

VBA BANKRUPTCY LAW SECTION
BENCH-BAR BROWN BAG LUNCH MEETING
with Hon. Colleen A. Brown, U.S. Bankruptcy Judge

United States Bankruptcy Court, Rutland
Friday, September 13, 2019 ~ 12:00 to 1:00 PM
Dial-in number: (888) 398-2342. Access code: 846 68 72#
If you dial into the meeting, please use your “mute” function, unless speaking.

AGENDA

1. CH 11, 12 AND 13 OPERATING ORDERS & RPT FORMS Judge Brown, Jan Sensenich & Lisa Penpraze
 - Update of meetings / progress thus far (*cont'd to 9/13/19*)
2. NEW GENERAL ORDER FROM USDC RE ADMISSION OF ATTORNEYS Judge Brown
 - U.S. Bankruptcy Court can now admit attorneys to D. Vt (both USDC & USBC)
 - See attachment: USDC General Order #82
3. FEDERAL BANKRUPTCY RULE AMENDMENTS Judge Brown
 - Affects Bk Rules 2005, 3007, 7007.1, and 9036
 - Comment period ends February 19, 2020
 - See attachment (redacted to include only the amended Bk'cy Rules)
4. E-WAGE PROGRAM FROM TFS BILLPAY Jan Sensenich
 - Allows debtors and their attys to set up wage deductions without employer involvement
 - See link below
5. SEMI-ANNUAL MEETING W/Ts, UST & COURT MGRS Judge Brown & Lisa Penpraze
 - Summary of discussion, at meeting held on 4/30/19, per Bk Rule 9003(b)
6. TASK FORCE REPORT (continued discussion) Judge Brown & Task Force
 - The purpose of this TF (created in Feb 2019*) was to make recommendations on 4 issues:
 - possible new procedure re how often mtge pmt chg notcs must be filed for HELOC mtges;
 - possible new procedure for T in CMP cases when D objects to mtge pmt chg notc;
 - creation of local forms for motions to extend the stay under § 362(c)(3); and
 - possible revision to LRs re *pro se* parties' use of ECF in response to Bk Rules eff 12/1/18.
 - Appears conclusions on each topic are ready for Bk Section's review & input
 - See attachment: (i) memo summarizing outcome / status of each item with
(ii) proposed local forms for § 362(c)(3) motions
7. VBA BANKRUPTCY SECTION'S 19TH ANNUAL HOLIDAY CLE Don Hayes & Nancy Giese
 - December 6, 2019 – Killington Grand Hotel
 - Need presenters; *possible topics: Student Loans, Pers Injury, Veteran's Issues, Ethics*
 - Legal Services Vermont will have update on changes to their name, staff, procedures, etc.
 - will include current pro bono stats & decision not to renew Upsolve contract

8. BANKRUPTCY LEGISLATION UPDATE

Judge Brown & Lisa Penpraze

- President Trump signed 3 bk'cy bills into law on 8/23/19:
 - Honoring American Veterans in Extreme Need (HAVEN) Act,
 - Small Business Reorganization Act (SBRA)– eff Feb 2020, and
 - Family Farmer Relief Act (increases aggregate debt limit to \$10M in family farmer cases)
- See copies of 3 bills.

9. VTB BAR'S OUT OF STATE SEMINARS

R. Obuchowski, J. Sensenich

- ACT2 Ch 12 Conf in Indianapolis in July 2019 – *kudos to Jan S!*
- NABT Conf in Denver in August 2019 – *kudos to Ray O!*

10. CLERK'S OFFICE UPDATE

Jeff Eaton

11. INTRODUCTION OF NEW CHAMBERS STAFF

Judge Brown

- Ashley Mauldin Spillman (as career law clerk) and Harrison Drapo (as extern)

12. NEW BUSINESS?

The group

- Questions? Comments? Suggestions for future BB topics?

* Task Force members: Jeff Hardiman, Tavian Mayer, Rebecca Rice, Jan Sensenich, Susan Steckel, Todd Taylor;
ex officio members: Don Hayes / Nancy Geise (*as VBA Bk Section co-chairs*), Theresa Davidson (*VTB Clerk's Office*).

6 Attachments:

- USDC General Order,
- Memo re TF issues (that includes 3 proposed forms for §362(c)(3) motions),
- Announcement re pending Bk Rule amendments,
- HAVEN Act – H.R. 2938
- Small Biz Reorg Act – H.R. 3311
- Family Farmer Relief Act – H.R. 2336

Links for eWage:

Tutorial: How to Create Your Client's eWage Account (Free)

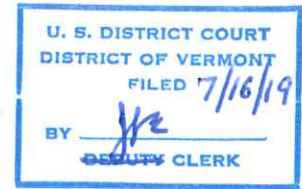
<https://www.dropbox.com/s/n11ui0cu9l800dm/How%20to%20create%20an%20eWage%20account.mp4?dl=0>

Video Link Showing Quick Steps:

<https://www.dropbox.com/s/v31mxfr84xowz2n/How%20to%20create%20an%20atty%20portal-%20FInal.mp4?dl=0>

These Bench-Bar lunch meetings are coordinated by the Bankruptcy Court.
1 CLE credit is provided for attendance at each meeting.
Contact Maria Dionne @ 802-657-6432 or maria_dionne@vtb.uscourts.gov with any questions.

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**



In re:)
)
Order of Designation)
for Attorney Admissions)
in Bankruptcy Court)

GENERAL ORDER #82

The District Court hereby authorizes the Hon. Colleen A. Brown to admit attorneys to the bar of the District of Vermont in all matters involving the Bankruptcy Court. Judge Brown is in a good position to evaluate the application of these practitioners and to observe them in practice. It will also be a convenience for counsel traveling from out of state to be admitted in the course of a bankruptcy case. The same standards and procedure apply to these admissions and an attorney, once admitted, will be admitted to practice for all purposes.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 15th day of July, 2019.

A handwritten signature in dark ink, appearing to read "Geoffrey W. Crawford".

Geoffrey W. Crawford
Chief Judge

Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure

Request For Comment

Comments are Sought
on Amendments to:

Appellate Rules 3, 6, 42, and Forms 1 and 2

Bankruptcy Rules 2005, 3007, 7007.1, and 9036

Civil Rule 7.1

All Written Comments are Due
by February 19, 2020



THE UNITED STATES COURTS

Prepared by the
Committee on Rules of Practice and Procedure of the
Judicial Conference of the United States

AUGUST 2019

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, DC 20544

DAVID G. CAMPBELL
CHAIR

REBECCA A. WOMELDORF
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

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APPELLATE RULES

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BANKRUPTCY RULES

JOHN D. BATES
CIVIL RULES

DONALD W. MOLLOY
CRIMINAL RULES

DEBRA A. LIVINGSTON
EVIDENCE RULES

MEMORANDUM

TO: THE BENCH, BAR, AND PUBLIC

FROM: Honorable David G. Campbell, Chair
Committee on Rules of Practice and Procedure



DATE: August 19, 2019

RE: Request for Comments on Proposed Rules and Forms Amendments

The Judicial Conference Advisory Committees on Appellate, Bankruptcy, and Civil Rules have proposed amendments to their respective rules, and requested that the proposals be circulated to the bench, bar, and public for comment. The proposed amendments, advisory committee reports, and other information are attached and posted on the Judiciary's website at:

<http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>

Opportunity for Public Comment

All comments on these proposed amendments will be carefully considered by the advisory committees, which are composed of experienced trial and appellate lawyers, judges, and scholars. Please provide any comments on the proposed amendments, whether favorable, adverse, or otherwise, as soon as possible, but **no later than February 19, 2020**. All comments are made part of the official record and are available to the public.

Comments concerning the proposed amendments must be submitted electronically by following the instructions at:

<http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>

Members of the public who wish to present testimony may appear at public hearings on these proposals. The advisory committees will hold hearings on the proposed amendments on the following dates:

- Appellate Rules in Washington, DC on October 30, 2019, and in Phoenix, AZ on January 27, 2020;
- Bankruptcy Rules in Kansas City, MO on January 7, 2020, and in Phoenix, AZ on January 27, 2020; and
- Civil Rules in Washington, DC on October 28, 2019, and in Phoenix, AZ on January 27, 2020.

If you wish to testify, you must notify the Committee **at least 30 days before the scheduled hearing**. Requests to testify should be emailed to the Secretary of the Committee on Rules of Practice and Procedure at: RulesCommittee_Secretary@ao.uscourts.gov. Hearing cancelations, if any, will be posted at: <https://www.uscourts.gov/rules-policies/about-rulemaking-process/open-meetings-and-hearings-rules-committee>.

At this time, the Committee on Rules of Practice and Procedure has approved these proposed amendments only for publication and comment. The proposed amendments have not been submitted to or considered by the Judicial Conference or the Supreme Court. After the public comment period, the advisory committees will decide whether to submit the proposed amendments to the Committee on Rules of Practice and Procedure for approval in accordance with the Rules Enabling Act.

If approved, with or without revision, by the relevant advisory committee, the proposed amendment must be approved by the Committee on Rules of Practice and Procedure, the Judicial Conference, and the Supreme Court. The proposed amendments would become effective on December 1, 2021 absent congressional action.

If you have questions about the rulemaking process or pending rules amendments, please contact the Rules Committee Staff at 202-502-1820 or visit:

<http://www.uscourts.gov/rules-policies>

**Rule 2005. Apprehension and Removal of Debtor to
Compel Attendance for Examination**

(c) CONDITIONS OF RELEASE. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the relevant provisions and policies of title 18, U.S.C., § 3146(a) and (b) 3142.

The rule is amended to replace the reference to 18 U.S.C. § 3146(a) and (b) with a reference to 18 U.S.C. § 3142. Sections 3141 through 3151 of Title 18 were repealed by the Bail Reform Act of 1984, Pub. L. No. 98-473, Title II, § 203(a), 98 Stat. 1979 (1984), and replaced by new provisions dealing with bail. The current version of 18 U.S.C. § 3146 deals not with conditions to assure attendance or appearance, but with penalties for failure to appear. The topic of conditions is in 18 U.S.C. § 3142. Because 18 U.S.C. § 3142 contains provisions bearing on topics not included in former 18 U.S.C. § 3146(a) and (b), the rule is

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2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

also amended to limit the reference to the “relevant” provisions and policies of § 3142.

1 **Rule 3007. Objections to Claims**

2 (a) TIME AND MANNER OF SERVICE.

3 * * * * *

4 (2) *Manner of Service.*

5 (A) The objection and notice shall be served
6 on a claimant by first-class mail to the person
7 most recently designated on the claimant's
8 original or amended proof of claim as the
9 person to receive notices, at the address so
10 indicated; and

11 * * * * *

12 (ii) if the objection is to a claim of
13 an insured depository institution as
14 defined in section 3 of the Federal
15 Deposit Insurance Act, in the
16 manner provided by Rule 7004(h).

17 * * * * *

Committee Note

Subdivision (a)(2)(A)(ii) is amended to clarify that the special service method required by Rule 7004(h) must be used for service of objections to claims only on insured depository institutions as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813. Rule 7004(h) was enacted by Congress as part of the Bankruptcy Reform Act of 1994. It applies only to insured depository institutions that are insured by the Federal Deposit Insurance Corporation and does not include credit unions, which are instead insured by the National Credit Union Administration. A credit union, therefore, may be served with an objection to a claim according to Rule 3007(a)(2)(A)—by first-class mail sent to the person designated for receipt of notice on the credit union’s proof of claim.

1 **Rule 7007.1. Corporate—Ownership Disclosure**
2 **Statement**

3 (a) REQUIRED DISCLOSURE. Any
4 nongovernmental corporation that is a party to an adversary
5 proceeding, other than the debtor, ~~or a governmental unit,~~
6 shall file ~~two copies of~~ a statement that identifies any parent
7 corporation and any publicly held corporation, ~~other than a~~
8 ~~governmental unit, that directly or indirectly~~ that owns 10%
9 or more of ~~any class of the corporation's equity interests,~~ its
10 stock or states that there ~~are no entities to report under this~~
11 ~~subdivision~~ is no such corporation. The same requirement
12 applies to a nongovernmental corporation that seeks to
13 intervene.

14 (b) TIME FOR FILING; SUPPLEMENTAL FILING.
15 ~~A party shall file the~~ The disclosure statement ~~shall;~~ required
16 ~~under Rule 7007.1(a)~~

17 (1) be filed with ~~its~~ the corporation's first
18 appearance, pleading, motion, response, or other
19 request addressed to the court; and

20 (2) be supplemented whenever the
21 information required by this rule changes
22 ~~A party shall file a supplemental statement~~
23 ~~promptly upon any change in~~
24 ~~circumstances that this rule requires the~~
25 ~~party to identify or disclose.~~

Committee Note

The rule is amended to conform to recent amendments to Fed. R. Bankr. P. 8012, Fed. R. App. P. 26.1., and Fed. R. Civ. P. 7.1. Subdivision (a) is amended to encompass nongovernmental corporations that seek to intervene. Stylistic changes are made to subdivision (b) to reflect that some statements will be filed by nonparties seeking to intervene.

1 **Rule 9036. Notice and Service ~~Generally~~ by Electronic**
2 **Transmission¹**

3 (a) IN GENERAL. This rule applies ~~W~~ whenever
4 these rules require or permit sending a notice or serving a
5 paper by mail or other means, ~~the clerk, or some other~~
6 ~~person as the court or these rules may direct, may send the~~
7 ~~notice to — or serve the paper on —~~

8 (b) NOTICES FROM AND SERVICE BY THE
9 COURT.

10 (1) Registered Users. The clerk may send notice
11 to or serve a registered user by filing ~~the notice or~~
12 ~~paper~~ it with the court's electronic-filing system.

13 (2) All Recipients. For any recipient, the clerk
14 may send notice or serve a paper ~~Or it may be sent~~
15 ~~to any person by other~~ electronic means that the

¹ The changes indicated are to the version of Rule 9036 that will take effect on December 1, 2019, assuming that Congress takes no action to the contrary.

8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

16 ~~person~~ recipient consented to in writing,
17 including by designating an electronic address for
18 receipt of notices under Rule 2002(g)(1). But
19 these exceptions apply:

20 (A) if the recipient has registered an
21 electronic address with the Administrative
22 Office of the United States Courts'
23 bankruptcy-noticing program, the clerk shall
24 send the notice to or serve the paper at that
25 address; and

26 (B) if an entity has been designated by the
27 Director of the Administrative Office of the
28 United States Courts as a high-volume
29 paper-notice recipient, the clerk may send
30 the notice to or serve the paper electronically
31 at an address designated by the Director,

32 unless the entity has designated an address

33 under § 342(e) or (f) of the Code.

34 (c) NOTICES FROM AND SERVICE BY AN

35 ENTITY. An entity may send notice or serve a paper in the

36 same manner that the clerk does under (b), excluding

37 (b)(2)(A) and (B).

38 (d) COMPLETING NOTICE OR SERVICE. ~~In either~~

39 ~~of these events,~~ Electronic ~~service or notice~~ or service is

40 complete upon filing or sending but is not effective if the

41 filer or sender receives notice that it did not reach the person

42 to be served.

43 (e) INAPPLICABILITY. This rule does not apply to

44 any ~~pleading or other~~ paper required to be served in

45 accordance with Rule 7004.

Committee Note

The rule is amended to take account of the Administrative Office of the United States Courts' program for providing notice to high-volume paper-notice recipients.

Under this program, when the Bankruptcy Noticing Center (“BNC”) has sent by mail more than a designated number of notices in a calendar month (initially set at 100) from bankruptcy courts to an entity, the Director of the Administrative Office will notify the entity that it is a high-volume paper-notice recipient. As such, this “threshold notice” will inform the entity that it must register an electronic address with the BNC. If, within a time specified in the threshold notice, a notified entity enrolls in Electronic Bankruptcy Noticing with the BNC, it will be sent notices electronically at the address maintained by the BNC upon a start date determined by the Director. If a notified entity does not timely enroll in Electronic Bankruptcy Noticing, it will be informed that court-generated notices will be sent to an electronic address designated by the Director. Any designation by the Director, however, is subject to the entity’s right under § 342(e) and (f) of the Code to designate an address at which it wishes to receive notices in chapter 7 and chapter 13 cases, including at its own electronic address that it registers with the BNC.

The rule is also reorganized to separate methods of electronic noticing and service available to courts from those available to parties. Both courts and parties may serve or provide notice to registered users of the court’s electronic-filing system by filing documents with that system. Both courts and parties also may serve and provide notice to any entity by electronic means consented to in writing by the recipient. As a result of a contemporaneous amendment to Rule 2002(g)(1) and Official Form 410, this consent may be indicated by providing an electronic address for the receipt of notices on a proof of claim. Only courts may serve or give notice to an entity at an electronic address registered with the

BNC as part of the Electronic Bankruptcy Noticing program, and any such address will supersede for court-generated notices an electronic address specified on a proof of claim.

The title of the rule is revised to more accurately reflect the rule's applicability to methods of electronic noticing and service. Rule 9036 does not preclude noticing and service by physical means otherwise authorized by the court or these rules.



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

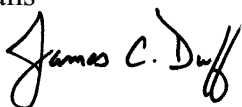
JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

August 19, 2019

MEMORANDUM

To: All United States Judges
Circuit Executives
District Court Executives
Clerks, United States Courts
Senior Staff Attorneys
Chief Circuit Mediators
Bankruptcy Administrators
Circuit Librarians

From: James C. Duff 

RE: PROPOSED AMENDMENTS FOR PUBLIC COMMENT—AUGUST 2019
(IMPORTANT INFORMATION)

The Judicial Conference Advisory Committees on Appellate, Bankruptcy, and Civil Rules have proposed amendments to the following rules and have asked that they be circulated to the bench, bar, and public for comment.

Appellate Rules: 3, 6, 42, and Forms 1 and 2
Bankruptcy Rules: 2005, 3007, 7007.1, and 9036
Civil Rule: 7.1

The proposed amendments and the advisory committees' reports explaining the proposed changes are posted on the Judiciary's website at:
<http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>.

The information is posted in a printable format for those who prefer hard-copy documents.

The public comment period closes on February 19, 2020.

If you have any questions regarding this matter, please contact the Rules Committee Staff at (202) 502-1820 or via email at RulesCommittee_Secretary@ao.uscourts.gov.



Introducing eWage by TFS

The biggest change to Chapter 13 plan payments since ePay

Traditional payroll deduction is often considered the gold standard in payments, but it does have its flaws. We heard from debtors about the embarrassment of having their employer know they are in bankruptcy, and their fear of losing their dignity in the workplace.

And we've heard from Trustees across the country about the difficulties associated with a traditional order – waiting months for an employer to begin a wage deduction, receiving checks with no case number or voucher, having the check lost in the mail with no way to track, and the headache of stopping the wage deduction after the case has been closed!

That's where eWage by TFS comes in. We've worked hard to build yet another payment option to combat the flaws and hassles the traditional methods provide. And, with yet another option, everyone benefits!



Dependable Payments

Wages go from the payroll to the trustee and the money never touches the debtor's hands. In addition, eWage removes common errors that are attendant to paper payments - funds will always be identified, and payments will never "get lost in the mail."



Full Control

eWage is far easier to adjust for a plan adjustment. The attorney or paralegal simply prints out another form with the updated amount. New job? The debtor brings the authorization form to the new employer. No need for the Trustee to have the wage order sent to the new employer.



Easy to Use Tools

eWage provides the trustee's staff with better tools. If the case is completed, dismissed, or converted, the account can be deactivated and the flows of funds stopped. eWage also removes the paper-intensive procedures that currently surround traditional wage deductions.

Want to learn More? Contact us today at trustee@tfsbillpay.com to set up a walk through of the new eWage service!

www.tfsbillpay.com

DIRECT DEPOSIT AUTHORIZATION FORM

For Employer/HR: Please deposit \$ 102.99 to the routing and account numbers on the check below.

The remaining net payroll should be deposited into my existing bank account.

Employee Name: James Girtatos

James Girtatos
146 Nartoff Road
Hollis, NH 03049

1936

DATE

PAY TO THE ORDER OF \$ 102.99

DOLLARS

FOR

026073066 07686472683

Routing Number

Bank Account Number

Details

Bank Name: Esquire Bank

Account Number: 07686472683

Routing Number: 026073066

Type of Account: Checking

Dollar Amount: \$ 102.99 (This is the amount per pay period)

Authorization

Employer is hereby authorized to add a second account and deposit \$ 102.99 per pay period into the above account and the net into my existing account. This authorization will remain in effect until I modify or cancel it in writing.

Employee Signature: _____

Date: _____

VTB Task Force 2019 re Procedural Issues

Tentative Conclusions ~ September 2019

The TF was formed to address four, unrelated issues and addressed those issues as follows:

- I. Possible new procedure for dealing w/ notice of mtge pmt changes from Cs w/ HELOC mtges**
4/5/19 BB mtg: J. Hardiman proposed no notc of pmt change would be req'd unless there was a change in (i) int rate, (ii) amortization or (iii) escrow amt. There was a discussion about the option of setting fixed rate for period of time (3, 6, 12 mos?) during the term of a ch 13 case. **Cont'd to 9/13/19**
9/13/19 new proposal: adopt ABI Commission Recommendation re Rule 3002.1 (a)(2):
The HELOC C need only send an annual notice, as long as
 1. the monthly change is less than \$10 and
 2. includes a reconciliation amt to account for any over- or under-pmt received during the prior year.The monthly pmt specified in the annual notice would be adjusted upward or downward to account for the reconciliation amount. ALSO, no late fee or declaration of default if D pays monthly fee on last stmt.
- II. Possible new procedure for T in CMP cases when D objects to Mortgage Pmt Change Notice**
At the 4/5/19 BB mtg, this was discussed but no conclusion was reached. **Cont'd to 9/13/19**
9/13/19 new proposal: When the D or T objects to a notice of mtge pmt change then, Unless the mtge C reaches a stipulation with the objecting party that provides otherwise, then
 1. The D will not be required to increase the plan payment, and the T will not be required to increase the monthly disbursement to the mtge C, until the Court rules on the objection.
 2. If the objection is overruled then the D must file a motion to modify and a modified plan, within 14 days of the Court's ruling, to cure the arrears and increase the mtge pmt going forward.
 3. The mtge C will not be entitled to enforce its rights against the D based on the default that occurs during the time the objection is pending, or while the motion to modify is pending, as long as the D has timely filed the motion to modify, if needed.
 4. If the D chooses to increase plan payments based on the notice of mtge payment change, notwithstanding the pending objection, the T shall retain those additional sums and continue to make the pre-notice payment, until the Court rules on the objection. If the Court sustains the objection the T will apply any such funds to future payments due under the plan (or, at the D's discretion, deem the plan complete earlier or distribute them to the general unsecured creditors).
- III. Possible new procedure & forms for extending the stay under 362(c) [See Attachment]**
3/28/19: T. Taylor proposed a Model Form that included both a motion to extend the automatic stay in a repeat filer case, and a notice of evidentiary hearing (for that motion). At the April BB meeting the group agreed we would use that Model Form when applicable, but also have a Model Form that had just the motion (for those instances in which the D's atty is not yet ready to file the notice of evidentiary hearing at the time s/he is fling the motion) and one for a proposed order, as well.
9/13/19 Status: Complete. Chambers has drafted a Model Form for § 362(c) cases that has 3 parts: A is the motion & evidentiary hearing notice, B includes just the motion, and C is a proposed order. See attached.
- IV. Possible new procedure or LR change for pro se parties to file documents electronically**
3/28/19: TF recommended no change the current procedure which allows pro se parties to "file electronically" by e-mailing documents to the Clerk's Office since that seems to be working well.

They suggested slight revisions to the LRs to clarify the pertinent rules & include a recommendation that the filer call the Clerk's Office just prior to or after emailing that document

➤ The proposed changes are set out below in red:

VT. LBR 9011-2. *PRO SE* PARTIES

– REQUIREMENTS, RETENTION OF DOCUMENTS, USE OF CM/ECF.

...

(b) *Pro Se* Party's Duty to Retain Originals of Documents Submitted by E-Mail for Filing.

The *pro se* party must retain for 5 years the originals of any documents they submit, by email, to the Clerk, for filing. On request or order of this Court or any other court, the *pro se* filer must provide original, signed documents for review.

(c) *Pro Se* Use of CM/ECF. See Vt. LBR 5005-3(a)(2). *Pro se* parties may file using CM/ECF as specified in Vt. LBR 5005-3 or file documents electronically via e-mail. **The Court prefers that *pro se* parties who wish to file documents electronically do so by e-mail.**

VT. LBR 5005-3. FILING DOCUMENTS VIA CM/ECF – REGISTRATION REQUIREMENTS.

(a) Registration and Passwords for Electronic Filings.

(1) ...

(2) **Non-Attorneys.** Upon Court approval, and after being trained by a member of the Clerk's staff, a party to a pending case, proceeding, or motion who is ***pro se* may register to use CM/ECF in that particular matter.** Registration is in the form prescribed by the Clerk and requires identification of the case, proceeding, or motion in which the party seeks to participate electronically, as well as the party's name, address, e-mail address, and telephone number. If, during the course of the case, proceeding, or motion, the party retains an attorney who appears on the party's behalf, the attorney must file a notice of appearance.

VT. LBR 5005-4. FILING DOCUMENTS VIA OTHER ELECTRONIC MEANS.

(b) Filing Documents by E-Mail.

The Clerk accepts documents by e-mail for filing. The Court prefers that *pro se* parties file documents by e-mail, and that attorneys file documents via CM/ECF. The appropriate e-mail address to use for this purpose is efiling@vtb.uscourts.gov. Documents e-mailed to the Clerk for filing must be PDF attachments to the transmittal e-mail and, whenever possible, be in a searchable format. Parties who submit documents for filing by e-mail are required to simultaneously serve all parties in interest via e-mail and immediately thereafter e-mail a certificate of service (as a PDF attachment) to the Clerk. Exhibits to pleadings, motions, and other documents that are submitted for filing by e-mail must be clearly marked as exhibits. If documents are e-mailed, the original of those documents should not be transmitted to the Clerk by any other means. Court fees that are due at the time of filing must be paid pursuant to the provisions set forth in paragraph (c) of this Rule. ***Pro se* parties who transmit documents via e-mail must call the Clerk's Office, either immediately before or immediately after the submission, to notify it of the e-mail filing. This is important because documents are not deemed filed until the Clerk's Office enters them on the docket. See also** Vt. LBR 1002-1(b); Vt. LBR 9011-4(d).

Recommendation — HELOC Payment Changes. Mortgage servicers have suggested that compliance with the payment-change notice requirements is burdensome with respect to a home equity line of credit (HELOC), because the payments on such mortgages may change monthly and in small amounts. Servicers have in some cases requested that courts exempt such loans from rule 3002.1. One court refused to grant such a request, finding that compliance with the rule is mandatory and that the court lacks discretion to extend the time deadlines or excuse performance.¹¹³ Another court modified the payment-change notice requirement for a HELOC loan, requiring that notices be filed every six months until the last year of the debtor's plan, at which time quarterly filings were required.¹¹⁴

On September 19, 2012, the Advisory Committee on Rules of Bankruptcy Procedure conducted a roundtable discussion with representatives of the mortgage-servicing industry, consumer debtors, chapter 13 trustees and others to discuss ways to improve Federal Rule of Bankruptcy Procedure 3002.1. One of the discussion topics was the treatment of HELOCs, and various proposals for amending rule 3002.1(b) were considered. Following the roundtable and further consideration by the Advisory Committee, an amendment to rule 3002.1(b) was published for comment. This amendment was finalized and became effective on December 1, 2018. It adds the following sentence at the end of amended rule 3002.1(b)(1): "If the claim arises from a home-equity line of credit, this requirement may be modified by court order."

The Advisory Committee Note related to this change states:

Subdivision (b) is subdivided and amended in two respects. First, it is amended in what is now subdivision (b)(1) to authorize courts to modify its requirements for claims arising from home equity lines of credit (HELOCs). Because payments on HELOCs may adjust frequently and in small amounts, the rule provides flexibility for courts to specify alternative procedures for keeping the person who is maintaining payments on the loan

¹¹³ *In re Adkins*, 477 B.R. 71 (Bankr. N.D. Ohio 2012).

¹¹⁴ *In re Pillow*, 2013 WL 10252924 (Bankr. W.D. Mich. 2013).

II: IMPROVING CREDITOR CERTAINTY AND LOWERING COSTS 77

apprised of the current payment amount. Courts may specify alternative requirements for providing notice of changes in HELOC payment amounts by local rules or orders in individual cases.

A uniform procedure for addressing HELOC payment change notices should be adopted.¹¹⁵ Bankruptcy rules that establish uniform procedures for the treatment of claims secured by home mortgages generally further the objective of economical and efficient administration of bankruptcy cases. The approach permitted under the 2018 amendment will detract from this objective by making it difficult for mortgage servicers to comply with myriad local rules or orders in individual cases.

The Commission believes that an annual notice should suffice with respect to HELOCs, provided that the monthly changes are less than \$10 and the annual notice explains the monthly changes and includes a reconciliation amount to account for any overpayment or underpayment received during the prior year. The monthly payment specified in the annual notice would be adjusted upward or downward to account for the reconciliation amount.

¹¹⁵ The Commission believes nonuniform practices in the bankruptcy system generally are a problem and recommends that courts adopt local rules, standing orders, and practices that promote uniformity. See § 4.02 Nonuniform Court Practices. The Commission's recommendation for a uniform procedure to address HELOC payment-change notices addresses these concerns.

¹¹⁶ An explanation of reverse mortgages appears at Tara Twomey, *Reverse Mortgages in Bankruptcy*, AM. BANKR. INST. J., Aug. 2014, at 18.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF VERMONT**

In re: _____

Debtor(s)

Case #: _____

Chapter ____

**DEBTOR'S OMNIBUS EMERGENCY MOTION TO EXTEND THE AUTOMATIC STAY
WITH NOTICE OF EVIDENTIARY HEARING & CERTIFICATE OF SERVICE**

The Debtor, _____, by counsel, _____, files this motion seeking an extension of the automatic stay in a repeat-filer case, pursuant to 11 U.S.C. § 362(c)(3)(B).

In support of this relief, the Debtor alleges the following:

A. Pertinent procedural history:

1. Filing date and chapter of the prior bankruptcy case(s): _____
2. Docket number of the prior bankruptcy case(s): _____
3. Date the prior bankruptcy case(s) were dismissed: _____
4. Reasons for dismissal(s) of the Debtor's prior bankruptcy case(s): _____

5. Did the Court attach any conditions to the prior dismissals? If so, specify docket # and conditions:

6. The creditors to whom the Debtor seeks to have the automatic stay apply in the current, new bankruptcy case:
☐ All creditors
☐ Only specific creditors (please list): _____

B. The substantial changes in the Debtor's financial or personal affairs since the Debtor's most recent previous bankruptcy case dismissal [if additional space is needed, attach additional pages and/or affidavit as an exhibit]:

C. Any other facts or circumstances that support extension of the automatic stay in this case:

D. Rule 9014(e) Notice of Evidentiary Hearing [pursuant to Vt. LBR 9014-1(b) & 4001-1(g)]:

1. A hearing on this Motion is scheduled for [time] on [date] at [location] regarding the above-named Debtor's motion. Debtor's counsel has confirmed with the courtroom deputy that this hearing has been scheduled as an evidentiary hearing.
2. [Amount of time] has been set aside for this evidentiary hearing.
Debtor's counsel [has/has not] contacted the opposing/interested party regarding the time they believe necessary for presentation of their witnesses and/or cross-examination of the Debtor's witnesses at this evidentiary hearing. *If not, specify why not:* _____

3. The Debtor intends to call the following witnesses, in the following order, and expects each will testify for the following amounts of time:¹ _____

(Note: If an opposing/interested party requires additional time and/or intends to call additional witnesses, that party must contact the courtroom deputy at least seven (7) days prior to the hearing to arrange for additional time, and must also file and serve a Supplemental Rule 9014(e) Notice.)
4. If you dispute the need for or scope of the hearing described in this Notice, you must
 - (a) file a written opposition with the Clerk of the Court on or before 4:00 P.M. on [date (*the response deadline must be no later than three (3) business days before the hearing*)]; and
 - (b) serve a copy of that opposition on Debtor's counsel, the U.S. Trustee, the case trustee, if any, and, in a Chapter 11 case, the creditors' committee and its counsel (or if no committee is appointed, the 20 largest unsecured creditors), by the response deadline.
5. Any additional information Debtor's counsel deems relevant/necessary to the Debtor's motion: [e.g., whether, due to the request for an evidentiary hearing, the requesting party agrees to a waiver of 11 U.S.C. § 362(e)]: _____

6. **Exhibits.** The Debtor lists below all exhibits the Debtor intends to introduce at the evidentiary hearing (including any pay advices, income tax returns, profit and loss statements, balance sheets, affidavits, medical records, or other documentary evidence pertinent to this motion that is not in the record):

E. Prayer for Relief

WHEREFORE, the Debtor prays that the Court grant this motion and extend the automatic stay, with respect to [name creditors], for the pendency of this case.

[Date filed]

[attorney name, address, telephone and email]

¹ If the list of intended witnesses changes, the Debtor must file and serve a Supplemental Notice of Evidentiary Hearing at least three (3) business days prior to the date set for the evidentiary hearing. See Vt. LBR 9014-1(b)(3).

Certificate of Service [pursuant to Fed. R. Bankr. Proc. 7004(a)–(h)]:

Counsel for the Debtor hereby certifies that they have served a copy of this pleading and any attachments on the entire mailing matrix (which is attached to this motion as an exhibit), by serving it electronically to all parties who accept service through the ECF system and on paper to the following parties, using the following methods:

- (i) via U.S. first class mail, postage prepaid to the following parties on *[date]*:

OR:

- (ii) via certified or priority overnight mail, return receipt requested, postage prepaid to the following parties on *[date]*:

OR:

- (iii) via personal delivery, fax transmission or e-mail to the following parties on *[date]*:

[Date filed]

*[name, address, telephone, email
of person filing this certificate]*

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF VERMONT**

In re: _____

Debtor(s)

Case #: _____

Chapter ____

DEBTOR'S OMNIBUS EMERGENCY MOTION TO EXTEND THE AUTOMATIC STAY
WITH CERTIFICATE OF SERVICE

The Debtor, _____, by counsel, _____, files this motion seeking an extension of the automatic stay in a repeat-filer case, pursuant to 11 U.S.C. § 362(c)(3)(B).

In support of this relief, the Debtor alleges the following:

A. Pertinent procedural history:

1. Filing date and chapter of the prior bankruptcy case(s): _____
2. Docket number of the prior bankruptcy case(s): _____
3. Date the prior bankruptcy case(s) were dismissed: _____
4. Reasons for dismissal(s) of the Debtor's prior bankruptcy case(s): _____

5. Did the Court attach any conditions to the prior dismissals? If so, specify docket # and conditions: _____

6. The creditors to whom the Debtor seeks to have the automatic stay apply in the current, new bankruptcy case:
☐ All creditors
☐ Only specific creditors (please list): _____

B. The substantial changes in the Debtor's financial or personal affairs since the Debtor's most recent previous bankruptcy case was dismissed [*if additional space is needed, attach additional pages and/or affidavit as an exhibit*]:

Any other facts or circumstances that support extension of the automatic stay in this case:

C. Prayer for Relief

WHEREFORE, the Debtor prays that the Court grant this motion and extend the automatic stay, with respect to [name creditors], for the pendency of this case.

[Date filed]

[name, address, telephone and email of attorney]

Certificate of Service [pursuant to Fed. R. Bankr. Proc. 7004(a)–(h)]

Counsel for the Debtor hereby certifies that they have served a copy of this pleading and any attachments on the entire mailing matrix (which is attached to this motion as an exhibit), by serving it electronically to all parties who accept service through the ECF system and on paper to the following parties, using the following methods:

- (i) via U.S. first class mail, postage prepaid to the following parties on [date]:

OR:

- (ii) via certified or priority overnight mail, return receipt requested, postage prepaid to the following parties on [date]:

OR:

- (iii) via personal delivery, fax transmission or e-mail to the following parties on [date]:

[Date filed]

[name, address, telephone, email of
the person signing this certificate]

Attachment: list of all parties on master mailing list who were served electronically

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF VERMONT**

In re:

Debtor(s)

Case #: _____

Chapter ____

[PROPOSED] ORDER
GRANTING DEBTOR'S MOTION TO EXTEND AUTOMATIC STAY, PURSUANT TO § 362(C)(3)

The Debtor filed a motion on *[date]*, by counsel *[attorney's name]*, seeking an extension of the automatic stay in this repeat-filer case, pursuant to 11 U.S.C. § 362(c)(3)(B).

The Court has considered the Debtor's motion, any objections that were filed, the testimony and arguments made at the hearing held on *[date]*, as well as the evidence admitted at that hearing, in support of the Debtor's motion. Based on that record, THE COURT FINDS

1. the Debtor has satisfied the time requirements of this statute;
2. the Debtor has demonstrated a substantial change in the Debtor's financial or personal affairs since the Debtor's most recent previous bankruptcy case was dismissed, and
3. the Debtor has demonstrated cause to extend the stay in this case as to:
 - ☐ All creditors
 - ☐ Only specific creditors *[Debtor to fill in those creditors' names here]:*

THEREFORE, IT IS HEREBY ORDERED that the automatic stay imposed by 11 U.S.C. § 362(a) is extended, as to the specified creditors, for the pendency of this case.

SO ORDERED.

Date:
Burlington, Vermont

Colleen A. Brown
United States Bankruptcy Judge

One Hundred Sixteenth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and nineteen*

An Act

To exempt from the calculation of monthly income certain benefits paid by the
Department of Veterans Affairs and the Department of Defense.

*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 “Honoring American Veterans
in Extreme Need Act of 2019” or the “HAVEN Act”.

SEC. 2. DEFINITION OF CURRENT MONTHLY INCOME.

Section 101(10A) of title 11, United States Code, is amended
by striking subparagraph (B) and inserting the following:

“(B)(i) includes any amount paid by any entity other
than the debtor (or in a joint case the debtor and the
debtor’s spouse), on a regular basis for the household
expenses of the debtor or the debtor’s dependents (and
in a joint case the debtor’s spouse if not otherwise a
dependent); and

“(ii) excludes—

“(I) benefits received under the Social Security Act
(42 U.S.C. 301 et seq.);

“(II) payments to victims of war crimes or crimes
against humanity on account of their status as victims
of such crimes;

“(III) payments to victims of international ter-
rorism or domestic terrorism, as those terms are
defined in section 2331 of title 18, on account of their
status as victims of such terrorism; and

“(IV) any monthly compensation, pension, pay,
annuity, or allowance paid under title 10, 37, or 38
in connection with a disability, combat-related injury
or disability, or death of a member of the uniformed
services, except that any retired pay excluded under
this subclause shall include retired pay paid under
chapter 61 of title 10 only to the extent that such
retired pay exceeds the amount of retired pay to which
the debtor would otherwise be entitled if retired under
any provision of title 10 other than chapter 61 of
that title.”.

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

H. R. 2938—2

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.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

One Hundred Sixteenth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and nineteen*

An Act

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

*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 “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:

“SUBCHAPTER V—SMALL BUSINESS DEBTOR
REORGANIZATION

“§ 1181. Inapplicability of other sections

“(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

“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

“(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.

“(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.

“§ 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.

“§ 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

“(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

“(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.

“§ 1188. Status conference

“(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.

“§ 1189. Filing of the plan

“(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

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

“§ 1190. Contents of plan

“A plan filed under this subchapter—

“(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 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.

“§ 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.

“(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—

“(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

“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

“(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.

“§ 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.

“§ 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.”.

(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.

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.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

One Hundred Sixteenth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and nineteen*

An Act

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

*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”.

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.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*