can have pre-petition claim of less than \$10,000 and still be disinterested.
See § 1195.

Preference actions under § 547(b) – in ALL cases under the Code, not just Subchapter V cases – will require “reasonable due diligence in the circumstances of the case” on the part of the plaintiff “taking into account a party’s known or reasonably knowable affirmative defenses under [§ 547](c).” See amended § 547(b). [NOTE: This is in clerical amendments and is not part of the SBRA, which means this amendment likely becomes effective immediately!]

Avoidance actions in which the amount in controversy is less than \$25,000 (up from \$10,000) must be commenced in the district in which the defendant resides. See amended 28 U.S.C. § 1409(b). [NOTE: This is in clerical amendments and is not part of the SBRA, which means this amendment likely becomes effective immediately!]

Analysis

§ 1181. Inapplicability of other sections

(a) Renders §§ 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) inapplicable to a case under Subchapter V.

(b) Unless court orders otherwise, §§ 1102(a)(1), (2), and (4), as well as §§ 1102(b), 1103, and 1125 do not apply.

(c) If a plan is confirmed, § 1141(d) does not apply, except as provided in § 1192.

Sections Inapplicable under § 1181(a)

§ 105(d) – (1) requires a court to hold status conferences as are necessary to further the expeditious and economical resolution of the case; and (2) permits a court to issue scheduling orders that set certain dates and deadlines including, but not limited to: (i) deadline to file a DS and plan; (ii) deadline to solicit acceptances of a plan; (iii) deadline by which a party other than the debtor may file a plan, (iv) provides that the hearing on approval of the DS may be combined with the hearing on confirmation of the plan.

Instead: § 1188(a) requires the court to convene a status conference not later than 60 days after entry of the order for relief “to further the expeditious and economical resolution” of the case. **§ 1188(b)** permits the court to extend this period “if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.” Under **§ 1188(c)**, no fewer than 14 days prior to the status conference, 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.”

§ 1101(1) – Defines “debtor in possession” as debtor

Instead: § 1182(1) defines “debtor” as a “small business debtor”; and **§ 1182(2)** defines debtor in possession as “debtor”. [Per **§ 101(51D)**, a “small business debtor” is a person engaged in commercial or business activities that has aggregate noncontingent liquidated secured and unsecured debts as of the petition date not exceeding \$2,725,625 (as of Apr. 4, 2019 and excluding debts owed to affiliates or insiders) *not less than 50% of which arose from the commercial or business activities of the debtor**]

* *Italicized text* added to § 101(51D)(A) by clerical amendments incorporated into SBRA. [Debtor will have to opt in to treatment as a small business debtor in Item 13 of Petition; see new § 103(i), below.]

§ 1104 – Appointment of trustee or examiner

Instead: § 1183(a) provides that, if a standing Ch. 12/13 trustee has been appointed, then that individual shall serve as trustee in Subchapter V cases. Otherwise, the UST shall appoint one disinterested person to serve as trustee in the case or the UST may serve as trustee in the case, as necessary.

and

Instead: § 1185 governs removal of debtor in possession. Provides for removal of a debtor in possession “for cause,” including “fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the commencement of the case, or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter.” Tracks first portion of § 1104(a)(1), but omits (a)(2) (appointment of a trustee where it would be in the interests of creditors). Failure to perform obligations under a confirmed plan as grounds for appointment of a trustee comports with §§ 1112(b)(4)(M) (inability to effectuate substantial consummation of a confirmed plan) and (N) (material default by the debtor with respect to a confirmed plan).

§ 1105 – Termination of trustee’s appointment

Instead: § 1183(c) Termination of Trustee Service

(1) If the D’s plan is confirmed, the service of the trustee in the case shall terminate upon substantial consummation, except that the UST may reappoint a trustee as needed to perform duties set forth in § 1183(b)(3)(C) (appear at hearings concerning the modification of a confirmed plan) and § 1185 (removal of debtor in possession)

(2) No more than 14 days after substantial consummation of plan, the debtor shall file with the court and serve on the trustee, UST, and all parties in interest notice of substantial consummation.

§ 1106 – Duties of trustee and examiner

Instead: § 1183(b)

(b) The trustee shall –

(1) perform duties specified in §§ 704(a)(2) (be accountable for all property received), (5) (examine POC and object to improper claims, if necessary), (6) (oppose the debtor’s discharge, if advisable), (7) (unless otherwise ordered, furnish information concerning the estate and the estate’s administration as parties in interest might request), and (9) (make a

final report and file a final account of the administration of the estate with the court and with the UST)

(2) If the court orders for cause and on request by a party in interest, the trustee, or the UST, perform duties specified in §§ 1106(a)(3) (investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business and any other matter relevant to the case or to the formulation of a plan), (4) (as soon as practicable, file a statement of such investigation and transmit a summary or copy to any creditors' or equity committee, any indenture trustee, or as ordered), **and** (7) (file any necessary or court-ordered post-confirmation reports)

(3) appear at the § 1188 status conference **and** at any hearing that concerns:

- (a) value of property subject to a lien
- (b) confirmation
- (c) post-confirmation modification of plan
- (d) sale of property of the estate

(4) ensure commencement of timely payments under confirmed plan

(5) If D is removed (see § 1185), perform the duties in § 704(a)(8) (for an operating business, file MORs) and §§ 1106(a)(1) (incorporates §§ 704(a)(2) (collect and reduce to \$\$ property of the estate as expeditiously as possible), (5) (examine POC and object to improper claims, if necessary), (7) (unless otherwise ordered, furnish information concerning the estate and the estate's administration as parties in interest might request), (8) (for an operating business, file MORs), (9) (make a final report and file a final account of the administration of the estate with the court and with the UST), (10) (provide notice to holders of domestic support claims as required by § 704(c)), (11) (continue to fulfill debtor's ERISA plan administrator obligations, if any), **and** (12) (use all reasonable and best efforts to transfer patients from a healthcare business that is being closed to one that is nearby and similar); (2) (if debtor hasn't done so, file schedules, statements, and other documents required by § 521(a)(1)); **and** (6) (provide financial information to taxing authorities)

(6) Provide notice to holders of domestic support claims as required by § 704(c)

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

and

Instead: § 1194 requires debtor to make all plan payments through the trustee

(a) Trustee retains all funds until confirmation or denial of confirmation. If plan confirmed, trustee makes payments according to confirmed plan. If plan not confirmed, trustee returns \$\$ to

debtor after deducting (1) unpaid claims under § 503(b) [administrative expense claims]; (2) adequate protection payments; and (3) any fee owing to the trustee.

(b) If a plan is confirmed, trustee makes payments to creditors under the plan, unless plan or confirmation order provide otherwise.

(c) Prior to confirmation and after notice and a hearing, court may order trustee to make adequate protection payments to holder of secured claim.

§ 1107 – Rights, powers, and duties of debtor in possession

Instead: § 1184 affords debtor in possession “all the rights and powers” of a trustee [other than to compensation under section 330], and requires a debtor to “perform all functions and duties of a trustee” [other than those in §§ 1106(a)(2) (if debtor hasn’t done so, file schedules, statements, and other documents required by § 521(a)(1)), (4) (as soon as practicable, file a statement of the investigation of debtor’s financial condition and transmit a summary or copy to any creditors’ or equity committee, any indenture trustee, or as ordered), and (6) (provide financial information to taxing authorities)], including the operation of debtor’s business.

§ 1108 – Authorization to operate business

Instead: § 1183(b)(5) (authorizing trustee to operate debtor’s business upon debtor’s removal) and **§ 1184** (authorizing debtor in possession to operate its business)

§ 1115 – Property of the estate

Instead: § 1186

(a) If a plan is confirmed, property of the estate includes everything in § 541 and

(1) property acquired post-petition but prior to the earlier of closure of case, dismissal, or conversion to 7, 12, or 13; and

(2) earnings from services performed by the debtor post-petition but before the earlier of closure of case, dismissal, or conversion to 7, 12, or 13.

(b) Except per § 1185 (removal of debtor in possession), per a confirmation order, or per a confirmed plan, the debtor shall remain in possession of all property of the estate.

§ 1116 – Duties of trustee or debtor in possession in small business cases

Instead: § 1187

(a) Requires debtor to append to petition (voluntary case) or, in involuntary case, to file within 7 days of entry of order for relief (1) most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return; or (2) statement under penalty of perjury that no such documents have been prepared or filed [i.e., to comply with §§ 1116(1)(A) or (B)]

(b) Requires debtor to comply with §§ 1116(2) (attend § 341 meeting, IDI, and scheduling conferences, unless ordered otherwise upon a finding of “extraordinary and compelling circumstances”), (3) (timely file all schedules and SOFA, unless court extends deadline; deadline cannot be extended beyond 30 days following entry of order for relief except upon a finding of “extraordinary and compelling circumstances”), (4) (file all MORs and other post-petition reports), (5) (maintain insurance), (6) (timely file all tax return and timely pay all taxes entitled to administrative expense priority, except those being contested by appropriate proceedings), and (7) (allow UST or designated representative to inspect premises, books, and records)

(c) If court orders application of § 1125, then § 1125(f) will apply [if plan provides adequate information as defined in § 1125(a)(1), then separate DS not required; court may use standardized forms; tentative approval process OK; OK to solicit votes on tentatively approved plan; OK to combine confirmation hearing with hearing to consider final approval of DS]

§ 1121 – Who may file a plan

Instead: § 1189

(a) Only debtor may file a plan

(b) D shall file a plan no more than 90 days after entry of order for relief, unless court extends that period upon a finding that such an extension is “attributable to circumstances for which the debtor should not justly be held accountable”

§ 1123(a)(8) – Requires a plan proposed by an individual debtor to provide for payments to creditors all or such portion of earnings from personal services performed post-petition or other future income as is necessary for the execution of the plan

Instead: § 1190 requires plans filed under Subchapter V to –

(1) shall include:

- (A) a brief history of the business operations of the debtor
 - (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 § 1123(b)(5) [Ch. 11 anti-modification provision], “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.

§ 1123(c) – plan not proposed by debtor may not provide for use, sale, or lease of property exempted under § 522 absent debtor’s consent

Instead: § 1189(a), which permits only the debtor to file a plan

§ 1127 – Modification of plan

Instead: § 1193 governs modification of plans

- (a) Debtor may modify a plan at any time prior to confirmation, but may not propose a modified plan that fails to comply with § 1122 (classification of claims or interests) and § 1123 (contents of plans; but see § 1190)
- (b) Post-confirmation and before substantial consummation, debtor may modify the plan at any time so long as modified plan complies with § 1122 (classification of claims or interests) and § 1123 (contents of plans; but see § 1190) **and** confirms the modified plan **and** finds that circumstances warrant the modification
- (c) Post-confirmation and post-substantial consummation, debtor may modify the plan at any time within 3 years, or such longer time as fixed by the court (but not to exceed 5 years), but any proposed modified plan must comply with § 1191(b) and court must so find and must find that circumstances warrant the modification

(d) Post-confirmation, any holder of a claim or interest that has accepted or rejected the plan is deemed to have accepted or rejected the modified plan unless, within the time fixed by the court, such holder changes its previous acceptance or rejection.

§ 1129(a)(15) – In order to be confirmed, an individual debtor’s plan, to which the holder of an allowed unsecured claim has objected, must distribute to the objecting creditor: (A) value, as of the effective date, not less than the amount of such objecting creditor’s claim; or (B) value not less than the projected disposable income of the debtor to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

§ 1129(b) – Cramdown/Absolute Priority Rule

Instead: § 1191 governs confirmation

(a) Court shall confirm a plan only if all requirements of § 1129(a) [other than (a)(15)] are met

(b) BUT if plan complies with all requirements of § 1129(a) [other than (a)(8) (each class has accepted plan or is not impaired), (a)(10) (at least one accepting, impaired, non-insider class required), and (a)(15) (see above)] court shall confirm the plan so long as 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) Plan is fair and equitable if:

(1) as to a class of secured claims, the plan satisfies § 1129(b)(2)(A) [(i)(I) and (II) retain lien and receive present value of allowed secured claim in deferred cash payments; (ii) sale of collateral free and clear with lien to attach to proceeds and treatment under (i) or (iii); or (iii) indubitable equivalent]

(2) as of effective date of plan

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

(B) the value of property to be distributed under the plan [in the same period defined in (A)] 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 non-exempt assets, to protect the holders of claims or interests in the event that the payments are not made.

(d) Disposable income means – the income that is received by the debtor and that is not reasonably necessary to be expended –

(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 expenses necessary for the continuation, preservation, or operation of the debtor's business

(e) Notwithstanding § 1129(a)(9)(A) [unless claimant agrees, plan must pay holders of claims entitled to priority under § 507(a)(2) [post-petition administrative expenses under § 503(b)] or § 507(a)(3) [post-petition, allowed, unsecured claims arising in an involuntary case from the ordinary course of the debtor's business but before the appointment of a trustee or entry of an order for relief] cash on effective date in an amount = allowed amount of such claim], court may confirm a plan that provides for payment of such claims through the plan.

§ 1129(c) – Court may confirm only one plan unless the confirmation order is revoked

Instead: § 1193 governs modification of plans and provides for confirmation of modified plans under a number of circumstances

§ 1129(e) – In a small business case, the court shall confirm a plan that meets all content and confirmation requirements and that is filed within the time limits provided by § 1121(e) [applicable to small business cases] not later than 45 days after filing of the plan unless the time for confirmation is extended in accordance with § 1121(e)(3).

Instead: § 1189(a) only the debtor may file a plan; **and (b)** debtor shall file a plan not later than 90 days after entry of order for relief, unless court extends that deadline upon a finding that the “need for the extension is attributable to circumstances for which the debtor should not justly be held accountable”

§ 1141(d)(5) – In an individual case (A) confirmation does not discharge any debt until completion of payments under the plan but (B)(i) court may grant a discharge to a debtor who hasn't completed all payments under the plan if the present value of money or property actually distributed on account of each allowed, unsecured claim is not less than what the holders of such claims would have received in distributions in a case under Ch. 7, (ii) modification is not practicable, and (iii) sub-part (C) is satisfied [no reasonable cause to believe § 522(q)(1) applies]

Instead: § 1192 requires the court to issue a discharge “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 as fixed by court, not to exceed 5 years unless debtor waives discharge in writing).

Discharge applies to all debts provided in § 1141(d)(1)(A), and all other debts allowed under § 503, 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 as fixed by the court; or (2) specified in § 523(a)

Sections Inapplicable under § 1181(b)

§ 1102(a)(1) – provides for appointment of an unsecured creditors committee

§ 1102(a)(2) – provides for appointment of additional creditors' committees and/or equity security holders committees

[But see amended § 1102(a)(3), which will apply and which will read: “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.”]

§ 1102(a)(4) – authorizes UST to change membership of committees

§ 1102(b) – governs composition of committees

§ 1103 – powers and duties of committees

§ 1125 – governs disclosure statements [But see § 1187(c), which permits the court to order the application of § 1125 and provides that, if court does so, § 1125(f) will apply (if plan provides adequate information as defined in § 1125(a)(1), then separate DS not required; court may use standardized forms; tentative approval process OK; OK to solicit votes on tentatively approved plan; OK to combine confirmation hearing with hearing to consider final approval of DS)]

Sections Inapplicable under § 1181(c)

§ 1141(d) – If plan confirmed, § 1141(d) shall not apply except as provided in § 1192 [Discharge applies to all debts provided in § 1141(d)(1)(A), and all other debts allowed under § 503, 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 as fixed by the court; or (2) specified in § 523(a)]

Other

§ 1195 – A person is not disqualified from employment under § 327 by virtue of holding a pre-petition claim of less than \$10,000.

Important Clerical Amendments

§ 101(51D)(A) – revises definition of “small business debtor” to require at least 50% of debt to have arisen from debtor’s commercial or business activities and removes language regarding the absence of a committee (given that § 1181(b) renders §§ 1102(a)(1), (a)(2), and (a)(4); § 1102(b); and § 1103 inapplicable).

§ 103 – adds new § 103(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 shall apply.”

§ 326(a) – excludes small business debtor cases from those to which this section applies

§ 326(b) – adds small business debtor cases to those to which this section applies. [This means trustee compensation will be governed this section and will permit “reasonable compensation . . . for the trustee’s services, payable after the trustee renders such services, not to exceed 5% upon all payments under the plan.” See also 28 U.S.C. § 586, below.]

§ 363(c)(1) – adds small business debtor cases to those in which the trustee is authorized to in which a trustee may enter into ordinary course transactions, and may use estate property in the ordinary course, without notice or hearing

§ 364(a) – adds small business debtor cases to those in which the trustee is authorized to obtain ordinary course unsecured credit or to incur ordinary course unsecured debt as an administrative expense

§ 523(a) – adds “§ 1192” to the list of discharges to which § 523(a)’s exceptions apply

§§ 524(a)(1), (a)(3), (c)(1), and (d) – adds § 1192 to list of discharges in each of these sections

§ 547(b) – amended to condition the ability to avoid a preferential transfer on the plaintiff having undertaken “reasonable due diligence in the circumstances of the case” and having taken “into account a party’s known or reasonably knowable affirmative defenses under [§ 547](c).”

[NOTE: This is in clerical amendments, not in the SBRA, which means this amendment likely becomes effective immediately.]

§ 1102(a)(3) – rewritten to state: “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.”

28 U.S.C. § 586 – adds small business debtor cases to those referenced in §§ 586(a)(3), (b), (d)(1), (e)(1), and (e)(2) and adds new § 586(e)(5), which states: “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 . . . the court shall award compensation to the trustee consistent with the services performed by the trustee and the limits on the compensation of the trustee established pursuant to paragraph (1) of this subsection.”

28 U.S.C. § 1409(b) – amended to increase from \$10,000 to \$25,000 as the threshold amount in controversy that determines venue in avoidance actions. Avoidance actions in which the amount in controversy is less than \$25,000 must be brought in the defendant’s home district. [NOTE: This is in clerical amendments, not in the SBRA, which means this amendment likely becomes effective immediately.]

28 U.S.C. § 1930(a)(6)(A) – amended to exclude Subchapter V cases from those Ch. 11 cases in which a quarterly fee must be paid.