ment of transfer under a plan confirmed under section 1225 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

(d) The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

(1) the date on which such governmental unit responds to the request under this subsection; or

(2) 270 days after such request.

(Added Pub. L. 99–554, title II, § 255, Oct. 27, 1986, 100 Stat. 3113.)

REPEAL OF SECTION

Section repealed effective Oct. 1, 1998, see note set out preceding section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

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

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 103, 109, 321, 326, 329, 330, 346, 347, 348, 362, 363, 365, 502, 706, 1106, 1112 of this title; title 15 section 1673; title 20 section 1087; title 28 sections 157, 586, 1930.

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

§ 1301. Stay of action against codebtor

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

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

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

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

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

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

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

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

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

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95–989

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

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

The automatic stay under this section pertains only to the collection of a consumer debt, defined by section

101(7) of this title to mean a debt incurred by an individual primarily for a personal, family, or household purpose. Therefore, not all debts owed by a chapter 13 debtor will be subject to the stay of the codebtor, particularly those business debts incurred by an individual with regular income, as defined by section 101(24) of this title, engaged in business, that is permitted by virtue of section 109(b) and section 1304 to obtain chapter 13 relief.

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

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

HOUSE REPORT NO. 95–595

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

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

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

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

AMENDMENTS

1984—Subsec. (c)(3). Pub. L. 98–353, § 524, inserted ''continuation of'' after ''by''.

Subsec. (d). Pub. L. 98–353, § 313, added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 108, 348 of this title.

§ 1302. Trustee

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

(b) The trustee shall—

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

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

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

(B) confirmation of a plan; or

(C) modification of the plan after confirmation;

(3) dispose of, under regulations issued by the Director of the Administrative Office of the United States Courts, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act;

(4) advise, other than on legal matters, and assist the debtor in performance under the plan; and

(5) ensure that the debtor commences making timely payments under section 1326 of this title.

(c) If the debtor is engaged in business, then in addition to the duties specified in subsection (b) of this section, the trustee shall perform the duties specified in sections 1106(a)(3) and 1106(a)(4) of this title.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2645; Pub. L. 98–353, title III, §§ 314, 525, July 10, 1984, 98 Stat. 356, 388; Pub. L. 99–554, title II, §§ 228, 283(w), Oct. 27, 1986, 100 Stat. 3103, 3118; Pub. L. 103–394, title V, § 501(d)(37), Oct. 22, 1994, 108 Stat. 4147.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95–989

The principal administrator in a chapter 13 case is the chapter 13 trustee. Experience under chapter XIII of the Bankruptcy Act [chapter 13 of former title 11] has shown that the more efficient and effective wage earner programs have been conducted by standing chapter XIII trustees who exercise a broad range of responsibilities in both the design and the effectuation of debtor plans.

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

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

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

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

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

HOUSE REPORT NO. 95–595

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

REFERENCES IN TEXT

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

''(B) any amount by which the percentage fee fixed under paragraph (1)(B) of this subsection for all such cases exceeds—

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 322, 326, 546, 557 of this title.

§ 1303. Rights and powers of debtor

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

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95–989

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

§ 1304. Debtor engaged in business

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

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

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

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2646; Pub. L. 98–353, title III, §§ 311(b)(2), 526, July 10, 1984, 98 Stat. 355, 389.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95–989

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

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

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

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

AMENDMENTS

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 363, 364 of this title.

§ 1305. Filing and allowance of postpetition claims

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

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

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

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

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

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1305(a)(2) of the House amendment modifies similar provisions contained in the House and Senate bills by restricting application of the paragraph to a consumer debt. Debts of the debtor that are not consumer debts should not be subjected to section 1305(c) or section 1328(d) of the House amendment.

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

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

SENATE REPORT NO. 95–989

Section 1305, exclusively applicable in chapter 13 cases, supplements the provisions of sections 501–511 of title 11, dealing with the filing and allowance of claims. Sections 501–511 apply in chapter 13 cases by virtue of section 103(a) of this title. Section 1305(a) provides for the filing of a proof of claim for taxes and other obligations incurred after the filing of the chapter 13 case. Subsection (b) prescribes that section 502 of title 11 governs the allowance of section 1305(a) claims, except that its standards shall be applied as of the date of allowance of the claim, rather than the date of filing of the petition. Subsection (c) requires the disallowance

of a postpetition claim for property or services necessary for the debtor's performance under the plan, if the holder of the claim knew or should have known that prior approval by the trustee of the debtor's incurring of the obligation was practicable and was not obtained.

HOUSE REPORT NO. 95–595

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 348, 1322, 1328 of this title.

§ 1306. Property of the estate

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

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

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

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

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95–989

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

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

AMENDMENTS

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

§ 1307. Conversion or dismissal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2647; Pub. L. 98–353, title III, §§ 315, 527, July 10, 1984, 98 Stat.

356, 389; Pub. L. 99–554, title II, §§ 229, 257(v), Oct. 27, 1986, 100 Stat. 3103, 3116.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95–989

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

HOUSE REPORT NO. 95–595

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 348, 365, 706, 726, 1330 of this title.

SUBCHAPTER II—THE PLAN

§ 1321. Filing of plan

The debtor shall file a plan.

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

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1307 of this title.

§ 1322. Contents of plan

(a) The plan shall—

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

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

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

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

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

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

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

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

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

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

(7) subject to section 365 of this title, provide for the assumption, rejection, or assignment

of any executory contract or unexpired lease of the debtor not previously rejected under such section;

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

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

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

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

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

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

(d) The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years.

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

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2648; Pub. L. 98–353, title III, §§316, 528, July 10, 1984, 98 Stat. 356, 389; Pub. L. 103–394, title III, §§301, 305(c), Oct. 22, 1994, 108 Stat. 4131, 4134.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

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

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

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

SENATE REPORT NO. 95–989

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

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

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1323, 1328, 1329 of this title.

§ 1323. Modification of plan before confirmation

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

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

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

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

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1329 of this title.

§ 1324. Confirmation hearing

After notice, the court shall hold a hearing on confirmation of the plan. A party in interest may object to confirmation of the plan.

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

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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

AMENDMENTS

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 586.

§ 1325. Confirmation of plan

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

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

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

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

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

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

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

(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

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

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

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

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

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

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(2) For purposes of this subsection, ''disposable income'' means income which is received by the debtor and which is not reasonably necessary to be expended—

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

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

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

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2649; Pub. L. 98–353, title III, §§ 317, 530, July 10, 1984, 98 Stat.

356, 389; Pub. L. 99–554, title II, § 283(y), Oct. 27, 1986, 100 Stat. 3118.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95–989

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

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

AMENDMENTS

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

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

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1307, 1322, 1329, 1330 of this title.

§ 1326. Payments

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

(2) A payment made under this subsection shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as practicable. If a plan is not confirmed, the trustee shall return any such payment to the debtor, after deducting any unpaid claim allowed under section 503(b) of this title.

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

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

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

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

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2650; Pub. L. 98–353, title III, §§ 318(a), 531, July 10, 1984, 98 Stat. 357, 389; Pub. L. 99–554, title II, §§ 230, 283(z), Oct. 27, 1986, 100 Stat. 3103, 3118; Pub. L. 103–394, title III, § 307, Oct. 22, 1994, 108 Stat. 4135.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95–989

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

HOUSE REPORT NO. 95–595

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

AMENDMENTS

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced

under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 347, 1302, 1307 of this title.

§ 1327. Effect of confirmation

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

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

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

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

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

§ 1328. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2650; Pub. L. 98–353, title III, § 532, July 10, 1984, 98 Stat. 389; Pub. L. 101–508, title III, § 3007(b)(1), Nov. 5, 1990, 104 Stat. 1388–28; Pub. L. 101–581, §§ 2(b), 3, Nov. 15, 1990, 104 Stat. 2865; Pub. L. 101–647, title XXXI, §§ 3102(b), 3103, Nov. 29, 1990, 104 Stat. 4916; Pub. L. 103–394, title III, § 302, title V, § 501(d)(38), Oct. 22, 1994, 108 Stat. 4132, 4147.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95–989

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

Subsection (b) is the successor to Bankruptcy Act Section 661 [section 1061 of former title 11]. This subsection permits the bankruptcy judge to grant the debtor a discharge at any time after confirmation of a

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

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENTS

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

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 524 of this title; title 12 section 1715z–1a; title 26 sections 6327, 7434.

§ 1329. Modification of plan after confirmation

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

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

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

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

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

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

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

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2651; Pub. L. 98–353, title III, §§ 319, 533, July 10, 1984, 98 Stat. 357, 389.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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

AMENDMENTS

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1307, 1328, 1330 of this title; title 28 section 586.

§ 1330. Revocation of an order of confirmation

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

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

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

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

SENATE REPORT NO. 95–989

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1307 of this title.

[CHAPTER 15—REPEALED]

[§§ 1501 to 151326. Repealed. Pub. L. 99–554, title II, § 231, Oct. 27, 1986, 100 Stat. 3103]

Section 1501, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2652, related to applicability of chapter which provided a pilot program for a United States trustee system.

Section 15101, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2652, related to definitions.

Section 15102, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2652, related to a rule of construction.

Section 15103, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2652; Pub. L. 98–353, title III, §§ 311(b)(3), 318(b), July 10, 1984, 98 Stat. 355, 357, related to applicability of subchapters and sections.

Section 15303, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to involuntary cases.

Section 15321, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to eligibility to serve as trustee.

Section 15322, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to qualification of trustee.

Section 15324, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to removal of trustee or examiner.

Section 15326, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to limitation on compensation of trustee.

Section 15330, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to compensation of officers.

Section 15343, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2653, related to examination of debtor.

Section 15345, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2654; Pub. L. 97–258, § 3(c), Sept. 13, 1982, 96 Stat. 1064, related to money of estates.

Section 15701, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2654, related to interim trustee.

Section 15703, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2654, related to successor trustee.

Section 15704, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2655, related to duties of trustee.

Section 15727, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2655, related to discharge.

Section 151102, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2655, related to creditors' and equity security holders' committees.

Section 151104, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2655, related to appointment of trustee or examiner.

Section 151105, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2656, related to termination of trustee's appointment.

Section 151163, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2656, related to appointment of trustee.

Section 151302, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2656; Pub. L. 98–353, title III, §§ 311(b)(4), 534, July 10, 1984, 98 Stat. 355, 390, related to trustees.

Section 151326, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2657, related to payments.

EFFECTIVE DATE OF REPEAL

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

Pub. L. 95–598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended by Pub. L. 98–166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98–353, title III, § 323, July 10, 1984, 98 Stat. 358; Pub. L. 99–429, Sept. 30, 1986, 100 Stat. 985; Pub. L. 99–500, § 101(b) [title II, § 200], Oct. 18, 1986, 100 Stat. 1783–39, 1783–45, and Pub. L. 99–591, § 101(b) [title II, § 200], Oct. 30, 1986, 100 Stat. 3341–39, 3341–45; Pub. L. 99–554, title III, § 307(a), Oct. 27, 1986, 100 Stat. 3125, provided for the repeal of this chapter at a prospective date, prior to repeal by Pub. L. 99–554, title III, § 307(b), Oct. 27, 1986, 100 Stat. 3125.