CASE NOS. 15-1218 & 15-1271

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

FRANKLIN CALIFORNIA TAX-FREE TRUST, *ET AL.*,

Plaintiffs/Appellees,

v.

THE COMMONWEALTH OF PUERTO RICO, *ET AL.*,

Defendants/Appellants.

BLUEMOUNTAIN CAPITAL MANAGEMENT, LLC, *ET AL.*,

Plaintiffs/Appellees,

v.

ALEJANDRO GARCÍA-PADILLA, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO, *ET AL.*,

Defendants/Appellants.

On Appeal from the United States District Court for the District of Puerto Rico (Besosa, J.)
Case Nos. 3:14-cv-1518 & 3:14-cv-1569

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CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

In accordance with Rule 26.1 of the Federal Rules of Appellate Procedure, the Franklin Funds[1] respectfully state that none of the Franklin Funds has a parent corporation, and to its knowledge, no public corporation owns 10% or more of its stock.

In accordance with Rule 26.1 of the Federal Rules of Appellate Procedure, the Oppenheimer Rochester Funds[2] respectfully state that none of the

[1] The "Franklin Funds" consist of Franklin California Tax-Free Trust (for the Franklin California Intermediate-Term Tax Free Income Fund), Franklin New York Tax-Free Trust (for the Franklin New York Intermediate-Term Tax Free Income Fund), Franklin Tax-Free Trust (for the series Franklin Federal Intermediate-Term Tax-Free Income Fund, Franklin Double Tax-Free Income Fund, Franklin Colorado Tax-Free Income Fund, Franklin Georgia Tax-Free Income Fund, Franklin Pennsylvania Tax-Free Income Fund, Franklin High Yield Tax-Free Income Fund, Franklin Missouri Tax-Free Income Fund, Franklin Oregon Tax-Free Income Fund, Franklin Virginia Tax-Free Income Fund, Franklin Alabama Tax-Free Income Fund, Franklin Florida Tax-Free Income Fund, Franklin Connecticut Tax-Free Income Fund, Franklin Louisiana Tax-Free Income Fund, Franklin Maryland Tax-Free Income Fund, Franklin North Carolina Tax-Free Income Fund, Franklin New Jersey Tax-Free Income Fund and Franklin Arizona Tax-Free Income Fund), Franklin Municipal Securities Trust (for the series Franklin California High Yield Municipal Bond Fund and Franklin Tennessee Municipal Bond Fund), Franklin California Tax-Free Income Fund, Franklin New York Tax-Free Income Fund and Franklin Federal Tax-Free Income Fund.

[2] The "Oppenheimer Rochester Funds" consist of Oppenheimer Rochester Fund Municipals, Oppenheimer Municipal Fund (on behalf of its series Oppenheimer Rochester Limited Term Municipal Fund), Oppenheimer Multi-State Municipal Trust (on behalf of its series Oppenheimer Rochester New Jersey Municipal Fund, Oppenheimer Rochester Pennsylvania Municipal Fund, and Oppenheimer Rochester High Yield Municipal Fund), Oppenheimer Rochester Ohio Municipal

Oppenheimer Rochester Funds has a parent corporation and no public corporation owns 10% or more of its stock.

Dated: April 15, 2015

Respectfully submitted,

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

For almost 70 years, Congress has barred the "States" (including Puerto Rico) from enacting their own municipal bankruptcy statutes. Congress enacted this prohibition in 1946, reaffirmed it in 1976, and codified it in 1978 as Section 903(1) of the new Bankruptcy Code. Each time, Congress stated its intent explicitly: to ensure that *only* federal bankruptcy law (now Chapter 9) can be used to compromise municipal debts.

Nevertheless, Defendants and *amici* argue that Puerto Rico was free to enact the Recovery Act as a harsher copy of federal bankruptcy law. Defendants and *amici* variously assert that:

- Section 903(1) applies only during a Chapter 9 case, because it applies to "creditors" that supposedly exist only in Chapter 9;
- Section 903(1) no longer applies to Puerto Rico or the District of Columbia, because a 1984 amendment excluded their municipalities from eligibility for Chapter 9; *and*
- Section 903(1) should not apply in order to avoid constitutional issues.

None of these arguments have merit. The U.S. Court of Appeals for the Sixth Circuit has held, in an *en banc* decision, that nothing in Section 903(1) limits its application to pending Chapter 9 cases. Indeed, a contrary interpretation would make the section irrelevant and permit *all* states to enact their own municipal bankruptcy statutes. The 1984 amendment neither amended Section 903(1) nor revealed any intent to do so by implication – the amendment did not

grant Puerto Rico (or the District of Columbia) unprecedented license to enact a harsher copy of federal bankruptcy law.

And there is no constitutional issue to avoid. Congress in 1952 did not give Puerto Rico a power that Congress had denied to all states in 1946, and, in any event, states have *never* had the ability to enact bankruptcy laws like the Recovery Act that provide for a discharge. Preemption does not deny Puerto Rico any power it ever had.

Finally, while Defendants make much of the supposedly unique inability of Puerto Rico's municipalities to access Chapter 9, in fact they do not stand alone. Municipalities of about half of the states are not eligible for Chapter 9: They may file only if they receive specific authorization from the legislative body that exercises ultimate control over them – their state legislature. Municipalities of Puerto Rico, similarly, may file only if the legislative body that exercises ultimate control over them – Congress – determines to so authorize.

In sum, Congress wanted Chapter 9 to be the sole method of restructuring municipal debt. It said so unequivocally, in both the text and the legislative history of Section 903(1). All of Defendants' arguments reduce to the assertion that Congress' laws did not accomplish what Congress said it wanted. This Court should enforce the will of Congress and uphold preemption of the Recovery Act.

STATEMENT OF THE ISSUES

Does Section 903(1) of the Bankruptcy Code, 11 U.S.C. § 903(1), preempt the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (the "Recovery Act" or "Act")? [1]

JURISDICTIONAL STATEMENT

Franklin California Tax-Free Trust and the other plaintiffs-appellees (collectively, the "Franklin Plaintiffs") agree with Defendants that this Court has jurisdiction over the appeal of the District Court's preemption ruling and related injunction pursuant to 28 U.S.C. § 1291 and 1292(a)(1).[2] This Court does not have jurisdiction over the non-final rulings denying Defendants' motions to dismiss Franklin Plaintiffs' Contracts Clause and Takings claims. *See, e.g., Marie*

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[1] The Court should disregard any additional issues raised by *amici curiae*. *See Lane v. First Nat. Bank of Boston*, 871 F.2d 166, 175 (1st Cir. 1989) ("We know of no authority which allows an amicus to interject into a case issues which the litigants, whatever their reasons might be, have chosen to ignore.").

[2] References to "Defendants" are to (i) the Commonwealth of Puerto Rico, Alejandro Garcia Padilla, in his capacity as the Commonwealth's Governor, and Cesar R. Miranda Rodriguez, in his capacity as the Commonwealth's Secretary of Justice (collectively, the "Commonwealth"); and (ii) Melba Acosta, in her capacity as agent for the Government Development Bank for Puerto Rico (the "GDB"). References to "JA __" are to the Joint Appendix filed by the Commonwealth. References to the "Comm. Br. __" are to the Commonwealth's opening brief, references to "GDB Br. __" are to the GDB's opening brief, references to "PREPA Br. __" are to the amicus brief filed by the Puerto Rico Electric Power Authority ("PREPA"), and references to "Gillette Br.__" are to the amicus brief filed by Professors Gillette and Skeel. References to "Comm. Add. __" are to the Addendum attached to the Commonwealth's opening brief. References to "Franklin Add. __" are to the Addendum attached hereto.

v. Allied Home Mortg. Corp., 402 F.3d 1, 6 n.1 (1st Cir. 2005) (denial of motion to dismiss not an appealable interlocutory order within meaning of 28 U.S.C. § 1292).

The District Court had jurisdiction over the Franklin Plaintiffs' constitutional challenges to the Recovery Act under the federal question statute, 28 U.S.C § 1331, and it correctly held that all but one of these claims were ripe, *see* Opinion & Order, Comm. Add. 12-23, 65-67. Defendants do not challenge the District Court's detailed ripeness findings.

STATEMENT OF THE CASE

A. The PREPA Bonds

PREPA, a public corporation established pursuant to the Puerto Rico Electric Power Authority Act, Act No. 83 of May 2, 1941, 22 L.P.R.A. §§ 191, *et seq*. (as amended, the "PREPA Act"), issued bonds (the "PREPA Bonds") under a Trust Agreement dated as of January 1, 1974, as amended and supplemented through August 1, 2011 (the "Trust Agreement"). Franklin 2d Am. Compl. ¶ 3, JA 157. The PREPA Bonds are secured by a pledge of all or substantially all of the present and future revenues of PREPA. *Id*.

In the PREPA Act, the Commonwealth pledged that it will not "limit or alter the rights or powers" vested in PREPA until the PREPA Bonds are fully paid. PREPA Act § 25, Franklin Add. 71. In addition, the Trust Agreement provides that "no contract or contracts will be entered into or any action taken by

which the rights of the Trustee or of the bondholders might be impaired or diminished." Trust Agreement § 709, JA 405. The Trust Agreement also prohibits the extension of maturities, reduction in amounts owed, or the grant of any other liens on PREPA's revenue without the consent of 60% of bondholders. Trust Agreement §§ 701, 712, 1102, JA 401, 407-09, 421-23. Both the PREPA Act and the Trust Agreement grant holders of PREPA Bonds remedies after an event of default, including the right to seek the appointment of a receiver to collect the revenues pledged to secure the PREPA Bonds. PREPA Act §§ 17, 18, Franklin Add. 68-70; Trust Agreement § 804, JA 411-12.

Section 502 of the Trust Agreement grants holders of PREPA Bonds the right to compel PREPA to adjust electricity rates so that its revenues will be sufficient to repay the PREPA Bonds. Trust Agreement § 502, JA 383-84.

B. Passage of the Recovery Act

The Commonwealth's Senate and House of Representatives passed the Recovery Act on June 25, 2014, and the Governor signed the statute into law three days later. Franklin 2d Am. Compl. ¶ 11, JA 159.

Defendants assert that the Commonwealth's fiscal crisis, PREPA's need for restructuring, and the prospect of island-wide power failures and chaos following creditor action all justify the Recovery Act. *See, e.g.*, Comm. Br. 7-9. However, allegations as to the *Commonwealth* are not germane (the Recovery Act

does not apply to the Commonwealth);[3] allegations as to *PREPA* are not supported (PREPA could avoid a restructuring by increasing its revenues, reducing its costs and collecting its debts, and the Recovery Act nowhere finds that PREPA is unable to do so);[4] and allegations of power failure and chaos are wholly invented. There is no danger of cessation of public services – the Trust Agreement itself provides for the use of first dollars in to pay operating expenses, so PREPA will always keep operating. Trust Agreement §§ 503, 505, JA 384-86. Nor is there a danger of a "race to the court-house," as creditors are precluded from seizing PREPA's assets. *See* Trust Agreement § 601, JA 398-99 ("All moneys received by the Authority under the provisions of this Agreement . . . shall not be subject to lien or attachment by any creditor of the Authority."). Finally, there is no danger of chaos because the PREPA bondholders' remedy is a Puerto Rico court's appointment of

[3] The Recovery Act excludes many entities from eligibility, including the GDB and "the seventy-eight municipalities of the Commonwealth." Recovery Act Statement of Motives at 82, Franklin Add. 9.

[4] As the District Court found, the Franklin Plaintiffs have plausibly alleged that PREPA has failed to pursue many alternatives that, together or in combination, could eliminate the need for a restructuring. Opinion & Order, Comm. Add. 62-64. These include (i) modestly increasing its base rate to cover its debt service, which it has not done in 26 years (*id.* at 63), (ii) collecting the $640 million that the Commonwealth owes it (*id.*), (iii) reducing the amount of funds diverted as subsidies to other municipalities, including "contributions in lieu of taxes" expected to total almost a billion dollars for 2014 to 2018 (*id.*), and (iv) cutting costs and correcting management inefficiencies, including by reducing headcount and customer service costs and employing better timekeeping standards and accounting controls (*id.*). *See also* Franklin 2d Am. Compl. ¶ 50, JA 169-71.

a receiver – who can and will keep the lights on, and who also can increase revenues, cut costs and collect debts.

The Defendants' unsupported and disputed allegations are all irrelevant to the principal issue on appeal: the preemption of the Recovery Act.

C. The Recovery Act's Provisions

The Recovery Act authorizes PREPA to impose a non-consensual debt restructuring on the secured PREPA Bonds without even trying to negotiate with its creditors. Under the Bankruptcy Code, a municipality is not eligible to file under Chapter 9 unless it has either obtained approval or negotiated in good faith to obtain approval of a plan with creditors holding at least a majority in amount of the claims of each class impaired by such plan. 11 U.S.C. §§ 109(c)(5)(A) & (B).

The Recovery Act authorizes PREPA to impose a non-consensual debt restructuring on the secured PREPA Bonds in two alternate ways.

Chapter 2 of the Recovery Act empowers PREPA to impose new terms on 100% of secured PREPA Bonds (including payment at a discount, or "haircut") so long as the terms have been approved in an election where holders of 50% of the PREPA Bonds have "participated" and holders of 75% in amount of

the participating bonds have agreed.[5] Thus it is possible for holders of 37.5% of the PREPA Bonds to bind all 100% of the PREPA Bonds.

Chapter 3 of the Recovery Act is explicitly modeled after Chapter 9,[6] but is even more onerous. PREPA can force PREPA Bonds to take a haircut over the objection of *100%* of the bonds so long as the plan has been accepted by one *other* class of PREPA creditors (the "cramdown" power, a particular feature of federal bankruptcy law), and the Commonwealth court finds that the PREPA Bonds receive under the plan more than they would otherwise have recovered by enforcing their claims on the petition date.[7] The latter requirement has no parallel in Chapter 9 and provides no real protection, since the Recovery Act separately

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[5] *See* Recovery Act § 202(d) (debt relief transaction is binding upon any class of affected debt instruments so long as 50% of debt holders in such class participate in the vote and 75% of such voting holders accept proposed modifications); *see also id.* § 204 (procedures for court approval of such transaction), § 115(b) (binding effect of transaction).

[6] "In designing chapter 3, this Legislative Assembly has adopted a model similar to that of chapter 9 of title 11 of the United States Code in order to provide all stakeholders with much needed familiarity in a process wrought with uncertainty. As a result, this Legislative Assembly clearly expresses its intent that jurisprudence interpreting the provisions of chapter 9 of title 11 of the United States Code be used, to the extent applicable, for purposes of interpreting the provisions of chapter 3 of this Act." Recovery Act Statement of Motives at 85, Franklin Add. 12.

[7] *See* Recovery Act § 312 (affected debt entitled to vote on plan), § 315(d) (creditor must receive as much as it would have if all creditors had enforced their claims on the petition date), § 315(e) (authorizing approval of plan upon acceptance by one class of affected debt).

eliminates the PREPA Bondholders' rights to obtain a receiver[8] or to compel an increase in revenues that would repay their bonds in full.[9] Equally illusory is Chapter 3's promise to repay PREPA Bondholders from one half of "excess cash flow" for up to ten years[10] – an empty promise, since cash flow is determined by rates and PREPA determines what the rates are.[11] As with Chapter 2, each PREPA Bondholder is enjoined from seeking payment of any remaining amounts owing under its bonds. Recovery Act § 115(c).

Finally, Chapter 3 empowers PREPA to take collateral without adequate protection, or indeed any compensation, "if and when the police power

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[8] *Id.* § 108(b).

[9] *Id.* Under Chapter 9 of the Bankruptcy Code, PREPA could not confirm a plan unless it had done what it could to raise revenues and repay its creditors. *See* 11 U.S.C. § 943(b)(7) (court must determine that Chapter 9 plan is in the "best interests of creditors"); 124 Cong. Rec. 32,403 (1978) (remarks of Rep. Edwards) ("In making such a determination, it is expected that the court will be guided by standards set forth in *Kelley v. Everglades Drainage District*, 319 U.S. 415 (1943), and *Fano v. Newport Heights Irrigation Dist.*, 114 F.2d 563 (9th Cir. 1940)."); *Fano*, 114 F.2d at 565-66 (reversing confirmation of Chapter IX plan on ground that debtor could raise taxes to pay bondholders and refused to do so).

[10] *See* Recovery Act § 315(k) (50% is payable for ten years).

[11] Recovery Act § 315(o) requires PREPA to prove that it undertook cost reductions and revenue enhancements "subject to the constraints . . . that some cost reductions or revenue enhancements may be counterproductive if they cause individuals or businesses to leave the Commonwealth." *Id.* § 315(o). Any revenue enhancement *may* "cause individuals or businesses to leave the Commonwealth," so the limiting clause renders the requirement illusory; it too has no parallel in Chapter 9.

justifies." Recovery Act § 129(d). It also authorizes PREPA to grant to new-money lenders a senior or "priming" lien on collateral without "adequate protection" or other compensation so long as the proceeds of the loan "are needed to perform public functions." Recovery Act § 322(c). The Bankruptcy Code grants no such powers. Instead – unlike the Recovery Act – the Bankruptcy Code complies with the Fifth Amendment by requiring "adequate protection" before a debtor may take collateral or grant a priming lien. *See* 11 U.S.C. §§ 361, 363(e), 364(d).

D. Proceedings Below

Interest on the PREPA Bonds was payable on July 1, 2014. Fearing a potential PREPA filing under the Recovery Act, the Franklin Plaintiffs, as holders of approximately $1.56 billion in PREPA Bonds (Franklin Decl. ¶ 5, JA 150; Oppenheimer Decl. ¶ 5, JA 147), filed their initial complaint on June 28, 2014, JA 1 (Dkt. No. 1 in Case No. 14-1518), and an amended complaint the next day, JA 1 (Dkt. No. 2 in Case No. 14-1518). The Franklin Plaintiffs filed a second amended complaint on August 11, 2014. JA 12 (Dkt. No. 85 in Case No. 14-1518). Another PREPA bondholder, BlueMountain Capital Management, LLC, filed a complaint alleging similar constitutional violations, and the two cases were consolidated. JA 12-13 (Dkt. Nos. 92, 93 in Case No. 14-1518).

The Franklin Plaintiffs alleged in their complaint that the Recovery Act (i) was preempted by the Bankruptcy Code, (ii) violated the Takings and Contracts Clauses of the United States Constitution, and (iii) upon commencement of a Recovery Act proceeding in Commonwealth court, would unlawfully stay creditors from challenging (or continuing to challenge) the constitutionality of the Recovery Act in federal court. Franklin 2d Am. Compl. ¶¶ 58-71, JA 173-77.

Defendants and PREPA moved to dismiss all counts of the Franklin Plaintiffs' complaint. JA 3, 5, 13 (Dkt. Nos. 10, 31, 95, 97 in Case No. 14-1518). The Franklin Plaintiffs opposed the motions to dismiss and cross-moved for summary judgment on their preemption and access-to-federal-courts claims. JA 11, 14 (Dkt. No. 78, 79, 102 in Case No. 14-1518).

On February 6, 2015, the District Court issued a decision granting the Franklin Plaintiffs' summary judgment motion on their preemption claim, determining that the Recovery Act was expressly preempted by Section 903(1) of the Bankruptcy Code. Opinion & Order, Comm. Add. 31-43.

The District Court denied Defendants' motions to dismiss the Contracts Clause claim and denied in part the motions to dismiss the Takings Clause claim. Among other things, the court determined that:

(i) Plaintiffs had sufficiently alleged both a substantial impairment of a contractual relationship, *id.* 49-60, and that PREPA had

failed to pursue reasonable alternatives to the Recovery Act's drastic impairment of contractual rights, *id.* 60-65; and

(ii) Plaintiffs had properly stated a claim under the Takings Clause based on the taking of their right to a receiver, *id.* 65-70.

The District Court granted Defendants' motions to dismiss as premature Plaintiffs' stay of federal proceedings claim, *id.* 23-26, and part of their Takings Clause claim. *Id.* 73-74. The court also dismissed PREPA as a defendant for lack of standing on the ground that claims against PREPA were premature. *Id.* 27-28.

On February 10, 2015, the District Court entered a judgment in the Franklin case granting Franklin Plaintiffs' motion for summary judgment on their preemption claim. JA 17 (Dkt. No. 123 in Case No. 14-1518). This appeal followed. This Court granted Defendants' unopposed motion to consolidate the Franklin and BlueMountain appeals and expedite the briefing on February 26, 2015. *See* Order (2/26/15).

SUMMARY OF THE ARGUMENT

In 1946, Congress barred states – including Puerto Rico – from enacting their own municipal bankruptcy statutes. In 1976 and again in 1978, Congress reenacted the prohibition, codifying it on the latter occasion as Section 903(1) of the new Bankruptcy Code. Each time, Congress stated that its purpose

was to preempt all state municipal bankruptcy laws. Accordingly, the District Court held that Section 903(1) expressly preempts the Recovery Act. The court found support for its holding both in the plain language of Section 903(1), Opinion & Order, Comm. Add. 32-37, and in the statute's history and purpose, *id.* 37-42.

Defendants advance several arguments in support of reversal, but each of them fails.

Defendants contend that Section 903(1) applies only when a Chapter 9 bankruptcy has been or could be filed – but the *text* of Section 903(1) contains no such limitation, and the *purpose* of Section 903(1) would be defeated by reading such a limitation into the statute. Defendants' interpretation of Section 903(1) has been rejected by an *en banc* panel of the Sixth Circuit.

Defendants contend that Puerto Rico is not subject to Section 903(1) because a 1984 amendment provides that Puerto Rico is not a "State" for purposes of Chapter 9 eligibility – but that amendment makes clear that Puerto Rico *is* a "State" for all *other* purposes, including Section 903(1). Nothing in the language or legislative history of the amendment reflects any Congressional intent to repeal Section 903(1) as it applies to Puerto Rico, much less the "clear and manifest intent" required for implied repeals. There is no conceivable reason why Congress would have taken the vain act of barring Puerto Rico and the District of Columbia

from Chapter 9, just to license those jurisdictions to enact their own versions of Chapter 9.

Defendants contend that applying Section 903(1) to preempt the Recovery Act raises constitutional issues by depriving Puerto Rico of its inherent "police power" to enact a bankruptcy law – but there is no inherent "police power" to enact a law *discharging* debts, as the Recovery Act does. Moreover, Puerto Rico, unlike the states, has only those powers granted by Congress. By approving Puerto Rico's constitution in 1952, Congress did not grant Puerto Rico the very power to enact municipal bankruptcy laws that it had explicitly denied to all states and territories when it enacted Section 903(1)'s predecessor only six years earlier.

Defendants' arguments are not really with Section 903(1) – the arguments are with the 1984 amendment that excluded Puerto Rico from Chapter 9. The desirability or constitutionality of that 1984 amendment are issues that Puerto Rico may raise with Congress (as it is currently doing) or in a separate lawsuit, but they are not before the Court on this appeal.

ARGUMENT

I. THE TEXT AND HISTORY OF SECTION 903(1) MAKE CLEAR THAT CONGRESS INTENDED TO PREEMPT THE RECOVERY ACT

"Express preemption occurs when congressional intent to preempt state law is made explicit in the language of a federal statute." *Tobin v. Federal*

Exp. Corp., 775 F.3d 448, 452 (1st Cir. 2014); *see also Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008) (the "purpose of Congress is the ultimate touchstone in every pre-emption case") (citation and quotation omitted). As the District Court correctly concluded, both the text and the history of Section 903(1) of the Bankruptcy Code and its predecessor, Section 83(i) of the Bankruptcy Act of 1898 (the "Bankruptcy Act"), express the "clear and manifest purpose" of Congress to preempt the Recovery Act. Opinion & Order, Comm. Add. 42.[12]

A. Section 903(1)'s Plain Terms Prohibit State Municipal Bankruptcy Laws

Section 903 of the Bankruptcy Code provides as follows:

> This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but--
>
> (1) *a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition*; and

[12] The GDB asserts on appeal, for the first time, that the District Court should not have struck down the Recovery Act in its entirety but instead should have considered whether certain portions of the statute could have been severed from the preempted portions. GDB Br. 13, n.3. This argument was not timely raised and has therefore been waived. *Iverson v. City of Boston*, 452 F.3d 94, 102 (1st Cir. 2006). In any event, the Recovery Act comprises in its entirety – as Defendants acknowledge – a municipal bankruptcy act expressly modelled on Chapter 9 of the Bankruptcy Code. *See* Recovery Act Statement of Motives § E (claiming to "mirror" Chapter 9). As such, it is preempted in its entirety.

> (2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.

11 U.S.C. § 903 (emphasis added).

Section 903(1) by its terms bars any (i) "State law," (ii) "prescribing a method of composition of indebtedness," of (iii) a "municipality," that (iv) binds non-consenting creditors. The Recovery Act meets all of these requirements.

First, the Recovery Act is a "State law." *See* Opinion & Order, Comm. Add. 32-34. The Bankruptcy Code provides that "[t]he term 'State' includes the District of Columbia and Puerto Rico, *except for the purpose of defining who may be a debtor under chapter 9 of this title*." 11 U.S.C. § 101(52) (emphasis added). Because Section 903(1) of the Bankruptcy Code has nothing to do with "defining who may be a debtor under chapter 9," the term "State" as used in Section 903(1) includes Puerto Rico.

Second, the Recovery Act prescribes a "method of composition of indebtedness," *see* Opinion & Order, Comm. Add. 34-35, as Defendants do not dispute. A "composition" is a debt adjustment or discharge. *Black's Law Dictionary* 346 (10th ed. 2014). As described above, the Recovery Act authorizes the adjustment, and indeed the discharge, of debts.

Third, PREPA (and each of the other public corporations authorized to file under the Recovery Act) is a "municipality." *See* Opinion & Order, Comm. Add. 35-36. The Bankruptcy Code provides that "[t]he term 'municipality' means

political subdivision or public agency or instrumentality of a State." 11 U.S.C. § 101(40). PREPA is a public agency or instrumentality, and as just noted, Puerto Rico is a "State" for purposes of Section 903(1). The GDB argues that PREPA is not a municipality for purposes of Section 903(1), but, as set forth in Point II.F below, this argument has no merit.

Finally, the Recovery Act purports to bind non-consenting creditors. *See* Opinion & Order, Comm. Add. 36-37. Both Chapter 2 and Chapter 3 of the Recovery Act permit a binding composition upon consent of less than all of the affected creditors. *See, e.g.*, Recovery Act §§ 115(b) & (c), 202(d), 315(e). Defendants argue that Section 903(1) does not apply because PREPA has no "creditors," but, as set forth in Points II.A-C below, this argument has no merit.

B. Section 903(1)'s History Confirms Congress's Intent to Prohibit State Municipal Bankruptcy Laws

The history of Section 903(1) makes abundantly clear that Congress intended to preempt state municipal bankruptcy laws, including the Recovery Act.

Section 903(1) of the Bankruptcy Code was originally enacted in 1946 as a part of Section 83(i) of the Bankruptcy Act to overrule the Supreme Court's decision *Faitoute Iron & Steel Co. v. City of Asbury Park, N.J.*, 316 U.S. 502 (1942). *Faitoute* had sustained a New Jersey municipal debt restructuring statute in the face of (among other things) a preemption challenge. Four years later, Congress amended Section 83(i) for the express purpose of overruling *Faitoute* and

thereby ensuring that states could no longer enact municipal bankruptcy laws of their own. *See Hearings on H.R. 4307 Before the Special Subcomm. on Bankr. & Reorg. of the H. Comm. on the Judiciary*, 79th Cong., at 15-16 (1946), JA 66-67 (statement of Millard Parkhurst) (describing amendment as overruling *Faitoute*).

To this end, Section 83(i) was amended to provide, in language almost identical to now-Section 903:

> Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor: *Provided, however, no State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition, and no judgment shall be entered under such State law which would bind a creditor to such composition without his consent.*

Act of July 1, 1946, ch. 532, § 83(i), 60 Stat. 409, 415 (1946) (emphasis added, reflecting 1946 amendment). The House Report explained the reason for the 1946 amendment as follows:

> An amendment to section 83(i) provides that State legislation dealing with compositions of municipal indebtedness shall not be binding on non-consenting creditors. State adjustment acts have been held to be valid, but a bankruptcy law under which bondholders of a municipality are required to surrender or cancel their obligations *should be uniform* throughout the 48 States, as the bonds of almost every municipality are widely held. *Only under a Federal law should a creditor be forced to accept such an adjustment without his consent.*

H.R. Rep. No. 79-2246, at 4 (1946), JA 55 (emphasis added).

Section 83(i) clearly applied to Puerto Rico as a "State," since that term was defined to "include the Territories and possessions to which this title is or may hereafter be applicable," *see* Act of June 22, 1938, ch. 575, § 1(29), 52 Stat. 840, 842 (1938), and the Bankruptcy Act was "applicable" to Puerto Rico, *see In re Vidal*, 233 F. 733, 737-38 (1st Cir. 1916) (noting applicability of national Bankruptcy Act in Puerto Rico and preemption of inconsistent Puerto Rico laws).

In 1976, Congress amended Chapter IX, moving Section 83(i) to Section 83. *See* Act to Amend Chapter IX of the Bankruptcy Act, Pub. L. No. 94-260, 90 Stat. 315, 316-17 (1976). The prohibition on state municipal bankruptcy laws was retained unaltered, with Congress reaffirming its original understanding of the Section's preemptive effect. *See* H.R. Rep. No. 94-938, at 16 (1976) (Conf. Rep.) (adopting Senate version of Section 83 over House version); H.R. Rep. No. 94-686, at 19 (1975) (explaining that Senate version retained preemptive language "for the same reason it was enacted by Congress" in 1946).

In 1978, Congress replaced the Bankruptcy Act with the Bankruptcy Code. *See generally* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549. Former Section 83(i)/83 was retained almost verbatim, with the provision codified at 11 U.S.C. § 903. Congress reiterated its intent to preempt state municipal bankruptcy laws:

> Section 903 is derived, *with stylistic changes*, from section 83 of current Chapter IX. It sets forth the primary authority of a

> State, through its constitution, laws, and other powers, over its municipalities. The proviso in section 83, prohibiting State composition procedures for municipalities, is retained. *Deletion of the provision would "permit all States to enact their own versions of Chapter IX,"* Municipal Insolvency, 50 Am. Bankr. L.J. 55, 65, *which would frustrate the constitutional mandate of uniform bankruptcy laws*.

S. Rep. No. 95-989, at 110 (1978) (emphasis added).[13] Section 903(1) continued to cover Puerto Rico as a "State."[14]

In 1984, Congress amended the definition of "State" to specifically include Puerto Rico and the District of Columbia for all purposes except Chapter 9 eligibility under Bankruptcy Code section 109(c). *See* Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, 369. As discussed further in Point III below, the exclusion of Puerto Rico from eligibility under Section 109(c) did not, by its terms, affect preemption of Puerto Rican law under Section 903(1), and the legislative history contains no indication of any intent to withdraw Puerto Rico from the scope of Section 903(1).

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[13] While the original version of the House bill would have deleted the provision, the Senate version of Section 903(1) was ultimately adopted. *See* 124 Cong. Rec. 32,403 (1978) (remarks of Rep. Edwards) ("To the extent section 903 of the House bill would have changed present law, such section is rejected."); *id.* at 34,002 (remarks of Sen. DeConcini) (same).

[14] The 1978 version of the Code contained no definition of "State," *see generally* Pub. L. No. 95-598, 92 Stat. 2549 (1978), but Puerto Rico continued to be treated as a "State" under the Code. *See Segarra v. Banco Central y Economias (In re Segarra)*, 14 B.R. 870, 872-73 (Bankr. D.P.R. 1981).

To sum up: Congress thrice enacted statutes (in 1946, 1976, and 1978) to preempt all state municipal bankruptcy laws, with near-identical legislative history expressly declaring that intent. That is why, as the District Court held, "this is not a close case." Opinion & Order, Comm. Add. 42. The arguments advanced by Defendants to the contrary – that Section 903(1) only applies when there is a pending Chapter 9 case, and that Puerto Rico's exclusion from Chapter 9 in 1984 somehow effected an implied repeal of the longstanding preemption of Puerto Rico municipal bankruptcy statutes – have no merit.

II. SECTION 903(1) PREEMPTS STATE MUNICIPAL BANKRUPTCY LAWS WHETHER OR NOT A CHAPTER 9 CASE IS OR COULD BE PENDING

Defendants argue that Section 903(1) preempts state municipal bankruptcy laws only after the municipality has already filed for Chapter 9 relief. According to Defendants, Section 903(1) preempts state laws binding "creditors," and a municipality has no "creditors" within the meaning of Bankruptcy Code Section 101(10)(A) (which defines "creditor" as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor") unless and until there is a "debtor" within the meaning of Bankruptcy Code Section 101(13) (which defines "debtor" as a "person or municipality concerning which a case under [title 11] has been commenced"). *See* GDB Br. 22-

24 (no "creditor" until there is a "debtor"); Comm. Br. 27, 39 ("a municipality cannot have a 'creditor' unless it is a 'debtor'"); Gillette Br. 11-13.[15]

This reading of the statutory language makes no sense, particularly in light of the history just discussed. Section 903(1) carried forward Section 83(i), and Section 83(i) was enacted to overrule *Faitoute* – a case in which no Chapter IX proceeding had been commenced or, indeed, could have been commenced. The state law restructuring at issue in *Faitoute* was consummated after the Supreme Court had struck down the original Chapter IX and before Congress had enacted its replacement. *See Faitoute*, 316 U.S. at 507-08.

No court has ever accepted Defendants' argument that Section 903(1) applies only during Chapter 9, and the Sixth Circuit Court of Appeals has rejected it. *City of Pontiac Retired Emps. Ass'n v. Schimmel*, 751 F.3d 427 (6th Cir. 2014) (en banc). In *City of Pontiac*, retired city employees challenged orders entered by a state-appointed emergency manager that would have reduced their health care benefits. The retirees sought a preliminary injunction, contending among other things that the challenged orders were preempted by Section 903(1). The district

[15] In two variations on this argument, Defendants alternately contend that (a) the term "municipality" as used in Section 903(1) excludes Puerto Rico's municipalities (GDB Br. 28-29), and (b) Section 903(1) preempts state municipal bankruptcy laws only when a municipality is *eligible* to file for Chapter 9 relief (Comm. Br. 30-31). As discussed in Points II.F and II.G below, these alternative arguments have no support whatsoever in the text of Section 903(1), much less in that provision's history and purpose.

court denied the preliminary injunction, but the Sixth Circuit reversed and remanded, and the Sixth Circuit sitting *en banc* upheld that reversal. The *en banc* court held that "[t]he plain language of this section [903(1)] is not limited to bankruptcy proceedings." *Id.* at 431.[16]

The Court should not construe Section 903(1) in a way that defeats its express purpose, but instead should give the term "creditor" its ordinary meaning, as "[o]ne to whom a debt is owed," *see Black's Law Dictionary* 449 (10th ed. 2014). As explained below, an ordinary-meaning construction is mandated by accepted statutory construction principles; it conforms to the definition of "creditor" at the time Congress enacted Section 903(1)'s predecessor; and it is further supported by the language of other Bankruptcy Code provisions and of Section 903(1) itself.

A. Defendants' Interpretation of "Creditor" Would Defeat Section 903(1)'s Stated Purpose

When rigid application of a statutory definition would nullify the statute's purpose, courts employ the term's ordinary, rather than defined, meaning. *See Lawson v. Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949) (declining to read the term "disability," as used in Longshoremen's and Harbor Workers'

[16] Two of the fifteen judges filed a short concurring opinion noting that Section 903(1) "*may* be construed to mean" that the section applies only where Chapter 9 has been invoked. *Id*. at 433 (McKeague, concurring) (emphasis in original). This view was not adopted by the other thirteen judges.

Compensation Act, in accordance with its statutory definition, where doing so would "create obvious incongruities in the language" and "destroy one of the major purposes" of the statute); *see also Philko Aviation, Inc. v. Shacket*, 462 U.S. 406, 412 (1983) (statutory definition should not be applied to "defeat the purpose of the legislation").

This rule applies here. Defendants' interpretation of "creditor" would reduce Section 903(1) to mere surplus: Once a municipality is in Chapter 9, state-enacted bankruptcy laws are irrelevant and would be irrelevant even if Section 903(1) did not exist. In addition, under this interpretation, every state in the union would be free to enact its own municipal bankruptcy statute, in direct contravention of Congress' manifest intent to preempt state-enacted municipal bankruptcy acts.[17]

Puerto Rico is not the only jurisdiction whose municipalities cannot file for Chapter 9. Bankruptcy Code Section 109(c)(2) requires specific state authorization before a municipality may file under Chapter 9, and approximately half of the states do not provide such authorization. *See* Clayton P. Gillette, *Fiscal Federalism, Political Will, and Strategic Use of Municipal Bankruptcy*, 79 U. Chi.

[17] The GDB itself has acknowledged that Section 83(i) was enacted in response to the "specter of every state passing its own version of chapter 9." GDB Br. 46. If Defendants' interpretation were adopted, neither Section 83(i) nor its successor, Section 903(1), would have done anything to diminish that specter.

L. Rev. 281, 296-97 (2012); *see also* Opinion & Order, Comm. Add. 39, n.16 (citing authority for similar proposition).[18] As Defendants read the Bankruptcy Code, no municipality in those states can be a "debtor" or have "creditors," so each of those states would be free to adopt its own municipal bankruptcy statute. And every other state could follow suit, by withdrawing its municipalities' authorization to employ Chapter 9.

The Court should not read "creditor" to create such an incongruous result, which would "destroy . . . the major purpose[]" of Section 903(1), *Lawson*, 336 U.S. at 201, and give states free rein to evade Section 903(1) at their whim, *see United States v. United Cont'l Tuna Corp.*, 425 U.S. 164, 168-69 (1976) ("We should . . . be as hesitant to infer that Congress intended to authorize evasion of a statute at will as we are to infer that Congress intended to narrow the scope of a statute."). Instead, the Court should adopt a common sense construction of "creditor" that effectuates Congress's stated purpose.

[18] Two states (Georgia and Iowa) actually prohibit their municipalities from filing (although one has an exception to the prohibition). *See* Ga. Code Ann. § 36-80-5 (2014), Iowa Code §§ 76.16-76.16A (2015). Other states have, by statute, made constitutionally enforceable pledges that particular municipalities cannot file under Chapter 9. *See* N.Y. Pub. Auth. Law § 1269(9) (McKinney 2015) (prohibiting the New York Metropolitan Transportation Authority from filing).

B. The Original Chapter IX Definition of "Creditor" Defeats Defendants' Interpretation of Section 903(1)

An ordinary-meaning construction of "creditor" also accords with the definition of that term that was in effect when Section 903(1)'s predecessor was enacted. As used in Section 83(i) – Section 903(1)'s predecessor – "creditor" meant "the holder of a security or securities," without any requirement that the issuer of the security be in Chapter IX. Act of July 1, 1946, ch. 532, § 82, 60 Stat. 409, 410 (1946); *see also id.* at 409 (defining "security" to include "bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured"). Thus, it was clear in 1946 that Section 83(i) applied to all "creditors," whether or not their obligor was in Chapter IX.

In 1976, Congress amended the definition of "creditor" to mean "holder . . . of a claim against the petitioner." *See* Act to Amend Chapter IX of the Bankruptcy Act, Pub. L. No. 94-260, § 81(3), 90 Stat. 315 (1976); *see also id.* § 81(8) (adding definition for "petitioner"). In doing so, Congress did not intend to modify the substance of Section 83(i)'s prohibition: The House Report stated that the defined term "petitioner" was added "for convenience only" and that "[n]o substantive or limiting result is intended." H.R. Rep. No. 94-686, at 16 (1975). In 1978, Congress adopted the current definition of "creditor," now contained in Section 101(10), which replaces the word "petitioner" with "debtor." *See* Pub. L.

No. 95-598, § 101(9), 92 Stat. 2549, 2550 (1978). Nothing in the legislative history to the 1976 or 1978 amendments suggests any intent to modify the substance of the Section 83(i) bar; to the contrary, as noted above in Point I.B, Congress on both occasions stated that it intended no substantive change to that prohibition and reiterated its intent to preempt state municipal bankruptcy laws.

Despite Congress's stated intentions, Defendants would have the Court conclude that these minor definitional amendments fundamentally transformed a provision barring all state municipal restructuring laws into one permitting any state to enact such laws. Such a conclusion flies in the face of the Supreme Court's teaching that courts should not read the Bankruptcy Code to "erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Cohen v. de la Cruz*, 523 U.S. 213, 221 (1998) (citation omitted); *see also Dewsnup v. Timm*, 502 U.S. 410, 419 (1992) ("[T]his Court has been reluctant to accept arguments that would interpret the [Bankruptcy] Code, however vague the particular language under consideration might be, to effect a major change in pre-Code practice that is not the subject of at least some discussion in the legislative history."); *United Savings Assn. of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 380 (1988) ("Such a major change in the existing rules would not likely have been made without specific provision in

the text of the statute; it is most improbable that it would have been made without even any mention in the legislative history.").

C. Other Provisions of the Bankruptcy Code Use "Creditor" In Accordance With Its Ordinary Meaning

Defendants' argument that there are no "creditors" unless there is a "debtor" does not work with multiple other provisions of the Bankruptcy Code, including provisions of Chapter 9 itself. For each of these provisions, it is clear that Congress intended "creditor" to have its ordinary, rather than its defined, meaning.

Defendants argue that "creditor" in Section 903(1) means an entity that holds a claim "that arose at the time of or before the *order for relief* concerning the debtor." *See* GDB Br. 24 (emphasis added). But an "order for relief" is entered in a Chapter 9 case *after* the court finds that the municipality is eligible for Chapter 9, 11 U.S.C. §§ 921(c), (d), which in turn requires the municipality to prove, among other things, that it:

> (A) has obtained the agreement of *creditors* holding at least a majority in amount of the claims of each class that [it] intends to impair under a [Chapter 9 plan];
>
> (B) has negotiated in good faith with *creditors* and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a [Chapter 9 plan];
>
> (C) is unable to negotiate with *creditors* because such negotiation is impracticable; or

(D) reasonably believes that a *creditor* may attempt to obtain a [voidable preference].

11 U.S.C. §§ 109(c)(5)(A)-(D) (emphasis added). A "creditor" for purposes of Section 109(c)(5) cannot be limited to an entity holding a claim "that arose at the time of or before the order for relief," because at the time a bankruptcy court is addressing an objection to Chapter 9 eligibility, there will not have been – and may *never* be – an order for relief.

Other sections of the Bankruptcy Code similarly use the term "creditor" in a manner inconsistent with Defendants' interpretation. For example:

- Section 303(c) permits a "creditor" to join with the original "petitioning creditor[s]" in the filing of an involuntary petition against a debtor. But because in an involuntary case, an order for relief is not entered automatically – and indeed may never be entered, *see* 11 U.S.C. § 303(h) – the "creditor" and "petitioning creditor" referred to in section 303(c) cannot be limited to an entity holding a claim that arose "at the time of or before the order for relief."

- Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a *creditor* of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects." 11 U.S.C. § 502(a) (emphasis added). A "creditor" of the general partner is not an entity holding a claim against a "debtor."

- Section 101(12A)(C) defines "debt relief agency" to include "any person who provides any bankruptcy assistance to an assisted person . . . but does not include . . . a *creditor* of such assisted person, to the extent that the *creditor* is assisting such assisted person to restructure any debt owed by such assisted person to the creditor." 11 U.S.C. § 101(12A)(C) (emphasis added). Because

debt relief agencies provide assistance to "assisted persons" before bankruptcy, 11 U.S.C. § 528, and there is no requirement that an "assisted person" file for bankruptcy and thereby become a "debtor," a "creditor" of an "assisted person" cannot be limited to an entity holding a claim against a "debtor."

D. The Language of Section 903(1) Is Not Limited to Chapter 9 Cases

Defendants argue that Section 903(1) is only a "proviso" that limits (and is thus limited by) Section 903's first clause, which refers to "this chapter" (*i.e.*, Chapter 9). From this, Defendants argue that Section 903(1) applies only in a Chapter 9 case. *See* Comm. Br. 29; GDB Br. 27-30; PREPA Br. 16. However, a proviso may state a general independent rule; it is not necessarily a mere limitation of a preceding clause. *See Alaska v. United States*, 545 U.S. 75, 106-08 (2005) (proviso may operate "affirmatively and independently," not just "negatively and parasitically"). This is the case with Section 903: As its history makes clear, it was intended to apply regardless of whether there is a pending Chapter IX case.

Moreover, the language of Section 903 itself shows that subsections (1) and (2) must apply independent of any Chapter 9 case. As noted above, Section 903 provides:

> This chapter *does not* limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but--

> (1) a State law prescribing a method of composition of indebtedness of such municipality *may not bind* any creditor that *does not consent* to such composition; and
>
> (2) a judgment entered under such a law *may not bind* a creditor that *does not consent* to such composition.

11 U.S.C. § 903(1)-(2) (emphasis added).

If Section 903(1) & (2) only preempted state law *during* a Chapter 9 proceeding, *see* GDB Br. 39, the clauses would provide that the state law "*does not bind* a creditor that *did not consent*." Instead, the clauses say that state law "*may not bind* a creditor that *does not consent*" – words of universal application inside or outside of Chapter 9 rather than limited application during Chapter 9. Finally, Section 903(1) cannot apply only to a pre-Chapter 9 composition ordered by a state court, *see* GDB Br. 39 – the state court's order would be invalidated by Section 903(2) without regard to Section 903(1). This interpretation would render Section 903(1) mere surplus.

E. Section 103(k) Does Not Limit Section 903(1)'s Scope to Chapter 9

The GDB argues, in reliance on Section 103(k)(2) of the Bankruptcy Code, that if Congress had intended for Section 903(1) to apply outside of the context of a pending Chapter 9 bankruptcy, it would have explicitly so stated. GDB Br. 27 (citing Section 103(k)(2), which specifies that Section 1509 of the Code "applies whether or not a case under this title is pending"). As noted above, the GDB's argument would deprive Section 903(1) of any practical effect.

Moreover, Section 903(1) is no different than other Bankruptcy Code provisions *not* mentioned in Section 103 that also apply whether or not a bankruptcy case is pending. *See, e.g.*, 11 U.S.C. § 528 (imposing regulations on debt relief agencies); *id.* § 525 (prohibiting discriminatory treatment of former debtors); *id.* § 362(a)-(b) (making automatic stay applicable to proceedings under the Securities Investor Protection Act). Also, while the GDB focuses on the language in Section 103(k)(2), it ignores the fact that many of Section 103's provisions limit specific chapters or subchapters of the Code to apply "only in a case under such chapter." *See, e.g.*, 11 U.S.C. §§ 103(b)-(e), (g)-(k). Congress did not so limit any portion of Chapter 9.[19]

F. There Is No Textual Basis For the GDB's Alternative Argument That the Term "Municipality" Excludes Puerto Rico's Municipalities

The GDB (though not the Commonwealth) also asserts that Puerto Rico's municipalities are not "municipalit[ies]" within the meaning of Section

[19] The Commonwealth cites to a footnote in a 2011 article by one of the Franklin Plaintiffs' counsel, which observed that, because Section 903(1) "appears as an exception to Section 903[]," it was "not clear how it would apply if no chapter 9 case was commenced." Comm. Br. 30 (citing Thomas Moers Mayer, *State Sovereignty, State Bankruptcy, & a Reconsideration of Chapter 9*, 85 Am. Bankr. L.J. 363, 379 n.84 (2011)). As the District Court observed, this was a "tangential footnote," Opinion & Order, Comm. Add. 41 n.18, four lines in length, which did not explore Section 903(1)'s text, structure or history, all of which support its application outside of Chapter 9. As the District Court said, "this is not a close case," Opinion & Order, Comm. Add. 42 – it is clear that Section 903(1) applies whether or not a Chapter 9 case is commenced.

903(1) because they are ineligible for Chapter 9. GDB Br. 28-29. There is no textual basis whatsoever for this argument. A "municipality" is defined in the Bankruptcy Code as a "political subdivision or public agency or instrumentality of a State." 11 U.S.C. § 101(40). The term "State," as noted above, specifically *includes* Puerto Rico, "except for the purpose of defining who may be a debtor under chapter 9." 11 U.S.C. § 101(52). That exception, by its terms, applies to Section 109(c) – the provision governing "who may be a debtor under chapter 9" – but not to Section 903(1). Thus, for purposes of Section 903(1), a "municipality" includes an instrumentality of *any* "State," including Puerto Rico.

G. There Is No Textual Basis For the Commonwealth's Alternative Argument That Section 903(1) Applies Only Where a Municipality *Could Be* a Chapter 9 Debtor

The Commonwealth has also advanced a modified version of the foregoing argument: it argues that Section 903(1) prohibits the use of municipal bankruptcy laws not only by municipalities that have actually filed under Chapter 9, but also by those that *could* be a debtor under Chapter 9. *See* Comm. Br. 28 ("If an entity cannot be a 'debtor' under Chapter 9, by definition it cannot have a 'creditor' under that provision.").

However, this alternative construction of Section 903(1) has no basis at all in the language of the Bankruptcy Code. The Code defines "creditor" as an "entity that *has* a claim against the debtor," *not* "an entity that has a claim against

an entity that *could* be a debtor." As Professors Gillette and Skeel themselves acknowledge, in careful understatement, the alternative interpretation advanced by the Commonwealth "is not the most natural reading of the literal language of section 903." Gillette Br. 13. Moreover, this construction is no less contrary to Section 903(1)'s purpose than is Defendants' main interpretation. Under any of the interpretations advanced by the Defendants, states would be free to enact their own municipal bankruptcy laws.

III. THE 1984 AMENDMENTS DID NOT REPEAL SECTION 903(1)'S APPLICATION TO PUERTO RICO

Defendants and *amici* acknowledge that, from 1946 until 1984 – a period that encompassed the enactment of three separate versions of what is now Chapter 9 – Puerto Rico, as a "State," was subject to the provisions of Chapter 9 in all respects. Comm. Br. 42-43; GDB Br. 24, 49; Gillette Br. 6; PREPA Br. 23. This included, specifically, the provision in current Section 903(1) that prohibited "State" law compositions.

In 1984, Congress enacted a new definition of "State," which expressly withdrew from Puerto Rico municipalities the ability to file for Chapter 9. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, 369 (codified at 11 U.S.C. § 101(52)). Defendants argue that the 1984 amendment effectively repealed Section 903(1) as to Puerto Rico. But relevant canons of statutory construction compel the opposite result: that

notwithstanding the 1984 amendments, Section 903(1) continued to apply to Puerto Rico, as it had for nearly 40 years.

First, the 1984 amendment was limited: The definition of "State" excluded Puerto Rico from the definition only "for the purpose of defining who may be a debtor under chapter 9." 11 U.S.C. § 101(52). The amendment thus affected only Bankruptcy Code Section 109(c). The amendment did not by its terms alter or affect any other provision of the Bankruptcy Code such as Section 903. *See, e.g.*, *TRW, Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (under canon of "*expressio unius est exclusio alterius*," where statute contains a single express exception, additional exceptions are not to be implied).

Second, the standards for implied repeal or implied amendment are not met. It is a "cardinal rule" that "repeals by implication are not favored." *Cook Cty., Ill. v. United States*, 538 U.S. 119, 132 (2003) (quotation marks and citation omitted); *see Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 663 n.8 (2007) (noting "implied amendments are no more favored than implied repeals").[20] In the bankruptcy context, as noted above, the Supreme Court has

[20] A statute is deemed repealed by implication only when the legislature's intent to repeal is "clear and manifest" *and* one of two limited circumstances exists: (i) provisions in the two acts are in irreconcilable conflict, or (ii) the later act covers the whole subject of the earlier one and is clearly intended as a substitute. *United States v. Lahey Clinic Hosp., Inc.*, 399 F.3d 1, 10 (1st Cir. 2005) (quoting *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 468 (1982)); *Díaz-Ramos v.*

repeatedly held that courts should not read the Bankruptcy Code to "erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Cohen*, 523 U.S. at 221 (citation omitted). As the GDB observes, Congress does not alter "the fundamental details of a regulatory scheme in vague terms or ancillary provisions," or "hide elephants in mouseholes." GDB Br. 37 (quoting *Whitman v. Am. Trucking Assocs.*, 531 U.S. 457, 468 (2001)).

Defendants make no attempt to – and could not – show that the requirements for implied repeal are met here. There is no "clear and manifest" intent to repeal. As Defendants acknowledge, Comm. Br. 42, GDB Br. 50, Congress gave no explanation for its decision to eliminate Puerto Rico municipalities from eligibility for Chapter 9. The legislative history reveals only that a definition of "State" was added to make clear that residents of Puerto Rico could be debtors under the Bankruptcy Code. *See* H.R. Rep. No. 96-1195, at 8 (1980). Congress gave no indication that it intended to relieve Puerto Rico from the restrictions of Section 903(1) to which it had been subject for 38 years.

Defendants argue that "courts have long recognized that Congress' exclusion of particular entities from the federal Bankruptcy Code represents a considered judgment to allow such entities to restructure under state law" – and

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Hyundai Motor Co., 501 F.3d 12, 16-17 (1st Cir. 2007). Defendants have not argued that either circumstance is presented here.

therefore the exclusion of Puerto Rican municipalities from Chapter 9 must allow Puerto Rico to pass the Recovery Act. Comm. Br. 32; *see also* GDB Br. 33.

This argument is both inapposite and irrelevant. It is inapposite because, unlike municipalities, banks and insurance companies had long been subject to liquidation under other regulatory schemes, which is why they were excluded from the Bankruptcy Code. *See* S. Rep. No. 95-989, at 31 (1978). It is irrelevant because, whereas Congress expressly preempted state municipal restructuring laws, it took no such action with respect to state bank and insurance company statutes.

Third, the Defendants' argument that there is a "presumption against preemption" is without basis. Nothing in the 1984 amendments triggers any "presumption against preemption." Any such presumption applies only when "Congress legislates in a field traditionally occupied by the states." *United Parcel Serv., Inc. v. Flores-Galarza*, 318 F.3d 323, 336 (1st Cir. 2003); *see also United States v. Locke*, 529 U.S. 89, 108 (2000) ("[A]n 'assumption' of non-preemption is not triggered when the State regulates in an area where there has been a history of significant federal presence."); *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467, 471, 477 (4th Cir. 2014) (presumption against preemption "almost certainly not applicable" where federal government's regulatory authority dated back to 1930s, even though "extensive local regulation" had preceded federal regime). Federal

law, rather than state law, has dominated the field of municipal bankruptcy since 1938, when the Supreme Court upheld the predecessor to Chapter 9 in *United States v. Bekins*, 304 U.S. 27 (1938).[21]

Finally, Defendants' interpretation of the 1984 amendment would have Congress enacting meaningless legislation. Defendants argue that Congress, by excluding Puerto Rico from Chapter 9, licensed Puerto Rico and the District of Columbia to enact the same statute, or a more onerous version, as their own law. Indeed, Puerto Rico has done just that: Chapter 3 of the Recovery Act is explicitly modeled after Chapter 9. There is no conceivable reason for Congress to have barred Puerto Rico and the District of Columbia from Chapter 9 if those jurisdictions were then free to enact the same statute as their own.

IV. THE DOCTRINE OF CONSTITUTIONAL AVOIDANCE DOES NOT APPLY

Defendants contend that Congress's decision to exclude Puerto Rico from eligibility for Chapter 9, while at the same time continuing to bar Puerto Rico from enacting municipal bankruptcy laws of its own, raises issues of state sovereignty, which the Court should avoid by construing Section 903(1) to exclude

[21] Moreover, as one scholarly article has noted, "[p]rior to 1933, there was neither state nor federal municipal bankruptcy legislation." Randal C. Picker & Michael W. McConnell, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. Chi. L. Rev. 425, 427 (1993).

Puerto Rico. *See* Comm. Br. 36-37; GDB Br. 32-38, 45, 48-49. This argument fails for multiple reasons.[22]

In the first place, sovereignty concerns could, at most, serve to tip the scales in the event the Court determines Section 903(1) is ambiguous. *Warger v. Shauers*, 135 S. Ct. 521, 529 (2014) ("Given the clarity of both the text and history of Rule 606(b), . . . the canon of constitutional avoidance has no role to play here."); *see also B&B Hardware, Inc. v. Hargis Indus., Inc.*, -- S. Ct. --, 2015 WL 1291915, at *8 (Mar. 24, 2015) ("[B]ecause this Court's cases are so clear, there is no ambiguity for this Court to sidestep through constitutional avoidance."). Section 903(1) is not ambiguous: As set forth above, Congress's intent to preempt state-enacted municipal bankruptcy laws has been pellucid in statutory text and legislative history since 1946. The doctrine of constitutional avoidance therefore has no role to play.

Second, Section 903(1)'s preemption of the Recovery Act raises no genuine constitutional issues, because, contrary to Defendants' contentions, Comm. Br. 17-18, GDB Br. 17, 32, Puerto Rico never had the power to enact a

[22] Defendants' academic *amici* concede that there is no constitutional issue: "If Congress clearly intended to preempt a Puerto Rican restructuring law, it had the power to do so." Gillette Br. 3. Significantly, Defendants do not now seek to invalidate Section 903(1) on constitutional grounds, nor did Defendants in the court below assert a constitutional challenge to the statute or file a notice of constitutional question under Rule 5.1 of the Federal Rules of Civil Procedure.

bankruptcy law providing (as the Recovery Act provides) for a nonconsensual *discharge* of debt. *See Ry. Labor Execs. Ass'n v. Gibbons*, 455 U.S. 457, 472 n.14 (1982) ("Apart from and independently of the Supremacy Clause, the Contract Clause prohibits the States from enacting debtor relief laws which discharge the debtor from his obligations . . . unless the law operates prospectively.") (citations omitted); *Sturges v. Crowninshield*, 17 U.S. 122, 199 (1819); *Stellwagen v. Clum*, 245 U.S. 605, 615 (1918); *Sherwood Partners, Inc. v. Lycos, Inc.*, 394 F.3d 1198, 1203 (9th Cir. 2005) ("We know, because the Supreme Court has repeatedly told us, that state statutes that purport to . . . giv[e] debtors a discharge of their debts, are preempted.").[23]

This limitation on a state's ability to impose a nonconsensual discharge was recognized by both the Supreme Court and Congress in the 1930s

[23] While the Recovery Act does not use the term "discharge," a permanent injunction, for these purposes, is indistinguishable from a discharge. *See, e.g., Am. Hardwoods, Inc. v. Deutsche Credit Corp. (In re Am. Hardwoods, Inc.)*, 885 F.2d 621, 626 (9th Cir. 1989) ("We find American's semantic distinction between a permanent injunction and a discharge unpersuasive."). The GDB argues there is no discharge because PREPA must pay creditors half of its excess cash flow for ten years. As discussed above at page 9, this protection is illusory and, in any event, lasts only for ten years, regardless of whether the debt is paid in full. To the extent the GDB argues that the use of "post-bankruptcy earnings to repay pre-bankruptcy debt" means the Recovery Act does not grant a true "discharge," GDB Br. 10, Chapter 13 of the Bankruptcy Code refutes this assertion. *See* 11 U.S.C. §§ 1322(a), (d), 1325(b)(1), (4) & § 1328(a) (under Chapter 13 plan, debtor makes payments in accordance with judicially-approved schedule for three or five years, and only then receives a "discharge").

when the original Chapter IX was enacted. *Ashton v. Cameron Cty. Water Imp. Dist. No. 1*, 298 U.S. 513, 531 (1936); *Bekins*, 304 U.S. at 53-54; S. Rep. No. 75-911, at 3 (1937) ("There is no hope for relief through statutes enacted by the States, because the Constitution forbids the passing of State laws impairing the obligations of existing contracts.").[24] *Faitoute* is not to the contrary – unlike the Recovery Act, the statute upheld by *Faitoute* extended the maturity of the debt (it did not presume to reduce principal), and it did not apply to secured debt. *Faitoute*, 316 U.S. at 504-06, 516.[25]

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[24] Defendants seize on a snippet from the Senate Report that accompanied the 1937 statute – specifically, the statement that "[t]he committee are not prepared to admit that the situation presents a legislative no-man's land." Comm. Br. 40 (quoting S. Rep. No. 75-911, at 3). In fact, a review of the full passage from which Defendants have selectively quoted compels the opposite conclusion: Congress was forced to act – as *Ashton* and *Bekins* both acknowledged – because if it did not, the States would have no adequate remedy. S. Rep. No. 75-911, at 3 (noting "because the Constitution forbids the passing of State laws impairing the obligations of existing contracts . . . relief must come from Congress, if at all").

[25] Defendants also cite to Collier on Bankruptcy and to *Ropico, Inc. v. City of New York*, 425 F. Supp. 970 (S.D.N.Y. 1976). Comm. Br. 37. Neither authority supports the proposition that states have historically had the broad power to enact bankruptcy laws calling for a discharge. The statute at issue in *Ropico*, like that in *Faitoute*, called only for an extension, or postponement of payments, a fact the court found determinative in analyzing whether it violated Section 83(i). 425 F. Supp. at 978-83. Similarly, while the Commonwealth selectively quotes Collier, that treatise concludes only that a state might have authority to enact a restructuring statute that – like those in *Faitoute* and *Ropico* – does *not* impair the principal amount of a debt obligation. *See* 6 Collier on Bankruptcy ¶ 903.03[2] (16th ed.) (state procedure "for restructuring municipal obligations *where the principal amount of the obligation is not reduced* . . . should be upheld") (emphasis

Finally, Section 903(1)'s preemption of the Recovery Act raises no issue of state sovereignty because Puerto Rico is different from a state. States enter the union as sovereigns, and yield to the federal government only the sovereignty that they expressly give up under the Constitution. *See, e.g.*, *Sturges*, 17 U.S. at 193 (state powers "proceed, from the people of the several states; and remain, after the adoption of the constitution . . . except so far as they may be abridged by that instrument"). Puerto Rico derives its sovereignty from Congressional grant pursuant to the Puerto Rican Federal Relations Act, Pub. L. No. 600, 64 Stat. 319 (1950) (codified at 48 U.S.C. §§ 731, *et seq.*).

In 1946, Congress denied to the "States" (including Puerto Rico) the ability to enact their own municipal bankruptcy laws by passage of the predecessor to Section 903(1). Four years later, Congress passed the Puerto Rican Federal Relations Act, authorizing Puerto Rico to enact its own constitution. Thereafter, Congress approved Puerto Rico's constitution. Act of July 3, 1952, Pub. L. No. 447, 66 Stat. 327. By approving Puerto Rico's constitution in 1952, Congress did not provide Puerto Rico a power to enact municipal bankruptcy laws that Congress had explicitly denied to the states under Section 83(i) only six years earlier.[26]

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added). Even assuming Collier's suggestion is correct, any such state act would, of course, have to pass muster under the Contracts Clause.

[26] For a comprehensive analysis of the Federal Relations Act and related congressional legislation, *see United States v. López-Andino*, 831 F.2d 1164, 1175

Moreover, as the District Court noted, Opinion & Order, Comm. Add. 39, it is well-settled that Congress has the power to treat Puerto Rico differently than the 50 states. *Harris v. Rosario*, 446 U.S. 651, 652 (1980) ("Congress, which is empowered under the Territory Clause of the Constitution, U.S. Const., Art IV, § 3, cl. 2, to 'make all needful Rules and Regulations respecting the Territory . . . belonging to the United States,' may treat Puerto Rico differently from States so long as there is a rational basis for its actions."); *United States v. Rivera Torres*, 826 F.2d 151, 154 (1st Cir. 1987) ("We begin with the proposition that Congress can, pursuant to the plenary powers conferred by the Territorial Clause, legislate as to Puerto Rico in a manner different from the rest of the United States.") (citations omitted).

Here, it was anything but irrational for Congress to have denied Puerto Rico's municipalities advance authorization to file under Chapter 9. As the District Court found, "Congress's decision not to permit Puerto Rico municipalities to be Chapter 9 debtors reflects its considered judgment to retain control over any restructuring of municipal debt in Puerto Rico." Opinion & Order, Comm. Add. 39 (citation omitted). In this regard, Congress, which ultimately controls both

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(1st Cir. 1987) (Torruella, concurring) ("Like any other act of Congress [the Federal Relations Act] may be repealed, modified, or amended at the unilateral will of future Congresses. Thus . . . the *ultimate source of power* in Puerto Rico, even after the enactment of [the Federal Relations Act], is Congress . . . .").

Puerto Rico and D.C., treated Puerto Rico's municipalities essentially the way many states treat their municipalities, by withholding "pre-approval" to file under Chapter 9. If Congress determines Puerto Rico is in need of Chapter 9, it has the power to alter the Chapter 9 eligibility requirements to permit that result.[27] Or, as it did with the District of Columbia in the 1990s, Congress may opt for an alternative approach to managing the Commonwealth's financial difficulties. *See* Pub. L. No. 104-8, 109 Stat. 97, 98 (1995) (establishing District of Columbia Financial Responsibility and Management Assistance Authority to address "fiscal emergency in the District of Columbia").[28]

Congress may have had a particular reason to exclude Puerto Rico from Chapter 9. As noted above, Congress's stated reason for enacting Section 903(1)'s predecessor was that municipal bonds are "widely held" throughout the states and thus only a federal law should apply. *See* H.R. Rep. No. 79-2246, at 4 (1946). This reason applies with particular force to Puerto Rico. Bonds issued by Puerto Rico or its instrumentalities are exempt from federal, state and local tax –

[27] Indeed, in February of this year, Representative Pedro R. Pierluisi proposed H.R. 870, which would "amend [the Bankruptcy Code] to make Puerto Rican municipalities eligible for relief under Chapter 9."

[28] Before establishing the District of Columbia Financial Responsibility and Management Assistance Authority to address financial problems of "horrendous proportions" in the District of Columbia, Congress considered and rejected the idea of making the District of Columbia eligible for Chapter 9. *See* H.R. Rep. No. 104-96, at 4, 16-17 (1995).

i.e., "triple tax-exempt" – in every one of the 50 states. 48 U.S.C. § 745. Not one of the 50 states enjoys this same triple-tax-exempt status. *See* Tonya Chin, *Puerto Rico's Possible Statehood Could Affect Triple Tax-Exempt Status*, The Bond Buyer (Nov. 5, 2012). This privileged tax status may have contributed to Congress's decision to exclude Puerto Rico's municipalities from Chapter 9.

V. THIS COURT LACKS JURISDICTION TO REVIEW THE DISTRICT COURT'S DENIAL OF DEFENDANTS' MOTIONS TO DISMISS

The District Court did not reach the ultimate merits of the Franklin Plaintiffs' Contracts Clause and Takings claims, but simply denied motions to dismiss those claims. The Court lacks jurisdiction over an appeal of the denial of Defendants' motions to dismiss. *See, e.g.*, *Carabello-Seda v. Municipality of Hormigueros*, 395 F.3d 7, 9 (1st Cir. 2005) ("As a general rule, we do not grant interlocutory appeals from a denial of a motion to dismiss.").

Nevertheless, Defendants urge this Court to vacate the lower court's denial of their motion to dismiss. There is no basis for doing so. The District Court did not, as the Commonwealth asserts, embark on a "frolic and detour" through federal constitutional law. Comm. Br. 3. Instead, in a careful and well-reasoned opinion informed by extensive briefing, it addressed the *very issues* that Defendants asked it to address when they moved to dismiss the Franklin Plaintiffs' complaint.

Accordingly, Defendants have failed to establish any basis for vacating the District Court's determinations – the only effect of which would be to improperly grant them a second chance to litigate the exact issues already briefed and analyzed by the District Court.

CONCLUSION

Defendants argue for a topsy-turvy world, where Congress' expressed preemption of state-enacted municipal bankruptcy laws becomes an option for states to enact such laws, and where Congress' exclusion of Puerto Rico and the District of Columbia from Chapter 9 becomes a license for those jurisdictions to enact their own harsher versions of the same statute. Both arguments flout rather than effectuate the intent of Congress. Congress wanted no state-enacted Chapter 9s, and Congress wanted Puerto Rico and the District of Columbia to be ineligible for Chapter 9. The District Court followed Congress' mandate. We ask this Court to do the same.

For the reasons set forth above, the Franklin Plaintiffs respectfully request that this Court affirm the judgment of the District Court.

Dated: April 15, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I hereby certify that this brief complies with the type-volume limitations set forth in Fed. R. App. P. 32(a)(5) and 32(a)(7)(B). This brief contains 11,803 words, excluding those exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief was prepared in a proportionally spaced 14-point Times New Roman font.

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Addendum

Index to Addendum

Sección 340.–Cierre de Caso.

(a) Luego de que un plan sea confirmado y sea efectivo, y todas las reclamaciones en disputa hayan sido resueltas, la Sala Especializada cerrará el caso.

(b) Un caso puede reabrirse en la Sala Especializada en el cual el caso se cerró para hacer valer el plan, acordar un alivio para el peticionario o por alguna otra razón.

Sección 341.–Reglas *Escheat* o de Reversión de Propiedad.

Cualquier depósito, dinero u otra propiedad que permanezca sin reclamar una vez expire el periodo permitido en un caso bajo el Capítulo 3 de esta Ley para la presentación de un depósito o para llevar a cabo cualquier otra acción como condición para la participación en la distribución bajo cualquier plan confirmado bajo el Capítulo 3 de esta Ley, o que permanezca sin reclamar tras la expiración del tiempo límite para reclamar dicha declaración final de distribución o dicho plan, según sea el caso, se convertirá en propiedad del peticionario o de la entidad que adquiera los activos del peticionario bajo el plan, según sea el caso.

Capítulo 4: Vigencia

Sección 401.–Efectividad de la Ley.

Esta Ley entrará en vigor inmediatamente después de su aprobación.

Parte II – English Version of the Puerto Rico Public Corporation Debt Enforcement and Recovery Act,"

To create the "Puerto Rico Public Corporation Debt Enforcement and Recovery Act," in order to establish a debt enforcement, recovery, and restructuring regime for the public corporations and other instrumentalities of the Commonwealth of Puerto Rico during an economic emergency; to create chapter 1 of the Act, titled General Provisions, chapter 2, titled Consensual Debt Relief, chapter 3, titled Debt Enforcement, and chapter 4, titled Effectiveness of the Act; to establish the definitions, interpretation and evidentiary standards applicable to the Act; to establish provisions regarding jurisdiction and procedure, including the creation of the Public Corporation Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, the powers and responsibilities of said court, the parameters that will govern eligibility for processes under chapter 2 and chapter 3 of the Act and to establish provisions on service of process, applicability of the rules of civil procedure, objections and appeals, among others; to establish provisions regarding creditor protection and governance, including limitations on avoidance actions, recovery on avoidance actions and the appointment of an emergency manager, among others; to establish the rules that will govern chapter 2, Consensual Debt Relief, including the objectives of a consensual debt relief transaction, the creation an oversight committee to monitor the public corporation's compliance with the recovery program, the court approval of the consensual debt relief transaction, the suspension of remedies during the suspension period and the financing of the public corporation during said period, among others; to establish the rules that will govern chapter 3, Debt Enforcement, including the petition for relief, the automatic stay, the eligibility hearing, the enforcement of claims by foreclosure transfer, the confirmation requirements, the

creation of the creditors' committees and various additional provisions relating to the assets, liabilities, contracts and powers of the petitioner, among others; and to other ends.

STATEMENT OF MOTIVES

A. Current State of Fiscal Emergency

The fiscal situation of the Government of the Commonwealth of Puerto Rico for the last six years has been the most critical the country has undergone in its history. In January 2013, the General Fund deficit for fiscal year 2012-2013 was projected to surpass $2.2 billion. By means of various measures implemented by this Administration, said deficit was reduced to approximately $1.29 billion as of June 30, 2013. For the current fiscal year 2013-2014, this Legislative Assembly approved various measures of fiscal discipline that permitted a reduction, with legislative approval, of appropriations in an amount of $170 million below budgeted amounts. Notwithstanding, and as informed by the Treasury Department, at June 10, 2014, the projected collections for the current fiscal year were $320 million below the projected amount, for which measures have been implemented in order to close the gap and achieve the goal of closing the current fiscal year with a deficit of $650 million.

The situation at the public corporations in January 2013 was no different, as the combined deficit of the country's three main public corporations (the Electric Power Authority (hereinafter "PREPA"), the Aqueduct and Sewer Authority (hereinafter "PRASA") and the Highways and Transportation Authority (hereinafter "PRHTA")) for fiscal year 2012-2013 was approximately $800 million, all of them with a combined debt adding up to $20 billion. This Administration implemented various measures in order to improve the finances of these public corporations in order to assist them in again becoming financially self-sufficient.

For example, on February 27, 2013, this Administration completed the transaction that involved the lease of the Luis Muñoz Marín International Airport by means of a public-private partnership, which strengthened the fiscal position of the Ports Authority and reduced the financial difficulties of said public corporation and Government Development Bank for Puerto Rico (hereinafter "GDB") by repaying in excess of $490 million owed to, or guaranteed by, GDB; on June 25, 2013, acts 30-2013 and 31-2013 were approved increasing the revenues of the PRHTA by approximately $270 million and allowing such public corporations to begin amortizing all of the lines of credit owed to GDB, currently in an amount of approximately $1.8 billion, and cover operational expenses; in July 2013, the Governing Board of PRASA implemented an average increase of 60% in water rates, approved by the prior administration, to cover operational expenses and improve its debt service coverage, which has allowed that public corporation to stop depending on General Fund subsidies to cover its operational deficits; and, notwithstanding the predictions, in August 2013, PREPA was able to place a bond issue of $673 million that allowed it to partially finance its capital improvement program.

Notwithstanding all of the foregoing, the measures taken with the General Fund, as well as with the public corporations, have not been enough to address the economic and fiscal problems of Puerto Rico. As the public is aware, for the first time in our constitutional

history, the credit of the Commonwealth has been compromised as a result of the downgrade to non-investment grade of its general obligation bonds by the principal rating agencies, notwithstanding all of the previously mentioned governmental measures. The three principal rating agencies downgraded below investment grade the Commonwealth's general obligation bonds, and the bonds of the majority of its instrumentalities and public corporations, including GDB, PREPA, PRASA, PRHTA, and the Public Buildings Authority. The public debt's loss of its investment grade rating places the economic and fiscal health of the people of Puerto Rico at risk, and improperly compromises the credit of the Central Government and its public corporations.

Also, during fiscal year 2013-2014, the liquidity of the government and GDB was adversely affected by various factors that significantly limited the available resources and financial flexibility of the government to cover its governmental operations. These factors include a significant increase in the interest rates and yields of both Commonwealth obligations and those of its instrumentalities and public corporations, limited access by these entities to the United States capital markets and a marked reduction in the island's capital markets. In addition, this crisis limited GDB's ability to provide interim financing to public corporations and other entities. In light of this, local and international private financial institutions, which in the past had served as a source of interim liquidity for the Central Government and the public corporations, have significantly reduced and continue to reduce the credit extended to the Commonwealth and its public corporations, and no longer are a viable alternative for obtaining interim financing. The reduction in capital market access and in the credit provided by private financial institutions, has also limited the volume of debt that can be issued and, as a result, makes it impossible for the government to depend on financings to cover the cost of its governmental operations.

GDB, which has the statutory role of serving as financial adviser and fiscal agent to the Government of the Commonwealth, its instrumentalities, municipalities, and public corporations, and has also served as a source of interim financing for all parts of the governmental apparatus, has seen its liquidity affected precisely by its financing of the operational deficits of various public corporations. In GDB's financial statements for the fiscal year ended June 30, 2013, the auditors emphasize that GDB has $6.9 billion in loans to the Commonwealth and its public corporations, which constitutes 48% of GDB's total assets. On the other hand, loans to municipalities totaled $2.212 billion, or 15% of GDB's total assets. Therefore, the liquidity and financial condition of GDB significantly depends upon the ability of the Commonwealth and its public corporations to repay their debt, which, as stated before, has been severely affected.

Based on this situation, the present Administration took various measures to improve GDB's liquidity. For example, in March 2014, the Commonwealth made a historic bond issue of its general obligation bonds in the amount of $3.5 billion, the net proceeds of which were mainly used to repay the Commonwealth's obligations with GDB. Also, Act No. 24-2014 was approved so that GDB, among others, could require certain governmental entities to transfer the balance of cash accounts maintained at private sector institutions to GDB. Also, said Act prohibits GDB from approving loans to public corporations that are unable to show that they have the sources of revenue sufficient to cover the debt service of the new financing. As a result, that law has the effect of imposing fiscal discipline on public entities and

preserves the liquidity and financial situation of GDB. Although these measures, together with other efforts, have increased GDB's liquidity, it still lacks sufficient financial strength, on its own, to satisfy the current financing needs of the Government of the Commonwealth and, in particular, of its public corporations, especially with the limited market access of these entities.

As a result of this liquidity situation which has exacerbated the difficult fiscal and financial outlook of the country, this Administration has proposed the approval of a balanced budget for the Commonwealth, without the financing of operational deficits nor debt refinancing for fiscal year 2014-2015. In addition, various expense reduction and operational reorganization measures have been taken at the agency and public corporation level, including the enactment of the Special Law for the Fiscal and Operational Sustainability of the Government of the Commonwealth of Puerto Rico, Act 66-2014, so that the Central Government as well as the public corporations may be able to cover their operational expenses with revenues collected by such entities and not by means of non-recurring funds, such as loans and debt refinancing. Act 66-2014 declared a fiscal emergency for the country for:

> the fiscal and economic recovery after the downgrade of Puerto Rico's credit and the reduction of collections that affects the liquidity of the State, safeguarding the constitutional mandate for the payment of interest and amortization of the public debt, it is hereby adopted a plan for the management of the consequences of the same and to establish a structured administration that will permit the country to meet its obligations. Similarly, the continuity of the public function is assured in essential areas of health, safety, education, social work and development, among others, as well as the rendering of those services necessary and indispensable for the populace. This law will have as its public policy the restoration of the public credit of the commonwealth of Puerto Rico through the elimination, in the short term, of the General Fund deficit and the improvement in the fiscal condition of the public corporation, without resorting to the dismissal of regular or career public employees, nor affecting the essential functions of the government agencies that provide security, education, health or social work. This structured plan is indispensable to protect the availability of cash to the Commonwealth of Puerto Rico in such a manner so that the provision of indispensable services the populace receives is not affected. This plan considers the challenges that Puerto Rico confronts to restore the public credit and address the uncertainty surrounding the duration, scope and cost of access to the capital markets in the absence of an investment grade rating.

Although the implementation of Act 66-2014 will result in approximately $230 million in combined savings for all public corporations, such fiscal control measures will not be sufficient to address the immediate fiscal situation of many public corporations of the country. Public corporations of the Commonwealth of Puerto Rico that provide essential public services, PREPA being the most dramatic example, today face significant operational, fiscal, and financial challenges. During the past years, these public corporations have issued bonds in the capital markets or obtained loans, guarantees, or other financial support from the

Government Development Bank for Puerto Rico ("GDB") or private financial institutions to cover recurring budget deficits as result of the prolonged weakness in the Commonwealth's macroeconomic conditions, their inefficiencies, and their high operating costs. These fiscal and financial conditions have also been exacerbated by the needs of these public corporations to invest substantial amounts in their capital improvement plans, in many instances required by applicable federal regulation. As a result of this, some of these public corporations are also burdened with a heavy debt load as compared to the resources available to cover the corresponding debt service.

At present, as previously discussed, these public corporations have limited access to the capital markets and their ability to repay outstanding financings is severely compromised. At the same time and contrary to past improper practices, the Government of Puerto Rico has implemented responsible public policies pursuant to which GDB will no longer provide financing to cover operating deficits of the public corporations, and neither will the Department of the Treasury of the Commonwealth because these are not financially sound practices, and GDB and the Central Government are not in a position to cover such deficits. As previously indicated, under this Administration, the public corporations have been taking the measures necessary to achieve economic self-sufficiency, because reaching such self-sufficiency is fundamental for the new policy of responsibility required by the people of Puerto Rico. That being said, the lack of access to financing and deficit funding may culminate in some public corporations becoming unable to pay their debts when due, honor their other contractual obligations, and continue to perform important public functions such as providing required maintenance and improvements to existing critical infrastructure or making new investments necessary to the continuation of these vital services and compliance with regulatory requirements.

As recognized by this Legislative Assembly upon the enactment of Act Nos. 30 and 31 of 2013, which, as previously indicated, assigned new revenues to PRHTA, that public corporation has been facing a precarious situation for some years now due to the general reduction of its revenues exacerbated by the increases in the costs of its operations. Based on that public corporation's audited financial statement for fiscal years 2010 through 2013, PRHTA had accumulated operational losses (before depreciation) of $349 million. These deficiencies were covered by GDB during the past years in order for that public corporation to continue operating and making payments to its principal creditors. During the past four years from 2009-2012, PRHTA's fiscal outlook worsened due to a severe pattern of covering its operational mismatches with GDB lines of credit, that, during such period, added up to $2.113 billion without having identified resources for the repayment of such obligations.

In a separate matter, this Legislative Assembly has also recognized, through the Puerto Rico Transformation and Energy RELEIF Act, Act 57-2014, that high energy costs, which reached their highest levels at the end of 2012 at $0.31 per kilowatt hour, have crippled our economic development and that these high costs are a result of PREPA's dependence on oil for purposes of generating electricity and its highly leveraged structure, which for several years has created difficulties in its ability to implement necessary capital improvements to the power generation, transmission, and distribution systems. PRHTA and PREPA exemplify the nature and scope of the crisis that certain of our public corporations currently face that may lead to an unprecedented failure in the ability of some public corporations to safeguard the

public and promote the general welfare of the people by continuing to provide essential government services while at the same time honoring their debt and other obligations.

As previously mentioned the financial challenges facing some of the public corporations have been further exacerbated by the Central Government's own fiscal and economic challenges. The budget deficits incurred over decades, prolonged economic recession (since 2006), a high rate of unemployment that reached 16% in 2010, population decline, and high levels of debt and pension obligations, have contributed to the financial problems of the public corporations. All of these factors have led to widening of credit spreads for public sector debt and the ratings downgrades, all as previously discussed. This, in turn, has further strained the liquidity of the Commonwealth and its public corporations and adversely affected their access to the capital markets and private sources of financing, as well as their borrowing costs.

This Legislative Assembly has time and again demonstrated its willingness to act to address the financial and economic challenges of the Commonwealth and its public corporations. This Legislative Assembly has enacted comprehensive reforms of the Employees Retirement System through Act No. 3-2013, as amended, the Teachers Retirement System through Act No. 160-2013, and the Judiciary Retirement System through Act No. 162-2013 in order to ensure retirees will continue to receive their pensions while addressing the Commonwealth's cash flow needs. This Legislative Assembly also enacted comprehensive energy reform legislation, Act 57-2014, in order to promote the economic development and wellbeing of the people of the Commonwealth.

In light of the financial situation of the Commonwealth and the Administration's goal to balance the Commonwealth's General Fund, Governor Alejandro Garcia Padilla recently announced that the Commonwealth's public corporations would be required to achieve financial self-sufficiency in the near future. This self-sufficiency, however, may not be achieved through increases in basic rates, which are already excessively high, hinder and depress economic activity and development. Given that public corporations no longer can rely on GDB loans, Commonwealth subsidies, or rate increases to cover their operating deficits, they may be unable to pay their debts as they come due and honor their other contractual obligations, while at the same time trying to meet their obligations to provide services to our populace. If the public corporations were to default on their obligations in a manner that permits creditors to exercise their remedies in a piecemeal way, the lack of an effective and orderly process to manage the interests of creditors and consumers, would threaten the ability of the Commonwealth's government to safeguard the interests of the public to continue receiving essential public services and promote the general welfare of the people of Puerto Rico.

The challenges described herein are not issues that can be addressed in the future in a gradual and measured manner over an extended period of time. We have inherited them and they are with us today, constituting a real and palpable threat to the government's ability to protect and promote the general welfare of the people of Puerto Rico now, and therefore establish a current state of fiscal emergency.

B. Insufficiency of Current Commonwealth Laws and Inapplicability of Federal Law

At present, there is no Commonwealth statute providing an orderly recovery regime for public corporations that may become insolvent. The enabling acts of PREPA and PRASA, for example, contain provisions that contemplate the appointment by a court of a receiver in the context of a default that, under the direction of a court, would take over the operations of the public corporation and apply its operating revenues in the manner ordered by the court. The receiver would remain in place until such time as all defaults of the public corporation are cured. These general provisions are inadequate to address the complexities involved in a recovery process in the event of an insolvency. They lack the rules and procedures necessary to properly and equitably manage the recovery process of a public corporation for the benefit and protection of all stakeholders.

At the same time, the provisions of the federal laws applicable to corporations in state of insolvency are inapplicable to the Commonwealth's public corporations.

This Act addresses the existing statutory gap, consistent with Commonwealth and federal constitutional requirements, and enables the Commonwealth's public corporations to address their particular fiscal and financial emergencies in a manner that maximizes value to creditors while protecting public functions important for the public health, safety and welfare, and positioning the Commonwealth to grow its economy for the benefit of all stakeholders collectively. This legislation acknowledges the complexity of these types of proceedings and provides special procedures by which the Chief Justice of the Puerto Rico Supreme Court may designate particular judges to oversee these types of proceedings who may, in turn, designate special commissioners with the required expertise to assist in their resolution. This is not a bankruptcy act, but an orderly debt enforcement act for the eligible public corporations.

C. Constitutional Basis

This legislation is consistent with guidance provided by the United States Supreme Court (the "U.S. Supreme Court") with respect to the proper rules and procedures for carrying out the financial recovery of entities ineligible for relief under the applicable federal laws.

As discussed below, the Commonwealth has the power to enact a statute that allows a public corporation to modify the terms of its debt with the consent of a substantial number of affected creditors or through a court-supervised proceeding because the U.S. Supreme Court has acknowledged the power of states to enact their own laws for entities Congress has not rendered eligible under applicable federal law. In addition, Puerto Rico has the police power to enact orderly debt enforcement and recovery statutes when facing an economic emergency, since Congress enacted legislation in 1950 and 1952 granting the Commonwealth the power to govern under its own constitution.

These being the circumstances, states have the power to enact their own laws to provide a process for adjusting debts. States have also enacted laws permitting insurance companies and banks ineligible under provisions like chapters 9 and 11 of title 11 of the United States Code to adjust their debts.

States are also able to enact their own enforcement and adjustment statute under their police power. In Faitoute Iron & Steel Co. v. City of Asbury Park, 316 U.S. 502 (1942), the U.S. Supreme Court explained the state retains police power with respect to the financial wellbeing of the state: "If a State retains police power with respect to building and loan

associations . . . because of their relation to the financial well-being of the State, and if it may authorize the reorganization of an insolvent bank upon the approval of a state superintendent of banks and a court, . . . a State should certainly not be denied a like power for the maintenance of its political subdivisions and for the protection not only of their credit but of all the creditors . . . ." Faitoute Iron & Steel Co., 315 U.S. at pages 313–14. This police power extends not only to the enactment of an adjustment statute where Congress has failed to act, but also to the use of the police power during periods of emergency.

The Commonwealth has sovereign authority to enact its own laws, as long as the statute does not conflict with our own Constitution, the Constitution of the United States or applicable federal law. With the passage of Public Law 600, Congress authorized the Commonwealth to draft its own constitution. The legislation was offered in the "nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption." In approving the proposed constitution, Congress noted: "Within this framework, the people of Puerto Rico will exercise self-government. As regards local matters, the sphere of action and the methods of government bear a resemblance to that of any State of the Union."

Courts have recognized this sovereign authority of the Commonwealth. The U.S. Supreme Court has held that the Commonwealth is "sovereign over matters not ruled by the Constitution." The Court has reiterated this holding on two occasions. Specifically, in Examining Board of Engineers v. Flores de Otero, 426 U.S. 572, 594 (1976), the Court stated that "The purpose of Congress in the 1950 and 1952 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with a state of the union." In Rodriguez v. Popular Democratic Party, 457 U.S. 1, 8 (1982), the Court further explained: ". . . Puerto Rico . . . is an autonomous political entity, sovereign over matters not ruled by the Constitution." Moreover, in Cordova & Simonpietri Insurance Agency, Inc. v. Chase Manhattan Bank, 649 F.2d 36, 41 (1st Cir. 1981) , a case that was cited positively by the U.S. Supreme Court in U.S. v. Lara, 541 U.S. 193, 204 (2004), the United States Court of Appeals for the First Circuit concluded that:

> In sum, Puerto Rico's status changed from that of a mere territory to the unique status of Commonwealth. And the federal government's relations with Puerto Rico changed from being bounded merely by the territorial clause, and the rights of the people of Puerto Rico as United States citizens, to being bounded by the United States and Puerto Rico Constitutions, Public Law 600, the Puerto Rican Federal Relations Act and the rights of the people of Puerto Rico as United States citizens.

The Commonwealth Constitution expressly recognizes the Commonwealth's police power. Under Article II, Section 18, citizens of the Commonwealth are given the right to organize and bargain collectively. That right, however, does not impair the state's police power: "Nothing herein contained shall impair the authority of the Legislative Assembly to enact laws to deal with grave emergencies that clearly imperil the public health or safety or essential public services." In addition, Article II, Section 19 more explicitly recognizes the police power of the Commonwealth: "The power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people shall likewise not be construed restrictively."

Similarly, the Legislative Assembly was given the power to create the Commonwealth courts by Congress in 1950 and 1952 when Congress enacted legislation granting Puerto Rico Commonwealth status and the power to govern under its own constitution. Section 2 of Article V of the Commonwealth Constitution grants the Legislative Assembly the authority to create the Commonwealth court. Therefore, the Legislative Assembly has the power to enact, and a Puerto Rico court has the power to enforce, an orderly debt enforcement statute.

D. Purpose and Objectives of the Act

This Legislative Assembly finds that the current fiscal emergency situation requires legislation that allows public corporations, among other things, (i) to adjust their debts in the interest of all creditors affected thereby, (ii) provides procedures for the orderly enforcement and, if necessary, the restructuring of debt in a manner consistent with the Commonwealth Constitution and the U.S. Constitution, and (iii) maximizes returns to all stakeholders by providing them going concern value based on each obligor's capacity to pay. It further believes that the public corporations can be restored to a position of solvency and creditworthiness by postponing or reducing debt service with the consent of a supermajority of the creditors as part of a recovery program, as contemplated by chapter 2 of this Act.

This Legislative Assembly recognizes that if the public corporations fail to use the revenues that have been pledged to the payment of debt service to maintain basic public services that are necessary to preserve the public health, safety, and welfare of our citizens, they will likely be unable to honor their debt. This Act also recognizes that if an orderly debt enforcement and recovery process is not in place, there will likely be outcomes that do not balance fairly the interests of all the stakeholders. To address these challenges in a manner that treats debt holders fairly and balances the best interests of creditors with the interest of the Commonwealth to protect its citizens and to grow and thrive for the benefit of its residents, this Legislative Assembly has decided to enact a law that is consistent with the precepts espoused by the courts of the Commonwealth and the United States.

E. Summary of the Act

The Act contemplates two types of procedures to address a public corporation's debt burden. The first is a consensual debt modification procedure that would culminate in a recovery program (chapter 2 of this Act) and the second is a court-supervised procedure that would culminate in an orderly debt enforcement plan (chapter 3 of this Act). A public corporation can seek relief under either chapter 2 or chapter 3 at the same time or sequentially. This Act is designed in many respects to mirror certain key provisions of title 11 of the United States Code, and courts and stakeholders are encouraged to review and consider existing precedent under title 11 of the United States Code, where applicable, when interpreting and applying this Act.

Eligibility

The following entities are not eligible to seek relief under this Act: the Commonwealth (for the avoidance of doubt, neither the general obligation debt of the Commonwealth, nor any debt guaranteed by the Commonwealth shall be subject to the Act); the seventy-eight municipalities of the Commonwealth; GDB and its subsidiaries, affiliates, and ascribed entities; the Children's Trust; the Employees Retirement System; the Judiciary

Requirement System; the Municipal Finance Agency; the Municipal Finance Corporation; the Puerto Rico Industrial Development Company; the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority; the Puerto Rico Infrastructure Financing Authority; the Puerto Rico Sales Tax Financing Corporation; the Teachers Retirement System; and the University of Puerto Rico.

Summary of Chapter 1 of the Act

Chapter 1 of the Act establishes the general provisions of the law and includes three subchapters, the first entitled "Title, Purposes, Nomenclature, and Interpretation," the second "Jurisdiction and Procedure," and the third "Creditors' Protections and Governance." Subchapter I includes provisions related to, among other things, definitions, standards of interpretation and evidence, a savings clause, and inapplicability of other laws. Subchapter II establishes the norms regarding jurisdiction, the powers and responsibilities of the Court, eligibility, service of process, and appeals, among others. Subchapter III contains provisions concerning constitutional safeguards for creditors, the role of GDB in proceedings conducted under the Act, the power of the Governor to appoint an Emergency Manager, and the basic tools available to an eligible public corporation availing itself of the Act, such as continued operations and limited recovery of setoffs and actual fraudulent transfers.

Summary of Chapter 2 of the Act

General. Chapter 2 provides a mechanism for a public corporation to adopt a recovery program and seek a market-led solution for debt relief, based on the recovery program, that binds all debt holders with the consent of a supermajority of debt holders. The recovery program contemplated by chapter 2 will have as its objectives: to enable an eligible obligor to become financially self-sufficient; to allocate equitably among all stakeholders the burdens of the recovery program; and to provide the same treatment to all creditors unless a creditor agrees to a less favorable treatment.

Chapter 2 was designed based on jurisprudence that has determined that no violation of the constitutional prohibition on the impairment of contracts exists upon the enactment of a debt adjustment regime that complies with the following principal characteristics: the existence of a fiscal emergency that necessitates the enactment of this legislation; a supermajority vote in order to bind the minority; the creation of an impartial oversight board to supervise compliance with the recovery program; ratable distributions; and court approval.

Commencement and Eligibility. The chapter 2 process begins when the governing body of a public corporation and GDB, or GDB upon the Governor's request, as the case may be, authorize the public corporation to seek consensual debt relief from holders of specified debt instruments (which chapter 2 identifies as the affected debt instruments). Any government entity, other than those specifically excluded (see above), is eligible to commence a recovery process under chapter 2 of this Act.

Scope of Relief. The relief available under chapter 2 consists of any combination of amendments, modifications, waivers, or exchanges (collectively referred to as amendments) to the affected debt instruments, so long as the amendments are coupled with the public corporation's commitment to be bound by the recovery program. Amendments may include

various features such as interest rate adjustments, maturity extensions, debt relief, or other revisions to affected debt instruments.

Suspension of Remedies. After a public announcement of the suspension period is made, all remedies otherwise granted to holders of, parties with a beneficial interest in, and trustees and indenture trustees and similar representatives related to the affected debt instruments are temporarily suspended for a sufficient period of time to allow the public corporation to engage in discussions with stakeholders, seek the required consent from holders, and obtain court approval of the amendments. The public corporation shall have the power through court process to enforce the temporary suspension of remedies.

Recovery Program. A public corporation seeking approval of a consensual debt relief transaction must commit to and formulate a recovery program. The recovery program must allow the public corporation to become financially self-sufficient based on financial and operational adjustments as may be necessary or appropriate to allocate the burdens of such consensual debt relief equitably among all stakeholders. The recovery program, which may include interim milestones and performance targets, will necessarily require burden sharing by affected stakeholders and may also include measures designed to improve operating margins; increase operating revenues; reduce operating expenses; transfer or otherwise dispose of existing operating assets; acquire new operating assets; and close down or restructure existing operations or functions.

Required Consent of Debt Holders. Proposed amendments to the affected debt instruments must be submitted to the holders of such debt instruments for consent or approval. If holders of at least half of the amount of debt entitled to vote or consent in a particular class participate in the vote or consent process and holders of at least three-quarters of the aggregate amount of debt that participate in the vote or consent solicitation approve the amendments, the public corporation may then seek court approval of the amendments for the purpose of binding all holders of such affected debt instruments to the amendments.

Court Approval. The court process is designed to be efficient and expedient in light of the consensual nature of the transaction. The designated courtroom within the Court of First Instance, San Juan Part, established by this Act will have original jurisdiction to resolve any disputes relating to any provision under chapter 2, including a consensual debt relief transaction. Upon an application by the public corporation for approval of the amendments, the court will be required to determine whether (i) the amendments proposed in such transaction are consistent with the objectives of chapter 2, and (ii) that the voting procedure was conducted in a manner consistent with chapter 2. If the court is satisfied that these requirements have been satisfied, the court must order that the proposed amendments shall become effective immediately, and that all holders of such instruments shall be bound by the new terms of the instrument. The amendments shall be binding on the public corporation and any entity asserting claims or other rights, including anyone with a beneficial interest, in respect of affected debt instruments.

Oversight Commission. In order to monitor the public corporation's compliance with the recovery program, chapter 2 establishes an oversight commission comprised of three independent experts appointed by the Governor. The commission is also charged with the responsibility of providing periodic compliance updates to stakeholders and the public. If the

public corporation fails to achieve its interim performance targets, for example, the commission may issue non-compliance findings and make recommendations for curing such non-compliance.

Summary of Chapter 3 of the Act

General. Chapter 3 addresses the debt problem of the Commonwealth's public corporations through a judicial solution requiring the same consent required in, for example, chapters 9 and 11 of title 11 of the United States Code. Chapter 3 enables each qualifying public corporation to defer debt repayment and to decrease interest and principal to the extent necessary to enable each entity to continue to fulfill its vital public functions. Collective bargaining agreements may be modified or rejected under certain circumstances and trade debt can be reduced when necessary. In designing chapter 3, this Legislative Assembly has adopted a model similar to that of chapter 9 of title 11 of the United States Code in order to provide all stakeholders with much needed familiarity in a process wrought with uncertainty. As a result, this Legislative Assembly clearly expresses its intent that jurisprudence interpreting the provisions of chapter 9 of title 11 of the United States Code be used, to the extent applicable, for purposes of interpreting the provisions of chapter 3 of this Act.

Constitutional Basis. Notwithstanding the common concepts that this legislation shares with analogous federal law, as stated before, this legislation is not a bankruptcy statute. This legislation provides for a regime to guarantee the orderly enforcement of debts, to the extent of each such public corporation's ability to do so. To address the U.S. Supreme Court's concern about a municipality legislating the terms on which its own instrumentalities' debts can be handled, chapter 3 adopts even more stringent economic standards than Congress adopted for chapters 9 and 11 of title 11 of the United States Code. Accordingly, the underlying premise of chapter 3 is that it must serve as an orderly debt enforcement mechanism that makes creditors better off than they would be if they all simultaneously enforced their claims immediately. Primarily, chapter 3 accomplishes this task by requiring that each creditor receive (i) at least the value it would receive if all creditors were allowed simultaneously to enforce their respective claims against the public corporation, and, wherever possible, the higher going concern value of the public corporation, plus (ii) a note providing additional value based on the amount by which the public corporation's future financial results yield positive cash flow. This note serves as a protection against paying creditors less than the available value and as a proxy for the amount each creditor could receive in the future in the absence of chapter 3.

Chapter 3 was designed based on the desire of the Commonwealth's public corporations to satisfy their contractual obligations to the maximum extent possible. Wherever practicable, chapter 3 opts to maximize distributions to creditors consistent with the execution of vital public functions, without which all creditors would be worse off. For example, in some circumstances, if pledged revenues are turned over to creditors and not used to sustain a public corporation, there may be fewer revenues in the future to pay the creditors. Assets backing employee retirement or post-employment benefit plans remain inviolable under chapter 3. Obligations for employee wages and salaries, payment for the provision of goods and services under a certain threshold (not to be lower than $1 million), and debts owing to the United States of America will be paid in full.

Commencement and Eligibility; Stay of Actions. A case under chapter 3 is commenced when a petition for relief is filed, as such concept is defined in chapter 3. To be eligible for chapter 3, a petitioner must be (i) currently unable or at serious risk of being unable to pay valid debts as they mature while performing its public functions without additional legislative or financial assistance, (ii) ineligible for relief under chapter 11 of title 11 of the United States Code and (iii) authorized to file a petition by its governing body and GDB or by GDB at the Governor's request on behalf the public corporation. The petition must contain information about the types and amounts of claims the petitioner intends to affect under its debt enforcement plan. Any actions for payment of such claims are stayed as of the date the petition is filed, channeling their adjudication into a single forum—the designated courtroom within the Court of First Instance, San Juan Part, established by this Act. Prompt notice of the petition, the claims to be affected, and the automatic stay must be furnished to creditors, along with notice of the opportunity to volunteer to serve on a general creditors' committee to be appointed by the Court. The notice shall also include a date set by the Court for a hearing to determine whether the petitioner is eligible for relief under chapter 3 and the deadlines for filing any objections to eligibility. The eligibility hearing must take place no more than 30 days after the petition is filed.

Pendency of Case. During its chapter 3 case, the petitioner remains in possession and in control of its assets and operations. After the petition is filed, any expense the petitioner incurs in exchange for new value is an administrative expense, to be paid in full in the ordinary course, and unaffected by the petitioner's plan. The petitioner may obtain unsecured credit or incur debt in the ordinary course as an administrative expense; if the petitioner is unable to obtain credit or incur debt on those terms, chapter 3 provides the Court with the power to authorize significant further protections for lenders willing to extend credit to the petitioner.

Rejection of Contracts. The petitioner also has the power to assign or reject contracts to which it is party if the Court finds it is in the petitioner's best interests. Counterparties to rejected contracts will be left with claims for breach of contract, to be treated under the petitioner's plan. Collective bargaining agreements are subject to rejection or modification, but only where the Court determines that absent rejection or modification the petitioner would likely become unable to perform public functions, which determination is to be made only, based on U.S. Supreme Court precedent, after the data underlying the request for rejection have been shared with union representatives and reasonable efforts to negotiate a voluntary modification have failed.

Debt Enforcement Plan. Only the petitioner or GDB, upon the Governor's request, may propose a debt enforcement plan under chapter 3. Creditors must be separated into different classes (based upon different collateral security, priorities, or rational bases for classifying similar claims separately) for treatment under the plan. Plan treatment must be such that every affected creditor receives payments and/or property having a present value of at least the amount the claims in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed and the distributions are maximized under the circumstances. Under the plan, every affected creditor also must receive a note that provides for 50% of the petitioner's positive free cash flow for ten years following the plan effective date. No plan can be confirmed unless at least

one class of affected debt votes to accept the plan, but all other classes can have their claims treated as described above regardless of whether they accept the plan. This protects the public corporations from entering into debt repayment plans they cannot afford.

F. Desire for a Single Court

This Act creates the Public Sector Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, which will have exclusive competence and jurisdiction over all matters arising under or related to this Act. Accordingly, it is this Legislative Assembly's desire that all disputes arising under or related to this Act (or to any debt that is affected by it), wherever filed, be directed to and resolved by the Court established by this Act (or to the federal court located in the Commonwealth, if applicable) and that courts in States (and federal courts located outside the Commonwealth) decline to adjudicate such disputes in the same manner that this Legislative Assembly would expect Commonwealth courts to abstain from hearing disputes against States and their instrumentalities facing a similar financial crisis.

G. Conclusion

As previously demonstrated, this Legislative Assembly has the power to enact legislation that allows a public corporation to modify the terms of its debt with the consent of supermajority of its affected creditors or through a court supervised proceeding. Certain public corporations are operating under fiscal and financial conditions such that, if emergency action is not taken to prevent their insolvency, they will have to submit themselves to a debt adjustment process, because with their current revenue structures they will be unable to pay their debts as they become due and honor their contractual obligations, while continuing to provide services to the people. This Act provides the necessary regime to establish an orderly process that will allow those public corporations that so require to satisfy their debts and other contractual obligations to the best of their ability, while guaranteeing the continuity of the governmental functions in providing essential public services.

In light of the foregoing, this Legislative Assembly, relying on the state of fiscal emergency declared in Act 66-2014, confirms that the approval of this Act is of utmost importance to ensure that the public corporations of the Commonwealth satisfy their debts in an orderly fashion so that indispensable services to the people of Puerto Rico may continue uninterrupted.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Chapter 1: General Provisions

Subchapter I: Title, Purpose, Nomenclature, and Construction

Section 101. —Short Title and Fiscal Emergency.—

(a) This Act shall be known and may be cited as the "Puerto Rico Public Corporation Debt Enforcement and Recovery Act."

(b) Pursuant to Act No. 66-2014, the Legislative Assembly has declared a state of fiscal emergency for the Commonwealth and its instrumentalities.

(c) The Legislative Assembly, in the exercise of its police power, is empowered to adopt measures aimed at protecting the public health, safety and welfare in a structured manner, while addressing the current fiscal situation of the Commonwealth and, in particular, of its public corporations. To that end, the Legislative Assembly may adopt legislation in response to social and economic interests, as well as in emergencies. Section 19 of the Bill of Rights of the Commonwealth Constitution provides that the enumeration of rights contained in Article II shall not be construed as to restrict "[t]he power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people". Similarly, Section 18 of the Bill of Rights of the Commonwealth Constitution gives this Legislative Assembly authority to enact laws to address grave emergencies that imperil the public health, safety or essential public services."

(d) This Act is adopted in the exercise of the Commonwealth's police power, as well as under the Legislative Assembly's power to adopt laws for the protection of the life, health and welfare of the people, such as in emergencies where the health, public safety and essential government services are clearly endangered. For these reasons, this Act shall prevail over any other law.

(e) The public policy of this Act shall be to restore the credit of the public corporations of the Commonwealth by improving the fiscal condition of the public corporations without affecting the essential functions of such entities.

Section 102. —Definitions.—

The following words and terms, when used and referred to in this Act, shall have the meaning stated below:

(1) "Act" means this Puerto Rico Public Corporation Debt Enforcement and Recovery Act.

(2) "administrative expense" means an expense of a petitioner, incurred or accrued from and after the date its petition is filed up through the date a plan is confirmed in its case, in respect of new value provided or new obligations incurred, including any expenses necessary to fulfill the petitioner's public functions.

(3) "affected creditor" means a creditor holding affected debt.

(4) "affected debt" means the debt scheduled pursuant to section 302(a)(2) of this Act.

(5) "affected debt instrument" means each debt instrument related to an obligation identified in a suspension period notice, provided that no debt instrument evidencing an obligation incurred pursuant to section 206 or section 322 of this Act shall qualify as an affected debt instrument.

(6) "affiliate" means, with respect to an entity, another entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the entity first specified.

(7) "approval order" means an order of the Court under chapter 2 of this Act finding that:

(a) the amendments, modifications, waivers, or exchanges, as the case may be, proposed in a consensual debt relief transaction are consistent with the requirements of chapter 2 of this Act, including the objectives stated in section 201(a) of this Act and the requirements of sections 202(d)(1) through 202(d)(3) of this Act; and

(b) the voting procedure followed in connection with the consensual debt relief transaction was carried out in a manner consistent with the requirements of chapter 2 of this Act.

(8) "case" means a case commenced under chapter 3 of this Act.

(9) "cash collateral" means a petitioner's cash and cash equivalents to the extent encumbered by valid liens or security interests.

(10) "claim" means:

(a) a right to present or future payment, whether matured, unmatured, contingent, noncontingent, disputed, undisputed, liquidated, or unliquidated; or

(b) a right to an equitable remedy for which money damages are a remedy under applicable law.

(11) "Commonwealth" means the Commonwealth of Puerto Rico.

(12) "Commonwealth Constitution" means the Constitution of the Commonwealth of Puerto Rico, as amended.

(13) "Commonwealth Entity" means the Commonwealth and a department, agency, district, municipality, or instrumentality (including a public corporation) of the Commonwealth, including any successor entity or additional entity created or to be created to perform any function of such Commonwealth Entity.

(14) "Commonwealth law" means any law of the Commonwealth, or rule or regulation of any Commonwealth Entity.

(15) "consensual debt relief transaction" has the meaning given to that term in section 201(b) of this Act.

(16) "contract" means any contract or agreement, including any debt instrument or unexpired lease, any collective bargaining agreement, any retirement or post-employment benefit plan, and any other agreement or instrument providing for amounts or benefits due by the petitioner to any retiree or employee.

(17) "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

(18) "Court" means the Public Sector Debt Enforcement and Recovery Act Courtroom of the Court of First Instance, San Juan Part, described in section 109 of this Act.

(19) "Court of Appeals" means the Court of Appeals of the Commonwealth of Puerto Rico.

(20) "Court of First Instance" means the Court of First Instance of the Commonwealth of Puerto Rico.

(21) "creditor" means a holder of a claim against, either or both:

(a) a public sector obligor seeking a consensual debt relief transaction under chapter 2 of this Act; and

(b) a petitioner under chapter 3 of this Act.

(22) "creditors' committee" means a committee appointed by the Court pursuant to section 318 of this Act.

(23) "critical vendor debt" means special trade debt owed to an entity that agrees to deliver, during the pendency of a case under chapter 3 of this Act and through the effective date, ongoing provision of goods and services to the petitioner—

(a) on the same or better terms for the petitioner than those in place during the one hundred and eighty (180) days preceding the filing of a petition under chapter 3 of this Act; and

(b) that the petitioner has designated as critical to its ability to perform public functions.

(24) "custodian" means:

(a) a receiver or trustee of any of the property of an entity;

(b) an assignee under a general assignment for the benefit of an entity's creditors; or

(c) a trustee, a receiver, a conservator, or an agent under any applicable law, common law right, or under any contract, that is appointed or authorized to take charge of property of an entity for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of some or all of the entity's creditors.

(25) "debt" means liability on a claim.

(26) "debt instrument" includes any document or statement for, used in connection with, or related to:

(a) any obligation to pay the principal of, premium of, if any, interest on, penalties, reimbursement or indemnification amounts, fees, expenses, or other amounts relating to any indebtedness, and any other liability, contingent or otherwise,

(i) for borrowed money,

(ii) evidenced by bonds, debentures, indentures, notes, resolutions, credit agreements, trade finance agreements, trade finance facility agreements, securities, or similar instruments, or

(iii) for any letter of credit or performance bond;

(b) any liability of, or related to, the kind described in the preceding clause (a), which has been guaranteed or insured;

(c) any obligation in respect of bankers' acceptances;

(d) any obligation in respect of a swap agreement, derivative contract or related agreement, hedge agreement, securities contract, forward contract, repurchase agreement, option, warrant, commodities contract, or similar document;

(e) any and all deferrals, renewals, extensions, and refunding of, or amendments, modifications, or supplements to, any liability of the kind described in any of the preceding clauses (a) through (d);

(f) any liability arising out of any judgment relating to any liability of the kind described in any of the preceding clauses (a) through (e); or

(g) any liability arising from an obligation of insurance relating to any liability of a kind described in this section.

(27) "effective date" of a plan has the meaning given to that term in section 315(l) of this Act.

(28) "eligible obligor" means a public sector obligor satisfying the eligibility criteria in section 113(a) of this Act, rendering it eligible to seek relief under chapter 2 of this Act.

(29) "emergency manager" means a natural person appointed as emergency manager pursuant to section 135 of this Act.

(30) "employee claims against a successor employer" means any liability or obligation relating to the petitioner's employees' rights pursuant to any contract or applicable law not expressly assumed in a transfer pursuant to section 307 of this Act.

(31) "entity" includes an individual, a person, an estate, a trust, a Commonwealth Entity, a governmental unit that is not a Commonwealth Entity, a corporation, a partnership, and a limited liability company.

(32) "enumerated entity" means the eligible obligor and the petitioner, as applicable, and each of their successors or assigns to all or part of their business; the Commonwealth; GDB; any governing body of any of the foregoing; any emergency manager; any official of an employee benefit plan to which any of the foregoing in the past contributed or now contributes and any trustee or other official of any pension fund or retirement or post-employment benefit plan for the benefit of any past or present employee of any of the foregoing; the oversight commission appointed pursuant to section 203 of this Act; any member of such oversight commission; any creditors' committee; any member of a creditors' committee or its representative on the creditors' committee; any elected official; any entity appointed by an elected official or any other public official; any professional retained by any of the foregoing; any past or present advisor, agent, consultant, controlling person (if any), director, employee, manager, member, officer, partner, or stockholder of any of the foregoing; and any successor, assign, and personal representative of any of the foregoing.

(33) "essential supplier contract" means a contract, or type of contract, for the provision of goods or services to a public sector obligor seeking relief under this Act, which contract or type of contract is necessary for such public sector obligor to continue performing public functions, and as identified—

(a) with respect to an eligible obligor, on a schedule published on the website on the date the suspension period notice is published; and

(b) with respect to a petitioner, on the schedule specified in section [302(a)(2)] of this Act.

(34) "financially self-sufficient" means, in respect of any public sector obligor, able to meet its projected operating expenses, capital expenditure requirements, working capital requirements, and financing costs out of its projected revenues within the period of time specified in the recovery program without the need for subsequent relief under this Act or financial support from any Commonwealth Entity.

(35) "GDB" means the Government Development Bank for Puerto Rico, including any successor entity or additional entity created or to be created to perform any function of the Government Development Bank for Puerto Rico.

(36) "general committee" means the committee formed pursuant to section 318(a) of this Act.

(37) "governing body" means:

(a) the board of directors of a public corporation; and

(b) any deliberative body by means of which an instrumentality exercises its authority, as provided in the particular instrumentality's enabling act.

(38) "Governor" means the person serving as the Governor of the Commonwealth pursuant to Article IV of the Commonwealth Constitution.

(39) "insolvent" means:

(a) currently unable to pay valid debts as they mature while continuing to perform public functions; or

(b) will be unable or at serious risk of being unable, without further legislative acts or without financial assistance from the Commonwealth or GDB, to pay valid debts as they mature while continuing to perform public functions

(40) "instrumentality" means an entity created by Commonwealth law as an entity authorized to perform public functions for the Commonwealth.

(41) "noticing agent" means the agent that an eligible obligor, a petitioner, or GDB (acting on behalf of the eligible obligor or petitioner) may retain at the expense of such eligible obligor or petitioner pursuant to section 121 of this Act.

(42) "oversight commission" means a body composed of three (3) independent experts appointed by the Governor under chapter 2 of this Act, not more than one (1) of whom may be a resident of the Commonwealth at the time of appointment.

(43) "party in interest" includes a public sector obligor that seeks relief under chapter 2 of this Act or that files a petition under chapter 3 of this Act, the Governor, GDB, a creditor of such public sector obligor, a creditors' committee, an indenture trustee (or entity performing comparable functions) acting in the interest of one or more of such public sector

obligor's creditors, and a party to a contract scheduled pursuant to section 302(a)(2) of this Act.

(44) "performing public functions" or other similar phrase including "fulfilling public functions" and "serving public functions" means serving an important government purpose—including providing goods or services important or necessary for the protection of public health, safety, or welfare (which include the promotion of the economic activity of the Commonwealth)—whether such public functions are performed directly, or indirectly by facilitating or assisting another Commonwealth Entity to serve such a purpose.

(45) "petition" means the document filed by a petitioner to commence a case under chapter 3 of this Act pursuant to section 301 of this Act.

(46) "petitioner" means a public sector obligor that files a petition—or on whose behalf GDB, upon the Governor's request, files a petition—pursuant to section 301 of this Act.

(47) "plan" means a debt enforcement plan proposed under chapter 3 of this Act.

(48) "pleading" means any document, including any motion, filed with the Court in any proceeding under chapter 2 or chapter 3 of this Act.

(49) "public corporation" means an entity created by Commonwealth law as a public corporation.

(50) "public sector obligor" means a Commonwealth Entity, but excluding:

(a) the Commonwealth;

(b) the seventy-eight (78) municipalities of the Commonwealth; and

(c) the Children's Trust; the Employees Retirement System of the Government of the Commonwealth of Puerto Rico and its Instrumentalities; GDB and its subsidiaries, affiliates, and entities ascribed to GDB; the Judiciary Retirement System; the Municipal Finance Agency; the Municipal Finance Corporation; the Puerto Rico Public Finance Corporation; the Puerto Rico Industrial Development Company, the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority; the Puerto Rico Infrastructure Financing Authority; the Puerto Rico Sales Tax Financing Corporation (COFINA); the Puerto Rico System of Annuities and Pensions for Teachers; and the University of Puerto Rico.

(51) "recovery program" means, consistent with section 202 of this Act, for an eligible obligor, a financial and operational adjustment program.

(52) "special trade debt" means any claim for the provision of goods or services that

(a) is scheduled pursuant to section 302(a)(2) of this Act, and

(b) exceeds a threshold to be determined by the petitioner in its reasonable discretion, but not to be less than $1 million;

(53) "statement of allocation," "amended statement of allocation," and "final statement of allocation" have the meanings given to those terms in section 308 of this Act.

(54) "Supreme Court" means the Supreme Court of the Commonwealth of Puerto Rico.

(55) "suspension period" means the period of time commencing on the date that the suspension period notice is published, and ending on the earlier of:

(a) the date that the approval order has become a final and unappealable order; and

(b) the date on which either of the conditions specified in section 205(e) of this Act has occurred.

(56) "suspension period notice" means the notice published pursuant to section 201(d) of this Act.

(57) "transfer order" means the order approving a transfer pursuant to section 307 of this Act.

(58) "United States" means the United States of America.

(59) "U.S. Constitution" means the Constitution of the United States, as amended.

Section 103. —Interpretation.—

(a) The terms of this Act shall be liberally construed in favor of furthering the legislative objectives of this Act.

(b) The singular includes the plural.

(c) Any neuter personal pronoun shall be considered to mean the corresponding masculine or feminine personal pronoun, as the context requires.

(d) The phrase "after notice and a hearing," or other similar phrase means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances, provided, however, an act may be authorized without a hearing if notice is given properly under the circumstances and if—

(1) a hearing is not timely requested by a party in interest; or

(2) there is insufficient time for a hearing to be commenced before such act must be done, and the Court authorizes such act.

(e) The phrase "at any time" means at any time and from time to time.

(f) A "claim against the petitioner" includes any claim against property of the petitioner.

(g) The words "includes" and "including" are not limiting.

(h) The phrase "may not" is prohibitive, and not discretionary.

(i) The word "or" is not exclusive.

(j) The phrase "applicable law" includes applicable laws, rules, and regulations, including this Act.

(k) A definition contained in a section of this Act that refers to another section of this Act does not, for the purpose of such reference, affect the meaning of a term used in such other section.

(l) The phrase "counterparty" means:

(1) with respect to a collective bargaining agreement, the union that is a bargaining unit under such contract, and not any individual member of such union;

(2) with respect to a pension fund, the administrator of such pension fund, and not any beneficiary of such fund; and

(3) with respect to a retirement or post-employment benefit plan, the administrator of such retirement or post-employment benefit plan, and not any beneficiary of such plan.

(m) The phrase "final and unappealable" shall mean a final and unappealable order, resolution, judgment, or other ruling that is no longer subject to appeal or certiorari proceeding.

(n) The phrase "use or transfer" includes a lease and a sale and lease back transaction.

(o) Any reference to "website" with respect to an eligible obligor or a petitioner means either the website of such eligible obligor or petitioner, or the website specified in section 121 of this Act.

(p) For purposes of interpreting this Act, the Court shall consider to the extent applicable jurisprudence interpreting title 11 of the United States Code.

(q) The phrases "goods" or "services" do not include money loaned or other financial debt incurred.

Section 104. —Applicability of Act.—

This Act is applicable as to all debts—as they exist, prior to, on, and after the effective date of this Act—of any public sector obligor that requests relief under chapter 2 of this Act or that files a petition under chapter 3 of this Act; provided, however, that some of a public sector obligor's debt may remain unaffected by this Act as provided herein.

Section 105. —Evidentiary Standard.—

Unless expressly otherwise provided, the requisite standard of proof in any proceeding under this Act is proof by a preponderance of the evidence.

Section 106. —Savings and Severability Clause.—

This Act shall be interpreted in a manner to render it valid to the extent practicable in accordance with the Commonwealth Constitution and the U.S. Constitution. If any clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act, were to be declared unconstitutional by a competent court, the order to such effect issued by such court will neither affect nor invalidate the remainder of this Act. The effect of such an order shall

be limited to the clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act declared unconstitutional.

Section 107. —Language Conflict.—

This Act shall be adopted both in English and Spanish. If in the interpretation or application of this Act any conflict arises as between the English and Spanish texts thereof, the English text shall govern. It is recognized that certain terms and phrases used in this Act are terms and phrases used in English in the context of Title 11 of the U.S. Code.

Section 108. —Inapplicability of Other Laws.—

(a) Any other Commonwealth law or any certificate of incorporation, bylaw, or other governing instrument of any Commonwealth Entity is superseded to the extent inconsistent with this Act. Any and all procedural rules herein shall supersede any other conflicting Commonwealth law to the extent inconsistent with this Act. For the avoidance of doubt, the Commerce Code of 1932, as amended, and Act No. 60 of April 27, 1931, as amended, do not apply to any public sector obligor under this Act.

(b) This Act supersedes and annuls any insolvency or custodian provision included in the enabling or other act of any public corporation, including Section 17 of Act No. 83 of May 2, 1941, as amended, and Section 13 of Act No. 40 of May 1, 1945, as amended.

(c) Any contradiction between the enabling or other act of any public corporation or otherwise applicable Commonwealth law and this Act shall be resolved as if this Act supercedes. For purposes of Section 27 of Act No. 83 of May 21, 1941 and Section 21 of Act No. 74 of June 23, 1965, this Act shall be interpreted as specifically amending such Act No. 83 and Act No. 74, respectively. Nothing contained in the aforementioned Act No. 83, as amended, nor in the enabling legislation of any other Commonwealth Entity shall be construed as limiting in any way the application of the provisions of this Act.

Subchapter II: Jurisdiction and Procedure

Section 109. —The Court.—

(a) The Public Sector Debt Enforcement and Recovery Act Courteoom is created herein, which shall be located in and be part of the Court of First Instance, San Juan Part. The Chief Justice of the Supreme Court may designate a judge of the Puerto Rico judicial system.

(b) A judge appointed pursuant to subsection (a) of this section may appoint a special commissioner in accordance with Rule 41 of the Puerto Rico Rules of Civil Procedure. The special commissioner must be a person of recognized expertise in financial matters, including insolvency proceedings. The special commissioner is empowered to oversee multiple proceedings under either or both chapter 2 and chapter 3 of this Act, either simultaneously or sequentially.

(c) An eligible obligor or a petitioner, as applicable, shall reimburse the appropriate entity within the Judiciary Branch for the costs of administering any proceeding under this Act, including the reasonable and documented costs and expenses of the special commissioner, if any, and, if multiple eligible obligors and/or petitioners exist, the incremental costs shall be allocated among them.

Section 110. —Responsibilities and Powers of the Court.—

(a) In keeping with the prescribed time periods in other sections of this Act, the Court shall endeavor to conduct any proceeding under chapter 2 of this Act or to resolve a case under chapter 3 of this Act with all deliberate speed and efficiency consistent with due process, and taking into account that continuing uncertainty about the resolution of the proceeding is harmful to creditors, to the viability of the public sector obligor, to the credit of the Commonwealth Entities, and to the well-being of the residents and businesses in the Commonwealth.

(b) The Court may issue any order and conduct any processes necessary or appropriate to carry out the provisions of this Act. No provision of chapter 2 or chapter 3 of this Act providing for the raising of an issue by a party in interest shall be construed to preclude the Court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement Court orders or rules, or to prevent an abuse of process.

(c) Notwithstanding any other Commonwealth law, or any contract that is binding on any Commonwealth Entity or to which any of its property is subject, no court established by the Commonwealth shall appoint a custodian with respect to the public sector obligor during the suspension period under chapter 2 of this Act or in or during its case under chapter 3 of this Act under any applicable law or contract.

Section 111. —Subject Matter, Personal, and In Rem Jurisdiction.—

(a) Unless otherwise provided for in this Act, the Court shall have original jurisdiction and exclusive jurisdiction, except in relation to a federal court exercising federal jurisdiction, to consider and adjudicate all disputes arising out of or related to this Act, including the following—

(1) all disputes arising out of or related to affected debt instruments during the suspension period;

(2) all disputes, whether prior to or after entry of an approval order, arising under or related to chapter 2 of this Act, arising in any proceeding under chapter 2 of this Act, or related to a consensual debt relief transaction proposed under chapter 2 of this Act, including any dispute as to who votes or consents under this Act;

(3) all disputes arising under chapter 3 of this Act or arising in or related to a case under or related to chapter 3 of this Act, including those related to affected debt; and

(4) all proceedings or matters related to the preceding clauses (1) through (3), including proceedings to interpret or enforce an approval order, a confirmed plan, a transfer order, a final statement of allocation, or any part of this Act.

(b) The Court shall have personal jurisdiction over all entities to the fullest extent permitted by the Commonwealth Constitution and the U.S. Constitution. The Court shall have in rem jurisdiction over the property of each public sector obligor.

(c) The Court shall retain subject matter and in rem jurisdiction to interpret and enforce:

(1) a consensual debt relief transaction as to which it has entered an approval order under chapter 2 of this Act; and

(2) a transfer order, a final statement of allocation, and a plan confirmed under chapter 3 of this Act.

Section 112. —Interaction of Chapter 2 and Chapter 3.—

A public sector obligor with the approval of GDB (or, upon the Governor's request, GDB on the public sector obligor's behalf) may seek relief under either chapter 2 or chapter 3 of this Act, or both simultaneously or sequentially, subject to section 113 of this Act, and may withdraw, in its discretion, a suspension period notice or any obligation identified in a suspension period notice, a proposal for a consensual debt relief transaction, or an application for entry of an approval order under chapter 2 of this Act, prior to entry of an approval order that has become a final and unappealable order. The petitioner, with the approval of GDB (or, upon the Governor's request, GDB on the petitioner's behalf), may withdraw a petition under chapter 3 of this Act.

Section 113. —Eligibility.—

(a) A public sector obligor is eligible for chapter 2 of this Act, if it is authorized to commence a consensual debt relief transaction pursuant to section 201(b)(1) or 201(b)(2) of this Act.

(b) A petitioner is eligible for chapter 3 of this Act, if it—

(1) is insolvent;

(2) is authorized to file a petition under chapter 3 of this Act by its governing body and GDB, or a petition is filed on its behalf by GDB, upon the Governor's request; and

(3) is ineligible for relief under title 11 of the United States Code, because, among other reasons:

(A) it is not a "municipality" having permission of a "state" to file a chapter 9 petition, each as defined in title 11 of the United States Code; and

(B) it is a "governmental unit," as defined in title 11 of the United States Code, that may not seek relief under chapter 11 of title 11 of the United States Code.

Section 114. —Binding Nature of Court Determinations.—

Any determination of the Court shall be binding on the eligible obligor or the petitioner, any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments or affected debt of such eligible obligor or such petitioner, any trustee, any collateral agent, any indenture trustee, any fiscal agent, any bank that receives or holds funds from such eligible obligor or such petitioner related to the affected debt instruments or affected debt, and any other entity specifically identified in such determination by the Court or the order memorializing such determination.

Section 115. —Effect of Approval, Transfer, and Confirmation Orders.—

(a) An approval order in respect of a consensual debt relief transaction under chapter 2 of this Act and a confirmation order in respect of a plan or transfer order or final statement of allocation under chapter 3 of this Act shall each be treated as a judgment for the purposes of Commonwealth law, subject only to appeal as provided in section 127 of this Act.

(b) Upon entry of an approval order in respect of a consensual debt relief transaction under chapter 2 of this Act—

(1) the amendments, modifications, waivers, or exchanges contained therein automatically shall take effect and shall be binding on the eligible obligor that is party to the affected debt instrument, any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments of such eligible obligor, any trustee, any collateral agent, any indenture trustee, any fiscal agent, and any bank that receives or holds funds from such eligible obligor related to the affected debt instruments; and

(2) the Court shall retain jurisdiction, and thereafter no entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments of such eligible obligor, no trustee, no collateral agent, no idenure trustee, no fiscal agent, and no bank that receives or holds funds from such eligible obligor related to the affected debt instruments shall bring any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of such affected debt instruments, except with the permission of the Court and then only to recover and enforce the rights permitted under the amendments, modifications, waivers, or exchanges, and the approval order.

c) Except as otherwise provided in a plan, in the order confirming such plan, in a transfer order, or in a final statement of allocation, each under chapter 3 of this Act, upon entry of a confirmation order, a transfer order, or a final statement of allocation:

(1) the provisions of the confirmed plan and order confirming such plan bind the petitioner and all creditors whose rights are affected by the plan;

(2) the transfer order and final statement of allocation bind the petitioner and all creditors whose rights are affected by such transfer order or final statement of allocation; and

(3) all creditors affected by the plan or the final statement of allocation shall be enjoined from, directly or indirectly, taking any action inconsistent with the purpose of this Act, including bringing any action or proceeding of any kind or character for the enforcement of such claim or remedies in respect of affected debt, except as each has been affected pursuant to the plan under chapter 3 of this Act or the final statement of allocation.

(d) Except as expressly otherwise provided in an approval order under chapter 2 of this Act, or a plan, an order confirming a plan, a transfer order, or a final statement of allocation under chapter 3 of this Act, upon entry of any such order or final statement of allocation, the eligible obligor or the petitioner is authorized to perform all acts set forth in the debt relief transaction, the approval order, the plan, the order confirming such plan, the

transfer order, or the final statement of allocation, without any further authorization from any Commonwealth Entity or the Court.

(e) The Court may direct the eligible obligor, the petitioner, and any other necessary party to execute, to deliver, or to join in the execution or delivery of any contract required to effect a transfer of property dealt with by an approved consensual debt relief transaction under chapter 2 of this Act, or a final statement of allocation or a confirmed plan under chapter 3 of this Act, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the consensual debt relief transaction, the final statement of allocation, or the plan.

Section 116. —Service of Process.—

Except as otherwise ordered by the Court, service of process may be made by any of the means described in subsections (a), (b), or (c) below:

(a) Subject to section 337 of this Act, service of process may be made by the entities and in the manner prescribed by Rules 4.3 and 4.4 of the Puerto Rico Rules of Civil Procedure, or by notice by mail to the last known address of the individual or entity to be served.

(b) Notice by mail or direct transmission may be made in accordance with sections 204(c)(2) and 338 of this Act or as the Court otherwise orders.

(c) Notice by Publication.

(1) The Court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice by mail.

(2) Pursuant to Rule 4.6 of the Puerto Rico Rules of Civil Procedure, or as further detailed below, notice by publication, published at least three (3) times at least fourteen (14) days prior to a specified hearing, in both a newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth, shall be required to supplement notice of:

(A) the approval hearing pursuant to section 204(b) of this Act with regard to a consensual debt relief transaction under chapter 2 of this Act;

(B) the eligibility hearing pursuant to section 306 of this Act;

(C) the hearing on a transfer of all or substantially all assets of the petitioner pursuant to section 307 of this Act; and

(D) the confirmation hearing pursuant to section 314 of this Act.

(3) Notice by publication, published at least three (3) times during the fourteen (14) days after each event specified in subsections (c)(3)(A) and (c)(3)(B) of this section, in both a newspaper of national circulation in the United States, and a newspaper of general circulation in the Commonwealth, shall be required to supplement notice of:

(A) the filing of an application pursuant to section 204(a) of this Act; and

(B) the filing of a petition pursuant to section 301 of this Act.

Section 117. —Application of the Puerto Rico Rules of Civil Procedure.—

To the extent not inconsistent with this Act, the Puerto Rico Rules of Civil Procedure shall apply to any proceedings under chapter 2 and chapter 3 of this Act.

Section 118. —Language.—

(a) All pleadings, requests, and motions under this Act shall be filed in accordance with Rule 8.7 of the Puerto Rico Rules of Civil Procedure; provided, however, that all pleadings, requests, and motions filed in Spanish shall be accompanied by an English translation.

(b) All hearings, opinions, and orders shall be in the language designated by the presiding judge and in accordance with Act No. 1 of January 28, 1993.

(c) Each public sector obligor seeking relief under this Act shall post on its website copies in Spanish and English of each consensual debt transaction proposed under chapter 2 of this Act and each plan proposed in a case under chapter 3 of this Act.

Section 119. —Notice of Appearance and Pleading Requirements.

(a) To the extent applicable under this Act, any party in interest may file a notice of appearance with the Court requesting all notices and pleadings be transmitted to such party or its attorney at the email addresses specified in its notice of appearance, or, if an email address is not available, at the mailing address specified in its notice of appearance.

(b) Every pleading filed in a proceeding or case under this Act shall include the mailing address and email address, if available, of the entity or entities on behalf of which the pleading is filed.

(c) Any entity filing a pleading, inclusive of a notice of appearance, with the Court shall email an identical copy of the document filed to the noticing agent, eligible obligor, or petitioner maintaining the website contemporaneously with filing the document with the Court or sending it to the Court for filing. Any entity not having the ability to send such a document by email shall mail it by certified mail to the noticing agent, eligible obligor, or petitioner maintaining the website contemporaneously with filing it with the Court or mailing it to the Court for filing.

(d) Each eligible obligor and petitioner shall include on each of its pleadings in bold, 12-point font the following statement: "Every entity filing a document with the Court under the Puerto Rico Public Corporation Debt Enforcement and Recovery Act shall email an identical copy of the document filed to the entity maintaining the website required by section 121 hereof to the following email address [insert email address here], or if unable to transmit emails shall mail the copy to the following address [insert mailing address here].

(e) All petititions and documents filed under this Act shall be filed electronically. An electronic judicial file shall be kept for corresponding cases pursuant to the provisions of Rule 67.6 of the Rules of Civil Procedure and Act 148-2013."

Section 120. —Objections.—

Whenever an entity objects to or challenges the relief requested under chapter 2 or chapter 3 of this Act, such entity shall provide, within five (5) business days of an eligible

obligor's or a petitioner's written request, all documents in its possession, custody, or control supporting, and all documents in its possession, custody, or control opposing, the objecting party's claim and objection. This production shall be in addition to responses to any additional valid discovery requested by the eligible obligor or petitioner. Any such objection shall—

(a) be in writing and filed with the Court, no later than seven (7) business days prior to the relevant hearing unless the Court orders otherwise or as otherwise specified in this Act;

(b) articulate clearly the basis for the objection; and

(c) be accompanied by a statement, sworn under oath, that includes—

(1) the name of each objecting entity that holds or controls the beneficial interest in an affected debt instrument of the eligible obligor seeking relief under chapter 2 of this Act or an affected debt of a petitioner in a case under chapter 3 of this Act;

(2) a description of the beneficial interest that is held or controlled by such objecting entity or any of its controlled affiliates (naming such affiliates) in any of the following:

(A) the affected debt instrument or any affected debt, including the amount of any claim;

(B) any interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting any of the foregoing entities or affiliates an economic interest that is affected by the value, acquisition, or disposition of the affected debt instrument or affected debt; and

(C) any credit default swap of any insurance company that insures any obligation of any Commonwealth Entity;

(3) a statement whether each interest disclosed pursuant to sections 120(c)(2)(A) through 120(c)(2)(C) of this Act was acquired before or after the commencement of the suspension period under chapter 2 of this Act or before or after the date the petition was filed under chapter 3 of this Act; and

(4) a statement whether each interest disclosed pursuant to sections 120(c)(2)(A) through 120(c)(2)(C) of this Act may appreciate in value if any debt issued by any Commonwealth Entity declines in value.

Section 121. —Noticing Agent.—

(a) Each the eligible obligor, the petitioner, or GDB (acting on behalf of the eligible obligor or the petitioner), shall carry out the disclosure mechanisms and noticing requirements provided in this section, and, to that end, may retain and employ an entity to serve as noticing agent to:

(1) create and maintain a website, accessible free of charge, containing all pleadings, orders, opinions, and notices properly filed under chapter 2 or chapter 3 of this Act, and a calendar showing all deadlines and hearings; and

(2) provide notices of all hearings and deadlines, and perform related functions, including those of a claims agent where applicable.

(b) The noticing agent shall maintain on the website a list of all parties in interest who file notices of appearance pursuant to section 119 of this Act, together with the email addresses or mailing addresses to which each party in interest requested that notices and pleadings be sent.

(c) The noticing agent shall be compensated at rates based on its normal charges for such services to other debtors in collective proceedings to enforce claims, such as cases under chapter 9 or chapter 11 of title 11 of the United States Code.

Section 122. —Confidentiality of Certain Filings.—

(a) The Court, for cause, may protect an individual with respect to the following types of information to the extent the Court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

(1) any means of identification (as defined in 18 U.S.C. § 1028(d)) contained in a paper filed, or to be filed, in a proceeding or case under this Act; and

(2) other information contained in a paper described in subsection (a)(1) of this section.

(b) Upon ex parte or noticed application demonstrating cause, the Court shall provide access to information protected pursuant to subsection (a) of this section to an entity acting pursuant to the police or regulatory power of a Commonwealth Entity.

Section 123. —Confidential Deliberations.—

Notwithstanding any otherwise applicable Commonwealth law, including Act No. 159-2013, as amended, all deliberations regarding whether to seek relief under this Act, what plan or relief to propose, or other matters relating to this Act, shall not be made public, but adequate records of such deliberations shall be maintained. Such deliberations shall be privileged under Commonwealth law and shall neither be subject to discovery in any civil proceeding nor subject to disclosure, except as required by Commonwealth law or applicable U.S. law in connection with raising money or otherwise selling or buying securities.

Section 124. —No Implied Private Right of Action.—

There is no implied private right of action under this Act.

Section 125. —Special Counsel, Professional Disclosure, and Retainers.—

(a) To the extent, if any, that two public sector obligors seeking relief under this Act and represented by the same legal professionals have one or more disputes between such public sector obligors, or a public sector obligor seeking relief under this Act and GDB represented by the same legal counsel have one or more disputes between them, in each case, the disputes shall be handled by special counsel for each of the parties to the dispute.

(b) Each professional firm retained, respectively, by or for the public sector obligor(s) seeking relief under this Act or by one or more creditors' committees shall file with

the Court no later than fourteen (14) days after its retention a written disclosure of its then current representation of entities in related or unrelated matters, which entities, to the best of the professional's actual knowledge, are (1) a Commonwealth Entity or (2) based on a reasonable review of the books and records of the eligible obligor or petitioner, hold claims against or other economic interests in respect of such eligible obligor or petitioner. Each professional shall promptly update its disclosures contemplated by this subsection (b) as it obtains additional information or as facts change.

(c) Notwithstanding any other Commonwealth law, a retainer may be advanced to any financial and legal advisors of the eligible obligor, the petitioner, and GDB.

(d) In the event that the rules regarding conflicts of interests set forth in Canon 21 of the Canons of Professional Ethics and its interpretative jurisprudence make it impractical for a public sector obligor to obtain legal representation of the highest level of competency to represent such public sector obligor in a proceeding under chapter 2 or chapter 3 of this Act involving more than one hundred (100) creditors (including beneficial owners of publicly traded debt) that does not have a conflict or potential conflict, such public sector obligor may file a petition with the Supreme Court for a waiver of the rules regarding conflicts of interests set forth in Canon 21 of the Canons of Professional Ethics or for the approval of a special rule, setting forth the reasons supporting the request. In considering the merits of any such petition, the Supreme Court may take into consideration the special rules and accompanying jurisprudence regarding conflicts of interest set forth in section 327 of title 11 of the United States Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, including, but not limited to, those permitting the designation of one or more conflict counsel who would represent the public sector obligor in those matters that could represent a conflict for the attorneys representing the public sector obligor in a proceeding under chapter 2 or chapter 3 of this Act.

Section 126. —Bond Requirement.—

In the discretion of the Court or the Supreme Court, any entity may be ordered to post a bond in the amount determined by the Court or the Supreme Court when—

(a) seeking to enjoin compliance with or proceedings pursuant to all or a portion of this Act; or

(b) appealing from a decision of the Court and requesting a stay of such decision under this Act.

Section 127. —Appeals.—

(a) Any appeal of an approval order, a transfer order, a final statement of allocation, or a confirmation order shall be filed with the Supreme Court no later than fourteen (14) days after the filing in the record of a copy of the notice of the approval order, the transfer order, the final statement of allocation, or the confirmation order, respectively.

(b) All other appeals shall be taken as provided by the law of the Commonwealth, and subject to subsection (a) of this section, nothing in this Act shall limit an appellate court's review of matters decided by the Court.

Subchapter III: Creditors' Protections and Governance

Case: 15-1218 Document: 00116823987 Page: 95 Date Filed: 04/15/2015 Entry ID: 5900381

Section 128. —Compliance with Commonwealth Constitution and U.S. Constitution.—

If a party to a contract with an eligible obligor or a petitioner demonstrates that its treatment under this Act substantially or severely impairs its rights under such contract for purposes of the Commonwealth Constitution or the U.S. Constitution without providing an adequate remedy therefor, the substantial or severe impairment shall be allowed only if the eligible obligor, the petitioner, or GDB, each as applicable, carries the burdens imposed on it by the Commonwealth Constitution and the U.S. Constitution with respect to demonstrating its use of reasonable and necessary means to advance a legitimate government interest, and the aggrieved entity fails to carry the burden of persuasion to the contrary.

Section 129. —Adequate Protection and Police Power.—

(a) When an entity's interest in property is entitled to adequate protection under this Act, it may be provided by any reasonable means, including—

(1) cash payment or periodic cash payments;

(2) a replacement lien or liens (on future revenues or otherwise); or

(3) in connection with a case under chapter 3, administrative claims, in each case, solely to the extent that the suspension period, the automatic stay, the use or transfer of property subject to a lien, or the granting of a lien under this Act results in a decrease in value of such entity's interest in property subject to the lien as of commencement of the suspension period or a chapter 3 case.

(b) Without limiting subsection (a) of this section, adequate protection of an entity's interest in cash collateral, including revenues, of the eligible obligor or the petitioner, as applicable, may take the form of a pledge to such entity of future revenues (net of any current expenses, operational expenses or other expenses incurred by the eligible obligor or the petitioner under this Act) of such eligible obligor or petitioner if—

(1) the then-current enforcement of such entity's interest would substantially impair the ability of such eligible obligor or petitioner to perform its public functions;

(2) there is no practicable alternative available to fulfill such public functions in light of the circumstances; and

(3) the generation of future net revenues to repay such entity's secured claims is dependent on the then-current continued performance of such public functions and the future net revenues will be enhanced by the then-current use of cash collateral or revenues to avoid then-current impairment of public functions.

(c) Without limiting subsections (a) and (b) of this section, an eligible obligor or petitioner may recover from or use property securing an interest of an entity the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to such entity, including payment of expenses incurred by such eligible obligor or petitioner pursuant to or in furtherance of this Act.

(d) Notwithstanding any section of this Act conditioning the eligible obligor's or the petitioner's use or transfer of its property on adequate protection of an entity's interest in the property, if and when the police power justifies and authorizes the temporary or permanent use or transfer of property without adequate protection, the Court may approve such use or transfer without adequate protection.

Section 130. —Reserved. —

Section 131. —Limitations on Avoidance Actions.—

No preference action by or on behalf of creditors of any eligible obligor or petitioner shall be prosecuted. No fraudulent transfer action by or on behalf of creditors of any eligible obligor or petitioner shall be prosecuted except such actions for a transfer, or an incurrence of an obligation, that was made with actual intent to hinder, delay, or defraud creditors. Any and all such actions shall be controlled and prosecuted solely by the Commonwealth, in the discretion of its Attorney General, for the benefit of the creditors entitled to bring the action outside of this Act.

Section 132. —Recovery on Avoidance Actions.—

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided pursuant to section 131 of this Act, an eligible obligor or petitioner may recover the property transferred, or, if the Court so orders, the value of such property, from—

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

(b) An eligible obligor or petitioner may not recover pursuant to subsection (a)(2) of this section from—

(1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of such transferee.

(c) A good faith transferee from whom an eligible obligor or petitioner may recover pursuant to subsection (a) of this section has a lien on the property recovered to secure the lesser of—

(1) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and

(2) any increase in the value of such property as a result of such improvement of the property transferred.

(d) The eligible obligor or petitioner is entitled to only a single satisfaction pursuant to subsection (a) of this section.

(e) In this section, the term "improvement" includes—

(1) physical additions or changes to the property transferred;

(2) repairs to such property;

(3) payment of any tax on such property;

(4) payment of any debt secured by a lien on such property that is superior or equal to the rights of the eligible obligor or petitioner; and

(5) preservation of such property.

Section 133. —Right of GDB to Coordinate and Control Debt Enforcement and Recovery Procedures.—

(a) GDB shall have, on its own behalf and on behalf of the public sector obligor, at all stages of proceedings including appeals and certiorari proceedings, standing to raise, appear on, be heard on, prosecute, and defend against any and all issues and requests for relief in a consensual debt relief transaction under chapter 2 of this Act or in a case under chapter 3 of this Act. The eligible obligor or the petitioner shall reimburse GDB for all its costs and expenses therefor.

(b) All rights of a public sector obligor to take action in seeking and leading its consensual debt relief transaction under chapter 2 of this Act or in commencing and prosecuting its case under chapter 3 of this Act shall extend to GDB on behalf of the public sector obligor, in which instances GDB may act through its own attorneys, or the public sector obligor's attorneys shall take instructions from GDB. Each action taken by GDB shall be binding on the public sector obligor.

Section 134. —GDB Reimbursement.—

(a) The eligible obligor or the petitioner, as applicable, shall reimburse or pay GDB, in full, for GDB's costs and expenses for amounts paid or agreed to be paid, in preparation for seeking relief under this Act, including for the payment of financial and legal advisors of the eligible obligor, the petitioner, and GDB (including any retainer advanced to such advisors), before the commencement of a suspension period under chapter 2 of this Act or of a case under chapter 3 of this Act, or in connection with this Act.

(b) In addition to its reimbursement obligations set forth in subsection (a) of this section, the eligible obligor or the petitioner, as applicable, shall reimburse GDB, in full, for GDB's—

(1) costs and expenses (including payments to financial and legal advisors) for services provided by GDB to the eligible obligor or the petitioner, each before and after the commencement of the suspension period under chapter 2 of this Act or of a case under chapter 3 of this Act, or in connection with the prosecution of the rights of the eligible obligor or petitioner under this Act when GDB has acted through its own attorneys pursuant to section 133(b) of this Act; and

(2) outlays incurred each before and after the commencement of the suspension period under chapter 2 of this Act or the filing of a petition under chapter 3 of this Act, in each case, on behalf of the eligible obligor or petitioner for the provision of goods and services paid by GDB and delivered to the eligible obligor or petitioner,

and any funds GDB may have provided or provides to the eligible obligor or petitioner, as applicable, that GDB believes are necessary to the performance by the eligible obligor or petitioner of its public functions.

(c) Notwithstanding any other provision of this Act, the eligible obligor or the petitioner, as applicable, shall reimburse or pay GDB, in full, pursuant to subsections (a) and (b) of this section promptly, but no later than ten (10) business days after GDB's written request. Amounts owing to GDB as described in this section may not be adjusted as an affected debt instrument under chapter 2 of this Act or be affected debt under chapter 3 of this Act and shall be formalized and incurred in accordance with laws regulating government contracting, except as provided in this Act. The provisions of Act 66-2014 shall not be applicable to contracts related to services provided in connection with this Act.

Section 135. —Appointment of Emergency Manager.—

The Governor may, at any time during the suspension period under chapter 2 of this Act or during the pendency of a case under chapter 3 of this Act, appoint an emergency manager for the eligible obligor or petitioner, as applicable. The Governor may choose any individual to serve as emergency manager, including, without limitation, a current or former officer of the eligible obligor or petitioner. The Governor may empower the emergency manager to oversee multiple eligible obligors or petitioners simultaneously or sequentially. The emergency manager shall subject to the applicable provisions and obligations entered into pursuant to Act 66-2014:

(a) exclusively possess and exercise all powers of the governing body and the principal executive officer of the eligible obligor or petitioner, as applicable, and the powers of the existing governing body of the eligible obligor or petitioner shall be suspended during the emergency manager's tenure;

(b) report periodically to such governing body regarding the operations of the eligible obligor or petitioner, as applicable, the progress of the restructuring process under chapter 2 of this Act or prosecution of the petitioner's plan under chapter 3 of this Act, and the governing body may provide advice to the emergency manager;

(c) report to the Governor, the Legislative Assembly and GDB upon request;

(d) serve:

(1) during the suspension period and may continue serving for a period of up to three (3) months after entry of the approval order, which period may be extended for three (3) additional months by the Governor or as otherwise provided for in the recovery program;

(2) during the chapter 3 case, unless and until replaced by the Governor, and shall continue serving for a period of three (3) months after the effective date of the plan, which period may be extended for three (3) additional months by the Governor; or

(3) until the Governor, in his absolute discretion, determines; provided, however, that the periods set forth in items (d)(1) and (d)(2) above shall not be exceeded; and

(e) be compensated by the eligible obligor or petitioner, as applicable, according to terms of employment approved by the Governor with advice of GDB.

Section 136. —Ongoing Operations.—

(a) During the suspension period under chapter 2 of this Act or the pendency of a case under chapter 3 of this Act, an eligible obligor or petitioner, as applicable, shall (i) operate the enterprise and make all personnel and other business determinations during the suspension period or the pendency of a case under chapter 3 of this Act, in each case in accordance with applicable law, (ii) remain in possession and control of its assets and, (iii) subject to sections 307 and 323 of this Act, shall be authorized to use and transfer such assets without Court approval.

(b) The Governor may at any time, on an interim basis during the suspension period or during the pendency of a case under chapter 3 of this Act, appoint new members of the governing body of any eligible obligor or petitioner, as applicable, with the advice and consent of the Senate, to substitute for some or all of those existing members of the governing body who had been appointed by the Governor.

(c) The Governor may exercise either, both, or neither of the powers granted by subsection (b) of this section and section 135 of this Act, sequentially or simultaneously, as the case may be.

Section 137. —Quasi-immunity of the Eligible Obligor and the Petitioner, Creditors' Committee Personnel, and Government Officials.—

(a) Except to the extent proven by final and unappealable judgment, to have engaged in willful misconduct for personal gain or gross negligence comprising reckless disregard of and failure to perform applicable duties, the enumerated entities shall not have any liability to any entity for, and without further notice or order shall be exonerated from, actions taken or not taken in their capacity, and within their authority in connection with, related to, or arising under, or as permitted under this Act.

(b) No action shall be brought against any enumerated entity concerning its acts or omissions in connection with, related to, or arising under this Act, except in the Court. No civil cause of action may arise against and no civil liability may be imposed on such enumerated entities absent clear and convincing proof of willful misconduct for personal gain or gross negligence comprising reckless disregard of and failure to perform applicable duties. Any action brought for gross negligence shall be dismissed with prejudice if a defendant, as an officer, director, official, committee member, professional, or other enumerated entity, produces documents showing such defendant was advised of relevant facts, participated in person or by phone, and deliberated in good faith or received and relied on the advice of experts in respect of whatever acts or omissions form the basis of the complaint.

Chapter 2: Consensual Debt Relief

Section 201. —Consensual Debt Relief Transactions.—

(a) The objectives of chapter 2 of this Act are the following:

(1) to enable an eligible obligor to become financially self-sufficient;

(2) to allocate equitably among all stakeholders the burdens of the recovery program; and

(3) to provide the same treatment to all creditors within a class of affected debt instruments unless a creditor agrees to a less favorable treatment.

(b) An eligible obligor may seek debt relief from its creditors pursuant to one or more transactions in accordance with chapter 2 of this Act (each a "consensual debt relief transaction") if so authorized by either—

(1) its governing body, with the approval of GDB; or

(2) GDB, at the Governor's request, and on behalf of the eligible obligor, if the eligible obligor has not authorized such action and the Governor, with the advice of GDB, determines that it is in the best interest of the eligible obligor and the Commonwealth.

(c) To enable GDB to coordinate the relief requested in instances where the Governor and GDB authorize the consensual debt relief transaction, GDB shall be entitled to select and retain on behalf of the eligible obligor and at the eligible obligor's expense, such professionals as GDB believes are necessary to seek relief under chapter 2 of this Act.

(d) After the eligible obligor obtains authorization pursuant to subsection (b) of this section, the eligible obligor shall publish on its website a notice that—

(1) the suspension period has commenced on the date of such notice; and

(2) identifies which obligations are subject to the suspension period.

(e) The suspension period notice may be amended to add or eliminate obligations, but the suspension period shall commence only from the time the suspension period notice is first published pursuant to subsection (d) of this section.

Section 202. —Relief and Commitment.—

(a) In a consensual debt relief transaction undertaken pursuant to section 201 of this Act, an eligible obligor may seek approval of any amendment, modification, waiver, or exchange to or of the affected debt instruments from the holders of such instruments.

(b) In connection with a consensual debt relief transaction, an eligible obligor must prepare and commit itself by an act of its governing body (if authorized by it, pursuant to section 201(b)(1) of this Act) or by GDB, upon the Governor's request (if authorized by it pursuant to section 201(b)(2) of this Act) on behalf of the eligible obligor to a recovery program that—

(1) allows the eligible obligor to become financially self-sufficient based on such financial and operational adjustments as may be necessary or appropriate to allocate the burdens of such consensual debt relief equitably among all stakeholders; and

(2) GDB has approved in writing.

(3) The recovery program may include interim milestones, performance targets, and other measures to—

(1) improve operating margins;

(2) increase operating revenues;

(3) reduce operating expenses;

(4) transfer or otherwise dispose of or transfer existing operating assets;

(5) acquire new operating assets; and

(6) close down or restructure existing operations or functions.

(d) In respect of any consensual debt relief transaction, and notwithstanding anything to the contrary contained in an affected debt instrument or otherwise applicable law, the amendments, modifications, waivers, or exchanges proposed in such transaction shall become effective and binding for each affected debt instrument on any entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments, any trustee, any collateral agent, any indenture trustee, any fiscal agent, and any bank that receives or holds funds from such eligible obligor related to the affected debt instruments, within a class specified in the consensual debt relief transaction, if—

(1) GDB has approved the consensual debt relief transaction in writing;

(2) creditors of at least—

(A) fifty percent (50%) of the amount of debt of such class participates in a vote or consent solicitation with respect to such amendments, modifications, waivers, or exchanges; and

(B) seventy-five percent (75%) of the amount of debt that participates or votes in such class approves the proposed amendments, modifications, waivers, or exchanges;

(3) each class contains claims that are substantially similar to other claims in such class, provided that the term “substantially similar” does not require classification based on similar maturity dates; and

(4) the Court enters an approval order in respect of such consensual debt relief transaction pursuant to section 204 of this Act.

(e) For purposes of calculating the voting percentage set forth in this section, any affected debt instruments held or controlled by any Commonwealth Entity, shall not be counted in such vote.

Section 203. —Oversight Commission.—

(a) An oversight commission shall be established for each eligible obligor that is subject to a recovery program no later than ten (10) days after entry of the approval order. The identity and affiliation(s) of the persons who will serve on the oversight commission shall be disclosed publicly prior to the commencement of the approval hearing. Such oversight commission shall be responsible for monitoring compliance with the recovery program. The eligible obligor subject to the recovery program shall provide the oversight commission with regular updates, not less frequently than once every four (4) months, of its compliance with terms of the recovery program.

(b) If the oversight commission, by majority vote, finds that an eligible obligor has failed to meet an interim performance target or other milestone contained in the recovery program and such failure has continued for at least ninety (90) days thereafter, the oversight commission shall issue a non-compliance finding to the eligible obligor, the Governor and to the Legislative Assembly, with a copy to be made available publicly, explaining the reasons for such non-compliance and making recommendations for curing such non-compliance. Such recommendations may include the replacement of some or all of the management or the governing body of the eligible obligor.

Section 204. —Court Approval of Consensual Debt Relief Transactions.—

(a) Any eligible obligor seeking entry of an approval order shall file an application with the Court requesting such approval not later than thirty (30) days after obtaining the requisite consent of holders of an affected debt instrument set forth in section 202(d)(2).

(b) The Court shall conduct a hearing to consider entry of the approval order not later than twenty-one (21) days after the filing of the application.

(c) Notwithstanding any contractual provision or applicable law to the contrary, notice of the hearing described in section 204(b) shall be proper and reasonable if—

(1) publication notice of such hearing is made in accordance with section 116(c)(2) of this Act; and

(2) notice of such hearing is transmitted to the holders of the affected debt instruments at least fourteen (14) days prior to such hearing, including through The Depository Trust Company or similar depository, or as the Court otherwise orders.

(d) Subject to the terms and conditions of the affected debt instrument (including any limitations on suits prescribed therein), any holder of an affected debt instrument may object to the relief sought in subsection (a) of this section by filing an objection in accordance with section 120 of this Act, provided, however, that no entity may object if it is not adversely impacted by the actions taken in connection with this Act.

(e) In determining whether an approval order shall be entered, the Court shall consider only whether the amendments, modifications, waivers, or exchanges, as the case may be, proposed in such transaction, are consistent with the requirements of chapter 2 of this Act and the objectives set forth in section 201(a) of this Act, and whether the voting procedure followed in connection with the consensual debt relief transaction, which shall include a reasonable notice and period of time to vote or consent as the circumstances require, was carried out in a manner consistent with chapter 2 of this Act. If the Court determines that each of these requirements has been satisfied, it shall enter the approval order.

Section 205. —Suspension of Remedies.—

(a) Notwithstanding any contractual provision or applicable law to the contrary, during the suspension period, no entity asserting claims or other rights, including a beneficial interest, in respect of affected debt instruments, no trustee, no collateral agent, no indenture trustee, no fiscal agent, no bank that receives or holds funds from such eligible obligor related to the affected debt instruments, may exercise or continue to exercise any remedy under a contract or applicable law—

(1) for the non-payment of principal or interest;

(2) for the breach of any condition or covenant; or

(3) that is conditioned upon the financial condition of, or the commencement of a restructuring, insolvency, bankruptcy, or other proceedings (or a similar or analogous process) by, the eligible obligor concerned, including a default or an event of default thereunder.

(b) The term "remedy" as used in subsection (a) of this section shall be interpreted broadly, and shall include any right existing in law or contract, and any right to—

(1) setoff;

(2) apply or appropriate funds;

(3) seek the appointment of a custodian;

(4) seek to raise rates; and

(5) exercise control over property of the eligible obligor

(c) Notwithstanding any contractual provision or applicable law to the contrary, a contract to which the eligible obligor is a party may not be terminated or modified, and any right or obligation under such contract may not be terminated or modified, at any time during the suspension period solely because of a provision in such contract conditioned on—

(1) the insolvency or financial condition of the eligible obligor at any time before the commencement of the suspension period;

(2) the commencement of the suspension period or a restructuring process under chapter 2 of this Act; or

(3) a default under a separate contract that is due to, triggered by, or as the result of the occurrence of the events or matters in subsections (a)(1) or (a)(2) of this section.

(d) Notwithstanding any contractual provision to the contrary, a counterparty to a contract with the eligible obligor for the provision of goods or services shall, unless the eligible obligor advises to the contrary in writing, continue to perform all obligations under, and comply with all terms of, such contract during the suspension period, provided that the eligible obligor is not in default under such contract other than—

(1) as a result of a condition specified in subsection (c) of this section; or

(2) with respect to an essential supplier contract, as a result of a failure to pay any amounts arising prior to the commencement of the suspension period.

(e) The suspension period shall terminate automatically without further action if—

(1) an approval order for such consensual debt relief transaction is denied, and is not remedied within sixty (60) days after such denial unless otherwise provided for in an order denying the application for an approval order; or

(1) no approval application has been filed with the Court within two hundred and seventy (270) days after the commencement of the suspension period, provided that the suspension period may be extended for one additional period of

ninety (90) days if the eligible obligor and the holders of at least twenty (20) percent of the aggregate amount of the affected debt instruments in at least one class of affected debt instruments consent to such extension.

(f) The Court shall have the power to enforce the suspension period, and any entity found to violate this section shall be liable to the eligible obligor concerned for damages, costs, and attorneys' fees incurred by such eligible obligor in defending against action taken in violation of this section, and punitive damages for intentional or knowing violations. Upon determining that there has been a violation of the suspension period, the Court may order additional appropriate remedies, including that the act comprising such violation be declared void or annulled.

Section 206. —Obtaining Credit.—

(a) After the commencement of the suspension period, an eligible obligor may obtain credit in the same manner and on the same terms as a petitioner pursuant to section 322 of this Act.

(b) Prior to or after the filing of an application for an approval order pursuant to section 204 of this Act, the eligible obligor may, to the extent required by any entity seeking to extend credit pursuant to subsection (a), seek from the Court, after notice and a hearing, an order approving and authorizing it to obtain such credit.

(c) Credit obtained pursuant subsection (a) of this section may not be treated as an affected debt instrument under chapter 2 or as affected debt under chapter 3 or avoided as a fraudulent transfer.

(d) If the eligible obligor subsequently seeks relief under chapter 3, the credit extended pursuant to this section shall be entitled to same priority and security as if such credit had been extended in a case under chapter 3.

(e) Section 322(e) shall apply to any order entered pursuant to subsection (b) of this section.

Section 207. —Adequate Protection for Use of Property Subject to Lien or Pledge.—

(a) To continue performing its public functions and to obtain an approval order or consummate a consensual debt relief transaction, the eligible obligor may use property, including cash collateral, subject to a lien, pledge, or other interest of or for the benefit of an entity, provided that the entity shall be entitled to a hearing, upon notice, to consider a request for adequate protection of its lien, pledge, or other interest as promptly as the Court's calendar permits, at which hearing the Court may condition the use of the collateral on such terms, if any, as it determines necessary to adequately protect such interest.

(b) Notwithstanding anything to the contrary in this Act, if revenues of an eligible obligor are subject to a pledge under which current expenses or operating expenses may be paid prior to the payment of principal, interest or other amounts owed to a creditor, the eligible obligor shall not be required to provide adequate protection pursuant to this section, to the extent that sufficient revenues are unavailable for payment of such principal, interest or other amounts after full payment of such current expenses or operating expenses.

(c) If the entity holding a lien, pledge, or interest in the collateral consents to its use, then the entity shall be deemed adequately protected on the terms, if any, in the consent and no further adequate protection shall be required.

Chapter 3: Debt Enforcement

Subchapter I: Petition and Schedules

Section 301. —The Petition.—

(a) A case is commenced under chapter 3 of this Act by the filing of a petition with the Court, either:

(1) by a petitioner upon the decision of its governing body and approval of GDB; or

(2) by GDB, upon the Governor's request, on behalf of a petitioner, if the petitioner's governing body has not authorized the petition and GDB determines that the petition is in the best interests of the petitioner and the Commonwealth.

(b) To enable GDB to coordinate the relief requested in all cases filed under chapter 3 of this Act, GDB shall be entitled to select and retain financial and legal professionals to prosecute each chapter 3 case on behalf of the petitioner and at the petitioner's expense, subject to sections 125 and 134 of this Act.

(c) A case may not be commenced under chapter 3 of this Act by any involuntary petition of creditors or other entities.

(d) The petition shall set forth:

(1) the amounts and types of claims against the petitioner that the petitioner, subject to amendment, contemplates being affected under the plan, sufficient to enable the Court to form a general committee pursuant to section 318(a) of this Act; provided that if the schedule in section 302(a)(2) of this Act is filed with the petition, such schedule will satisfy the requirement in this subsection (1); and

(2) the assessment of the entity filing the petition pursuant to subsection (a)(1) or (a)(2) of this section that the petitioner meets the eligibility requirements provided in section 113(b) of this Act.

Section 302. —Petition Filing Requirements.—

(a) A petitioner shall file with the petition for relief under chapter 3 of this Act, or as soon as practicable thereafter, or if the petition is filed pursuant to section 301(a)(2) of this Act, no more than sixty (60) days after the date the petition is filed—

(1) a list of creditors the petitioner or GDB intends to be affected creditors and for whom the petitioner has readily accessible internal electronic records of names and mailing addresses or email addresses; and

(2) a schedule of all the claims against the petitioner, which existed on the date the petition was filed, intended to be affected under the plan, showing:

(A) the amounts outstanding as of the date the petition is filed;

(B) any seniorities or priorities among such claims;

(C) the collateral security, including pledges of revenues, for each claim;

(D) which of such claims the petitioner acknowledges as allowed and which claims the petitioner disputes or contends are contingent or unliquidated; and

(E) the essential supplier contracts.

(b) A petitioner may amend its list of affected creditors and schedule of claims at any time (1) up to five (5) days before the deadline to object to a transfer of all or substantially all of the petitioner's assets or (2) before the voting record date established by the Court, and shall provide notice of such amendments to all creditors affected by such amendments.

Section 303. —Notice of Commencement.—

(a) Promptly after the filing of the petition and obtaining a date from the Court for the hearing specified in subsection (a)(2) of this section, a petitioner shall send to all the petitioner's affected creditors and contract counterparties for whom it has readily accessible internal electronic records of mailing addresses or email addresses and to all entities who file notices of appearance pursuant to section 119 of this Act notice of:

(1) the filing of the petition and the automatic stay;

(2) the date and time of the hearing on the eligibility of the petitioner for relief under chapter 3 of this Act pursuant to section 306 of this Act;

(3) the date that objections, if any, to the petitioner's eligibility must be filed;

(4) the schedule specified in section 302(a)(2) of this Act, or, if not available, the schedule specified in section 301(d)(1) of this Act;

(5) the right of each affected creditor to advise the Court of its willingness to serve on the general committee to be appointed pursuant to section 318(a) of this Act, which advice shall be in the form of a notice filed with the Court prominently labeled as a "Notice of Willingness to Serve on General Committee," and shall clearly provide a disclosure of their economic interests as set forth in sections 318(d)(1) and 318(d)(2) of this Act; and

(6) the threshold for the special trade debt.

(b) A petitioner also shall provide supplemental notice of the information required by section 303(a) of this Act by publication as specified in section 116(c)(2) of this Act, and by posting on the website for its case under chapter 3 of this Act.

Subchapter II: Automatic Stay

Section 304. —The Automatic Stay.—

(a) Upon the filing of the petition, the following actions by all entities, regardless of where located, automatically shall be stayed with respect to affected debt:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, arbitrative, administrative, or other action or proceeding against

the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity that:

(A) was or could have been commenced before the filing of a petition under chapter 3 of this Act (including the request for a custodian); or

(B) is to recover on a claim against the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity, by mandamus or otherwise, which claim arose before the filing of a petition under chapter 3 of this Act;

(2) the enforcement against the petitioner or (insofar as relating to or arising from claims against the petitioner or the filing of the petition) against any enumerated entity of a judgment obtained before the filing of a petition under chapter 3 of this Act;

(3) any act to create, perfect, or enforce any lien against the petitioner's property;

(4) any act to collect, assess, or recover on a claim against the petitioner that arose before the filing of a petition under chapter 3 of this Act, including any act to obtain possession or control of property belonging to the petitioner; and

(5) the setoff of any debt owing to the petitioner that arose before the filing of a petition under chapter 3 of this Act against any claim against the petitioner.

(b) The stay in this section shall extend automatically to all affected debt added to the schedule described in section 302(a)(2) of this Act upon each amendment of such schedule.

(c) The petition shall not operate as a stay against the lawful exercise of police power by any Commonwealth Entity, the United States, or a state. Such exercise of police power shall not include the collection of interest or principal on any debt owed to the Commonwealth or GDB.

(d) The stay shall terminate with respect to property of the petitioner when the petitioner no longer has a legal or beneficial interest in the property.

(e) Unless terminated or modified by the Court pursuant to subsection (g) of this section, the stay of any act under this section shall continue until the earlier of:

(1) the effective date of the plan; or

(2) the time the case is dismissed and the dismissal is final and unappealable.

(f) Upon request of the petitioner, the Court may issue an order regarding the applicability and scope of the stay under subsection (a) of this section, and may issue an order enforcing the stay.

(g) The Court shall grant an entity relief from the stay, whether by terminating, annulling, modifying, or conditioning such stay, to the extent that—

(1) the entity's interest in property of the petitioner is not adequately protected against violations of the Commonwealth Constitution or the U.S. Constitution; or

(2) if—

(A) the petitioner does not have equity in such property; and

(B) no part of such property is used or intended to be used to perform public functions or otherwise foster jobs, commerce, or education.

(h) Upon objection to a motion seeking relief from the automatic stay, which objection shall be filed within fourteen (14) days of the filing of such motion, the Court shall commence a hearing no later than thirty (30) days after the motion for relief from the stay was filed unless a later date is otherwise agreed to by the petitioner and the affected creditor seeking relief from the stay. The affected creditor seeking relief from the stay shall have the burden to prove it lacks adequate protection, and the petitioner's lack of equity in the property. The petitioner has the burden to prove the facts relevant to relief pursuant to section 304(g)(2)(B) of this Act.

Section 305. —Remedies for Violating the Automatic Stay.—

Any entity found to violate section 304 of this Act shall be liable to the petitioner, and any other entity protected by the automatic stay, for compensatory damages, including any costs and expenses and attorneys' fees incurred by the petitioner in defending against action taken in violation of that section, and for punitive damages for intentional and knowing violations. Further, upon determining there has been a violation of the stay imposed by section [304] of this Act, the Court may order additional appropriate remedies, including that the acts comprising such violation be declared void or annulled.

Subchapter III: Eligibility Hearing

Section 306. —Eligibility Hearing.—

(a) No later than thirty (30) days after the petition is filed, the Court shall hold a hearing, on notice in accordance with section 338 of this Act, to determine whether the petitioner is eligible for relief under chapter 3 of this Act.

(b) No later than forty-five (45) days after the petition is filed, the Court shall enter an order determining that the petitioner is or is not eligible for relief under chapter 3 of this Act upon a finding that the petitioner satisfies, or does not satisfy, as the case may be, the eligibility requirements in section 113(b) of this Act.

Subchapter IV: Enforcement of Claims by Foreclosure Transfer

Section 307. —Power to Transfer.—

(a) Subject to the remaining provisions of this section 307 and notwithstanding any contrary contractual provision rendered unenforceable by this Act, the petitioner, with the approval of GDB (or GDB at the request of the Governor on the petitioner's behalf), subject to Court approval after notice and a hearing, may transfer all or part of the petitioner's encumbered assets (which transfer may also include unencumbered assets) free and clear of any lien, claim, interest, and employee claims against a successor employer, for good and valuable consideration consisting of any and all of cash, securities, notes, revenue pledges, and partial interests in the transferred assets or enterprise.

(b) A petitioner shall not effect a transfer of assets to an entity that is not a Commonwealth Entity, including a transfer of all or substantially all of the assets of such petitioner, unless all the following requirements are met—

(1) applicable law (other than this Act) permits such transfer;

(2) the Court orders that the liens, claims, and interests shall attach to the proceeds of transfer in their order of priority, with each dispute over priorities to be resolved, in the Court's discretion, before or after the closing of the transfer; provided, however, that, in the event of a transfer of all or substantially all of the petitioner's assets, the petitioner may recover the reasonable and necessary administrative expenses incurred in its chapter 3 case in preserving or disposing of such assets that are transferred pursuant to this subsection;

(3) the Court shall have determined that the transferee shall have undertaken to perform the same public functions with the property acquired (either alone or together with other property and/or entity) as the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;

(4) the Court finds that a transfer to an entity that is not a Commonwealth Entity is the product of

(A) adequate marketing and arms-length bargaining designed to procure a price that is at least the reasonably equivalent value of the assets proposed to be transferred, or

(B) a fair auction process;

(5) to the extent, if any, that the gross or net revenue of the petitioner to be transferred was pledged to secure any affected debt, such pledges shall have first priority against all portions of the proceeds of transfer other than portions allocable to other assets to be transferred free of liens or security interests securing allowed claims; and

(6) in the event of a transfer of all or substantially all of the petitioner's assets, all claims not scheduled pursuant to section 302(a)(2) of this Act shall be paid in full.

(c) For the avoidance of doubt, subsection (b) of this section does not confer any power on a petitioner to sell assets to a non-Commonwealth Entity that such petitioner does not currently posses under applicable law.

(d) A petitioner may effect a transfer of assets to a Commonwealth Entity, including a transfer of all or substantially all of the assets of such petitioner, notwithstanding any other applicable law to the contrary, only if—

(1) the Court orders that the liens, claims, and interests shall attach to the proceeds of transfer in their order of priority, with each dispute over priorities to be resolved, in the Court's discretion, before or after the closing of the transfer; provided, however, that, in the event of a transfer of all or substantially all of the petitioner's assets, the petitioner may recover the reasonable and necessary administrative

expenses incurred in its chapter 3 case in preserving or disposing of such assets that are transferred pursuant to this subsection;

(2) the Court shall have determined that the transferee shall have undertaken to perform the same public functions with the property acquired (either alone or together with other property and/or entity) as the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;

(3) the transfer to an entity that is a Commonwealth Entity is for a price that is at least the reasonably equivalent value of the assets proposed to be transferred, taking into account the requirement that they be used to perform the public functions the petitioner had been performing, unless the Court determines that any public functions not to be performed by the transferee will be performed by another entity or no longer are necessary;

(4) to the extent, if any, that the gross or net revenue of the petitioner to be transferred was pledged to secure any affected debt, such pledges shall have first priority against all portions of the proceeds of transfer other than portions allocable to other assets to be transferred free of liens or security interests securing allowed claims; and

(5) in the event of a transfer of all or substantially all of the petitioner's assets, all claims not scheduled pursuant to section [302(a)(2)] of this Act shall be paid in full.

(e) The petitioner (or GDB at the Governor's request on the petitioner's behalf) may transfer part, but not all or substantially all, of the petitioner's assets not subject to a lien or pledge without Court approval if such transfer is independent of any and all transfers of encumbered assets.

(f) All transfers of unencumbered property or encumbered property or both shall be free and clear of successor liability imposed by otherwise applicable law.

(g) No transfer shall be approved unless the petitioner, or GDB on behalf of the petitioner, shall have included in its request for approval the reasons why such proposed transfer is reasonably likely to maximize value for creditors, in the aggregate, consistent with enabling the continued carrying out of the petitioner's public functions and the Court shall have found such reasons plausible.

Section 308. —Distribution of Proceeds of Transfer of Substantially All Assets.—

(a) In the event of a transfer of all or substantially all of the petitioner's assets pursuant to section 307 of this Act, after the closing of the transfer, the petitioner, with the approval of GDB (or GDB, at the Governor's request, on behalf of the petitioner), shall file a statement of allocation setting forth how the proceeds of transfer shall be allocated among each affected creditor or classes of affected creditors, and each affected creditor shall be entitled to object to the allocation by filing an objection no later than thirty (30) days after the statement of allocation is filed. When the transfer proceeds include forms of consideration other than cash and cash equivalents, the statement of allocation shall provide which forms of

consideration shall be distributed to which classes of claims, or whether the non-cash forms of consideration shall first be sold for cash and then distributed.

(b) The Court shall hold a hearing to determine each objection. When all objections are resolved, the petitioner shall file an amended statement of allocation of the proceeds of transfer consistent with the Court's rulings on the objections. Affected creditors shall have fourteen (14) days to file objections to the petitioner's amended statement of allocation—provided, however, that such objections, if any, will be limited only to arguments that the amended statement of allocation does not accurately reflect the Court determination—after which the Court shall hold a hearing to resolve the objections and shall issue a final statement of allocation binding on the petitioner and all creditors. If there is no objection timely filed to the petitioner's amended statement of allocation, the Court shall order that the net proceeds of transfer shall be allocated in accordance with the petitioner's amended statement of allocation without further notice or hearing.

(c) If substantially all of the petitioner's assets are transferred pursuant to section 307 of this Act, a plan distributing the value of the assets not subject to such transfer shall not be required, but may be filed at the discretion of the petitioner, or by GDB on its behalf. If no such plan is filed, the final statement of allocation shall allocate the value of the assets that have not been transferred by means of such forms of consideration as are feasible and practicable under the circumstances.

Section 309. —Protection for Good Faith Acquirer.—

The reversal or modification on appeal of a transfer order shall not affect the validity of the transfer under such authorization to an entity that acquired such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such transfer were stayed pending appeal.

Subchapter V: Confirmation Requirements

Section 310. —Petitioner Exclusivity.—

A petitioner may file a proposed plan (and any amendment) or proposed transfer of all or substantially all the petitioner's assets if first approved by GDB, or GDB may file a proposed plan (and any amendment) or proposed transfer of all or substantially all the petitioner's assets on behalf of the petitioner with approval of the Governor. No other entity may file a proposed plan or file a proposed transfer of any of the petitioner's assets.

Section 311. —Plan Disclosure.—

The Court shall not confirm any plan unless the creditors' committee(s) and all affected creditors receive at least forty-five (45) days before the hearing on confirmation of the plan, a written disclosure statement, approved by the Court, containing:

(a) the material facts demonstrating the petitioner's reasons for contending the plan fairly uses the value of the petitioner's assets or operating revenues to maximize repayment of claims consistent with the performance of public functions or otherwise fostering a growing economy that will generate increasing revenues and enable greater claim repayment. Confidential or proprietary information may be redacted from any disclosure made;

(b) the treatment of each class of the petitioner's affected creditors under the plan and any material financial information reasonably necessary for such creditors to understand their future recoveries, if any, under the plan; and

(c) other information, if any, necessary to provide adequate information of a kind, and in sufficient detail, as far as reasonably practicable in light of the nature and history of the petitioner and the condition of the petitioner's books and records, that would enable a hypothetical creditor in the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

Section 312. —Affected Debt Entitled to Vote.—

Subject to the petitioner's right to deem a class to reject a plan, a class of claims of the petitioner is affected for purposes of voting under a plan unless, with respect to each claim of such class, the plan—

(a) leaves unaffected the legal, equitable, and contractual rights to which such claim entitles the holder of such claim;

(b) pays such claim in full in cash; or

(c) notwithstanding any contractual provision or applicable law that entitles the holder of such claim to demand or receive accelerated payment of such claim after the occurrence of a default—

(1) cures any such default that occurred before or after the filing of a petition under chapter 3 of this Act, other than a default of a kind that is not required to be cured or is unenforceable under this Act or a default creating no money damages;

(2) reinstates the maturity of such claim as such maturity existed before such default;

(3) compensates the holder of such claim for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;

(4) if such claim arises from any failure to perform a nonmonetary obligation, compensates the holder of such claim for any actual pecuniary loss incurred by such holder as a result of such failure; and

(5) does not otherwise affect the legal, equitable, or contractual rights to which such claim entitles the holder of such claim.

Section 313. —Plan Amendments.—

The petitioner or GDB may amend the plan at any time before confirmation, but may not amend the plan so that the plan as amended fails to meet the requirements of chapter 3 of this Act. After the petitioner files an amendment, the plan as amended becomes the plan. Material modifications adverse to affected creditors shall require resolicitation and approval pursuant to section 315(e) of this Act prior to the confirmation hearing.

Section 314. —Confirmation Hearing.—

(a) After notice specified in section 338 of this Act, the Court shall hold a hearing on confirmation of the plan.

(b) Any creditors' committee may object to the treatment of its constituency's claims under the plan and any affected creditor may object to the treatment of its claims under the plan and each may be heard in opposition of or in support of the plan, by filing an objection or a pleading supporting the plan, in writing, no later than fourteen (14) days prior to commencement of the hearing on the plan.

Section 315. —Standards for Plan Confirmation.—

The Court shall confirm a plan only if all the following requirements are met:

(a) the plan substantially complies with all applicable provisions of chapter 3 of this Act;

(b) the plan separates affected debt into classes based on:

(1) differences in the claims' collateral security or priorities; or

(2) rational business justifications for classifying similar claims separately, provided that different maturities shall not render claims dissimilar;

(c) the plan provides the same treatment for each claim of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such claim;

(d) the plan provides for every affected creditor in each class of affected debt to receive payments and/or property having a present value of at least the amount the affected debt in the class would have received if all creditors holding claims against the petitioner had been allowed to enforce them on the date the petition was filed;

(e) at least one class of affected debt has voted to accept the plan by a majority of all votes cast in such class and two-thirds of the aggregate amount of affected debt in such class that is voted;

(f) the plan does not contain any provision causing a violation of an entity's rights under the Commonwealth Constitution or the U.S. Constitution that is not remedied or otherwise justified pursuant to section 128 of this Act;

(g) the petitioner shall be able to—

(1) make all mandatory payments provided by the plan and

(2) perform public functions;

(h) confirmation of the plan is not likely to be followed by the need for further financial reorganization of the petitioner, unless such reorganization is proposed by the plan, and all other provisions of the plan must be feasible;

(i) the plan has been proposed in good faith and not by any means forbidden by law, subject to section 108 of this Act;

(j) all administrative expenses accruing prior to the effective date of the plan shall be paid in full according to their terms or on the effective date of the plan, and all

noncontingent, undisputed, and matured claims unaffected by the plan in accordance with section 327 of this Act shall be paid in full according to their terms; provided, however, that disputed or contingent claims shall be resolved in the ordinary course and paid as the parties agree or as the plan otherwise provides;

(k) each class of claims of affected debt that will not be satisfied in full under the plan absent the additional consideration provided in this subsection shall be entitled to receive annually in arrears its pro rata share of 50% of the petitioner's positive free cash flow, if any, at the end of any fiscal year, after payment of: (1) operating expenses; (2) capital expenditures (including capitalized expenses); (3) taxes, if any; (4) principal, interest, and other payments made in respect of financial indebtedness; (5) reserves; (6) changes in working capital; (7) cash payments of other liabilities; and (8) extraordinary items; in each case, incurred, expensed, and recorded in such fiscal year; such contingent payments to be made by the petitioner, but only to the extent necessary to pay each claim in full, including interest and any fees contractually required, for each of the first ten (10) full fiscal years ending after the first anniversary of the effective date of the plan, provided that once any claim is paid in full, its share of future contingent payments shall be ratably distributed to other affected creditors not yet paid in full;

(l) the effective date of the plan shall be the first date after confirmation of the plan that the confirmation order is not stayed and the petitioner or GDB files a notice with the Court that it is prepared to begin implementing the plan;

(m) with respect to affected secured claims (representing the amount by which a claim for principal, interest, and fees is secured by the value of the collateral security):

(1) both:

(A) the plan provides that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the petitioner or transferred to another entity, to the extent of the allowed amount of such claims; and

(B) each holder of such a claim receives on account of such claim immediate or deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the petitioner's interest in such property, with value being determined by the Court based on the plan's proposed disposition or use of the property, including its expected net revenues or net transfer proceeds if contemplated by the plan; or

(2) the plan provides for the transfer of any property that is subject to the liens securing such claims, free and clear of liens, and such liens attach to the net proceeds of such transfer;

(n) with respect to unsecured claims for affected debt (including deficiency claims, subject to section 331(d) of this Act, for secured affected debt that are based on a deficiency arising from liens against property having a value of less than the full amounts of the affected debt held by the affected creditor owning such liens), the plan shall be in the best interests of such creditors and shall maximize the amounts distributable to such creditors to the extent practicable, subject to the petitioner's obligations to fulfill its public functions;

(o) the petitioner shall have proved to the Court that it undertook—before or after the petition was filed—a reasonable program of cost reductions and income enhancements to try to maximize its repayment of affected debt under the plan, subject to the constraints that the petitioner must fulfill its public functions, and that some cost reductions or revenue enhancements may be counterproductive if they cause individuals or businesses to leave the Commonwealth, to reduce spending in the Commonwealth, or to reduce the consumption of services provided by the petitioner; and

(p) except to the extent agreed to by an affected creditor, the plan does not provide for a materially different and adverse treatment for such claim as compared to the treatment of claims in different classes under the plan having the same priority, unless the petitioner demonstrates a rational basis to permit such disparate treatment.

Section 316. —Compliance with Final Statement of Allocation and Confirmation Order.—

Notwithstanding any otherwise applicable law, the petitioner and any entity organized or to be organized for the purpose of carrying out a final statement of allocation issued pursuant to section 308 of this Act or a plan shall carry out the final statement of allocation or the plan and shall comply with all orders of the Court.

Subchapter VI: Case Management

Section 317. —Power of the Court.—

The Court, on its own motion or on the request of a party in interest—

(a) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case;

(b) unless inconsistent with another provision of chapter 3 of this Act, may issue an order, notwithstanding the rules of civil procedure, prescribing such limitations and conditions as the Court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(1) sets the date by which the petitioner shall file a disclosure statement and plan or a proposed transfer of all or substantially all the petitioner's property; or

(2) sets deadlines for pleadings, responses, replies, and other matters;

(3) may issue an order fixing the timing, scope, and format of any notice required under this Act.

Subchapter VII: Creditors' Committees

Section 318. —Formation of Creditors' Committees.—

(a) As soon as practicable after the petition is filed, but not later than fourteen (14) days prior to the first scheduled date of the eligibility hearing pursuant to section 306 of this Act, the Court shall appoint a general committee comprised of entities, based on the received Notices of Willingness to Serve on General Committee, holding the largest amount of secured claims and largest amount of unsecured claims identified in the schedule of affected debt filed pursuant to section 301(d)(1) or 302(a)(2) of this Act. The general committee shall be

comprised of at least five (5) and no more than thirteen (13) members, and, to the extent reasonably practicable, shall be representative of the categories of claims to be affected by the plan.

(b) The Court may appoint as the general committee a committee of creditors formed to negotiate with the petitioner prior to the filing of the petition; provided that the members of the prepetition committee are representative of the categories of claims to be affected by the plan.

(c) At the petitioner's or GDB's request, the Court shall appoint one or more additional committees, comprised of holders of affected debt held by particular creditor constituencies and identified by the petitioner in a written certification that the petitioner or GDB believes formation of such committee(s) would facilitate efforts to obtain a transfer pursuant to section 307 of this Act or confirmation of a plan. Such additional committee shall be comprised of at least three (3) and no more than seven (7) members. If and when an additional committee is disbanded or the petitioner or GDB certifies in a writing filed with the Court that it no longer believes an additional committee previously appointed will further facilitate a transfer pursuant to section 307 of this Act or confirmation of a plan or that the additional committee's costs outweigh its benefits, the additional committee no longer shall be eligible for reimbursement of its member expenses and its professionals' fees and disbursements.

(d) Each creditors' committee member shall file with the Court, within twenty-one (21) days after its appointment to a creditors' committee, a verified statement declaring, as of the date of its appointment to the creditors' committee, that:

(1) the creditors' committee member, the entity to be acting on its behalf on the creditors' committee, and any affiliate of the foregoing that employed or is employed by such member, held or controlled, to the extent set forth in such statement, a beneficial interest in:

(A) any affected debt, specifying the face amount of each security or other claim;

(B) any interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting any of the foregoing an economic interest that is affected by the value, acquisition, or disposition of the affected debt, specifying each type of right;

(C) each other economic interest relating to any Commonwealth Entity, specifying each interest; and

(D) any credit default swap of any insurance company that insures any obligation of any Commonwealth Entity, specifying each type of interest; and

(2) no interest that the creditors' committee member, such entity to be acting on its behalf, or any such affiliate holds or controls and that should have been set forth pursuant to sections 318(d)(1)(A) through 318(d)(1)(D) of this Act may increase in value if any debt issued by any Commonwealth Entity declines in value.

(e) The holding or controlling at any time of any interest that should be set forth pursuant to section 318(d)(2) of this Act by the creditors' committee member, such entity that acts on its behalf, or any such affiliate shall disqualify such creditor from serving as a member of any creditors' committee. For the avoidance of doubt, the acquisition of such an interest by a creditors' committee member, such entity acting on its behalf, or any such affiliate, automatically shall divest the creditor of committee membership.

(f) Each creditors' committee member shall update its disclosure contemplated by subsection (d) of this section in writing filed with the Court within three (3) business days of each change in its previously disclosed holdings.

(g) Requests by the petitioner, GDB, or any affected creditor for changes or additions to creditors' committee membership shall be granted or denied in the Court's discretion. The Court's determinations of creditors' committee(s) membership shall not be appealable.

(h) Creditors' committee(s) members shall not be entitled to compensation for their time and service as creditors' committee members or to reimbursement of their expenses for retaining professionals to represent them individually, but the creditors' committee(s) shall be entitled from the petitioner to payment of fees to the extent permitted in section 333 of this Act, and creditors' committee(s) members shall be entitled to reimbursement of their actual, reasonable, and documented out-of-pocket expenses for travel and lodging arising from their function as creditors' committee members.

Section 319. —Powers and Duties of Appointed Committees.—

(a) At a scheduled meeting of a creditors' committee, at which a majority of the members of such creditors' committee is present in person or by phone, the creditors' committee may select and authorize the employment of up to two (2) law firms, one of which must be resident in the Commonwealth, and one financial advisor, to perform services for such creditors' committee to be paid as administrative expenses in accordance with section 333 of this Act; provided, however, upon seven (7) days' notice to the petitioner and subject to the petitioner's right to object, the general committee may retain one or more additional professionals, including law firms, when and if reasonably necessary to represent different constituencies of the general committee in respect of material issues. If the petitioner objects to the general committee's proposed retention of any additional professional, the petitioner shall not be obligated to compensate such professional unless the Court rules its retention should be permitted.

(b) A creditors' committee may only:

(1) appear and be heard on any issue—

(A) relating to the eligibility hearing pursuant to section 306 of this Act;

(B) relating to adequate protection;

(C) involving new borrowing by the petitioner;

(D) concerning a transfer pursuant to section 307 of this Act or the allocation of proceeds of transfer pursuant to section 308 of this Act; and

(E) in connection with the plan, but solely as to matters regarding how the plan affects the creditors' committee's constituents;

(2) conduct a reasonable investigation into the petitioner's legal and financial ability to increase distributions under the plan for the creditors' committee's constituents; and

(3) negotiate with the petitioner over the treatment of its constituents in the plan.

(c) A creditors' committee appointed pursuant to section 318 of this Act or its authorized agent shall receive copies of notices concerning motions and actions taken by the petitioner (and any objections thereto) pursuant to sections 307 and 308 of this Act, and sections 310 through 316 of this Act.

(d) A creditors' committee may request discovery in accordance with the Puerto Rico Rules of Civil Procedure, but only with respect to the matters enumerated in subsections (b)(1)(A) through (b)(1)(E) of this section.

(e) Subject to redaction of confidential or proprietary information, affected creditors who are not committee members may obtain the same discovery produced to the creditors' committee and may obtain other discovery only, in each case, upon order of the Court for good cause shown.

(f) The committee shall not be a juridical entity capable of suing and being sued.

Section 320. —Limitations on Committees.—

(a) A creditors' committee appointed under chapter 3 of this Act shall not have standing to commence an action either directly on its own behalf or derivatively on behalf of the petitioner or on behalf of the petitioner's creditors, and may not be heard on any matter except as expressly provided in this Act.

(b) Each creditors' committee may make recommendations to its constituents with respect to the plan but cannot bind its constituencies or any member thereof to accept, reject, support, or object to any plan, and may not consent to a plan on behalf of any creditor.

(c) No member of a creditors' committee appointed pursuant to section 318 of this Act shall trade in claims against or securities issued by any Commonwealth Entity, unless the member:

(1) has established and enforces sufficient compliance procedures to prevent such member's representative on the creditors' committee from sharing information obtained as the member's representative with any entity within or retained by the member in connection with the trading of claims against or securities issued by any Commonwealth Entity;

(2) filed with the Court a notice of its intention to trade, which notice sets forth the details of the member's compliance procedures referenced in subsection (c)(1) of this section;

(3) obtained approval of its compliance procedures from the petitioner , which approval, in the petitioner's discretion, may be based on the recommendation of an

entity knowledgeable in the securities industry and retained by or for the petitioner; and

(4) does not share information obtained from its service on the creditors' committee with any entity within or retained by the member in connection with the trading of claims against or securities issued by any Commonwealth Entity.

Section 321. —Disbanding Committees.—

All creditors' committees automatically shall be disbanded on the earlier of the date the Court issues the final statement of allocation pursuant to section 308 of this Act or confirms a plan for the petitioner, unless the final statement of allocation or plan provides otherwise or the Court orders otherwise. The petitioner may disband any additional committee appointed pursuant to section 318(c) of this Act by seven (7) days' written notice to such additional committee and the Court.

Subchapter VIII: Assets, Liabilities, Contracts, and Powers of the Petitioner

Section 322. —Obtaining Credit.—

(a) A petitioner may obtain unsecured credit and incur unsecured debt allowable under chapter 3 of this Act as an administrative expense.

(b) If the petitioner is unable to obtain unsecured credit allowable as an administrative expense, the Court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 333 of this Act;

(2) secured by a lien on property of the petitioner that is not otherwise subject to a lien;

(3) secured by a junior lien on property of the petitioner that is subject to a lien; or

(4) any combination of the preceding clauses (1), (2), and (3), in addition to allowance as an administrative expense.

(c) The Court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on the petitioner's property that is subject to a lien only if—

(1) the petitioner is unable to obtain such credit otherwise; and

(2) either

(A) the proceeds are needed to perform public functions and satisfy the requirements of section 128 of this Act; or

(B) there is adequate protection of the interest of the holder of the lien on the property of the petitioner on which such senior or equal lien is proposed to be granted.

(d) In any hearing pursuant to this section, the petitioner has the burden of proof.

(e) The reversal or modification on appeal of an authorization pursuant to this section to obtain credit or incur debt, or of a grant pursuant to this section of a priority or a

lien, shall not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, was stayed pending appeal.

Section 323. —Use or Lease of Property not Subject to Court Approval.—

Unless the Court orders otherwise, without notice or a hearing, the petitioner may, in its sole discretion:

(a) pay on a current basis—

(1) its expenses accruing postpetition (exclusive of amounts related to prepetition indebtedness except as set forth in subsection (a)(2) of this section) and the costs and expenses incurred in connection with the case (including the reasonable fees and expenses of the professionals retained by or for the petitioner or GDB and any creditors' committee(s) formed under chapter 3 of this Act, subject to sections 318, 319 and 333 of this Act); and

(2) its prepetition debt not scheduled to be affected under the plan or that is necessary to pay to safeguard the petitioner's ability to perform its public functions;

(b) enter into transactions, including the lease of property, and use its property in its operations, including the use of revenues; and

(c) use cash and other resources as necessary to perform public functions, subject to section 324(a) of this Act.

Section 324. —Adequate Protection for Use of Property Subject to Lien or Pledge.—

(a) To continue performing its public functions and to obtain confirmation of a plan or approval of a statement of allocation, the petitioner may use property, including cash collateral, subject to a lien, pledge, or other interest of or for the benefit of an entity, provided that the entity shall be entitled to a hearing, upon notice, to consider a request for adequate protection of its lien, pledge, or other interest as promptly as the Court's calendar permits, at which hearing the Court may condition the use of the collateral on such terms, if any, as it determines necessary to adequately protect such interest.

(b) Notwithstanding anything to the contrary in this Act, if revenues of a petitioner are subject to a pledge under which current expenses or operating expenses may be paid prior to the payment of principal, interest or other amounts owed to a creditor, the petitioner shall not be required to provide adequate protection to such creditor pursuant to this section, to the extent that sufficient revenues are unavailable for payment of such principal, interest or other amounts after full payment of such current expenses or operating expenses.

(c) If the entity holding a lien, pledge, or interest in the collateral consents to its use, then the entity shall be deemed adequately protected on the terms, if any, in the consent and no further adequate protection shall be required.

Section 325. —Unenforceable Ipso Facto Clauses; Assignment of Contracts.—

(a) Notwithstanding any contractual provision or applicable law to the contrary, a contract of a petitioner may not be terminated or modified, and any right or obligation under

such contract may not be terminated or modified, at any time after the filing of a petition under chapter 3 of this Act solely because of a provision in such contract conditioned on—

(1) the insolvency or financial condition of the petitioner at any time before the closing of the case;

(2) the filing of a petition pursuant to section 301 of this Act and all other relief requested under this Act; or

(3) a default under a separate contract that is due to, triggered by, or as the result of the occurrence of the events or matters in subsections (a)(1) or (a)(2) of this section.

(b) Notwithstanding any contractual provision to the contrary, a counterparty to a contract with the petitioner for the provision of goods or services shall, unless the petitioner advises to the contrary in writing, continue to perform all obligations under, and comply with all terms of, such contract, provided that the petitioner is not in default under such contract other than—

(1) as a result of a condition specified in subsection (a) of this section; or

(2) with respect to an essential supplier contract, as a result of a failure to pay any amounts arising prior to the date when the petition is filed.

(c) All claims against the petitioner arising from performance by a contract counterparty pursuant to subsection (b) of this section, after the date when the petition is filed, shall have the status of an administrative expense. Failure by such contract counterparty to satisfy the requirement of subsection (b) of this section shall result in compensatory damages to the petitioner, in an amount determined by the Court.

(d) Notwithstanding any contractual provision to the contrary, except as set forth in subsection (e) of this section, on notice to the counterparty under the contract and upon Court approval, a petitioner can assign any contract, if the petitioner cures—or provides adequate assurance it promptly will cure—any default under such contract, other than a default that is a breach of an unenforceable provision under applicable law. Defaults on nonmonetary obligations that cannot reasonably be cured by nonmonetary actions may be cured as best as practicable with money damages.

(e) A petitioner shall not assign a contract of the petitioner, whether or not such contract prohibits or restricts assignment of rights or delegation of duties, if—

(1) applicable law excuses a party, other than the petitioner, to such contract from accepting performance from or rendering performance to the petitioner or to an assignee of such contract, and such party does not consent to such assumption or assignment; or

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the petitioner, or to issue a security or other instrument of the petitioner.

(f) Only a party to a contract that a petitioner seeks to assign and having the right under such contract to enforce such contract, or such party's authorized representative, shall have standing to object to and be heard on the petitioner's requests pursuant to this section.

Section 326. —Contract Rejection, Impairment, and Modification.—

(a) Subject to subsection (d) of this section and Court approval, after notice and a hearing, and notwithstanding any contractual provision to the contrary, a petitioner may reject any contract if the rejection is in the petitioner's best interests; provided, however, that a petitioner may not reject a contract (except for collective bargaining agreements and retirement or post-employment benefit plans) where rejection of such contract would produce damages that would not exceed the threshold for special trade debt, as defined in section 102(52) of this Act.

(b) Any counterparty to a contract the petitioner seeks to reject shall file with the Court its calculation of rejection damages at least five (5) days prior to the hearing on rejection. A counterparty opposing rejection shall file such calculation with its objection at least seven (7) days prior to the hearing on rejection. The petitioner may object to such proposed damages at any time before confirmation. Disputes concerning rejection damages shall be resolved by the Court.

(c) Rejection of a contract pursuant to subsection (a) of this section shall be treated as a material breach of such contract.

(d) The Court shall not approve the rejection of a collective bargaining agreement or retirement or post-employment benefit plan unless the petitioner has demonstrated that:

(1) the equities balance in favor of the rejection of such agreement or plan. In making such determination, the Court shall take into consideration the impact of the provisions of Law 66-2014, including any agreements made by employees and the petitioner pursuant to negotiations provided thereunder, on such agreement or plan;

(2) absent rejection, the petitioner will likely become unable to perform public functions; and

(3) the petitioner shared with the representative(s) for employees and retirees, as applicable, the data underlying its request to reject the agreement or plan and conferred, at reasonable times, in good faith with the representative(s) to reach voluntary modifications to such agreements or plans, and such efforts did not succeed;

(e) During a period when a collective bargaining agreement continues in effect, if essential to the continuation of the petitioner's public functions, or in order to avoid irreparable damage to the petitioner, the Court, after notice and a hearing, may authorize the petitioner to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by such collective bargaining agreement. Any hearing pursuant to this subsection shall be scheduled in accordance with the needs of the petitioner. The implementation of such interim changes shall not render the application for rejection moot.

(f) Nothing in this Act impairs the right, if any, of the petitioner under a collective bargaining agreement, retirement or post-employment benefit plan, or applicable law to terminate, modify, amend, or otherwise enforce any of the provisions of such collective bargaining agreement or retirement or post-employment benefit plan without obtaining the relief in subsection (d) of this section.

(g) Only a party to a contract a petitioner seeks to reject hereunder and having the right under such contract to enforce such contract, or such entity's authorized representative, shall have standing to object to and be heard on the petitioner's request pursuant to this section.

(h) Subject to subsection (b) of this section and section 327 of this Act, any damages arising from the rejection of a prepetition contract shall be treated as prepetition claims for affected debt that are neither priority claims nor administrative claims.

Section 327. —Unaffected Debt.—

The following expenses and claims arising prior to filing of a petition under chapter 3 of this Act shall not constitute affected debt under the plan and shall be paid to the maximum extent practicable, without acceleration or other remedy arising from a default occurring prior to the effective date of a chapter 3 plan, according to the terms of the contracts pursuant to which the unaffected debt was incurred, and subject to applicable law:

(a) allowed unsecured claims of individuals for wages, salaries, or commissions, vacation, severance, and sick leave pay, or other similar employee benefits, earned by an individual prior to the petition date in accordance with a petitioner's employment policies or by applicable law, except to the extent that such claims arise out of a transaction that is avoidable under applicable law, including section 131 of this Act;

(b) except as provided in subsection (c) of this section, claims for the provision of goods or services other than claims arising under a rejected contract or special trade debt, provided, however, that any and all claims for provision of goods or services may be affected debt if the treatment of such claims as unaffected debt is a direct cause of other debt being substantially or severely impaired for purposes of the Commonwealth Constitution or the U.S. Constitution and such substantial or severe impairment is not remedied or otherwise justified pursuant to section 128 of this Act;

(c) notwithstanding subsection (b) of this section, critical vendor debt as determined by the petitioner;

(d) notwithstanding subsection (a) of this section, claims arising under a collective bargaining agreement or retirement or post-employment benefit plan, unless and until the claims arising under such collective bargaining agreement or retirement or post-employment benefit plan are scheduled as affected debt pursuant to section 302(a)(2) of this Act or such collective bargaining agreement or retirement or post-employment benefit plan is rejected;

(e) claims owed to another public corporation (but only to the extent such claims are for goods or services provided by such public corporation to the petitioner), or to the United States;

(f) claims of a Commonwealth Entity for money loaned, or other financial support, to the petitioner during the sixty (60) days before the filing of the petition under chapter 3 of this Act, or claims of GDB for reimbursement pursuant to section 134 of this Act; and

(g) any credit incurred or debt issued by a public sector obligor between the commencement of the suspension period and the filing of a petition under chapter 3 of this

Act, but only if such petition under chapter 3 of this Act is filed no more than six (6) months after the suspension period shall have elapsed.

Section 328. —Goods and Services Delivered within Thirty Days before the Petition is Filed.—

All valid amounts payable for goods received by or services rendered to the petitioner within thirty (30) days before the filing of a petition under chapter 3 of this Act shall have the status of an administrative expense and shall be paid in full, and according to the terms of the contracts pursuant to which the goods were provided or services were rendered to the maximum extent practicable. To the extent there is any dispute as to the validity of such amounts payable, it shall be resolved pursuant to section 331(a) of this Act.

Section 329. —Assets Backing Retirement or Post-Employment Benefit Plans.—

All assets backing any pension plan, any retirement or post-employment benefit plan, and any other similar funded retiree or employee benefit shall be inviolable and shall not be considered in the calculation of the petitioner's value to be distributed pursuant to a plan under chapter 3 of this Act or final allocation statement pursuant to section 308 of this Act.

Section 330. —Subordination.—

(a) A subordination agreement is enforceable in a case under chapter 3 of this Act to the same extent that such agreement is enforceable under other applicable law.

(b) For the purpose of distribution under chapter 3 of this Act, a claim arising from rescission of a purchase or sale of a security or note of the petitioner or of an affiliate of the petitioner, for damages arising from the purchase or sale of such a security or note, or for reimbursement or contribution allowed on account of such a claim, shall be subordinated to all claims senior to or equal to the claim represented by such security or note.

Section 331. —Allowed Claims.—

(a) No creditor (affected or unaffected) needs to file a proof of claim to be entitled to payments on its claims. To the extent there are disputes between the petitioner and creditors as to the amounts of their claims, such disputes shall be resolved using the same procedures applicable if there were no case under chapter 3 of this Act; provided, however, that claim objections pursuant to sections 330, 332 and 333 of this Act and rejection damage claims shall be determined only by the Court, subject to its power to abstain when the determination is not required prior to deciding whether a plan should be confirmed.

(b) A claim shall be an allowed claim if valid under applicable law to the extent—

(1) it does not include unmatured interest as of the petition date, and

(2) is not disallowed under another provision of this Act.

(c) The assertion of a claim in a chapter 3 case shall not constitute a legal proceeding subject to the disclosure requirement for government vendors and contractors pursuant to any applicable law. The existence of a claim under chapter 3 of this Act shall not constitute the basis for disqualification from any procurement process or for not entering into a contract with the petitioner.

(d) Nothing in this Act shall grant recourse status to non-recourse claims.

Section 332. —Claims for Reimbursement, Contribution, Indemnification, and Subrogation.—

(a) Claims for reimbursement, contribution, or indemnification shall not be allowed to the extent their allowance causes a petitioner to have liability to pay the same underlying debt more than once. To the extent such claims relate to debts in existence prior to the filing of a petition under chapter 3 of this Act, such claims shall not be deemed administrative claims.

(b) The Court shall subordinate to the claim of an affected creditor and for the benefit of such creditor an allowed subrogation claim of an entity that is liable with the petitioner on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under chapter 3 of this Act or otherwise.

Section 333. —Payment of Administrative Expenses Pending Plan Confirmation.—

(a) A petitioner timely shall pay in full and in cash all administrative expenses incurred in connection with its operations and its case, including wages, salaries, commissions for services, trade debt, and monthly requests for reasonable fees and reimbursement of expenses incurred by the professionals retained by the petitioner (or retained by GDB on behalf of the petitioner, as provided by section 301(b) of this Act) and the creditors' committee(s), and the noticing agent.

(b) To the extent that a petitioner or GDB believes fees and expenses of a retained professional are unreasonable, it shall advise the applicant of its objection and the petitioner shall pay the undisputed portion. If the petitioner or GDB, as applicable, and the applicant are unable to reach an agreement about the disputed portion, either party may request the Court to rule on the reasonableness of such disputed fees and expenses. The petitioner or GDB, as applicable, may object to any applicant's fees as unreasonable for any legitimate reason.

(c) A petitioner or GDB may, in its sole discretion, retain an entity to serve as a fee examiner to review all fees and disbursements of all professionals for the petitioner and the creditors' committee(s). To the extent any professional requests payments in excess of those recommended by the fee examiner, the professional must procure a Court order allowing such additional amounts.

Section 334. —Custodian.—

(a) A custodian with knowledge of the filing of a petition under chapter 3 of this Act concerning the petitioner may not make any disbursement from, or take any action in the administration of, property of the petitioner, proceeds, product, offspring, rents, or profits of such property, or property of the petitioner, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.

(b) A custodian shall—

(1) deliver to the petitioner any property of the petitioner held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the filing of the petition; and

(2) file an accounting of any property of the petitioner, or proceeds, product, offspring, rents, or profits of such property that, at any time, came into the possession, custody, or control of such custodian.

(c) The Court, after notice and a hearing, shall—

(1) protect all entities to which a custodian has become obligated with respect to such property or proceeds, product, offspring, rents, or profits of such property;

(2) provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian; and

(3) surcharge such custodian for any improper or excessive disbursement, other than a disbursement that has been made in accordance with any applicable law, or that has been approved, after notice and a hearing, by a court of competent jurisdiction before the filing of the petition.

Section 335. —Turnover.—

(a) Except for collateral secured and perfected by possession, and except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the petitioner may use or transfer pursuant to sections 307 and 323 of this Act, shall deliver to the petitioner, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the petitioner.

(b) Except as provided in this section, an entity that owes a debt to the petitioner that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the petitioner, except to the extent that such debt may be offset against a claim against the petitioner.

(c) Except as provided in section 304(a)(5) of this Act, an entity that has neither actual notice nor actual knowledge of the filing of the petition concerning the petitioner, may transfer property of the petitioner, or pay a debt owing to the petitioner, to an entity other than the petitioner, with the same effect as to the entity making such transfer or payment as if the case under chapter 3 of this Act concerning the petitioner had not been commenced.

(d) Subject to any applicable privilege, after notice and a hearing, the Court may order an attorney, accountant, or other entity that holds recorded information, including books, documents, records, and papers, relating to the petitioner's property or financial affairs, to turn over or disclose such recorded information to the petitioner.

Section 336. —Surrender of Securities.—

If a plan requires presentment or surrender of a security or the performance of any other act as a condition to participation in distribution under the plan, such action shall be taken not later than five (5) years after the date of the entry of the confirmation order or as otherwise provided under the plan. Any entity that has not within such time presented or surrendered such entity's security or taken any such other action that the plan requires may not participate in any distribution under the plan.

Section 337. —Notice of Pleadings.—

(a) Service of any and all pleadings in a case under chapter 3 of this Act, arising in a case under chapter 3 of this Act, or related to a case under chapter 3 of this Act shall be sufficient if provided—

(1) by mail to the last known address or attorney of the affected creditor or other party in interest;

(2) by email to the email address provided by the affected creditor or other party in interest in any of such cases; or

(3) through The Depository Trust Company or similar depository.

(b) Service may be made within the Commonwealth and the United States and by first class mail postage prepaid or email as follows:

(1) notices required to be mailed to an affected creditor or indenture trustee (or entity performing comparable functions) shall be addressed as such entity or an authorized agent has directed in its last notice of appearance filed in the particular case;

(2) if an affected creditor or indenture trustee (or entity performing comparable functions) has not filed a notice of appearance designating a mailing address or email address, the notices shall be mailed to the entity's address, if any, shown on the list of affected creditors filed by the petitioner;

(3) if a list of affected creditors filed by the petitioner includes the name and address of a legal representative of a minor or incompetent person, and an entity other than that representative files a notice of appearance designating a name and mailing address that differs from the name and address of the representative included in the list of affected creditors, unless the Court orders otherwise, notices shall be mailed to the representative included in the list or schedules and to the name and address designated in the notice of appearance;

(4) an entity and the noticing agent may agree that the noticing agent shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the noticing agent. That address is conclusively presumed to be a proper address for the notice. The noticing agent's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law;

(5) an affected creditor may treat a notice as not having been brought to the affected creditor's attention only if, prior to issuance of the notice, the affected creditor has filed a statement with the Court that designates the name and address of the entity or organizational subdivision of the affected creditor responsible for receiving notices under chapter 3 of this Act, and that describes the procedures established by the affected creditor to cause such notices to be delivered to the designated entity or subdivision and the notice does not conform to such designation; and

(6) if the papers in the case disclose a claim of the United States other than for taxes, copies of notices required to be mailed to all affected creditors under this Act shall be mailed to the United States Attorney for the District of Puerto Rico and to

the department, agency, or instrumentality of the United States through which the petitioner became indebted.

(c) If, at the request of the petitioner, a party in interest with standing to be heard on a matter hereunder, or on its own initiative, the Court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give an affected creditor with an address outside the Commonwealth and the United States to which notices under this Act are mailed reasonable notice under the circumstances, the Court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged. Unless the Court for cause orders otherwise, the mailing address of an affected creditor with such foreign address shall be determined pursuant to subsections (b)(1) and (b)(2) of this section.

(d) The Court may, in its discretion, order specific noticing requirements for specific deadlines, hearings, and motions in the case, which orders shall supersede the noticing requirements in chapter 3 of this Act to the extent inconsistent.

Section 338. —Special Notices.—

(a) In addition to all other notices required hereunder, a petitioner shall provide special notices of (1) the filing of a petition, (2) the hearing on a petitioner's request for entry of an order determining the petitioner is eligible for relief under chapter 3 of this Act, (3) the hearing on a transfer pursuant to section 307 of this Act, and (4) the hearing on confirmation of the proposed plan. Such notice shall be posted on the website for its case under chapter 3 of this Act and published in accordance with section 116(c)(2) of this Act.

(b) Notice shall be transmitted to

(1) all parties in interest (except for holders of claims not scheduled pursuant to section 302(a)(2) of this Act) for whom a petitioner has readily accessible internal electronic records of mailing addresses or email addresses,

(2) all entities that file notices of appearance, and

(3) in accordance with subsection (c) below, holders of claims not scheduled pursuant to section 302(a)(2) of this Act.

(c) Notwithstanding any contractual provision or applicable law to the contrary, notice of the events set forth in subsection (a) of this section to holders of claims not scheduled pursuant to section 302(a)(2) of this Act shall be proper and reasonable if publication notice thereof is made in accordance with section 116(c)(2) of this Act.

Section 339. —Dismissal of Case.—

(a) After notice and a hearing, the Court may dismiss a case under chapter 3 of th1a) a legislative determination that the state of fiscal emergency underlying the need for chapter 3 of this Act has ended; or

(1) a determination by the Court, or by a federal court whose judgment is final and unappealable, that the petitioner is eligible to prosecute a case under title 11 of the United States Code.

(b) The Court shall dismiss a case under chapter 3 of this Act, and may condition such dismissal on such terms as are just, if the petition is withdrawn pursuant to section 112 of this Act.

Section 340. —Closing of Case.—

(a) After a plan is confirmed and effective, and all disputed claims are resolved, the Court shall close the case.

(b) A case may be reopened in the Court in which such case was closed to enforce the plan, to accord relief to the petitioner, or for other cause.

Section 341. —Escheat Rules.—

Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 3 of this Act for the presentation of a security or the performance of any other act as a condition to participation in the distribution under any final statement of allocation or any plan confirmed under chapter 3 of this Act, or remaining unclaimed after the expiration of a time limit for claiming distribution under such final statement of allocation or such plan, as the case may be, becomes the property of the petitioner or of the entity acquiring the assets of the petitioner under the plan, as the case may be.

Chapter 4: Effectiveness of the Act

Section 401.-Effective Date.

This Act will be effective immediately upon its approval.

"Puerto Rico Electric Power Authority Act"

Act No. 83 of May 12, 1941, as amended,

(Contains amendments incorporated by:
Act No. 27 of June 10, 1959
Act No. 58 of June 6, 1960
Act No. 62 of June 17, 1966
Act No. 39 of May 23, 1967
Act No. 112 of June 28, 1969
Act No. 5 of June 28, 1973
Act No. 36 of May 25, 1973
Act No. 106 of June 28, 1974
Act No. 59 of May 27, 1976
Act No. 3 of February 1, 1979
Act No. 57 of May 30, 1979
Act No. 46 of May 12, 1980
Act No. 148 of June 18, 1980
Act No. 4 of June 8, 1981
Act No. 144 of August 2, 1988
Act No. 34 of July 24, 1989
Act No. 29 of July 26, 1991
Act No. 32 of July 22, 1992
Act No. 84 of August 13, 1994
Act No. 47 of May 23, 1995
Act No. 164 of August 11, 1995
Act No. 124 of August 11, 1996
Act No. 164 of August 23 , 1996
Act No. 152 of July 19, 1998
Act No. 145 of August 9, 2002
Act No. 194 of August 17, 2002
Act No. 272 of December 8, 2002
Act No. 297 of December 25, 2002
Act No. 28 of January 1, 2003
Act No. 189 of August 18, 2003
Act No. 300 of December 8, 2003
Act No. 255 of September 7, 2004
Act No. 370 of September 16, 2004
Act No. 2 of January 5, 2006
Act No. 223 of October 4, 2006
Act No. 79 of July 29, 2007
Act No. 86 of July 30, 2007
Act No. 131 of September 27, 2007

(12) as to the vesting in a trustee or trustees the right to enforce any covenants made to secure, to pay, or in relation to the bonds; as to the powers and duties of each trustee or trustees, and the limitation of the liabilities thereof; and as to the terms and conditions upon which the holders of the bonds or any proportion of percentage of them may enforce any covenants made under this Act or duties imposed hereby;

(13) as to the manner of collecting the rates, fees, rentals, or other charges for the services, facilities, or commodities of undertaking of the Authority, and the combining in one bill of the rates, fees, rentals, or other charges for the services, facilities, or commodities of any two or more of such undertakings;

(14) as to the discontinuance of the services, facilities, or commodities of any undertakings of the Authority, in the event that the rates, fees, rentals, or other charges for the services, facilities, or commodities of such undertaking are not paid, and

(15) as to any other acts and things not inconsistent with this Act that may be necessary or convenient for the security of the bonds, or as may tend to make the bonds more marketable.

(f) Neither the members of the Board nor any person executing the bonds shall be liable personally on [for] the bonds or be subject to any liability by reason of the issuance thereof.

(g) The Authority is authorized to purchase any outstanding bonds issued or assumed by it with any funds available therefor, at a price not more than the principal amount or the current redemption price thereof and the accrued interest. All bonds so purchased shall be cancelled.

Section 17. — Right to Receivership Upon Default. (22 L.P.R.A. § 207)

(a) In the event that the Authority shall default in the payment of the principal of, or interest on, any of its bonds after the same shall become due, whether it be a default in the payment of principal and interest or in the payment of interest only at maturity or upon call for redemption, and such default shall continue for a period of thirty (30) days, or in the event that the Authority or the Board, officers, agents, or employees thereof shall default in any agreement made with the holders of the bonds, any holder or holders of the bonds (subject to any contractual limitation as to a specific percentage of such holders), or trustee therefor, shall have the right to apply in an appropriate judicial proceeding to any court of competent jurisdiction in Puerto Rico for the appointment of a receiver of the undertakings, or parts thereof, the income or revenues of which are pledged to the payment of the bonds so in default, whether or not all the bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right or to exercise any remedy in connection with such bonds. Upon such application the court may appoint, and if the application is made by the holders of twenty-five (25%) per centum in principal amount of such bonds then outstanding, or by any trustee for holders of bonds in such principal amount, shall appoint a receiver of such undertakings.

(b) The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of such undertakings and each and every part thereof, and may exclude the Authority, its Board, officers, agents, and employees and all persons claiming under them, wholly therefrom and shall have, hold, use, operate, manage, and control the same and each and every part thereof, and, in the name of the Authority or otherwise, as the receiver may deem best, shall exercise all the rights and powers of the

Authority with respect to such undertakings as the Authority itself might do. Such receiver shall maintain, restore, insure, and keep insured, such undertakings and from time to time shall make all such necessary or proper repairs as such receiver may deem expedient, shall establish, levy, maintain, and collect such rates, fees, rentals, and other charges in connection with such undertakings as such receiver may deem necessary, proper and reasonable, and shall collect and receive all income and revenues and deposit the same in a separate account and apply the income and revenues so collected and received in such manner as the court shall direct.

(c) Whenever all that is due upon the bonds, and interest thereon, and upon any notes, bonds, or other obligations, and interest thereon, having a charge, lien, or encumbrance on the revenues of such undertakings and under any of the terms of any covenants or agreements with bondholders shall have been paid or deposited as provided therein, and all defaults in consequence of which a receiver may be appointed shall have been cured and made good, the court may, in its discretion and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of such undertakings to the Authority, the same right of the holders of the bonds to obtain the appointment of a receiver to exist upon any subsequent default as hereinabove provided.

(d) Such receiver shall act, in the performance of the powers hereinabove conferred upon him, under the direction and supervision of the court and shall at all times be subject to the orders and decrees of the court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of the court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth in this Act.

(e) Notwithstanding anything in this section to the contrary, such receiver shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the Authority and useful for such undertakings, but the powers of any such receiver shall be limited to the operation and maintenance of such undertakings, and the collection and application of the income and revenues therefrom, and the tribunal shall not have jurisdiction to enter any order or decree requiring or permitting said receiver to sell, mortgage, or otherwise dispose of any such assets.

Section 18. — Remedies of Bondholders. (22 L.P.R.A. § 208)

(a) Subject to any contractual limitations binding upon the holders of any issue of bonds, or trustees therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(1) By mandamus or other suit, action, or proceeding at law or in equity to enforce his rights against the Authority and its Board, officers, agents, or employees to perform and carry out its and their duties and obligations under this Act and its and their covenants and agreements with bondholders;

(2) by action or suit in equity to require the Authority and the Board thereof to account as if they were the trustee of an express trust;

(3) by action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders, and

(4) to bring suit upon the bonds.

(b) No remedy conferred by this Act upon any holder of the bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy, and may be exercised without exhausting and without regard to any other remedy conferred by this Act or by any other law. No waiver of any default or breach of duty or contract, whether by any holder of the bonds, or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy, conferred upon the holders of the bonds, may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action, or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holder of the bonds, or any trustee therefor, then and in every case the Authority and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action, or proceeding had been brought or taken.

Section 19. — Reports. (22 L.P.R.A. § 209)

The Authority shall submit to the Legislature and to the Governor of Puerto Rico, as soon as practicable after the close of each fiscal year of the Commonwealth Government but prior to the end of the calendar year: (1) A financial statement and complete report of the business of the Authority for the preceding fiscal year, and (2) a complete report on the status and progress of all its undertakings and activities since the creation of the Authority or the date of its last such report. The Authority shall also submit to the Legislature and to the Governor of Puerto Rico, at such other times as may be required, official reports of its business and activities under this Act.

Section 20. — Commonwealth and its Political Subdivisions not Liable on Bonds.. (22 L.P.R.A. § 210)

The bonds and other obligations issued by the Authority shall not be a debt of the Commonwealth of Puerto Rico or any of its municipalities or other political subdivisions, and neither the Commonwealth of Puerto Rico nor any such municipalities or other political subdivisions shall be liable thereon, nor shall such bonds or other obligations be payable out of any funds other than those of the Authority.

Section 21. — Bonds Legal Investments for Fiduciaries and Security for Public Deposits.. (22 L.P.R.A. § 211)

power, notwithstanding anything to the contrary in said Act No. 58, to fix the basis for allocating operating expenses to the several systems operated by the Authority.

(b) In carrying out its duties under the next preceding subsection, the Authority shall pay directly all costs and expenses incurred by it. The Authority shall be reimbursed for all such costs and expenses, including a fair share of the Authority's own overhead and operating expenses attributable to the Puerto Rico Irrigation Service, South Coast, as determined pursuant to subsection (a) above, from the funds available in the Commonwealth Treasury for the operation and maintenance, repair, reconstruction, construction of extensions, improvements and enlargements of the works or systems, constructed and operated and maintained pursuant to the Public Irrigation Law of 1908, approved September 18, 1908 [22 L.P.R.A. §§ 251--259] and laws amendatory thereof or supplementary thereto. There shall be advanced to the Authority, from time to time, from said Irrigation funds in the Treasury, amounts sufficient to provide a working fund adequate at all times to meet all of said costs and expenses promptly. Said funds shall be held and administered by the Authority in the same manner as its own funds but shall be used by it only for the payment of said costs and expenses.

(c) Upon authorization of the Legislature of Puerto Rico, the Authority, when it deems it advisable in the public interest, may take over and operate any irrigation and/or hydroelectric project existing and owned, or that may be developed or acquired in the future, by the Commonwealth of Puerto Rico.

Section 25. — Agreement of Commonwealth Government. (22 L.P.R.A. § 215)

The Commonwealth Government does hereby pledge to, and agree with, any person, firm or corporation, or any federal, Commonwealth or state agency, subscribing to or acquiring bonds of the Authority to finance in whole or in part any undertaking or any part thereof, that it will not limit or alter the rights or powers hereby vested in the Authority until all such bonds at any time issued, together with the interest thereon, are fully met and discharged. The Commonwealth Government does further pledge to, and agree with, the United States and any other federal agency that in the event that any federal agency shall construct, extend, improve, or enlarge, or contribute any funds for the construction, extension, improvement, or enlargement of, any project for the development of the water resources in Puerto Rico or any portion thereof, the Commonwealth Government will not alter or limit the rights or powers of the Authority in any manner which would be inconsistent with the continued maintenance and operation of the water resources development or the extensions, improvement, or enlargement thereof, or which would be inconsistent with the due performance of any agreements between the Authority and any such federal agency; and the Authority shall continue to have and may exercise all rights and powers herein granted so long as the same shall be necessary or desirable for the carrying out of the purposes of this Act and the purpose of the United States or any other federal agency in constructing, extending, improving or enlarging, or contributing funds for the construction, extension, improvement or enlargement of, any water resources development or any portion thereof.

Section 26. — Injunctions. (22 L.P.R.A. § 216)

AMENDMENTS

2005—Pub. L. 109–8, title I, §106(e)(2), title II, §233(b), Apr. 20, 2005, 119 Stat. 41, 74, added items 111 and 112.

1994—Pub. L. 103–394, title III, §308(b), Oct. 22, 1994, 108 Stat. 4137, added item 110.

§ 101. Definitions

In this title the following definitions shall apply:

(1) The term "accountant" means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized.

(2) The term "affiliate" means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement.

(3) The term "assisted person" means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $150,000.

(4) The term "attorney" means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law.

(4A) The term "bankruptcy assistance" means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

(6) The term "commodity broker" means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title.

(7) The term "community claim" means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case.

(7A) The term "commercial fishing operation" means—

(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A).

(7B) The term "commercial fishing vessel" means a vessel used by a family fisherman to carry out a commercial fishing operation.

(8) The term "consumer debt" means debt incurred by an individual primarily for a personal, family, or household purpose.

(9) The term "corporation"—

(A) includes—

(i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;

(ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;

(iii) joint-stock company;

(iv) unincorporated company or association; or

(v) business trust; but

(B) does not include limited partnership.

(10) The term "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim.

(10A) The term "current monthly income"—

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B) 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), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism.

(11) The term "custodian" means—

(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

(B) assignee under a general assignment for the benefit of the debtor's creditors; or

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors.

(12) The term "debt" means liability on a claim.

(12A) The term "debt relief agency" means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.

(13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

(13A) The term "debtor's principal residence"—

(A) means a residential structure if used as the principal residence by the debtor, including incidental property, without regard to whether that structure is attached to real property; and

(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer if used as the principal residence by the debtor.

(14) The term "disinterested person" means a person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

(14A) The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal

guardian, or responsible relative for the purpose of collecting the debt.

(15) The term "entity" includes person, estate, trust, governmental unit, and United States trustee.

(16) The term "equity security" means—

(A) share in a corporation, whether or not transferable or denominated "stock", or similar security;

(B) interest of a limited partner in a limited partnership; or

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph.

(17) The term "equity security holder" means holder of an equity security of the debtor.

(18) The term "family farmer" means—

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $3,237,000 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—

(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding;

the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed $3,237,000 and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded.

(19) The term "family farmer with regular annual income" means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.

(19A) The term "family fisherman" means—

(A) an individual or individual and spouse engaged in a commercial fishing operation—

(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) a corporation or partnership—

(i) in which more than 50 percent of the outstanding stock or equity is held by—

(I) 1 family that conducts the commercial fishing operation; or

(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

(III) if such corporation issues stock, such stock is not publicly traded.

(19B) The term "family fisherman with regular annual income" means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title.

(20) The term "farmer" means (except when such term appears in the term "family farmer") person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person.

(21) The term "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.

(21A) The term "farmout agreement" means a written agreement in which—

(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property.

(21B) The term "Federal depository institutions regulatory agency" means—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);

(B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;

(C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and

(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation.

(22) The term "financial institution" means—

(A) a Federal reserve bank, or an entity that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, conservator or entity is acting as agent or custodian for a customer (whether or not a "customer", as defined in section 741) in connection with a securities contract (as defined in section 741) such customer; or

(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940.

(22A) The term "financial participant" means—

(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding (aggregated across counterparties) at such time or on any day during the 15-month period preceding the date of the filing of the petition, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) at such time or on any day during the 15-month period preceding the date of the filing of the petition; or

(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991).

(23) The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

(24) The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

(25) The term "forward contract" means—

(A) a contract (other than a commodity contract, as defined in section 761) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in this section)[1] consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

[1] So in original. Probably should be followed by a comma.

(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562.

(26) The term "forward contract merchant" means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade.

(27) The term "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

(27A) The term "health care business"—

(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

(i) the diagnosis or treatment of injury, deformity, or disease; and

(ii) surgical, drug treatment, psychiatric, or obstetric care; and

(B) includes—

(i) any—

(I) general or specialized hospital;

(II) ancillary ambulatory, emergency, or surgical treatment facility;

(III) hospice;

(IV) home health agency; and

(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

(ii) any long-term care facility, including any—

(I) skilled nursing facility;

(II) intermediate care facility;

(III) assisted living facility;

(IV) home for the aged;

(V) domiciliary care facility; and

(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living.

(27B) The term "incidental property" means, with respect to a debtor's principal residence—

(A) property commonly conveyed with a principal residence in the area where the real property is located;

(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

(C) all replacements or additions.

(28) The term "indenture" means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor.

(29) The term "indenture trustee" means trustee under an indenture.

(30) The term "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker.

(31) The term "insider" includes—

(A) if the debtor is an individual—

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(iv) partnership in which the debtor is a general partner;

(v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) general partner in the debtor;

(ii) relative of a general partner in, general partner of, or person in control of the debtor;

(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor.

(32) The term "insolvent" means—

(A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title;

(B) with reference to a partnership, financial condition such that the sum of such

partnership's debts is greater than the aggregate of, at a fair valuation—

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's nonpartnership property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner's nonpartnership debts; and

(C) with reference to a municipality, financial condition such that the municipality is—

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due.

(33) The term ''institution - affiliated party''—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act; and

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act.

(34) The term ''insured credit union'' has the meaning given it in section 101(7) of the Federal Credit Union Act.

(35) The term ''insured depository institution''—

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of paragraphs (21B) and (33)(A) of this subsection).

(35A) The term ''intellectual property'' means—

(A) trade secret;

(B) invention, process, design, or plant protected under title 35;

(C) patent application;

(D) plant variety;

(E) work of authorship protected under title 17; or

(F) mask work protected under chapter 9 of title 17;

to the extent protected by applicable nonbankruptcy law.

(36) The term ''judicial lien'' means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(37) The term ''lien'' means charge against or interest in property to secure payment of a debt or performance of an obligation.

(38) The term ''margin payment'' means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments.

(38A) The term ''master netting agreement''—

(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a).

(38B) The term ''master netting agreement participant'' means an entity that, at any time before the date of the filing of the petition, is a party to an outstanding master netting agreement with the debtor.

(39) The term ''mask work'' has the meaning given it in section 901(a)(2) of title 17.

(39A) The term ''median family income'' means for any year—

(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and

(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year.

(40) The term ''municipality'' means political subdivision or public agency or instrumentality of a State.

(40A) The term ''patient'' means any individual who obtains or receives services from a health care business.

(40B) The term ''patient records'' means any record relating to a patient, including a written document or a record recorded in a magnetic, optical, or other form of electronic medium.

(41) The term ''person'' includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) acquires an asset from a person—

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person;

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of—

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit.

(41A) The term ''personally identifiable information'' means—

(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

(ii) the geographical address of a physical place of residence of such individual;

(iii) an electronic address (including an e-mail address) of such individual;

(iv) a telephone number dedicated to contacting such individual at such physical place of residence;

(v) a social security account number issued to such individual; or

(vi) the account number of a credit card issued to such individual; or

(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)—

(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or

(ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically.

(42) The term ''petition'' means petition filed under section 301, 302, 303 and[2] 1504 of this title, as the case may be, commencing a case under this title.

(42A) The term ''production payment'' means a term overriding royalty satisfiable in cash or in kind—

(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs.

(43) The term ''purchaser'' means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee.

(44) The term ''railroad'' means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier.

(45) The term ''relative'' means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree.

(46) The term ''repo participant'' means an entity that, at any time before the filing of the petition, has an outstanding repurchase agreement with the debtor.

(47) The term ''repurchase agreement'' (which definition also applies to a reverse repurchase agreement)—

(A) means—

(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

(B) does not include a repurchase obligation under a participation in a commercial mortgage loan.

(48) The term ''securities clearing agency'' means person that is registered as a clearing

[2] So in original. Probably should be ''or''. See 2010 Amendment note below.

agency under section 17A of the Securities Exchange Act of 1934, or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission, or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A.

(48A) The term ''securities self regulatory organization'' means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934.

(49) The term ''security''—

(A) includes—

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) debenture;

(vi) collateral trust certificate;

(vii) pre-organization certificate or subscription;

(viii) transferable share;

(ix) voting-trust certificate;

(x) certificate of deposit;

(xi) certificate of deposit for security;

(xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is required to be the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933, or is exempt under section 3(b) of such Act from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as ''security''; and

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

(ii) leverage transaction, as defined in section 761 of this title;

(iii) commodity futures contract or forward contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 from the requirement to file such a statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered.

(50) The term ''security agreement'' means agreement that creates or provides for a security interest.

(51) The term ''security interest'' means lien created by an agreement.

(51A) The term ''settlement payment'' means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade.

(51B) The term ''single asset real estate'' means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto.

(51C) The term ''small business case'' means a case filed under chapter 11 of this title in which the debtor is a small business debtor.

(51D) The term ''small business debtor''—

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $2,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,000,000 (excluding debt owed to 1 or more affiliates or insiders).

(52) The term ''State'' includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.

(53) The term ''statutory lien'' means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.

(53A) The term "stockbroker" means person—

(A) with respect to which there is a customer, as defined in section 741 of this title; and

(B) that is engaged in the business of effecting transactions in securities—

(i) for the account of others; or

(ii) with members of the general public, from or for such person's own account.

(53B) The term "swap agreement"—

(A) means—

(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement;

(III) a currency swap, option, future, or forward agreement;

(IV) an equity index or equity swap, option, future, or forward agreement;

(V) a debt index or debt swap, option, future, or forward agreement;

(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

(VII) a commodity index or a commodity swap, option, future, or forward agreement;

(VIII) a weather swap, option, future, or forward agreement;

(IX) an emissions swap, option, future, or forward agreement; or

(X) an inflation swap, option, future, or forward agreement;

(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference therein); and

(II) is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(iii) any combination of agreements or transactions referred to in this subparagraph;

(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act.

(53C) The term "swap participant" means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor.

(56A)[3] The term "term overriding royalty" means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized.

(53D) The term "timeshare plan" means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A "timeshare interest" is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

(54) The term "transfer" means—

(A) the creation of a lien;

[3] So in original.

(B) the retention of title as a security interest;

(C) the foreclosure of a debtor's equity of redemption; or

(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

(i) property; or

(ii) an interest in property.

(54A) The term "uninsured State member bank" means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(55) The term "United States", when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2549; Pub. L. 97–222, §1, July 27, 1982, 96 Stat. 235; Pub. L. 98–353, title III, §§391, 401, 421, July 10, 1984, 98 Stat. 364, 366, 367; Pub. L. 99–554, title II, §§201, 251, 283(a), Oct. 27, 1986, 100 Stat. 3097, 3104, 3116; Pub. L. 100–506, §1(a), Oct. 18, 1988, 102 Stat. 2538; Pub. L. 100–597, §1, Nov. 3, 1988, 102 Stat. 3028; Pub. L. 101–311, title I, §101, title II, §201, June 25, 1990, 104 Stat. 267, 268; Pub. L. 101–647, title XXV, §2522(e), Nov. 29, 1990, 104 Stat. 4867; Pub. L. 102–486, title XXX, §3017(a), Oct. 24, 1992, 106 Stat. 3130; Pub. L. 103–394, title I, §106, title II, §§208(a), 215, 217(a), 218(a), title III, §304(a), title V, §501(a), (b)(1), (d)(1), Oct. 22, 1994, 108 Stat. 4111, 4124, 4126–4128, 4132, 4141–4143; Pub. L. 106–554, §1(a)(5) [title I, §112(c)(3), (4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–393, 2763A–394; Pub. L. 109–8, title I, §102(b), (k), title II, §§211, 226(a), 231(b), title III, §306(c), title IV, §§401(a), 414, 432(a), title VIII, §802(b), title IX, §907(a)(1), (b), (c), title X, §§1004, 1005, 1007(a), title XI, §1101(a), (b), title XII, §1201, Apr. 20, 2005, 119 Stat. 32, 35, 50, 66, 73, 80, 104, 107, 110, 145, 170, 175, 186, 187, 189, 192; Pub. L. 109–390, §5(a)(1), Dec. 12, 2006, 120 Stat. 2695; Pub. L. 111–327, §2(a)(1), Dec. 22, 2010, 124 Stat. 3557.)

ADJUSTMENT OF DOLLAR AMOUNTS

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 101(2) defines "affiliate." The House amendment contains a provision that is a compromise between the definition in the House-passed version of H.R. 8200 and the Senate amendment in the nature of a substitute to H.R. 8200. Subparagraphs (A) and (B) are derived from the Senate amendment and subparagraph (D) is taken from the House bill, while subparagraph (C) represents a compromise, taking the House position with respect to a person whose business is operated under a lease or an operating agreement by the debtor and with respect to a person substantially all of whose property is operated under an operating agreement by the debtor and with respect to a person substantially all of whose property is operated under an operating agreement by the debtor and the Senate position on leased property. Thus, the definition of "affiliate" excludes persons substantially all of whose property is operated under a lease agreement by a debtor, such as a small company which owns equipment all of which is leased to a larger nonrelated company.

Section 101(4)(B) represents a modification of the House-passed bill to include the definition of "claim" a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment. This is intended to cause the liquidation or estimation of contingent rights of payment for which there may be an alternative equitable remedy with the result that the equitable remedy will be susceptible to being discharged in bankruptcy. For example, in some States, a judgment for specific performance may be satisfied by an alternative right to payment, in the event performance is refused; in that event, the creditor entitled to specific performance would have a "claim" for purposes of a proceeding under title 11.

On the other hand, rights to an equitable remedy for a breach of performance with respect to which such breach does not give rise to a right to payment are not "claims" and would therefore not be susceptible to discharge in bankruptcy.

In a case under chapter 9 to title 11, "claim" does not include a right to payment under an industrial development bond issued by a municipality as a matter of convenience for a third party.

Municipalities are authorized, under section 103(c) of the Internal Revenue Code of 1954, as amended [title 26], to issue tax-exempt industrial development revenue bonds to provide for the financing of certain projects for privately owned companies. The bonds are sold on the basis of the credit of the company on whose behalf they are issued, and the principal, interest, and premium, if any, are payable solely from payments made by the company to the trustee under the bond indenture and do not constitute claims on the tax revenues or other funds of the issuing municipalities. The municipality merely acts as the vehicle to enable the bonds to be issued on a tax-exempt basis. Claims that arise by virtue of these bonds are not among the claims defined by this paragraph and amounts owed by private companies to the holders of industrial development revenue bonds are not to be included among the assets of the municipality that would be affected by the plan.

Section 101(6) defines "community claim" as provided by the Senate amendment in order to indicate that a community claim exists whether or not there is community property in the estate as of the commencement of the case.

Section 101(7) of the House amendment contains a definition of consumer debt identical to the definition in the House bill and Senate amendment. A consumer debt does not include a debt to any extent the debt is secured by real property.

Section 101(9) of the Senate amendment contained a definition of "court." The House amendment deletes the provision as unnecessary in light of the pervasive jurisdiction of a bankruptcy court under all chapters of title 11 as indicated in title II of the House amendment to H.R. 8200.

Section 101(11) defines "debt" to mean liability on a claim, as was contained in the House-passed version of H.R. 8200. The Senate amendment contained language indicating that "debt" does not include a policy loan made by a life insurance company to the debtor. That language is deleted in the House amendment as unnecessary since a life insurance company clearly has no right to have a policy loan repaid by the debtor, although such company does have a right of offset with respect to such policy loan. Clearly, then, a "debt" does not include a policy loan made by a life insurance company. Inclusion of the language contained in the Senate amendment would have required elaboration of other legal relationships not arising by a liability on a claim. Further the language would have required clarification that interest on a policy loan made by a life insurance company is a debt, and that the insurance company does have right to payment to that interest.

Section 101(14) adopts the definition of "entity" contained in the Senate-passed version of H.R. 8200. Since the Senate amendment to H.R. 8200 deleted the U.S.

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.

§ 103. Applicability of chapters

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title, and this chapter, sections 307, 362(*o*), 555 through 557, and 559 through 562 apply in a case under chapter 15.

(b) Subchapters I and II of chapter 7 of this title apply only in a case under such chapter.

(c) Subchapter III of chapter 7 of this title applies only in a case under such chapter concerning a stockbroker.

(d) Subchapter IV of chapter 7 of this title applies only in a case under such chapter concerning a commodity broker.

(e) SCOPE OF APPLICATION.—Subchapter V of chapter 7 of this title shall apply only in a case under such chapter concerning the liquidation of an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(f) Except as provided in section 901 of this title, only chapters 1 and 9 of this title apply in a case under such chapter 9.

(g) Except as provided in section 901 of this title, subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.

(h) Subchapter IV of chapter 11 of this title applies only in a case under such chapter concerning a railroad.

(i) Chapter 13 of this title applies only in a case under such chapter.

(j) Chapter 12 of this title applies only in a case under such chapter.

(k) Chapter 15 applies only in a case under such chapter, except that—

(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

(2) section 1509 applies whether or not a case under this title is pending.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2555; Pub. L. 97–222, § 2, July 27, 1982, 96 Stat. 235; Pub. L. 98–353, title III, § 423, July 10, 1984, 98 Stat. 369; Pub. L. 99–554, title II, § 252, Oct. 27, 1986, 100 Stat. 3104; Pub. L. 106–554, § 1(a)(5) [title I, § 112(c)(5)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A–394; Pub. L. 109–8, title VIII, § 802(a), Apr. 20, 2005, 119 Stat. 145; Pub. L. 111–327, § 2(a)(2), Dec. 22, 2010, 124 Stat. 3557.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

Section 103 prescribes which chapters of the proposed bankruptcy code apply in various cases. All cases, other than cases ancillary to foreign proceedings, are filed under chapter 7, 9, 11, or 13, the operative chapters of the proposed bankruptcy code. The general provisions that apply no matter which chapter a case is filed under are found in chapters 1, 3, and 5. Subsection (a) makes this explicit, with an exception for chapter 9. The other provisions, which are self-explanatory, provide the special rules for Stockbroker Liquidations, Commodity Broker Liquidations, Municipal Debt Adjustments, and Railroad Reorganizations.

REFERENCES IN TEXT

Section 25A of the Federal Reserve Act, referred to in subsec. (e), popularly known as the Edge Act, is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 12 and Tables.

Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (e), is classified to section 4422 of Title 12, Banks and Banking.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–327 substituted "362(*o*)" for "362(n)".

2005—Subsec. (a). Pub. L. 109–8, § 802(a)(1), inserted ", and this chapter, sections 307, 362(n), 555 through 557, and 559 through 562 apply in a case under chapter 15" before period.

Subsec. (k). Pub. L. 109–8, § 802(a)(2), added subsec. (k).

2000—Subsecs. (e) to (j). Pub. L. 106–554 added subsec. (e) and redesignated former subsecs. (e) to (i) as (f) to (j), respectively.

1986—Subsec. (a). Pub. L. 99–554, § 252(1), inserted reference to chapter 12.

Subsec. (i). Pub. L. 99–554, § 252(2), added subsec. (i).

1984—Subsec. (c). Pub. L. 98–353 substituted "stockbroker" for "stockholder".

1982—Subsec. (d). Pub. L. 97–222 struck out "except with respect to section 746(c) which applies to margin payments made by any debtor to a commodity broker or forward contract merchant" after "concerning a commodity broker".

EFFECTIVE DATE OF 2005 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

§ 104. Adjustment of dollar amounts

(a) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28 immediately before such April 1 shall be adjusted—

(1) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(2) to round to the nearest $25 the dollar amount that represents such change.

(b) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the

Subsection (c) extends the statute of limitations for creditors. Thus, if a creditor is stayed from commencing or continuing an action against the debtor because of the bankruptcy case, then the creditor is permitted an additional 30 days after notice of the event by which the stay is terminated, whether that event be relief from the automatic stay under proposed 11 U.S.C. 362 or 1301, the closing of the bankruptcy case (which terminates the stay), or the exception from discharge of the debts on which the creditor claims.

In the case of Federal tax liabilities, the Internal Revenue Code [title 26] suspends the statute of limitations on a tax liability of a taxpayer from running while his assets are in the control or custody of a court and for 6 months thereafter (sec. 6503(b) of the Code [title 26]). The amendment applies this rule in a title 11 proceeding. Accordingly, the statute of limitations on collection of a nondischargeable Federal tax liability of a debtor will resume running after 6 months following the end of the period during which the debtor's assets are in the control or custody of the bankruptcy court. This rule will provide the Internal Revenue Service adequate time to collect nondischargeable taxes following the end of the title 11 proceedings.

AMENDMENTS

2005—Subsec. (c)(2). Pub. L. 109–8 substituted "922, 1201, or" for "922, or".

1986—Subsec. (b). Pub. L. 99–554, §257(b)(1), inserted reference to section 1201 of this title.

Subsec. (c). Pub. L. 99–554, §257(b)(2)(A), inserted reference to section 1201 of this title in provisions preceding par. (1).

Subsec. (c)(2). Pub. L. 99–554, §257(b)(2)(B), which directed the amendment of subsec. (c) by inserting "1201," after "722," could not be executed because "722," did not appear in text.

1984—Subsec. (a). Pub. L. 98–353, §424(b), inserted "nonbankruptcy" after "applicable" and "entered in a" in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98–353, §424(a), substituted "or" for "and" after the semicolon.

Subsec. (b). Pub. L. 98–353, §424(b), inserted "nonbankruptcy" after "applicable" and "entered in a" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98–353, §424(a), substituted "or" for "and" after the semicolon.

Subsec. (c). Pub. L. 98–353, §424(b), inserted "nonbankruptcy" after "applicable" and "entered in a" in provisions preceding par. (1).

Subsec. (c)(1). Pub. L. 98–353, §424(a), substituted "or" for "and" after the semicolon.

EFFECTIVE DATE OF 2005 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

§ 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the Small Business Administration under section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or

(3)(A) a foreign insurance company, engaged in such business in the United States; or

(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978) in the United States.

(c) An entity may be a debtor under chapter 9 of this title if and only if such entity—

(1) is a municipality;

(2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter;

(3) is insolvent;

(4) desires to effect a plan to adjust such debts; and

(5)(A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(C) is unable to negotiate with creditors because such negotiation is impracticable; or

(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

(d) Only a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or a commodity broker), and an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor under chapter 11 of this title.

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $250,000 and noncontingent, liquidated, secured debts of less than $750,000, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $250,000 and noncontingent, liquidated, secured debts of less than $750,000 may be a debtor under chapter 13 of this title.

(f) Only a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from such agencies by reason of the requirements of paragraph (1).

(B) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in subparagraph (A) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee (or the bankruptcy administrator, if any) at any time.

(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 7-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.

(4) The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2557; Pub. L. 97–320, title VII, §703(d), Oct. 15, 1982, 96 Stat. 1539; Pub. L. 98–353, title III, §§301, 425, July 10, 1984, 98 Stat. 352, 369; Pub. L. 99–554, title II, §253, Oct. 27, 1986, 100 Stat. 3105; Pub. L. 100–597, §2, Nov. 3, 1988, 102 Stat. 3028; Pub. L. 103–394, title I, §108(a), title II, §220, title IV, §402, title V, §501(d)(2), Oct. 22, 1994, 108 Stat. 4111, 4129, 4141, 4143; Pub. L. 106–554, §1(a)(5) [title I, §112(c)(1), (2)], §1(a)(8) [§1(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–393, 2763A–665; Pub. L. 109–8, title I, §106(a), title VIII, §802(d)(1), title X, §1007(b), title XII, §1204(1), Apr. 20, 2005, 119 Stat. 37, 146, 188, 193; Pub. L. 111–16, §2(1), May 7, 2009, 123 Stat. 1607; Pub. L. 111–327, §2(a)(6), Dec. 22, 2010, 124 Stat. 3557.)

ADJUSTMENT OF DOLLAR AMOUNTS

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 109(b) of the House amendment adopts a provision contained in H.R. 8200 as passed by the House. Railroad liquidations will occur under chapter 11, not chapter 7.

Section 109(c) contains a provision which tracks the Senate amendment as to when a municipality may be a debtor under chapter 11 of title 11. As under the Bankruptcy Act [former title 11], State law authorization and prepetition negotiation efforts are required.

Section 109(e) represents a compromise between H.R. 8200 as passed by the House and the Senate amendment relating to the dollar amounts restricting eligibility to be a debtor under chapter 13 of title 11. The House amendment adheres to the limit of $100,000 placed on unsecured debts in H.R. 8200 as passed by the House. It

and their creditors, because the cost of administration will be reduced, and there will be only one filing fee.

Section 302 specifies that a joint case is commenced by the filing of a petition under an appropriate chapter by an individual and that individual's spouse. Thus, one spouse cannot take the other into bankruptcy without the other's knowledge or consent. The filing of the petition constitutes an order for relief under the chapter selected.

Subsection (b) requires the court to determine the extent, if any, to which the estates of the two debtors will be consolidated; that is, assets and liabilities combined in a single pool to pay creditors. Factors that will be relevant in the court's determination include the extent of jointly held property and the amount of jointly-owned debts. The section, of course, is not license to consolidate in order to avoid other provisions of the title to the detriment of either the debtors or their creditors. It is designed mainly for ease of administration.

§ 303. Involuntary cases

(a) An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least $10,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least $10,000 of such claims;

(3) if such person is a partnership—

(A) by fewer than all of the general partners in such partnership; or

(B) if relief has been ordered under this title with respect to all of the general partners in such partnership, by a general partner in such partnership, the trustee of such a general partner, or a holder of a claim against such partnership; or

(4) by a foreign representative of the estate in a foreign proceeding concerning such person.

(c) After the filing of a petition under this section but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent, other than a creditor filing under subsection (b) of this section, may join in the petition with the same effect as if such joining creditor were a petitioning creditor under subsection (b) of this section.

(d) The debtor, or a general partner in a partnership debtor that did not join in the petition, may file an answer to a petition under this section.

(e) After notice and a hearing, and for cause, the court may require the petitioners under this section to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i) of this section.

(f) Notwithstanding section 363 of this title, except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(g) At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may order the United States trustee to appoint an interim trustee under section 701 of this title to take possession of the property of the estate and to operate any business of the debtor. Before an order for relief, the debtor may regain possession of property in the possession of a trustee ordered appointed under this subsection if the debtor files such bond as the court requires, conditioned on the debtor's accounting for and delivering to the trustee, if there is an order for relief in the case, such property, or the value, as of the date the debtor regains possession, of such property.

(h) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if—

(1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount; or

(2) within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

(i) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment—

(1) against the petitioners and in favor of the debtor for—

(A) costs; or

(B) a reasonable attorney's fee; or

(2) against any petitioner that filed the petition in bad faith, for—

(A) any damages proximately caused by such filing; or

(B) punitive damages.

(j) Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section—

(1) on the motion of a petitioner;

(2) on consent of all petitioners and the debtor; or

(3) for want of prosecution.

(k)(1) If—

(A) the petition under this section is false or contains any materially false, fictitious, or fraudulent statement;

(B) the debtor is an individual; and

(C) the court dismisses such petition,

the court, upon the motion of the debtor, shall seal all the records of the court relating to such petition, and all references to such petition.

(2) If the debtor is an individual and the court dismisses a petition under this section, the court may enter an order prohibiting all consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) from making any consumer report (as defined in section 603(d) of that Act) that contains any information relating to such petition or to the case commenced by the filing of such petition.

(3) Upon the expiration of the statute of limitations described in section 3282 of title 18, for a violation of section 152 or 157 of such title, the court, upon the motion of the debtor and for good cause, may expunge any records relating to a petition filed under this section.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2559; Pub. L. 98–353, title III, §§426, 427, July 10, 1984, 98 Stat. 369; Pub. L. 99–554, title II, §§204, 254, 283(b), Oct. 27, 1986, 100 Stat. 3097, 3105, 3116; Pub. L. 103–394, title I, §108(b), Oct. 22, 1994, 108 Stat. 4112; Pub. L. 109–8, title III, §332(b), title VIII, §802(d)(2), title XII, §1234(a), Apr. 20, 2005, 119 Stat. 103, 146, 204; Pub. L. 111–327, §2(a)(9), Dec. 22, 2010, 124 Stat. 3558.)

ADJUSTMENT OF DOLLAR AMOUNTS

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 303(b)(1) is modified to make clear that unsecured claims against the debtor must be determined by taking into account liens securing property held by third parties.

Section 303(b)(3) adopts a provision contained in the Senate amendment indicating that an involuntary petition may be commenced against a partnership by fewer than all of the general partners in such partnership. Such action may be taken by fewer than all of the general partners notwithstanding a contrary agreement between the partners or State or local law.

Section 303(h)(1) in the House amendment is a compromise of standards found in H.R. 8200 as passed by the House and the Senate amendment pertaining to the standards that must be met in order to obtain an order for relief in an involuntary case under title 11. The language specifies that the court will order such relief only if the debtor is generally not paying debtor's debts as they become due.

Section 303(h)(2) reflects a compromise pertaining to section 543 of title 11 relating to turnover of property by a custodian. It provides an alternative test to support an order for relief in an involuntary case. If a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession within 120 days before the date of the filing of the petition, then the court may order relief in the involuntary case. The test under section 303(h)(2) differs from section 3a(5) of the Bankruptcy Act [section 21(a)(5) of former title 11], which requires an involuntary case to be commenced before the earlier of time such custodian was appointed or took possession. The test in section 303(h)(2) authorizes an order for relief to be entered in an involuntary case from the later date on which the custodian was appointed or took possession.

SENATE REPORT NO. 95–989

Section 303 governs the commencement of involuntary cases under title 11. An involuntary case may be commenced only under chapter 7, Liquidation, or chapter 11, Reorganization. Involuntary cases are not permitted for municipalities, because to do so may constitute an invasion of State sovereignty contrary to the 10th amendment, and would constitute bad policy, by permitting the fate of a municipality, governed by officials elected by the people of the municipality, to be determined by a small number of creditors of the municipality. Involuntary chapter 13 cases are not permitted either. To do so would constitute bad policy, because chapter 13 only works when there is a willing debtor that wants to repay his creditors. Short of involuntary servitude, it is difficult to keep a debtor working for his creditors when he does not want to pay them back. See chapter 3, supra.

The exceptions contained in current law that prohibit involuntary cases against farmers, ranchers and eleemosynary institutions are continued. Farmers and ranchers are excepted because of the cyclical nature of their business. One drought year or one year of low prices, as a result of which a farmer is temporarily unable to pay his creditors, should not subject him to involuntary bankruptcy. Eleemosynary institutions, such as churches, schools, and charitable organizations and foundations, likewise are exempt from involuntary bankruptcy.

The provisions for involuntary chapter 11 cases is a slight change from present law, based on the proposed consolidation of the reorganization chapters. Currently, involuntary cases are permitted under chapters X and XII [chapters 10 and 12 of former title 11] but not under chapter XI [chapter 11 of former title 11]. The consolidation requires a single rule for all kinds of reorganization proceedings. Because the assets of an insolvent debtor belong equitably to his creditors, the bill permits involuntary cases in order that creditors may realize on their assets through reorganization as well as through liquidation.

Subsection (b) of the section specifies who may file an involuntary petition. As under current law, if the debtor has more than 12 creditors, three creditors must join in the involuntary petition. The dollar amount limitation is changed from current law to $5,000. The new amount applies both to liquidation and reorganization cases in order that there not be an artificial difference between the two chapters that would provide an incentive for one or the other. Subsection (b)(1) makes explicit the right of an indenture trustee to be one of the three petitioning creditors on behalf of the creditors the trustee represents under the indenture. If all of the general partners in a partnership are in bankruptcy, then the trustee of a single general partner may file an involuntary petition against the partnership. Finally, a foreign representative may file an involuntary case concerning the debtor in the foreign proceeding, in order to administer assets in this country. This subsection is not intended to overrule Bankruptcy Rule 104(d), which places certain restrictions on the transfer of claims for the purpose of commencing an involuntary case. That Rule will be continued under section 405(d) of this bill.

Subsection (c) permits creditors other than the original petitioning creditors to join in the petition with

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

§ 350. Closing and reopening cases

(a) After an estate is fully administered and the court has discharged the trustee, the court shall close the case.

(b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2569; Pub. L. 98–353, title III, § 439, July 10, 1984, 98 Stat. 370.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

Subsection (a) requires the court to close a bankruptcy case after the estate is fully administered and the trustee discharged. The Rules of Bankruptcy Procedure will provide the procedure for case closing. Subsection (b) permits reopening of the case to administer assets, to accord relief to the debtor, or for other cause. Though the court may permit reopening of a case so that the trustee may exercise an avoiding power, laches may constitute a bar to an action that has been delayed too long. The case may be reopened in the court in which it was closed. The rules will prescribe the procedure by which a case is reopened and how it will be conducted after reopening.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–353 substituted "A" for "a".

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.

§ 351. Disposal of patient records

If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

(1) The trustee shall—

(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the most recent known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

(A) if the records are written, shredding or burning the records; or

(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.

(Added Pub. L. 109–8, title XI, § 1102(a), Apr. 20, 2005, 119 Stat. 189.)

EFFECTIVE DATE

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

SUBCHAPTER IV—ADMINISTRATIVE POWERS

§ 361. Adequate protection

When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or

(3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2569; Pub. L. 98–353, title III, § 440, July 10, 1984, 98 Stat. 370.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 361 of the House amendment represents a compromise between H.R. 8200 as passed by the House

AMENDMENTS

1984—Par. (1). Pub. L. 98–353 inserted "a cash payment or" after "make".

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.

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

[(5) Repealed. Pub. L. 105–277, div. I, title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681–866;]

(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of—

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109(h) of title 49, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in

real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (*l*), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of—

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon

notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order en-

tered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended—

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing,

that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

(k)(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(*l*)(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a

hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

(A) is a debtor in a small business case pending at the time the petition is filed;

(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply—

(A) to an involuntary case involving no collusion by the debtor with creditors; or

(B) to the filing of a petition if—

(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(*o*) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2570; Pub. L. 97–222, §3, July 27, 1982, 96 Stat. 235; Pub. L. 98–353, title III, §§304, 363(b), 392, 441, July 10, 1984, 98 Stat. 352, 363, 365, 371; Pub. L. 99–509, title V, §5001(a), Oct. 21, 1986, 100 Stat. 1911; Pub. L. 99–554, title II, §§257(j), 283(d), Oct. 27, 1986, 100 Stat. 3115, 3116; Pub. L. 101–311, title I, §102, title II, §202, June 25, 1990, 104 Stat. 267, 269; Pub. L. 101–508, title III, §3007(a)(1), Nov. 5, 1990, 104 Stat. 1388–28; Pub. L. 103–394, title I, §§101, 116, title II, §§204(a), 218(b), title III, §304(b), title IV, §401, title V, §501(b)(2), (d)(7), Oct. 22, 1994, 108 Stat. 4107, 4119, 4122, 4128, 4132, 4141, 4142, 4144; Pub. L. 105–277, div. I, title VI, §603, Oct. 21, 1998, 112 Stat. 2681–886; Pub. L. 109–8, title I, §106(f), title II, §§214, 224(b), title III, §§302, 303, 305(1), 311, 320, title IV, §§401(b), 441, 444, title VII, §§709, 718, title IX, §907(d), (*o*)(1), (2), title XI, §1106, title XII, §1225, Apr. 20, 2005, 119 Stat. 41, 54, 64, 75, 77, 79, 84, 94, 104, 114, 117, 127, 131, 176, 181, 182, 192, 199; Pub. L. 109–304, §17(b)(1), Oct. 6, 2006, 120 Stat. 1706; Pub. L. 109–390, §5(a)(2), Dec. 12, 2006, 120 Stat. 2696; Pub. L. 111–327, §2(a)(12), Dec. 22, 2010, 124 Stat. 3558.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 362(a)(1) of the House amendment adopts the provision contained in the Senate amendment enjoining the commencement or continuation of a judicial, administrative, or other proceeding to recover a claim against the debtor that arose before the commencement of the case. The provision is beneficial and interacts with section 362(a)(6), which also covers assessment, to prevent harassment of the debtor with respect to pre-petition claims.

Section 362(a)(7) contains a provision contained in H.R. 8200 as passed by the House. The differing provision in the Senate amendment was rejected. It is not possible that a debt owing to the debtor may be offset against an interest in the debtor.

Section 362(a)(8) is new. The provision stays the commencement or continuation of any proceeding concerning the debtor before the U.S. Tax Court.

Section 362(b)(4) indicates that the stay under section 362(a)(1) does not apply to affect the commencement or continuation of an action or proceeding by a governmental unit to enforce the governmental unit's police or regulatory power. This section is intended to be given a narrow construction in order to permit governmental units to pursue actions to protect the public health and safety and not to apply to actions by a governmental unit to protect a pecuniary interest in property of the debtor or property of the estate.

Section 362(b)(6) of the House amendment adopts a provision contained in the Senate amendment restricting the exception to the automatic stay with respect to setoffs to permit only the setoff of mutual debts and claims. Traditionally, the right of setoff has been limited to mutual debts and claims and the lack of the clarifying term "mutual" in H.R. 8200 as passed by the House created an unintentional ambiguity. Section 362(b)(7) of the House amendment permits the issuance of a notice of tax deficiency. The House amendment rejects section 362(b)(7) in the Senate amendment. It would have permitted a particular governmental unit to obtain a pecuniary advantage without a hearing on the merits contrary to the exceptions contained in sections 362(b)(4) and (5).

of Title 20, Education, and provisions set out as a note under section 1078–1 of Title 20, were to cease to be effective Oct. 1, 1996, prior to repeal by Pub. L. 102–325, title XV, § 1558, July 23, 1992, 106 Stat. 841.

EFFECTIVE DATE OF 1986 AMENDMENT

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, 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.

Pub. L. 99–509, title V, § 5001(b), Oct. 21, 1986, 100 Stat. 1912, provided that: "The amendments made by subsection (a) of this section [amending this section] shall apply only to petitions filed under section 362 of title 11, United States Code, which are made after August 1, 1986."

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.

REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 99–509, title V, § 5001(a), Oct. 21, 1986, 100 Stat. 1911, directed Secretary of Transportation and Secretary of Commerce, before July 1, 1989, to submit reports to Congress on the effects of amendments to 11 U.S.C. 362 by this subsection.

§ 363. Use, sale, or lease of property

(a) In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

(2) If notification is required under subsection (a) of section 7A of the Clayton Act in the case of a transaction under this subsection, then—

(A) notwithstanding subsection (a) of such section, the notification required by such subsection to be given by the debtor shall be given by the trustee; and

(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the 15th day after the date of the receipt, by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, of the notification required under such subsection (a), unless such waiting period is extended—

(i) pursuant to subsection (e)(2) of such section, in the same manner as such subsection (e)(2) applies to a cash tender offer;

(ii) pursuant to subsection (g)(2) of such section; or

(iii) by the court after notice and a hearing.

(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section—

(1) in the case of a debtor that is a corporation or trust that is not a moneyed business, commercial corporation, or trust, only in accordance with nonbankruptcy law applicable to the transfer of property by a debtor that is such a corporation or trust; and

(2) only to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.

(e) Notwithstanding any other provision of this section, at any time, on request of an entity

that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 362).

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(g) Notwithstanding subsection (f) of this section, the trustee may sell property under subsection (b) or (c) of this section free and clear of any vested or contingent right in the nature of dower or curtesy.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if—

(1) partition in kind of such property among the estate and such co-owners is impracticable;

(2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

(i) Before the consummation of a sale of property to which subsection (g) or (h) of this section applies, or of property of the estate that was community property of the debtor and the debtor's spouse immediately before the commencement of the case, the debtor's spouse, or a co-owner of such property, as the case may be, may purchase such property at the price at which such sale is to be consummated.

(j) After a sale of property to which subsection (g) or (h) of this section applies, the trustee shall distribute to the debtor's spouse or the co-owners of such property, as the case may be, and to the estate, the proceeds of such sale, less the costs and expenses, not including any compensation of the trustee, of such sale, according to the interests of such spouse or co-owners, and of the estate.

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(*l*) Subject to the provisions of section 365, the trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11, 12, or 13 of this title may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.

(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(n) The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

(*o*) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2004), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.

(p) In any hearing under this section—

(1) the trustee has the burden of proof on the issue of adequate protection; and

(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2572; Pub. L. 98–353, title III, § 442, July 10, 1984, 98 Stat. 371;

Pub. L. 99–554, title II, § 257(k), Oct. 27, 1986, 100 Stat. 3115; Pub. L. 103–394, title I, § 109, title II, §§ 214(b), 219(c), title V, § 501(d)(8), Oct. 22, 1994, 108 Stat. 4113, 4126, 4129, 4144; Pub. L. 109–8, title II, §§ 204, 231(a), title XII, § 1221(a), Apr. 20, 2005, 119 Stat. 49, 72, 195; Pub. L. 111–327, § 2(a)(13), Dec. 22, 2010, 124 Stat. 3559.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 363(a) of the House amendment defines "cash collateral" as defined in the Senate amendment. The broader definition of "soft collateral" contained in H.R. 8200 as passed by the House is deleted to remove limitations that were placed on the use, lease, or sale of inventory, accounts, contract rights, general intangibles, and chattel paper by the trustee or debtor in possession.

Section 363(c)(2) of the House amendment is derived from the Senate amendment. Similarly, sections 363(c)(3) and (4) are derived from comparable provisions in the Senate amendment in lieu of the contrary procedure contained in section 363(c) as passed by the House. The policy of the House amendment will generally require the court to schedule a preliminary hearing in accordance with the needs of the debtor to authorize the trustee or debtor in possession to use, sell, or lease cash collateral. The trustee or debtor in possession may use, sell, or lease cash collateral in the ordinary course of business only "after notice and a hearing."

Section 363(f) of the House amendment adopts an identical provision contained in the House bill, as opposed to an alternative provision contained in the Senate amendment.

Section 363(h) of the House amendment adopts a new paragraph (4) representing a compromise between the House bill and Senate amendment. The provision adds a limitation indicating that a trustee or debtor in possession sell jointly owned property only if the property is not used in the production, transmission, or distribution for sale, of electric energy or of natural or synthetic gas for heat, light, or power. This limitation is intended to protect public utilities from being deprived of power sources because of the bankruptcy of a joint owner.

Section 363(k) of the House amendment is derived from the third sentence of section 363(e) of the Senate amendment. The provision indicates that a secured creditor may bid in the full amount of the creditor's allowed claim, including the secured portion and any unsecured portion thereof in the event the creditor is undersecured, with respect to property that is subject to a lien that secures the allowed claim of the sale of the property.

SENATE REPORT NO. 95–989

This section defines the right and powers of the trustee with respect to the use, sale or lease of property and the rights of other parties that have interests in the property involved. It applies in both liquidation and reorganization cases.

Subsection (a) defines "cash collateral" as cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents in which the estate and an entity other than the estate have an interest, such as a lien or a co-ownership interest. The definition is not restricted to property of the estate that is cash collateral on the date of the filing of the petition. Thus, if "non-cash" collateral is disposed of and the proceeds come within the definition of "cash collateral" as set forth in this subsection, the proceeds would be cash collateral as long as they remain subject to the original lien on the "non-cash" collateral under section 552(b). To illustrate, rents received from real property before or after the commencement of the case would be cash collateral to the extent that they are subject to a lien.

Subsection (b) permits the trustees to use, sell, or lease, other than in the ordinary course of business, property of the estate upon notice and opportunity for objections and hearing thereon.

Subsection (c) governs use, sale, or lease in the ordinary course of business. If the business of the debtor is authorized to be operated under § 721, 1108, or 1304 of the bankruptcy code, then the trustee may use, sell, or lease property in the ordinary course of business or enter into ordinary course transactions without need for notice and hearing. This power is subject to several limitations. First, the court may restrict the trustee's powers in the order authorizing operation of the business. Second, with respect to cash collateral, the trustee may not use, sell, or lease cash collateral except upon court authorization after notice and a hearing, or with the consent of each entity that has an interest in such cash collateral. The same preliminary hearing procedure in the automatic stay section applies to a hearing under this subsection. In addition, the trustee is required to segregate and account for any cash collateral in the trustee's possession, custody, or control.

Under subsections (d) and (e), the use, sale, or lease of property is further limited by the concept of adequate protection. Sale, use, or lease of property in which an entity other than the estate has an interest may be effected only to the extent not inconsistent with any relief from the stay granted to that interest's holder. Moreover, the court may prohibit or condition the use, sale, or lease as is necessary to provide adequate protection of that interest. Again, the trustee has the burden of proof on the issue of adequate protection. Subsection (e) also provides that where a sale of the property is proposed, an entity that has an interest in such property may bid at the sale thereof and set off against the purchase price up to the amount of such entity's claim. No prior valuation under section 506(a) would limit this bidding right, since the bid at the sale would be determinative of value.

Subsection (f) permits sale of property free and clear of any interest in the property of an entity other than the estate. The trustee may sell free and clear if applicable nonbankruptcy law permits it, if the other entity consents, if the interest is a lien and the sale price of the property is greater than the amount secured by the lien, if the interest is in bona fide dispute, or if the other entity could be compelled to accept a money satisfaction of the interest in a legal or equitable proceeding. Sale under this subsection is subject to the adequate protection requirement. Most often, adequate protection in connection with a sale free and clear of other interests will be to have those interests attach to the proceeds of the sale.

At a sale free and clear of other interests, any holder of any interest in the property being sold will be permitted to bid. If that holder is the high bidder, he will be permitted to offset the value of his interest against the purchase price of the property. Thus, in the most common situation, a holder of a lien on property being sold may bid at the sale and, if successful, may offset the amount owed to him that is secured by the lien on the property (but may not offset other amounts owed to him) against the purchase price, and be liable to the trustee for the balance of the sale price, if any.

Subsection (g) permits the trustee to sell free and clear of any vested or contingent right in the nature of dower or curtesy.

Subsection (h) permits sale of a co-owner's interest in property in which the debtor had an undivided ownership interest such as a joint tenancy, a tenancy in common, or a tenancy by the entirety. Such a sale is permissible only if partition is impracticable, if sale of the estate's interest would realize significantly less for the estate that sale of the property free of the interests of the co-owners, and if the benefit to the estate of such a sale outweighs any detriment to the co-owners. This subsection does not apply to a co-owner's interest in a public utility when a disruption of the utilities services could result.

Subsection (i) provides protections for co-owners and spouses with dower, curtesy, or community property rights. It gives a right of first refusal to the co-owner

with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

CONSTRUCTION OF SECTION 1221 OF PUB. L. 109–8

Pub. L. 109–8, title XII, §1221(e), Apr. 20, 2005, 119 Stat. 196, provided that: "Nothing in this section [see Effective Date of 2005 Amendment note above] shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property."

§ 364. Obtaining credit

(a) If the trustee is authorized to operate the business of the debtor under section 721, 1108, 1203, 1204, or 1304 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.

(b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

(d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

(e) The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

(f) Except with respect to an entity that is an underwriter as defined in section 1145(b) of this title, section 5 of the Securities Act of 1933, the Trust Indenture Act of 1939, and any State or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security does not apply to the offer or sale under this section of a security that is not an equity security.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2574; Pub. L. 99–554, title II, §257(*l*), Oct. 27, 1986, 100 Stat. 3115; Pub. L. 103–394, title V, §501(d)(9), Oct. 22, 1994, 108 Stat. 4144.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 364(f) of the House amendment is new. This provision continues the exemption found in section 3(a)(7) of the Securities Act of 1933 [15 U.S.C. 77c(a)(7)] for certificates of indebtedness issued by a trustee in bankruptcy. The exemption applies to any debt security issued under section 364 of title 11. The section does not intend to change present law which exempts such securities from the Trust Indenture Act, 15 U.S.C. 77aaa, et seq. (1976).

SENATE REPORT NO. 95–989

This section is derived from provisions in current law governing certificates of indebtedness, but is much broader. It governs all obtaining of credit and incurring of debt by the estate.

Subsection (a) authorizes the obtaining of unsecured credit and the incurring of unsecured debt in the ordinary course of business if the business of the debtor is authorized to be operated under section 721, 1108, or 1304. The debts so incurred are allowable as administrative expenses under section 503(b)(1). The court may limit the estate's ability to incur debt under this subsection.

Subsection (b) permits the court to authorize the trustee to obtain unsecured credit and incur unsecured debts other than in the ordinary course of business, such as in order to wind up a liquidation case, or to obtain a substantial loan in an operating case. Debt incurred under this subsection is allowable as an administrative expense under section 503(b)(1).

Subsection (c) is closer to the concept of certificates of indebtedness in current law. It authorizes the obtaining of credit and the incurring of debt with some special priority, if the trustee is unable to obtain unsecured credit under subsection (a) or (b). The various priorities are (1) with priority over any or all administrative expenses: (2) secured by a lien on unencumbered property of the estate; or (3) secured by a junior lien on encumbered property. The priorities granted under this subsection do not interfere with existing property rights.

Subsection (d) grants the court the authority to authorize the obtaining of credit and the incurring of debt with a superiority, that is a lien on encumbered prop-

Subsection (d) governs the filing of claims of the kind specified in subsections (f), (g), (h), (i), or (j) of proposed 11 U.S.C. 502. The separation of this provision from the other claim-filing provisions in this section is intended to indicate that claims of the kind specified, which do not become fixed or do not arise until after the commencement of the case, must be treated differently for filing purposes such as the bar date for filing claims. The rules will provide for later filing of claims of these kinds.

Subsection (e) gives governmental units (including tax authorities) at least six months following the date for the first meeting of creditors in a chapter 7 or chapter 13 case within which to file proof of claims.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–8 added subsec. (e).

1984—Subsec. (d). Pub. L. 98–353 inserted "502(e)(2),".

EFFECTIVE DATE OF 2005 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

CHILD SUPPORT CREDITORS OR THEIR REPRESENTATIVES; APPEARANCE BEFORE COURT

Pub. L. 103–394, title III, § 304(g), Oct. 22, 1994, 108 Stat. 4134, provided that: "Child support creditors or their representatives shall be permitted to appear and intervene without charge, and without meeting any special local court rule requirement for attorney appearances, in any bankruptcy case or proceeding in any bankruptcy court or district court of the United States if such creditors or representatives file a form in such court that contains information detailing the child support debt, its status, and other characteristics."

§ 502. Allowance of claims or interests

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

(2) such claim is for unmatured interest;

(3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;

(4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of—

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide, and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required.

(c) There shall be estimated for purpose of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

(d) Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under

section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

(e)(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that—

(A) such creditor's claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

(C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

(f) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(g)(1) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.

(h) A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if—

(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;

(B) the offer of the debtor under subparagraph (A)—

(i) was made at least 60 days before the date of the filing of the petition; and

(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

(C) no part of the debt under the alternative repayment schedule is nondischargeable.

(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

(A) the creditor unreasonably refused to consider the debtor's proposal; and

(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2579; Pub. L. 98–353, title III, § 445, July 10, 1984, 98 Stat. 373; Pub. L. 99–554, title II, §§ 257(j), 283(f), Oct. 27, 1986, 100 Stat. 3115, 3117; Pub. L. 103–394, title II, § 213(a), title III, § 304(h)(1), Oct. 22, 1994, 108 Stat. 4125, 4134; Pub. L. 109–8, title II, § 201(a), title VII, § 716(d), title IX, § 910(b), Apr. 20, 2005, 119 Stat. 42, 130, 184.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment adopts a compromise position in section 502(a) between H.R. 8200, as passed by the House, and the Senate amendment. Section 502(a) has been modified to make clear that a party in interest includes a creditor of a partner in a partnership that is a debtor under chapter 7. Since the trustee of the partnership is given an absolute claim against the estate of each general partner under section 723(c), creditors of the partner must have standing to object to claims against the partnership at the partnership level because no opportunity will be afforded at the partner's level for such objection.

The House amendment contains a provision in section 502(b)(1) that requires disallowance of a claim to

AMENDMENTS

2010—Subsec. (k)(3)(J)(i). Pub. L. 111–327, §2(a)(19)(A), in last undesignated par., substituted "property securing the lien" for "security property" and "amount of the allowed secured claim" for "current value of the security property" and inserted "must" before "make a single payment".

Subsec. (k)(5)(B). Pub. L. 111–327, §2(a)(19)(B), substituted "that," for "that".

2005—Subsec. (a)(3). Pub. L. 109–8, §1210, substituted "section 523, 1228(a)(1), or 1328(a)(1), or that" for "section 523, 1228(a)(1), or 1328(a)(1) of this title, or that".

Subsec. (c)(2). Pub. L. 109–8, §203(a)(1), added par. (2) and struck out former par. (2) which read as follows:

"(2)(A) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim; and

"(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;".

Subsecs. (i), (j). Pub. L. 109–8, §202, added subsecs. (i) and (j).

Subsecs. (k) to (m). Pub. L. 109–8, §203(a)(2), added subsecs. (k) to (m).

1994—Subsec. (a)(3). Pub. L. 103–394, §501(d)(14)(A), substituted "1328(a)(1)" for "1328(c)(1)". See 1986 Amendment note below.

Subsec. (c)(2). Pub. L. 103–394, §103(a)(1), designated existing provisions as subpar. (A), inserted "and" at end, and added subpar. (B).

Subsec. (c)(3). Pub. L. 103–394, §103(a)(2), struck out "such agreement" after "which states that" in introductory provisions, struck out "and" at end of subpar. (A), inserted "such agreement" in subpars. (A) and (B), and added subpar. (C).

Subsec. (c)(4). Pub. L. 103–394, §501(d)(14)(B), substituted "rescission" for "recission".

Subsec. (d). Pub. L. 103–394, §103(b), inserted "and was not represented by an attorney during the course of negotiating such agreement" after "this section" in introductory provisions.

Subsec. (d)(1)(B)(ii). Pub. L. 103–394, §501(d)(14)(C), inserted "and" at end.

Subsecs. (g), (h). Pub. L. 103–394, §111(a), added subsecs. (g) and (h).

1986—Subsec. (a)(1). Pub. L. 99–554, §257(*o*)(1), inserted reference to section 1228 of this title.

Subsec. (a)(3). Pub. L. 99–554, §257(*o*)(2), which directed the substitution of ", 1228(a)(1), or 1328(a)(1)" for "or 1328(a)(1)" was executed by making the substitution for "or 1328(c)(1)" to reflect the probable intent of Congress. See 1994 Amendment note above.

Subsec. (c)(1). Pub. L. 99–554, §257(*o*)(1), inserted reference to section 1228 of this title.

Subsec. (d). Pub. L. 99–554, §257(*o*)(1), inserted reference to section 1228 of this title.

Pub. L. 99–554, §282, substituted "shall" for "may" before "hold" in first sentence, inserted "any" after "At" in second sentence, and inserted "the court shall hold a hearing at which the debtor shall appear in person and" after "then" in third sentence.

Subsec. (d)(2). Pub. L. 99–554, §283(k), substituted "section" for "subsection" after "subsection (c)(6) of this".

1984—Subsec. (a)(2). Pub. L. 98–353, §§308(a), 455, struck out "or from property of the debtor," before "whether or not discharge", and substituted "an act" for "any act".

Subsec. (a)(3). Pub. L. 98–353, §455, substituted "an act" for "any act".

Subsec. (c)(2). Pub. L. 98–353, §308(b)(1), (3), added par. (2). Former par. (2), which related to situations where the debtor had not rescinded the agreement within 30 days after the agreement became enforceable, was struck out.

Subsec. (c)(3), (4). Pub. L. 98–352, §308(b)(3), added pars. (3) and (4). Former pars. (3) and (4) redesignated (5) and (6), respectively.

Subsec. (c)(5). Pub. L. 98–353, §308(b)(2), redesignated former par. (3) as (5).

Subsec. (c)(6). Pub. L. 98–353, §308(b)(2), (4), redesignated former par. (4) as (6) and generally amended par. (6), as so redesignated, thereby striking out provisions relating to court approval of such agreements as are entered into in good faith and are in settlement of litigation under section 523 of this title or provide for redemption under section 722 of this title.

Subsec. (d)(2). Pub. L. 98–353, §308(c), substituted "subsection (c)(6)" for "subsection (c)(4)".

Subsec. (f). Pub. L. 98–353, §308(d), added subsec. (f).

EFFECTIVE DATE OF 2005 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and, except with respect to amendment by section 111(a) of Pub. L. 103–394, amendment by Pub. L. 103–394 not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by sections 282 and 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.

CONSTRUCTION

Pub. L. 103–394, title I, §111(b), Oct. 22, 1994, 108 Stat. 4117, provided that: "Nothing in subsection (a), or in the amendments made by subsection (a) [amending this section], shall be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization."

§ 525. Protection against discriminatory treatment

(a) Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associ-

ated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt—

(1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;

(2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or

(3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

(c)(1) A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a student grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another person with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(2) In this section, "student loan program" means any program operated under title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2593; Pub. L. 98–353, title III, §309, July 10, 1984, 98 Stat. 354; Pub. L. 103–394, title III, §313, title V, §501(d)(15), Oct. 22, 1994, 108 Stat. 4140, 4145; Pub. L. 109–8, title XII, §1211, Apr. 20, 2005, 119 Stat. 194.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

This section is additional debtor protection. It codifies the result of *Perez v. Campbell*, 402 U.S. 637 (1971), which held that a State would frustrate the Congressional policy of a fresh start for a debtor if it were permitted to refuse to renew a drivers license because a tort judgment resulting from an automobile accident had been unpaid as a result of a discharge in bankruptcy.

Notwithstanding any other laws, section 525 prohibits a governmental unit from denying, revoking, suspending, or refusing to renew a license, permit, charter, franchise, or other similar grant to, from conditioning such a grant to, from discrimination with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor or that is or has been associated with a debtor. The prohibition extends only to discrimination or other action based solely on the basis of the bankruptcy, on the basis of insolvency before or during bankruptcy prior to a determination of discharge, or on the basis of nonpayment of a debt discharged in the bankruptcy case (the *Perez* situation). It does not prohibit consideration of other factors, such as future financial responsibility or ability, and does not prohibit imposition of requirements such as net capital rules, if applied nondiscriminatorily.

In addition, the section is not exhaustive. The enumeration of various forms of discrimination against former bankrupts is not intended to permit other forms of discrimination. The courts have been developing the *Perez* rule. This section permits further development to prohibit actions by governmental or quasi-governmental organizations that perform licensing functions, such as a State bar association or a medical society, or by other organizations that can seriously affect the debtors' livelihood or fresh start, such as exclusion from a union on the basis of discharge of a debt to the union's credit union.

The effect of the section, and of further interpretations of the *Perez* rule, is to strengthen the anti-reaffirmation policy found in section 524(b). Discrimination based solely on nonpayment could encourage reaffirmations, contrary to the expressed policy.

The section is not so broad as a comparable section proposed by the Bankruptcy Commission, S. 236, 94th Cong., 1st Sess. §4–508 (1975), which would have extended the prohibition to any discrimination, even by private parties. Nevertheless, it is not limiting either, as noted. The courts will continue to mark the contours of the anti-discrimination provision in pursuit of sound bankruptcy policy.

REFERENCES IN TEXT

The Perishable Agricultural Commodities Act, 1930, referred to in subsec. (a), is act June 10, 1930, ch. 436, 46 Stat. 531, as amended, which is classified generally to chapter 20A (§499a et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 499a(a) of Title 7 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (a), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, which is classified generally to chapter 9 (§181 et seq.) of Title 7. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

Section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943, referred to in subsec. (a), is classified to section 204 of Title 7.

The Bankruptcy Act, referred to in text, is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11.

The Higher Education Act of 1965, referred to in subsec. (c)(2), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2005—Subsec. (c)(1). Pub. L. 109–8, §1211(1), inserted "student" before "grant, loan,".

Subsec. (c)(2). Pub. L. 109–8, §1211(2), substituted "any program operated under" for "the program operated under part B, D, or E of".

1994—Subsec. (a). Pub. L. 103–394, §501(d)(15), struck out "(7 U.S.C. 499a–499s)" after "Act, 1930", "(7 U.S.C. 181–229)" after "Act, 1921", and "(57 Stat. 422; 7 U.S.C. 204)" after "July 12, 1943".

(1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;

(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and

(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506.

(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person.

(Added Pub. L. 109–8, title II, § 228(a), Apr. 20, 2005, 119 Stat. 69; amended Pub. L. 111–327, § 2(a)(21), Dec. 22, 2010, 124 Stat. 3560.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–327 substituted "Schedules, and Statement of Financial Affairs, and in some cases a Statement of Intention," for "Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention" in third sentence of fourth undesignated par.

EFFECTIVE DATE

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

§ 528. Requirements for debt relief agencies

(a) A debt relief agency shall—

(1) not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously—

(A) the services such agency will provide to such assisted person; and

(B) the fees or charges for such services, and the terms of payment;

(2) provide the assisted person with a copy of the fully executed and completed contract;

(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

(4) clearly and conspicuously use the following statement in such advertisement: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code." or a substantially similar statement.

(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public includes—

(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement; and

(B) statements such as "federally supervised repayment plan" or "Federal debt restructuring help" or other similar statements that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title.

(2) An advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt shall—

(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

(B) include the following statement: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code." or a substantially similar statement.

(Added Pub. L. 109–8, title II, § 229(a), Apr. 20, 2005, 119 Stat. 71.)

EFFECTIVE DATE

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

SUBCHAPTER III—THE ESTATE

§ 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

this chapter by section 103(e)[1] or 901 of this title, means property of the debtor;

(2) "special revenues" means—

(A) receipts derived from the ownership, operation, or disposition of projects or systems of the debtor that are primarily used or intended to be used primarily to provide transportation, utility, or other services, including the proceeds of borrowings to finance the projects or systems;

(B) special excise taxes imposed on particular activities or transactions;

(C) incremental tax receipts from the benefited area in the case of tax-increment financing;

(D) other revenues or receipts derived from particular functions of the debtor, whether or not the debtor has other functions; or

(E) taxes specifically levied to finance one or more projects or systems, excluding receipts from general property, sales, or income taxes (other than tax-increment financing) levied to finance the general purposes of the debtor;

(3) "special tax payer" means record owner or holder of legal or equitable title to real property against which a special assessment or special tax has been levied the proceeds of which are the sole source of payment of an obligation issued by the debtor to defray the cost of an improvement relating to such real property;

(4) "special tax payer affected by the plan" means special tax payer with respect to whose real property the plan proposes to increase the proportion of special assessments or special taxes referred to in paragraph (2) of this section assessed against such real property; and

(5) "trustee", when used in a section that is made applicable in a case under this chapter by section 103(e)[1] or 901 of this title, means debtor, except as provided in section 926 of this title.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2622; Pub. L. 98–353, title III, § 491, July 10, 1984, 98 Stat. 383; Pub. L. 100–597, § 4, Nov. 3, 1988, 102 Stat. 3028.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 902(2) of the Senate amendment is deleted since the bankruptcy court will have jurisdiction over all cases under chapter 9. The concept of a claim being materially and adversely affected reflected in section 902(1) of the Senate amendment has been deleted and replaced with the new concept of "impairment" set forth in section 1124 of the House amendment and incorporated by reference into chapter 9.

SENATE REPORT NO. 95–989

There are six definitions for use in chapter 9. Paragraph (1) defines what claims are included in a chapter 9 case and adopts the definition now found in section 81(1) [section 401(1) of former title 11]. All claims against the petitioner generally will be included, with one significant exception. Municipalities are authorized, under section 103(c) of the Internal Revenue Code of 1954, as amended [title 26], to issue tax-exempt industrial development revenue bonds to provide for the financing of certain projects for privately owned companies. The bonds are sold on the basis of the credit of the company on whose behalf they are issued, and the principal, interest, and premium, if any, are payable solely from payments made by the company to the trustee under the bond indenture and do not constitute claims on the tax revenues or other funds of the issuing municipalities. The municipality merely acts as the vehicle to enable the bonds to be issued on a tax-exempt basis. Claims that arise by virtue of these bonds are not among the claims defined by this paragraph and amounts owed by private companies to the holders of industrial development revenue bonds are not to be included among the assets of the municipality that would be affected by the plan. See Cong. Record, 94th Cong., 1st Sess. H.R. 12073 (statement by Mr. Don Edwards, floor manager of the bill in the House). Paragraph (2) defines the court which means the federal district court or federal district judge before which the case is pending. Paragraph (3) [enacted as (1)] specifies that when the term "property of the estate" is used in a section in another chapter made applicable in chapter 9 cases, the term means "property of the debtor". Paragraphs (4) and (5) [enacted as (2) and (3)] adopt the definition of "special taxpayer affected by the plan" that appears in current sections 81(10) and 81(11) of the Bankruptcy Act [section 401(10) and (11) of former title 11]. Paragraph (6) [enacted as (4)] provides that "trustee" means "debtor" when used in conjunction with chapter 9.

HOUSE REPORT NO. 95–595

There are only four definitions for use only in chapter 9. The first specifies that when the term "property of the estate" is used in a section in another chapter made applicable in chapter 9 cases, the term will mean "property of the debtor". Paragraphs (2) and (3) adopt the definition of "special taxpayer affected by the plan" that appears in current sections 81(10) and 81(11) [section 401(10) and (11) of former title 11]. Paragraph (4) provides for "trustee" the same treatment as provided for "property of the estate", specifying that it means "debtor" when used in conjunction with chapter 9.

REFERENCES IN TEXT

Section 103(e) of this title, referred to in pars. (1) and (5), was redesignated section 103(f) and a new section 103(e) was added by Pub. L. 106–554, § 1(a)(5) [title I, § 112(c)(5)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A–394.

AMENDMENTS

1988—Pars. (2) to (5). Pub. L. 100–597 added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

1984—Par. (2). Pub. L. 98–353 substituted "legal or equitable title to real property against which a special assessment or special tax has been levied" for "title, legal or equitable, to real property against which has been levied a special assessment or special tax".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–597 effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub. L. 100–597, 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.

§ 903. Reservation of State power to control municipalities

This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental

[1] See References in Text note below.

powers of such municipality, including expenditures for such exercise, but—

(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and

(2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2622; Pub. L. 98–353, title III, § 492, July 10, 1984, 98 Stat. 383.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 903 of the House amendment represents a stylistic revision of section 903 of the Senate amendment. To the extent section 903 of the House bill would have changed present law, such section is rejected.

SENATE REPORT NO. 95–989

Section 903 is derived, with stylistic changes, from section 83 of current Chapter IX [section 403 of former title 11]. It sets forth the primary authority of a State, through its constitution, laws, and other powers, over its municipalities. The proviso in section 83, prohibiting State composition procedures for municipalities, is retained. Deletion of the provision would "permit all States to enact their own versions of Chapter IX [chapter 9 of former title 11]", Municipal Insolvency, 50 Am.Bankr.L.J. 55, 65, which would frustrate the constitutional mandate of uniform bankruptcy laws. Constitution of the United States, Art. I, Sec. 8.

This section provides that the municipality can consent to the court's orders in regard to use of its income or property. It is contemplated that such consent will be required by the court for the issuance of certificates of indebtedness under section 364(c). Such consent could extend to enforcement of the conditions attached to the certificates or the municipal services to be provided during the proceedings.

AMENDMENTS

1984—Par. (2). Pub. L. 98–353 struck out "to" before "that does not consent".

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.

§ 904. Limitation on jurisdiction and powers of court

Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with—

(1) any of the political or governmental powers of the debtor;

(2) any of the property or revenues of the debtor; or

(3) the debtor's use or enjoyment of any income-producing property.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2622.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

This section adopts the policy of section 82(c) of current law [section 402(c) of former title 11]. The only change in this section from section 82(c) is to conform the section to the style and cross-references of S. 2266.

HOUSE REPORT NO. 95–595

This section adopts the policy of section 82(c) of current law [section 402(c) of former title 11]. The *Usery* case underlines the need for this limitation on the court's powers. The only change in this section from section 82(c) is to conform the section to the style and cross-references of H.R. 8200. This section makes clear that the court may not interfere with the choices a municipality makes as to what services and benefits it will provide to its inhabitants.

SUBCHAPTER II—ADMINISTRATION

AMENDMENTS

1984—Pub. L. 98–353, title III, § 493, July 10, 1984, 98 Stat. 383, substituted "SUBCHAPTER" for "SUBCHAPER".

§ 921. Petition and proceedings relating to petition

(a) Notwithstanding sections 109(d) and 301 of this title, a case under this chapter concerning an unincorporated tax or special assessment district that does not have such district's own officials is commenced by the filing under section 301 of this title of a petition under this chapter by such district's governing authority or the board or body having authority to levy taxes or assessments to meet the obligations of such district.

(b) The chief judge of the court of appeals for the circuit embracing the district in which the case is commenced shall designate the bankruptcy judge to conduct the case.

(c) After any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title.

(d) If the petition is not dismissed under subsection (c) of this section, the court shall order relief under this chapter notwithstanding section 301(b).

(e) The court may not, on account of an appeal from an order for relief, delay any proceeding under this chapter in the case in which the appeal is being taken; nor shall any court order a stay of such proceeding pending such appeal. The reversal on appeal of a finding of jurisdiction does not affect the validity of any debt incurred that is authorized by the court under section 364(c) or 364(d) of this title.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2622; Pub. L. 98–353, title III, § 494, July 10, 1984, 98 Stat. 383; Pub. L. 109–8, title V, § 501(a), Apr. 20, 2005, 119 Stat. 118.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 905 of the Senate amendment is incorporated as section 921(b) of the House amendment with the difference that the chief judge of the circuit embracing the district in which the case is commenced designates a bankruptcy judge to conduct the case in lieu of a district judge as under present law. It is intended that a municipality may commence a case in any district in which the municipality is located, as under present law. Section 906 of the Senate amendment has been adopted in substance in section 109(c) of the House amendment.

SENATE REPORT NO. 95–989

Section 905 [enacted as section 921(b)] adopts the procedures for selection of the judge for the chapter 9 case as found in current section 82(d) [section 402(d) of former title 11]. It is expected that the large chapter 9

accepted plan is not confirmed. In order to provide greater flexibility to the court, the debtor, and creditors, the bill allows the court to permit the debtor to propose another plan if the first plan is not confirmed. In that event the debtor need not, as under current law, commence the case all over again. This could provide savings in time and administrative expenses if a plan is denied confirmation.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–353 substituted "confirmation of a plan under this chapter" for "confirmation".

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.

SUBCHAPTER III—THE PLAN

§ 941. Filing of plan

The debtor shall file a plan for the adjustment of the debtor's debts. If such a plan is not filed with the petition, the debtor shall file such a plan at such later time as the court fixes.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2624.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

Section 941 gives the debtor the exclusive right to propose a plan, and directs that the debtor propose one either with the petition or within such time as the court directs. The section follows section 90(a) of current law [section 410(a) of former title 11].

§ 942. Modification of plan

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 this chapter. After the debtor files a modification, the plan as modified becomes the plan.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2624.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment deletes section 942 of the Senate amendment in favor of incorporating section 1125 by cross-reference. Similarly, the House amendment does not incorporate section 944 or 945 of the Senate amendment since incorporation of several sections in chapter 11 in section 901 is sufficient.

SENATE REPORT NO. 95–989

Section 942 permits the debtor to modify the plan at any time before confirmation, as does section 90(a) of current law [section 410(a) of former title 11].

§ 943. Confirmation

(a) A special tax payer may object to confirmation of a plan.

(b) The court shall confirm the plan if—

(1) the plan complies with the provisions of this title made applicable by sections 103(e)[1] and 901 of this title;

(2) the plan complies with the provisions of this chapter;

(3) all amounts to be paid by the debtor or by any person for services or expenses in the case or incident to the plan have been fully disclosed and are reasonable;

(4) the debtor is not prohibited by law from taking any action necessary to carry out the plan;

(5) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that on the effective date of the plan each holder of a claim of a kind specified in section 507(a)(2) of this title will receive on account of such claim cash equal to the allowed amount of such claim;

(6) any regulatory or electoral approval necessary under applicable nonbankruptcy law in order to carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such approval; and

(7) the plan is in the best interests of creditors and is feasible.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2624; Pub. L. 98–353, title III, § 497, July 10, 1984, 98 Stat. 384; Pub. L. 100–597, § 10, Nov. 3, 1988, 102 Stat. 3030; Pub. L. 109–8, title XV, § 1502(a)(6), Apr. 20, 2005, 119 Stat. 216.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 943(a) of the House amendment makes clear that a special taxpayer may object to confirmation of a plan. Section 943(b) of the House amendment is derived from section 943 of the House bill respecting confirmation of a plan under chapter 9. It must be emphasized that these standards of confirmation are in addition to standards in section 1129 that are made applicable to chapter 9 by section 901 of the House amendment. In particular, if the requirements of sections 1129(a)(8) are not complied with, then the proponent may request application of section 1129(b). The court will then be required to confirm the plan if it complies with the "fair and equitable" test and is in the best interests of creditors. The best interests of creditors test does not mean liquidation value as under chapter XI of the Bankruptcy Act [chapter 11 of former title 11]. In making such a determination, it is expected that the court will be guided by standards set forth in *Kelley v. Everglades Drainage District*, 319 U.S. 415 (1943) [Fla.1943, 63 S.Ct. 1141, 87 L.Ed. 1485, rehearing denied 63 S.Ct. 1444, 320 U.S. 214, 87 L.Ed. 1851, motion denied 64 S.Ct 783, 321 U.S. 754, 88 L.Ed. 1054] and *Fano v. Newport Heights Irrigation Dist.*, 114 F.2d 563 (9th Cir. 1940), as under present law, the bankruptcy court should make findings as detailed as possible to support a conclusion that this test has been met. However, it must be emphasized that unlike current law, the fair and equitable test under section 1129(b) will not apply if section 1129(a)(8) has been satisfied in addition to the other confirmation standards specified in section 943 and incorporated by reference in section 901 of the House amendment. To the extent that *American United Mutual Life Insurance Co. v. City of Avon Park*, 311 U.S. 138 (1940) [Fla.1940, 61 S.Ct. 157, 85 L.Ed. 91, 136 A.L.R. 860, rehearing denied 61 S.Ct. 395, 311 U.S. 730, 85 L.Ed. 475] and other cases are to the contrary, such cases are overruled to that extent.

SENATE REPORT NO. 95–989

Section 946 [enacted as section 943] is adopted from current section 94 [section 414 of former title 11]. The test for confirmation is whether or not the plan is fair and equitable and feasible. The fair and equitable test tracts current chapter X [chapter 10 of former title 11] and is known as the strict priority rule. Creditors must be provided, under the plan, the going concern value of

[1] See References in Text note below.

title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

SUBCHAPTER II—THE PLAN

§ 1321. Filing of plan

The debtor shall file a plan.

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

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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

§ 1322. Contents of plan

(a) The plan—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median fam-

ily income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

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

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

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

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

ADJUSTMENT OF DOLLAR AMOUNTS

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

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

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

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

SENATE REPORT NO. 95–989

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

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

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2005 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 301 of Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases

commenced under this title before Oct. 22, 1994, and amendment by section 305(c) of Pub. L. 103–394 effective Oct. 22, 1994, and applicable only to agreements entered into after Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

ADJUSTMENT OF DOLLAR AMOUNTS

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

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

By notice dated Feb. 19, 2010, 75 F.R. 8747, effective Apr. 1, 2010, in subsec. (d)(1)(C), (2)(C), dollar amount "575" was adjusted to "625".

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

§ 1323. Modification of plan before confirmation

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

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

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

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

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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

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

§ 1324. Confirmation hearing

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

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

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

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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

AMENDMENTS

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

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

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

EFFECTIVE DATE OF 2005 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

§ 1325. Confirmation of plan

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

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

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

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

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

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

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

(B)(i) the plan provides that—

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

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

(bb) discharge under section 1328; and

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

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

(iii) if—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) 3 years; or

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

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

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

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

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

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives

income to pay all or any part of such income to the trustee.

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

ADJUSTMENT OF DOLLAR AMOUNTS

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95–989

The bankruptcy court must confirm a plan if (1) the plan satisfies the provisions of chapter 13 and other applicable provisions of title 11; (2) it is proposed in good faith; (3) 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1998—Subsec. (b)(2)(A). Pub. L. 105–183 inserted before semicolon ", including charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made".

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

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

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

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

EFFECTIVE DATE OF 2005 AMENDMENT

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

EFFECTIVE DATE OF 1998 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

ministration and filing fees, as well as fees due the chapter 13 trustee, to be disbursed before payments to creditors under the plan. Subsection (b) makes it clear that the chapter 13 trustee is normally to make distribution to creditors of the payments made under the plan by the debtor.

HOUSE REPORT NO. 95–595

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2005 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

ADJUSTMENT OF DOLLAR AMOUNTS

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

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

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

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

§ 1327. Effect of confirmation

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

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

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

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

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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

§ 1328. Discharge

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

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

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

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

(4) for restitution, or damages, awarded in a civil action against the debtor as a result of

willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95–989

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

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

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

A chapter 13 discharge obtained through fraud and before the moving party gained knowledge of the fraud may be revoked by the court under subsection (e), after

Relations Act and also popularly known as the Jones Act, which is classified principally to the chapter. For complete classification of this Act to the Code, see Short Title note set out under section 731 of this title and Tables.

CODIFICATION

Section is comprised of last part of section 3 of act Mar. 2, 1917, as added by act Mar. 4, 1927. The first two parts are classified to sections 741 and 745 of this title.

AMENDMENTS

1937—Act Aug. 26, 1937, reenacted section without substantive change.

§ 742. Acknowledgment of deeds

Deeds and other instruments affecting land situate in the District of Columbia, or any other territory or possession of the United States, may be acknowledged in Puerto Rico before any notary public appointed therein by proper authority, or any officer therein who has ex officio the powers of a notary public. The certificate by such notary shall be accompanied by the certificate of the executive secretary of Puerto Rico to the effect that the notary taking such acknowledgment is in fact such notarial officer.

(Mar. 2, 1917, ch. 145, § 54, 39 Stat. 968; May 17, 1932, ch. 190, 47 Stat. 158.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Mar. 22, 1902, ch. 273, 32 Stat. 88, except that that act required the certificate of the attorney general of Puerto Rico, rather than of the executive secretary of Puerto Rico as required by this section.

CHANGE OF NAME

"Puerto Rico" substituted in text for "Porto Rico" pursuant to act May 17, 1932, which is classified to section 731a of this title.

§ 743. Repealed. July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714

Section, acts Apr. 12, 1900, ch. 191, § 10, 31 Stat. 80; Aug. 14, 1912, ch. 288, 37 Stat. 309; May 17, 1932, ch. 190, 47 Stat. 158, provided for quarantine stations in Puerto Rico. See section 267 of Title 42, The Public Health and Welfare.

RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed this section, was renumbered § 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, § 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47, § 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720, § 913 by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919, § 1013 by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931, and § 1113 by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506.

§ 744. Coasting trade laws

The coasting trade between Puerto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States.

(Apr. 12, 1900, ch. 191, § 9, 31 Stat. 79; May 17, 1932, ch. 190, 47 Stat. 158.)

CODIFICATION

Additional provisions of section 9 of act Apr. 12, 1900, authorizing the making of regulations for the nationalization of all vessels owned by inhabitants of Puerto Rico on April 11, 1889, and which continued to be so owned up to the date of that nationalization and for the admission of the same to all the benefits of the coasting trade of the United States, have been omitted.

Section was not enacted as part of the Puerto Rican Federal Relations Act which comprises this chapter.

CHANGE OF NAME

"Puerto Rico" substituted in text for "Porto Rico" pursuant to act May 17, 1932, which is classified to section 731a of this title.

§ 745. Tax exempt bonds

All bonds issued by the Government of Puerto Rico, or by its authority, shall be exempt from taxation by the Government of the United States, or by the Government of Puerto Rico or of any political or municipal subdivision thereof, or by any State, Territory, or possession, or by any county, municipality, or other municipal subdivision of any State, Territory, or possession of the United States, or by the District of Columbia.

(Mar. 2, 1917, ch. 145, § 3, 39 Stat. 953; Feb. 3, 1921, ch. 34, § 2, 41 Stat. 1096; Mar. 4, 1927, ch. 503, § 1, 44 Stat. 1418; Aug. 26, 1937, ch. 831, 50 Stat. 844; Aug. 17, 1950, ch. 731, 64 Stat. 458; Pub. L. 87–121, § 1, Aug. 3, 1961, 75 Stat. 245.)

CODIFICATION

Section is comprised of second part of section 3 of act Mar. 2, 1917, commencing with proviso clause. The first and last parts of section 3 are classified to sections 741 and 741a, respectively, of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Apr. 12, 1900, ch. 191, § 38, 31 Stat. 86.

AMENDMENTS

1961—Pub. L. 87–121 struck out "no public indebtedness of Puerto Rico and the municipalities of San Juan, Ponce, Arecibo, Rio Pledras, and Mayaguez shall be allowed in excess of 10 per centum of the aggregate tax valuation of its property, and no public indebtedness of any other subdivision or municipality of Puerto Rico shall hereafter be allowed in excess of 5 per centum of the aggregate tax valuation of the property in any such subdivision or municipality," before "All bonds issued" and also struck out "In computing the indebtedness of the people of Puerto Rico, municipal bonds for the payment of interest and principal of which the good faith of the people of Puerto Rico has heretofore been pledged and bonds issued by the people of Puerto Rico secured by bonds to an equivalent amount of bonds of municipal corporations or school boards of Puerto Rico shall not be counted but all bonds hereafter issued by any municipality or subdivision within the 5 per centum hereby authorized for which the good faith of the people of Puerto Rico is pledged shall be counted" after "District of Columbia".

1950—Act Aug. 17, 1950, made section applicable to municipalities of Arecibo and Rio Piedras.

1937—Act Aug. 26, 1937, made section applicable to municipality of Mayaguez and substituted "August 26, 1937" for "March 4, 1927" wherever appearing.

1927—Act Mar. 4, 1927, made section applicable to municipalities of San Juan and Ponce, limited public indebtedness of other subdivisions or municipalities of Puerto Rico to 5 per centum, and inserted in last sentence two clauses, the first relating to the non-inclusion of municipal bonds for the payment of interest and principal, and the second reading "but all bonds after August 26, 1937, issued by any municipality or subdivision within the 5 per centum authorized for which the good faith of the people of Porto Rico is pledged shall be counted."

UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS
ENACTED DURING THE THIRD SESSION OF THE
SEVENTY-FIFTH CONGRESS
OF THE UNITED STATES OF AMERICA

1938

AND

TREATIES, INTERNATIONAL AGREEMENTS OTHER
THAN TREATIES, AND PROCLAMATIONS

COMPILED, EDITED, INDEXED, AND PUBLISHED BY AUTHORITY OF CONGRESS
UNDER THE DIRECTION OF THE SECRETARY OF STATE

VOLUME 52

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General of the Navy, or as Major General Commandant of the Marine Corps, and is retired after completion of such service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank, pay, and allowances authorized by law for the highest grade or rank held by him as such Chief of Naval Operations, Chief of Bureau, Judge Advocate General, or Major General Commandant: *Provided*, That the President in his discretion may extend the privileges herein authorized to such officers as have heretofore been retired and who satisfy the foregoing conditions: *Provided further*, That no increase provided herein in retired pay shall be held to have accrued prior to the passage of this Act.

Provisos.
Extension of privileges to such officers heretofore retired.

No increase in prior retired pay.

Approved, June 22, 1938.

[CHAPTER 575]

AN ACT

June 22, 1938
[H. R. 8046]
[Public, No. 696]

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto; and to repeal section 76 thereof and all Acts and parts of Acts inconsistent therewith.

Bankruptcy Act of 1898, amendments.
30 Stat. 544; 32 Stat. 800; 36 Stat. 842; 47 Stat. 1467; 48 Stat. 911.
11 U. S. C.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 1 to 11, inclusive; 14; 15; 17 to 29, inclusive; 31; 32; 34; 35; 37 to 42, inclusive; 44 to 53, inclusive; and 55 to 72, inclusive, of an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended, are hereby amended; and sections 12, 13, 73, 74, 77A, and 77B are hereby amended and incorporated as chapters X, XI, XII, XIII, and XIV; said amended sections to read as follows:

Chapter I—Definitions.

"CHAPTER I—DEFINITIONS

Meaning of words and phrases.

"SECTION 1. MEANING OF WORDS AND PHRASES.—The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

"A person against whom a petition has been filed."

"(1) 'A person against whom a petition has been filed' shall include a person who has filed a voluntary petition;

"Adjudication."

"(2) 'Adjudication' shall mean a decree that a person is a bankrupt;

"Appellate courts."

"(3) 'Appellate courts' shall include the circuit courts of appeals of the United States, the United States Court of Appeals of the District of Columbia, and the Supreme Court of the United States;

"Bankrupt."

"(4) 'Bankrupt' shall include a person against whom an involuntary petition or an application to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt;

"Bona-fide purchaser."

"(5) 'Bona-fide purchaser' shall include a bona-fide encumbrancer or pledgee and the transferee, immediate or mediate, of any of them;

"Clerk."

"(6) 'Clerk' shall mean the clerk of a court of bankruptcy;

"Conceal."

"(7) 'Conceal' shall include secrete, falsify, and mutilate;

"Corporation."

"(8) 'Corporation' shall include all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint-stock companies, unincorporated companies and associations, and any business conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by certificate or other written instrument;

"(9) 'Court' shall mean the judge or the referee of the court of bankruptcy in which the proceedings are pending; "Court."

"(10) 'Courts of bankruptcy' shall include the district courts of the United States and of the Territories and possessions to which this Act is or may hereafter be applicable, and the District Court of the United States for the District of Columbia; "Courts of bankruptcy."

"(11) 'Creditor' shall include anyone who owns a debt, demand, or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy; "Creditor."

"(12) 'Date of adjudication' shall mean the date of entry of the decree of adjudication, or, if such decree is appealed from, then the date when such decree is finally confirmed or the appeal is dismissed; "Date of adjudication."

"(13) 'Date of bankruptcy', 'time of bankruptcy', 'commencement of proceedings', or 'bankruptcy', with reference to time, shall mean the date when the petition was filed; "Date of bankruptcy," "time of bankruptcy," "commencement of proceedings," or "bankruptcy" with reference to time.

"(14) 'Debt' shall include any debt, demand, or claim provable in bankruptcy; "Debt."

"(15) 'Discharge' shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this Act; "Discharge."

"(16) 'Document' shall include any book, deed, record, paper, or instrument in writing; "Document."

"(17) 'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations; "Farmer."

"(18) 'Holiday' shall include New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Armistice Day, Christmas Day, and any day appointed as a holiday or as a day of public fasting or thanksgiving by the President or the Congress of the United States, or by the Governor or the Legislature of the State in which the proceeding under this Act is filed or pending; "Holiday."

"(19) A person shall be deemed insolvent within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts; Insolvency.

"(20) 'Judge' shall mean a judge of a court of bankruptcy, not including the referee; "Judge."

"(21) 'Oath' shall include affirmation; "Oath."

"(22) 'Officer' shall include clerk, marshal, receiver, custodian, referee, and trustee, and the imposing of a duty upon, or the forbidding of an act by, any officer shall include his successor and any person authorized by law to perform the duties of such officer; "Officer."

"(23) 'Persons' shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are forbidden under this Act shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees or of other similar controlling bodies of corporations; "Persons."

"(24) 'Petition' shall mean a document filed in a court of bankruptcy or with a clerk thereof by a debtor praying for the benefits of this Act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named; "Petition."

"To record." "(25) 'To record' shall include to register or to file for record or registration;

"Referee." "(26) 'Referee' shall mean the referee who has jurisdiction of the case or to whom the case has been referred or anyone acting in his stead;

"Relatives." "(27) 'Relatives' shall mean persons related by affinity or consanguinity within the third degree as determined by the common law and shall include the spouse;

"Secured creditor." "(28) 'Secured creditor' shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this Act or who owns such a debt for which some endorser, surety, or other person secondarily liable for the bankrupt has such security upon the bankrupt's assets;

"States." "(29) 'States' shall include the Territories and possessions to which this Act is or may hereafter be applicable, Alaska, and the District of Columbia;

"Transfer." "(30) 'Transfer' shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, assignment, payment, pledge, mortgage, lien, encumbrance, gift, security, or otherwise;

"Trustee", "receiver." "(31) 'Trustee' shall include all of the trustees and 'receiver' shall include all of the receivers of an estate;

"Wage earner." "(32) 'Wage earner' shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding $1,500 per year;

Gender. "(33) Words importing the masculine gender may be applied to and include all persons;

Plural number. "(34) Words importing the plural number may be applied to and mean only a single person or thing; and

Singular number. "(35) Words importing the singular number may be applied to and mean several persons or things.

Chapter II—Courts of Bankruptcy.

"CHAPTER II—COURTS OF BANKRUPTCY

Creation of courts of bankruptcy and their jurisdiction. "SEC. 2. CREATION OF COURTS OF BANKRUPTCY AND THEIR JURISDICTION.—a. The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—

Powers.

Adjudication of bankrupts. "(1) Adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States, and have property within their jurisdictions;

Allowance, etc., of claims. "(2) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates;

Appointment of receivers or marshals. "(3) Appoint, upon the application of parties in interest, receivers or the marshals to take charge of the property of bankrupts and to

UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS
ENACTED DURING THE SECOND SESSION OF THE
SEVENTY-NINTH CONGRESS
OF THE UNITED STATES OF AMERICA

1946

AND

PROCLAMATIONS, TREATIES, INTERNATIONAL
AGREEMENTS OTHER THAN TREATIES,
AND REORGANIZATION PLANS

COMPILED, EDITED, INDEXED, AND PUBLISHED BY AUTHORITY OF LAW
UNDER THE DIRECTION OF THE SECRETARY OF STATE

VOLUME 60

IN TWO PARTS

PART 1

PUBLIC LAWS

AND

REORGANIZATION PLANS

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[CHAPTER 532]

AN ACT

July 1, 1946
[H. R. 6682]
[Public Law 481]

To amend sections 81, 82, and 83, and to repeal section 84 of chapter IX of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 81, 82, and 83 of chapter IX of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended (U. S. C., title 11, secs. 401, 402, and 403), are amended to read as follows:

Bankruptcy Act of 1898, amendments.
52 Stat. 939; 50 Stat. 654.
11 U. S. C. note prec. §§ 301-303.

"SEC. 81. This Act and proceedings thereunder are found and declared to be within the subject of bankruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levied against and constituting liens upon property in any of said agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such agencies or instrumentalities from any income-producing property, whether or not secured by a lien upon such property: (1) Drainage, drainage and levee, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts, such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts, such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public-school facilities; or (5) local improvement districts, such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) incorporated authorities, commissions, or similar public agencies organized for the purpose of constructing, maintaining, and operating revenue-producing enterprises; or (7) any county or parish or any city, town, village, borough, township, or other municipality: *Provided, however*, That if any provision of this chapter, or the application thereof to any such agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different circumstances, shall not be affected by such holding.

Courts of bankruptcy.
Jurisdiction for composition of indebtedness.

Separability of provisions.

"SEC. 82. The following terms as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

"The term 'petitioner' shall include any agency or instrumentality referred to in section 81 of this chapter.

"Petitioner."

"The term 'security' shall include bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interest in property.

"Security."

"Creditor."

"The term 'creditor' means the holder of a security or securities.

U. S. agency holding securities.

"Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be deemed a creditor in the amount of the full face value thereof.

"Security affected by the plan."

"The term 'security affected by the plan' means a security as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a composition agreement.

Number and gender.

"The singular number includes the plural and the masculine gender the feminine.

Petition for composition of debts.

"SEC. 83. (a) Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts. The petition shall be filed with the court in whose territorial jurisdiction the petitioner or the major part thereof is located, and, in the case of any unincorporated tax or special-assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations to be affected by the plan of composition.

Filing fee.

The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in lieu of the fees required to be collected by the clerk under other applicable chapters of this title, as amended. The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner) have accepted it in writing.

List of known creditors.

There shall be filed with the petition a list of all known creditors of the petitioner, together with their addresses so far as known to petitioner, and description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, the contents of which list shall not constitute admissions by the petitioner in a proceeding under this chapter or otherwise.

Order of approval or dismissal.

Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith, or dismissing it, if not so satisfied.

Obligations represented by securities, etc.

"Whenever the petition seeks to effect a plan for the composition of obligations represented by securities, or evidences in any form of rights to payment, issued by the petitioner to defray the cost of local improvements and which are payable solely out of the proceeds of special assessments or special taxes levied by the petitioner, or issued by the petitioner to finance one or more revenue-producing enterprises payable solely out of the revenues of such enterprise or enterprises, it shall be sufficient if the petitioner aver that the property liable for, or the revenues pledged to the payment of such securities, principal, and interest is not of sufficient value, or that the revenues of the enterprise or enterprises are inadequate to pay same, and that the accrued interest on such securities is past due and in default; and the list of creditors to be filed with such petition need contain only the known claimants of rights based on those securities evidencing the obligations sought to be composed under this chapter, and such list shall include separately the names and addresses of those creditors who have accepted the plan of composition. If the plan of composition sought to be effected requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some of the lands will be different from the proportion in effect at the time the petition is filed, a list of the record owners or holders of title, legal or equitable, to any real estate adversely affected in the

proceeding shall also be filed with the petition, and such record owners or holders of title shall be notified in the manner provided in this section for creditors and be entitled to hearing by the court upon reasonable application therefor.

"Plan of composition."

"The 'plan of composition', within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire.

Creditors deemed to be affected, etc.

"No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested.

Representation of creditor.

"For all purposes of this chapter any creditor may act in person or by an attorney or a duly authorized agent or committee. Where any committee, organization, group, or individual shall assume to act for or on behalf of creditors, such committee, organization, group, or individual shall first file with the court in which the proceeding is pending a list of the creditors represented by such committee, organization, group, or individual, giving the name and address of each such creditor, together with a statement of the amount, class, and character of the security held by him, and attach thereto copies of the instrument or instruments in writing signed by the owners of the bonds showing their authority, and shall file with the list a copy of the contract or agreement entered into between such committee, organization, group, or individual and the creditors represented by it or them, which contract shall disclose all compensation to be received, directly or indirectly, by such committee, organization, group, or individual, which agreed compensation shall be subject to modification and approval by the court.

Hearing on petition.

"(b) Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. The judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or, if no address is given in the petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. The notice shall be first published, and the mailing of copies thereof shall be completed, at least sixty days before the date fixed for the hearing.

Notice to creditors.

Filing of answer.

"At any time not less than ten days prior to the time fixed for the hearing, any creditor of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The judge may continue the hearing from time to time if the percentage of creditors required herein for the confirmation of the plan shall not have accepted the plan in writing, or if for any reason satisfactory to the judge the hearing is not completed on the date fixed therefor. At the hearing, or a continuance thereof, the judge shall decide the issues presented and unless the material allegations of the petition are sustained shall dismiss the proceeding. If, however, the material allegations of the petition are sustained, the judge shall classify the creditors according to the nature of their respective claims and interest: *Provided, however*, That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors.

Decision on issues presented.

Holders of claims, classes.

Reference of special issues.

"At the hearing or a continuance thereof the judge may refer any special issues of fact to a referee in bankruptcy or a special master for consideration, the taking of testimony, and a report upon such special issues of fact, if the judge finds that the condition of his docket is such that he cannot take such testimony without unduly delaying the dispatch of other business pending in his court, and if it appears that such special issues are necessary to the determination of the case. Only under special circumstances shall references be made to a special master who is not a referee in bankruptcy. A general reference of the case to a master shall not be made, but the reference, if any, shall be only in the form of requests for findings of specific facts.

Compensation for services of referee, etc.

"The court may allow reasonable compensation for the services performed by such referee in bankruptcy or special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing: *Provided, however*, That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of composition. An appeal may be taken from any order making such determination or award to the United States circuit court of appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals which may be taken in the proceeding, and such appeal shall be heard summarily.

Restriction.

Appeals from orders.

"Such compensation of referees in bankruptcy and special masters shall not be governed by section 40 of this Act.

Ante, p. 326.

Dismissal of proceeding.

"On thirty days' notice by any creditor to petitioner, the judge, if he finds that the proceeding has not been prosecuted with reasonable diligence, or that it is unlikely that the plan will be accepted by said proportion of creditors, may dismiss the proceeding.

Stay of suits, etc.

"(c) Upon entry of the order fixing the time for the hearing, or at any time thereafter, the judge may upon notice enjoin or stay, pending the determination of the matter, the commencement or continuation of suits against the petitioner, or any officer or inhabitant

thereof, on account of the securities affected by the plan, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any such tax lien or special assessment lien, except where rights have become vested, and may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of the principal or interest, or both, of such securities shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such securities which have otherwise become due, or which would otherwise become due, shall not be or become due or payable, and the payment of all such securities shall be postponed during the period in which such decree shall remain in force, but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any income-producing property, unless the plan of composition so provides.

Preliminary stay.
Ante, p. 409.

"Any agency or instrumentality referred to in section 81 of this chapter may file a petition for a preliminary stay with the court referred to in section 83 (a) stating (a) that the petitioner is insolvent or unable to meet its debts as they mature; (b) that it desires to effect a plan for the composition of its debts, a copy of which is filed and submitted with the petition; (c) that a creditor of the petitioner holding a security affected by the plan or a person claiming to be such a creditor (naming him and giving his address and the name and address of his attorney of record, if any), is attempting or threatening to obtain payment of said security in preference to other creditors by means of the commencement or continuation of a suit or process of the class hereinbefore in this section 83 (c) described; (d) that efforts are being made in good faith to the end that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner) shall accept it in writing; (e) that there is a reasonable prospect of such acceptance within a reasonable time; (f) that upon such acceptance the petitioner intends to file a petition under section 83 (a) of this chapter; and (g) that the petitioner prays that the judge will upon notice enjoin or stay the commencement or continuation of said suit or process. A single petition may seek the preliminary stay of several suits or processes brought or threatened by the same or different creditors or persons claiming to be creditors. The petition shall be accompanied by the filing fee required in section 83 (a) of this chapter, unless such fee shall have been paid upon the filing of an earlier petition for a preliminary stay involving the same plan, and no further fee shall be required upon the subsequent filing of a petition under said section 83 (a). Upon such petition the judge shall fix a time and place for hearing and direct that notice thereof shall be given in such manner as he shall prescribe to said creditor or person claiming to be a creditor and to any other person deemed by him to be interested. After such hearings, and upon being satisfied of the truth of the allegations of the petition, the judge may, in his discretion, except where rights have become vested, enjoin or stay the commencement and continuation of said suit or process until a date fixed by him in his order not exceeding sixty days from the date of entry thereof. The judge shall retain jurisdiction to vacate said injunction or stay,

Ante, p. 410.

Filing fee.

Hearings.

or to extend the period thereof for one additional period of not exceeding sixty days, upon good cause shown.

Acceptance of plan.

"(d) The plan of composition shall not be confirmed until it has been accepted in writing, by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by such plan and which have been admitted by the petitioner or allowed by the judge, but excluding claims owned, held, or controlled by the petitioner: *Provided, however*, That it shall not be requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors (a) whose claims are not affected by the plan; or (b) if the plan makes provision for the payment of their claims in cash in full; or (c) if provision is made in the plan for the protection of the interests, claims, or lien of such creditors or class of creditors.

Attorney's compensation.
Examination to ascertain existing practice.

"(e) Before concluding the hearing, the judge shall carefully examine all of the contracts, proposals, acceptances, deposit agreements, and all other papers relating to the plan, specifically for the purpose of ascertaining if the fiscal agent, attorney, or other person, firm, or corporation promoting the composition, or doing anything of such a nature, has been or is to be compensated, directly or indirectly, by both the petitioner and the creditors thereof, or any of such creditors—either by fee, commission, or other similar payment, or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue—and shall take evidence under oath to make certain whether or not any such practice obtains or might obtain.

Adjudication of issue, etc.

"After such examination the judge shall make an adjudication of this issue, as a separate part of his interlocutory decree, and if it be found that any such practice exists, he shall forthwith dismiss the proceeding and tax all of the costs against such fiscal agent, attorney, or other person, firm, or corporation promoting the composition, or doing anything of such a nature, or against the petitioner, unless such plan be modified within the time to be allowed by the judge so as to eliminate the possibility of any such practice, in which event the judge may proceed to further consideration of the confirmation of the plan. If it be found that no such practice exists, then the judge may proceed to further consideration of the confirmation of the plan.

Findings and conclusions.

"At the conclusion of the hearing, the judge shall make written findings of fact and his conclusions of law thereon, and shall enter an interlocutory decree confirming the plan if he finds and is satisfied that (1) it is fair, equitable, and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; (2) complies with the provisions of this chapter; (3) has been accepted and approved as required by the provisions of subdivision (d) of this section; (4) all amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and (6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding. No case shall be reversed or remanded for want of specific or detailed findings unless it is found that the evidence is insufficient to support one or more of the general findings required in this section.

Changes and modifications of plan.

"Before a plan is confirmed, changes and modifications may be made therein with the approval of the judge after hearing upon such notice to creditors as the judge may direct, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor, and if any creditor having such right of withdrawal shall not withdraw

within such period, he shall be deemed to have accepted the plan as changed or modified: *Provided*, *however*, That the plan as changed or modified shall comply with all the provisions of this chapter and shall have been accepted in writing by the petitioner. Either party may appeal from the interlocutory decree as in equity cases. In case said interlocutory decree shall prescribe a time within which any action is to be taken, the running of such time shall be suspended in case of an appeal until final determination thereof. In case said decree is affirmed, the judge may grant such time as he may deem proper for the taking of such action.

Acceptance by petitioner.

Appeal from interlocutory decree.

"(f) In an interlocutory decree confirming the plan is entered as provided in subdivision (e) of this section, the plan and said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it. If securities are deposited by the petitioner with the court or disbursing agent for delivery to the creditors, such final decree shall not be entered unless the court finds and adjudicates that said securities have been lawfully authorized and, upon delivery, will constitute valid obligations of the petitioner, and that the provisions made to pay and secure payment thereof are valid.

Decree of confirmation.

"(g) A certified copy of the final decree, or of any other decree or order entered by the court or the judge thereof, in a proceeding under this chapter, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made. A certified copy of an order providing for the transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly, and, if recorded as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.

Certified copies of decree or order.

"(h) This chapter shall not be construed as to modify or repeal any prior existing statute relating to the refinancing or readjustment of indebtedness of municipalities, political subdivisions, or districts: *Provided*, *however*, That the initiation of proceedings or the filing of a petition under section 80 of this Act shall not constitute a bar to the same agency or instrumentality initiating a new proceeding under section 81 of this chapter.

Chapter not to affect existing law.

48 Stat. 798.
11 U. S. C. §§ 301–303 note.
Ante, p. 409.

"(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor: *Provided*, *however*, That no State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition, and no judgment shall be entered under such State law which would bind a creditor to such composition without his consent.

Power of State to control political subdivisions.

"(j) The partial completion or execution of any plan of composition as outlined in any petition filed under the terms of this Act by the exchange of new evidences of indebtedness under the plan for

Partial completion or execution of plan.

evidences of indebtedness covered by the plan, whether such partial completion or execution of such plan of composition occurred before or after the filing of said petition, shall not be construed as limiting or prohibiting the effect of this title, and the written consent of the holders of any securities outstanding as the result of any such partial completion or execution of any plan of composition shall be included as consenting creditors to such plan of composition in determining the percentage of securities affected by such plan of composition."

Repeal.
50 Stat. 659; 54 Stat. 670; 56 Stat. 377.
11 U. S. C., Supp. V, § 404.

SEC. 2. Section 84 of chapter IX of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended by the Acts of August 16, 1937, June 28, 1940, and June 22, 1942, is hereby repealed.

Approved July 1, 1946.

[CHAPTER 533]

AN ACT

July 2, 1946
[H. R. 2543]
[Public Law 482]

To require weekly newspapers enjoying mailing privileges to make sworn statements with respect to their circulation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second paragraph of section 2 of the Act entitled "An Act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes", approved August 24, 1912, as amended (U. S. C., 1940 edition, title 39, secs. 233–234), is amended by inserting after "daily" the words "and weekly", "semiweekly", and "triweekly".

37 Stat. 553.

Approved July 2, 1946.

[CHAPTER 534]

AN ACT

July 2, 1946
[H. R. 3517]
[Public Law 483]

To authorize the admission into the United States of persons of races indigenous to India, and persons of races indigenous to the Philippine Islands, to make them racially eligible for naturalization, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 303 of the Nationality Act of 1940, as amended (54 Stat. 1140; 57 Stat. 601; 8 U. S. C., Supp. 703), be amended to read as follows:

Nationality Act of 1940, amendments.

Eligibility for naturalization.

"SEC. 303 (a) The right to become a naturalized citizen under the provisions of this Act shall extend only to—

"(1) white persons, persons of African nativity or descent, and persons who are descendants of races indigenous to the continents of North or South America or adjacent islands and Filipino persons or persons of Filipino descent;

"(2) persons who possess, either singly or in combination, a preponderance of blood of one or more of the classes specified in clause (1);

"(3) Chinese persons and persons of Chinese descent, and persons of races indigenous to India; and

"(4) persons who possess, either singly or in combination, a preponderance of blood of one or more of the classes specified in clause (3) or, either singly or in combination, as much as one-half blood of those classes and some additional blood of one of the classes specified in clause (1).

"(b) Nothing in the preceding subsection shall prevent the naturalization of former citizens of the United States who are otherwise eligible to naturalization under the provisions of section 317."

54 Stat. 1146.
8 U. S. C. § 717.

UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS
ENACTED DURING THE SECOND SESSION OF THE
EIGHTY-FIRST CONGRESS
OF THE UNITED STATES OF AMERICA

1950–1951

AND

PROCLAMATIONS, TREATIES, INTERNATIONAL
AGREEMENTS OTHER THAN TREATIES,
AND REORGANIZATION PLANS

VOLUME 64

IN THREE PARTS

PART 1

PUBLIC LAWS AND REORGANIZATION PLANS

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1952

"AUTHORITY TO ORDER RESERVE COMPONENTS TO ACTIVE FEDERAL SERVICE

"SEC. 21. Until July 9, 1951, and subject to the limitations imposed by section 2 of the Selective Service Act of 1948, as amended, the President shall be authorized to order into the active military or naval service of the United States for a period of not to exceed twenty-one consecutive months, with or without their consent, any or all members and units of any or all Reserve components of the Armed Forces of the United States and retired personnel of the Regular Armed Forces."

62 Stat. 605.
50 U. S. C., Sup. III, app. § 452.

SEC. 3. So much of section 10 (b) (4) of the Selective Service Act of 1948 (62 Stat. 604) as precedes the second proviso is hereby amended to read as follows: "(4) to appoint, and to fix, in accordance with the Classification Act of 1949, the compensation of such officers, agents, and employees as he may deem necessary to carry out the provisions of this title: *Provided*, That the compensation of employees of local boards and appeal boards may be fixed without regard to the Classification Act of 1949:".

62 Stat. 620.
50 U. S. C., Sup. III, app. § 460 (b) (4).
Post, p. 1074.
63 Stat. 954.
5 U. S. C., Sup. III, §§ 1071–1153.
Ante, pp. 232, 262; *post*, p. 1100.

SEC. 4. This Act may be cited as the "Selective Service Extension Act of 1950".

Approved June 30, 1950.

[CHAPTER 446]

AN ACT

To provide for the organization of a constitutional government by the people of Puerto Rico.

July 3, 1950
[S. 3336]
[Public Law 600]

Whereas the Congress of the United States by a series of enactments has progressively recognized the right of self-government of the people of Puerto Rico; and

Whereas under the terms of these congressional enactments an increasingly large measure of self-government has been achieved: Therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, fully recognizing the principle of government by consent, this Act is now adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption.

Puerto Rico.
Organization of constitutional government.

SEC. 2. This Act shall be submitted to the qualified voters of Puerto Rico for acceptance or rejection through an island-wide referendum to be held in accordance with the laws of Puerto Rico. Upon the approval of this Act, by a majority of the voters participating in such referendum, the Legislature of Puerto Rico is authorized to call a constitutional convention to draft a constitution for the said island of Puerto Rico. The said constitution shall provide a republican form of government and shall include a bill of rights.

Referendum.

Constitutional convention.

SEC. 3. Upon adoption of the constitution by the people of Puerto Rico, the President of the United States is authorized to transmit such constitution to the Congress of the United States if he finds that such constitution conforms with the applicable provisions of this Act and of the Constitution of the United States.

Upon approval by the Congress the constitution shall become effective in accordance with its terms.

Transmittal of constitution to Congress.

SEC. 4. Except as provided in section 5 of this Act, the Act entitled "An Act to provide a civil government for Porto Rico, and for other purposes", approved March 2, 1917, as amended, is hereby continued in force and effect and may hereafter be cited as the "Puerto Rican Federal Relations Act".

Puerto Rican Federal Relations Act.

39 Stat. 951.
48 U. S. C. § 731 note.
Post, p. 320.

Repeals.

39 Stat. 951.
48 U. S. C. §§ 732, 735, 736, 751–753, 773, 774, 778, 780–785, 787–793, 796, 799, 811–819, 821–837, 839–844, 861, 873; Sup. III, §§ 750, 771, 771a, 772, 775, 779, 786, 797, 798, 820, 838.

SEC. 5. At such time as the constitution of Puerto Rico becomes effective, the following provisions of such Act of March 2, 1917, as amended, shall be deemed repealed:

(1) Section 2, except the paragraph added thereto by Public Law 362, Eightieth Congress, first session, approved August 5, 1947.

(2) Sections 4, 12, 12a, 13, 14, 15, 16, 17, 18, 18a, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 39, 40, 49, 49b, 50, 51, 52, 53, 56, and 57.

(3) The last paragraph in section 37.

(4) Section 38, except the second paragraph thereof which begins with the words "The Interstate Commerce Act" and ends with the words "shall not apply in Puerto Rico".

SEC. 6. All laws or parts of laws inconsistent with this Act are hereby repealed.

Approved July 3, 1950.

[CHAPTER 449]

AN ACT

July 6, 1950
[H. R. 4295]
[Public Law 601]

To provide certain benefits for annuitants who retired under the Civil Service Retirement Act of May 29, 1930, prior to April 1, 1948.

Civil Service Retirement Act, 1930, amendment.
46 Stat. 475.
5 U. S. C. § 736c; Sup. III, § 736c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 of the Civil Service Retirement Act of May 29, 1930, as amended, is amended by inserting "(a)" after the section number, by striking out the word "paragraph" and inserting in lieu thereof the word "section", and by adding at the end thereof a new subsection as follows:

"(b) (1) In the case of any retired officer or employee mentioned in the first paragraph of subsection (a) who did not elect a survivor's annuity in accordance with the proviso in such subsection, there shall be payable upon his or her death, to his or her wife or husband to whom the annuitant was married before April 1, 1948, an annuity equal to one-half of his or her present annuity (excluding the increase therein under subsection (a)), but not to exceed $600 per annum, during the remainder of the life of such survivor. The provisions of this paragraph shall apply in the case of any such annuitant who died subsequent to April 30, 1948.

"(2) Any such retired officer or employee who elected a survivor's annuity in accordance with the proviso in subsection (a) shall be paid an increase in his annuity of 25 per centum or $300 whichever is the lesser."

Effective date.

SEC. 2. Subsection (b) of section 8 of the Civil Service Retirement Act of May 29, 1930, as added by this Act, shall become effective on the first day of the second month following the date of enactment of this Act, and no survivor's annuity or increase in annuity under such subsection shall accrue for any period prior to the effective date of such subsection.

Approved July 6, 1950.

[CHAPTER 452]

AN ACT

July 7, 1950
[S. 2348]
[Public Law 602]

To increase the annual authorization for the appropriation of funds for collecting, editing, and publishing of official papers relating to the Territories of the United States.

Papers relating to Territories of United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 31, 1945 (59 Stat. 510; 5 U. S. C. 168d), is hereby amended by

UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS
ENACTED DURING THE SECOND SESSION OF THE
EIGHTY-SECOND CONGRESS
OF THE UNITED STATES OF AMERICA

1952

AND

REORGANIZATION PLANS AND PROCLAMATIONS

VOLUME 66

IN ONE PART

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1953

Public Law 447 CHAPTER 567

JOINT RESOLUTION

July 3, 1952
[H. J. Res. 430]

Approving the constitution of the Commonwealth of Puerto Rico which was adopted by the people of Puerto Rico on March 3, 1952.

Whereas the Act entitled "An Act to provide for the organization of a constitutional government by the people of Puerto Rico", approved July 3, 1950, was adopted by the Congress as a compact with the people of Puerto Rico, to become operative upon its approval by the people of Puerto Rico; and

Whereas the people of Puerto Rico overwhelmingly approved such Act in a referendum held on June 4, 1951, and a constitution for the Commonwealth of Puerto Rico was drafted by a constitutional convention held as provided by such Act from September 17, 1951, to February 6, 1952; and

Whereas such constitution was adopted by the people of Puerto Rico, by a vote of three hundred seventy-four thousand six hundred and forty-nine to eighty-two thousand nine hundred and twenty-three, in a referendum held on March 3, 1952; and

Whereas the President of the United States has declared that the constitution of the Commonwealth of Puerto Rico conforms fully with the applicable provisions of such Act of July 3, 1950, and of the Constitution of the United States, that it contains a bill of rights, and provides for a republican form of government, and has transmitted the constitution of the Commonwealth of Puerto Rico to the Congress for its approval; and

Whereas the Congress has considered the constitution of the Commonwealth of Puerto Rico and has found it duly to conform to the above requirements: Therefore be it

Puerto Rico.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the constitution of the Commonwealth of Puerto Rico which was drafted by the selected delegates to the Constitutional Convention of Puerto Rico and adopted by the people of Puerto Rico in a referendum of March 3, 1952, in accordance with the Act entitled "An Act to provide for the organization of a constitutional government by the people of Puerto Rico", approved July 3, 1950 (64 Stat. 319; 48 U. S. C., secs. 731b–731e), is hereby approved by the Congress of the United States, except section 20 of article II of said constitution: *Provided*, That section 5 of article II thereof shall have no force and effect until amended by the people of Puerto Rico under the procedure prescribed by article VII of the constitution of the Commonwealth of Puerto Rico by adding to such section 5 the following declaration: "Compulsory attendance at elementary public schools to the extent permitted by the facilities of the state as herein provided shall not be construed as applicable to those who receive elementary education in schools established under nongovernmental auspices": *Provided further*, That except for the purpose of adopting the amendments to section 5 of article II and to section 3 of article VII as herein provided, article VII of said constitution likewise shall have no force and effect until amended by the people of Puerto Rico under the terms of said article by adding to section 3 of article VII the following new sentence: "Any amendment or revision of this constitution shall be consistent with the resolution enacted by the Congress of the United States approving this constitution, with the applicable provisions of the Constitution of the United States, with the Puerto Rican Federal Relations Act, and with Public Law 600, Eighty-first Congress, adopted in the nature of a compact": *And provided further*, That the constitution of the Commonwealth of Puerto Rico hereby approved shall become effective when the Con-

39 Stat. 951.
64 Stat. 319.
48 USC 731 note, 731b-731e.

stitutional Convention of Puerto Rico shall have declared in a formal resolution its acceptance in the name of the people of Puerto Rico of the conditions of approval herein contained, and when the Governor of Puerto Rico, being duly notified by the proper officials of the Constitutional Convention of Puerto Rico that such resolution of acceptance has been formally adopted, shall issue a proclamation to that effect.

Approved July 3, 1952.

Public Law 448 CHAPTER 568

July 3, 1952
[H. R. 6578]

AN ACT

To provide for research into and development of practical means for the economical production, from sea or other saline waters, of water suitable for agricultural, industrial, municipal, and other beneficial consumptive uses, and for other purposes.

Water research and development.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in view of the acute shortage of water in the arid areas of the Nation and elsewhere and the excessive use of underground waters throughout the Nation, it is the policy of the Congress to provide for the development of practicable low-cost means of producing from sea water, or from other saline waters, water of a quality suitable for agriculture, industrial, municipal, and other beneficial consumptive uses on a scale sufficient to determine the feasibility of the development of such production and distribution on a large-scale basis, for the purpose of conserving and increasing the water resources of the Nation.

Authority of Secretary of Interior.

SEC. 2. In order to carry out the purposes of this Act, the Secretary of the Interior, acting through such agencies of the Department of the Interior as he may deem appropriate, is authorized—

(a) by means of research grants and contracts as set forth in subsection (d) of this section to conduct research and technical development work, to make careful engineering studies to ascertain the lowest investment and operating costs, and to determine the best plant designs and conditions of operation;

(b) to study methods for the recovery and marketing of byproducts resulting from and incident to the production of water as herein provided for the purpose of ascertaining the possibilities of offsetting the costs of water production in any area by the commercial utilization of such products;

(c) to acquire, by purchase, license, lease, or donation, secret processes, technical data, inventions, patent applications, patents, licenses, land and any interest in land (including water rights, easements, and leasehold interests), plants and facilities, and other property or rights: *Provided*, That the land or other property acquired hereunder shall not exceed that necessary to carry on the experiments and demonstrations for the purposes herein provided;

(d) to engage, by noncompetitive contract or otherwise, chemists, physicists, engineers, and such other personnel as may be deemed necessary, and any educational institution, scientific organization, or industrial or engineering firm deemed suitable to do any part of the research or other work, and to the extent appropriate to correlate and coordinate the research and development work of such educational institutions, scientific organizations and industrial and engineering firms; and

UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS
ENACTED DURING THE SECOND SESSION OF THE
NINETY-FOURTH CONGRESS
OF THE UNITED STATES OF AMERICA

1976

AND

PROCLAMATIONS

VOLUME 90

IN TWO PARTS

PART 1

PUBLIC LAWS 94–206 THROUGH 94–454

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1978

Public Law 94-260
94th Congress

An Act

To amend chapter IX of the Bankruptcy Act to provide by voluntary reorganization procedures for the adjustment of the debts of municipalities.

Apr. 8, 1976
[H.R. 10624]

Whereas the Congress finds and declares this Act and proceedings thereunder providing for the composition of indebtedness of, or authorized by, municipalities to be within the subject of bankruptcies under article I, section 8, clause 4 of the United States Constitution; and

USC prec. title 1.

Whereas the Congress finds that the impracticability of existing Federal bankruptcy remedies for use by municipalities increases the likelihood of their default and will aggravate the adverse effects thereof; and

Whereas the Congress finds that the financial disruptions and dislocations resulting from default of such municipalities without availability of a Federal procedure to restructure their indebtedness in such fashion as to avoid continuing insolvency would have a substantial adverse effect on interstate commerce within the meaning of article I, section 8, clause 3 of the United States Constitution, by reason of the commercial importance of the municipalities involved.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter IX of the Bankruptcy Act is amended to read as follows:

Bankruptcy Act, amendments.
11 USC 401 *et seq.*

"CHAPTER IX

"ADJUSTMENT OF DEBTS OF POLITICAL SUBDIVISIONS AND PUBLIC AGENCIES AND INSTRUMENTALITIES

"SEC. 81. CHAPTER IX DEFINITIONS.—As used in this chapter the term— 11 USC 401.

"(1) 'claim' includes all claims of whatever character against the petitioner or the property of the petitioner, whether or not such claims are provable under section 63 of this Act and whether secured or unsecured, liquidated or unliquidated as to amount, fixed or contingent; 11 USC 103.

"(2) 'court' means court of bankruptcy in which the case is pending, or a judge of such court;

"(3) 'creditor' means holder (including the United States, a State, or political subdivision or public agency or instrumentality of a State) of a claim against the petitioner;

"(4) 'claim affected by the plan' means claim as to which the rights of its holder are proposed to be materially and adversely adjusted or modified by the plan;

"(5) 'debt' means claim allowable under section 88(a);

"(6) 'lien' means security interest in property, lien obtained on property by levy, sequestration, or other legal or equitable process, statutory or common law lien on property, or any other variety of charge against property to secure the performance of an obligation;

"(7) 'person' includes a corporation or a partnership, the United States, the several States, and political subdivisions and public agencies and instrumentalities of the several States;

"(8) 'petitioner' means agency, instrumentality, or subdivision which has filed a petition under this chapter;

"(9) 'plan' means plan filed under section 90;

"(10) 'special tax payer' means record owner or holder of title, legal or equitable, to real estate against which has been levied a special assessment or special tax the proceeds of which are the sole source of payment of obligations issued by the petitioner to defray the costs of local improvements; and

"(11) 'special tax payer affected by the plan' means special tax payer with respect to whose real estate the plan proposes to increase the proportion of special assessments or special taxes referred to in paragraph (10) of this section assessed against that real estate.

11 USC 402.

"SEC. 82. JURISDICTION AND POWERS OF COURT.—

"(a) JURISDICTION.—The court in which a petition is filed under this chapter shall exercise exclusive original jurisdiction for the adjustment of the petitioner's debts, and for the purposes of this chapter, shall have exclusive jurisdiction of the petitioner and its property, wherever located.

"(b) POWERS.—After the filing of a petition under this chapter the court may—

Notice and hearing.

"(1) permit the petitioner to reject executory contracts and unexpired leases of the petitioner, after hearing on notice to the parties to such contracts leases and to such other parties in interest as the court may designate;

Notice and hearing.

"(2) during the pendency of a case under this chapter, or after the confirmation of the plan if the court has retained jurisdiction under section 96(e), after hearing on such notice as the court may prescribe and for cause shown, permit the issuance of certificates of indebtedness for such consideration as is approved by the court, upon such terms and conditions, and with such security and priority in payment over existing obligations, secured or unsecured, and over costs and expenses of administration, not including operating expenses of the petitioner, as in the particular case may be equitable; and

"(3) exercise such other powers as are not inconsistent with the provisions of this chapter.

"(c) LIMITATION.—Unless the petitioner consents or the plan so provides, the court shall not, by any stay, order or decree, in the case or otherwise, interfere with—

"(1) any of the political or governmental powers of the petitioner;

"(2) any of the property or revenues of the petitioner; or

"(3) the petitioner's use or enjoyment of any income-producing property.

"(d) DESIGNATION OF JUDGE.—After the filing of a petition, the chief judge of the court in the district in which the petition is filed shall immediately notify the chief judge of the circuit court of appeals of the circuit in which the district court is located, who shall designate the judge of the district court to conduct the proceedings under this chapter.

11 USC 403.

"SEC. 83. RESERVATION OF STATE POWER TO CONTROL GOVERNMENTAL FUNCTIONS OF POLITICAL SUBDIVISIONS.—Nothing contained in this chapter shall be construed to limit or impair the power of any State

to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor: *Provided, however*, That no State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition, and no judgment shall be entered under such State law which would bind a creditor to such composition without his consent.

"SEC. 84. ELIGIBILITY FOR RELIEF.—Any State's political subdivision or public agency or instrumentality, which is generally authorized to file a petition under this chapter by the legislature, or by a governmental officer or organization empowered by State law to authorize the filing of a petition, is eligible for relief under this chapter if it is insolvent or unable to meet its debts as they mature, and desires to effect a plan to adjust its debts. An entity is not eligible for relief under this chapter unless— 11 USC 404. Conditions.

"(1) it has successfully negotiated a plan of adjustment of its debts with creditors holding at least a majority in amount of the claims of each class which are claims affected by that plan;

"(2) it has negotiated in good faith with its creditors and has failed to obtain, with respect to a plan of adjustment of its debts, the agreement of creditors holding at least a majority in amount of the claims of each class which are claims affected by that plan;

"(3) such negotiation is impracticable; or

"(4) it has a reasonable fear that a creditor may attempt to obtain a preference.

"SEC. 85. PETITION AND PROCEEDINGS RELATING TO PETITION.— 11 USC 405.

"(a) PETITION.—An entity eligible under section 84 may file a petition for relief under this chapter. In the case of an unincorporated tax or special assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations of the district. Any party in interest may file an answer to the petition with the court, not later than 15 days after the publication of notice required by subsection (d) is completed, objecting to the filing of the petition. Upon the filing of such an answer, the court may dismiss the petition after hearing on notice if the petitioner did not file the petition in good faith, or if the petition does not meet the requirements of this chapter. The court shall not, on account of an appeal from a finding of jurisdiction, delay any proceeding under this chapter in the case in which the appeal is being taken; nor shall any court order a stay of such proceeding pending such appeal. The reversal on appeal of a finding of jurisdiction shall not affect the validity of any certificate of indebtedness authorized by the court and issued in such case. Notice, publication. Notice and hearing.

"(b) LIST.—The petitioner shall file with the court a list of the petitioner's creditors, insofar as practicable. The list shall include for each known creditor, to the extent practicable, the name of the creditor, the address of the creditor so far as known to the petitioner, and a description of any claim of the creditor, showing the amount and character of the claim, the nature of any security for the claim, and whether the claim is disputed, contingent or unliquidated as to amount. If an identification of any of the petitioner's creditors is impracticable, the petitioner shall state the reason such identification is impracticable and the character of the claims of the creditors involved. The petitioner shall supplement the list as creditors who were unknown or unidentified at the time the list was filed become known or identified to the petitioner. If the list is not filed with the petition, the petitioner shall file the list at such later time as the court, upon its own motion or upon application of the petitioner, sets.

UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS
ENACTED DURING THE SECOND SESSION OF THE
NINETY-FIFTH CONGRESS
OF THE UNITED STATES OF AMERICA

1978

AND

PROCLAMATIONS

VOLUME 92

IN THREE PARTS

PART 1

PUBLIC LAWS 95–224 THROUGH 95–472

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

Public Law 95-598
95th Congress

An Act

To establish a uniform Law on the Subject of Bankruptcies.

Nov. 6, 1978
[H.R. 8200]

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

Title 11, USC.
Bankruptcy.

TITLE I—ENACTMENT OF TITLE 11 OF THE UNITED STATES CODE

SEC. 101. The law relating to bankruptcy is codified and enacted as title 11 of the United States Code, entitled "Bankruptcy", and may be cited as 11 U.S.C. §   , as follows:

11 USC prec. 101 note.

TITLE 11—BANKRUPTCY

CHAPTER 1—GENERAL PROVISIONS

§ 101. Definitions

11 USC 101.

In this title—

(1) "accountant" means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized;

(2) "affiliate" means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity

that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) entity that operates the business or all or substantially all of the property of the debtor under a lease or operating agreement;

(3) "attorney" means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law;

(4) "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

(5) "commodity broker" means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761(9) of this title;

Post, p. 2615.

(6) "community claim" means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case;

Post, p. 2594.

(7) "consumer debt" means debt incurred by an individual primarily for a personal, family, or household purpose;

(8) "corporation"—

(A) includes—

(i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;

(ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;

(iii) joint-stock company;

(iv) unincorporated company or association; or

(v) business trust; but

(B) does not include limited partnership:

(9) "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 502(f), 502(g), 502(h) or 502(i) of this title; or *Post*, p. 2579.

(C) entity that has a community claim;

(10) "custodian" means—

(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

(B) assignee under a general assignment for the benefit of the debtor's creditors; or

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors;

(11) "debt" means liability on a claim;

(12) "debtor" means person or municipality concerning which a case under this title has been commenced;

(13) "disinterested person" means person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not an investment banker for any outstanding security of the debtor;

(C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and

(E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason;

(14) "entity" includes person, estate, trust, governmental unit;

(15) "equity security" means—

(A) share in a corporation, whether or not transferable or denominated "stock", or similar security;

(B) interest of a limited partner in a limited partnership; or

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph;

(16) "equity security holder" means holder of an equity security of the debtor;

(17) "farmer" means person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person;

(18) "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state;

(19) "foreign proceeding" means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization;

(20) "foreign representative" means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding;

(21) "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government;

(22) "indenture" means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor;

(23) "indenture trustee" means trustee under an indenture;

(24) "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stock broker or a commodity broker;

Post, p. 2645.

(25) "insider" includes—

(A) if the debtor is an individual—

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(iv) partnership in which the debtor is a general partner;

(v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) general partner in the debtor;

(ii) relative of a general partner in, general partner of, or person in control of the debtor;

(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor;

(26) "insolvent" means—

(A) with reference to an entity other than a partnership, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title; and *Post*, p. 2586.

(B) with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation—

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's separate property, exclusive of property of the kind specified in subparagraph (A)(ii) of this paragraph, over such partner's separate debts;

(27) "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding;

(28) "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation;

(29) "municipality" means political subdivision or public agency or instrumentality of a State;

(30) "person" includes individual, partnership, and corporation, but does not include governmental unit;

(31) "petition" means petition filed under section 301, 302, 303, or 304 of this title, as the case may be, commencing a case under this title;

(32) "purchaser" means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee;

(33) "railroad" means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier;

(34) "relative" means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree;

(35) "security"—

(A) includes—

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) debenture;

(vi) collateral trust certificate;

(vii) pre-organization certificate or subscription;

(viii) transferable share;

(ix) voting-trust certificate;

(x) certificate of deposit;

(xi) certificate of deposit for security;

(xii) investment contract or certificate of interest or

participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933 (15 U.S.C. 77a et seq.), or is exempt under section 3(b) of such Act (15 U.S.C. 77c(b)) from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as "security"; and

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a secuity; but

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

Post, p. 2615.

(ii) leverage transaction, as defined in section 761(13) of this title;

(iii) commodity futures contract or forward commodity contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate specified in clause (xii) of subparagraph (A) of this paragraph that is not the subject of such a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) from the requirement to file such a statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered;

(36) "security agreement" means agreement that creates or provides for a security interest;

(37) "security interest" means lien created by an agreement;

(38) "statutory lien" means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute;

(39) "stockbroker" means person with respect to which there is a customer, as defined in section 741(2) of this title, engaged in the business of effecting transactions in securities—

Post, p. 2611.

(A) for the accounts of others; or

(B) with members of the general public, from or for such person's own account; and

(40) "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest.

11 USC 102.

§ 102. Rules of construction

After notice and a hearing.

In this title—

(1) "after notice and a hearing", or a similar phrase—

UNITED STATES
STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS
ENACTED DURING THE SECOND SESSION OF THE
NINETY-EIGHTH CONGRESS
OF THE UNITED STATES OF AMERICA

1984

AND

PROCLAMATIONS

Volume 98

IN THREE PARTS

Part 1

PUBLIC LAWS 98–216 THROUGH 98–369

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1986

Public Law 98-353
98th Congress

An Act

To amend title 28 of the United States Code regarding jurisdiction of bankruptcy proceedings, to establish new Federal judicial positions, to amend title 11 of the United States Code, and for other purposes.

July 10, 1984
[H.R. 5174]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bankruptcy Amendments and Federal Judgeship Act of 1984".

Bankruptcy Amendments and Federal Judgeship Act of 1984.
28 USC 151 note.

TITLE I—BANKRUPTCY JURISDICTION AND PROCEDURE

SEC. 101. (a) Section 1334 of title 28, United States Code, is amended to read as follows:

"§ 1334. Bankruptcy cases and proceedings

"(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

11 USC 101 *et seq.*

"(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

"(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain made under this subsection is not reviewable by appeal or otherwise. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

"(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of the estate.".

Gifts and property.

(b) The table of sections for chapter 85 of title 28, United States Code, is amended by amending the item relating to section 1334 to read as follows:

"1334. Bankruptcy cases and proceedings.".

"(44) 'State' includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title;"; and

(7) by inserting after paragraph (48) the following:

"(49) 'United States', when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States;".

11 USC 901 *et seq.*

SEC. 422. Section 102 of title 11 of the United States Code is amended by striking out "continued" and inserting in lieu thereof "contained" in paragraph (8).

SEC. 423. Section 103(c) of title 11 of the United States Code is amended by striking out "stockholder" and inserting in lieu thereof "stockbroker".

SEC. 424. (a) Subsections (a)(1), (b)(1), and (c)(1) of section 108 of title 11 of the United States Code are each amended by striking out "and" each place it appears and inserting in lieu thereof "or".

(b) Subsections (a), (b), and (c) of section 108 of title 11 of the United States Code are each amended by inserting "nonbankruptcy" after "applicable" and after "entered in a" each place such terms appear.

SEC. 425. (a) Section 109 of title 11 of the United States Code, is amended by striking out "in the United States," the first place it appears.

(b) Section 109(c)(5)(D) of title 11 of the United States Code of this Act is amended by striking out "preference" and inserting in lieu thereof "transfer that is avoidable under section 547 of this title".

(c) Section 109(d) of title 11 of the United States Code is amended by striking out "stockholder" and inserting in lieu thereof "stockbroker".

SEC. 426. (a) Section 303(b) of title 11 of the United States Code is amended by inserting "against a person" after "involuntary case".

(b) Section 303 of title 11 of the United States Code, is amended—

(1) in subsection (b)(1) by inserting "or the subject on a bona fide dispute," after "liability"; and

(2) in subsection (h)(1) by inserting "unless such debts that are the subject of a bona fide dispute" after "due".

SEC. 427. Section 303(j)(2) of title 11 of the United States Code is amended by striking out "debtors" and inserting in lieu thereof "debtor".

SEC. 428. Section 321(b) of title 11 of the United States Code is amended by striking out "a case" and inserting in lieu thereof "the case".

SEC. 429. Section 322(b)(1) of title 11 of the United States Code is amended by inserting "required to be" after "bond".

SEC. 430. (a) Section 326(a) of title 11 of the United States Code is amended by striking out all the language beginning with "three percent" through "$50,000" the second place the latter appears and inserting in lieu thereof "and three percent on any amount in excess of $3,000".

(b) Section 326(d) of title 11 of the United States Code is amended to read as follows:

"(d) The court may deny allowance of compensation for services or reimbursement of expenses of the trustee if the trustee failed to make diligent inquiry into facts that would permit denial of allowance under section 328(c) of this title or, with knowledge of such

TITLE 36. LOCAL GOVERNMENT
PROVISIONS APPLICABLE TO COUNTIES, MUNICIPAL CORPORATIONS, AND OTHER GOVERNMENTAL ENTITIES
CHAPTER 80. GENERAL PROVISIONS

GO TO GEORGIA STATUTES ARCHIVE DIRECTORY

O.C.G.A. § 36-80-5 (2014)

§ 36-80-5. Relief from or composition of debts under federal statute prohibited

(a) No county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state shall be authorized to file a petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities.

(b) No chief executive, mayor, board of commissioners, city council, board of trustees, or other governmental officer, governing body, or organization shall be empowered to cause or authorize the filing by or on behalf of any county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state of any petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities.

HISTORY: Ga. L. 1976, p. 1557, §§ 1, 2.

NOTES: LAW REVIEWS. --For comment, "Federalism, States, and the Power to Regulate Municipal Bankruptcies: Who May be a Debtor under Section 109(c)?," see 9 Bank. Dev. J. 621 (1993).

JUDICIAL DECISIONS

BANKRUPTCY. --Debtor, a Georgia county hospital authority, was ineligible for Chapter 9 relief because the State of Georgia, pursuant to O.C.G.A. § 36-80-5(a), had not specifically authorized the authority to file for relief under Chapter 9. United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

CHAPTER 76

PROVISIONS RELATED TO PUBLIC BONDS AND DEBT OBLIGATIONS

Referred to in §12A.4, §145A.18, §260C.20, §296.1, §298.18, §331.447, §357E.11A, §384.32, §386.11, §394.1, §423A.7, §423B.9

76.1 Mandatory retirement.

1. Hereafter issues of bonds of every kind and character by counties, cities, and school corporations shall be consecutively numbered.

2. *a.* The annual levy shall be sufficient to pay the interest and approximately such portion of the principal of the bonds as will retire them in a period not exceeding twenty years from date of issue, except as provided in paragraph *"b"*.

b. General obligation bonds issued for the purposes specified in **section 331.441, subsection 2**, paragraph *"b"*, subparagraphs (18) and (19), or in **section 384.24, subsection 3**, paragraphs *"w"* and *"x"*, and bonds issued to refund or refinance bonds issued for those purposes, may mature and be retired in a period not exceeding thirty years from date of issue.

3. Each issue of bonds shall be scheduled to mature in the same order as numbered.

[C27, 31, 35, §1179-b1; C39, §**1179.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §76.1]
2009 Acts, ch 100, §5, 21
Referred to in §76.2, §76.5

76.2 Mandatory levy — obligations in anticipation of levy.

1. *a.* The governing authority of a political subdivision specified in **section 76.1, subsection 1**, before issuing bonds shall, by resolution, provide for the assessment of an annual levy upon all the taxable property in the political subdivision sufficient to pay the interest and principal of the bonds within a period named not exceeding the applicable period of time specified in **section 76.1**. A certified copy of this resolution shall be filed with the county auditor or the auditors of the counties in which the political subdivision is located; and the filing shall make it a duty of the auditors to enter annually this levy for collection from the taxable property within the boundaries of the political subdivision until funds are realized to pay the bonds in full. The levy shall continue to be made against property that is severed from the political subdivision after the filing of the resolution until funds are realized to pay the bonds in full.

b. If the resolution is filed prior to April 1 or May 1, if the political subdivision is a school district, the annual levy shall begin with the tax levy for collection commencing July 1 of that year. If the resolution is filed after April 1 or May 1, in the case of a school district, the annual levy shall begin with the tax levy for collection in the next succeeding fiscal year. However, the governing authority of a political subdivision may adjust a levy of taxes made under **this section** for the purpose of adjusting the annual levies and collections for property severed from the political subdivision, subject to the approval of the director of the department of management.

2. If funds, including reserves and amounts available for temporary transfer, are found to be insufficient to pay in full any installment of principal or interest, a public issuer of bonds

76.14 Definition.

As used in **this chapter**, unless the context otherwise requires, *"public bond or obligation"* means any obligation issued by or on behalf of the state, an agency of the state, or a political subdivision of the state.

83 Acts, ch 90, §6
Referred to in **§390.9**

76.15 Underwriters doing business in Iowa.

An underwriter employed to assist in the issuance of obligations by an authority, as defined in **section 12.30**, state board of regents, or other political subdivision, instrumentality, or agency of the state, shall meet the requirements for doing business in Iowa sufficient to be subject to tax under rules of the department of revenue.

86 Acts, ch 1245, §851; 2003 Acts, ch 145, §286

76.16 Debtor status prohibited.

A city, county, or other political subdivision of this state shall not be a debtor under chapter nine of the federal bankruptcy code, 11 U.S.C. §901 et seq., except as otherwise specifically provided in **this chapter**.

87 Acts, ch 104, §2; 92 Acts, ch 1002, §1, 3; 2005 Acts, ch 3, §20

76.16A Debtor status permitted — circumstances.

A city, county, or other political subdivision may become a debtor under chapter nine of the federal bankruptcy code, 11 U.S.C. §901 et seq., if it is rendered insolvent, as defined in 11 U.S.C. §101(32)(c), as a result of a debt involuntarily incurred. As used herein, *"debt"* means an obligation to pay money, other than pursuant to a valid and binding collective bargaining agreement or previously authorized bond issue, as to which the governing body of the city, county, or other political subdivision has made a specific finding set forth in a duly adopted resolution of each of the following:

1. That all or a portion of such obligation will not be paid from available insurance proceeds and must be paid from an increase in general tax levy.
2. That such increase in the general tax levy will result in a severe, adverse impact on the ability of the city, county, or political subdivision to exercise the powers granted to it under applicable law, including without limitation providing necessary services and promoting economic development.
3. That as a result of such obligation, the city, county, or other political subdivision is unable to pay its debts as they become due.
4. That the debt is not an obligation to pay money to a city, county, entity organized pursuant to **chapter 28E**, or other political subdivision.

92 Acts, ch 1185, §1; 2005 Acts, ch 3, §21

76.17 Powers of public issuers.

1. A public body authorized to issue bonds may elect to issue bonds bearing a variable or fluctuating rate of interest which is determined on one or more intervals by reference to an index or standard, or as fixed by an interest rate indexing or remarketing agent retained by the issuer of the bonds. A public issuer of public bonds may provide for additional security or liquidity, enter into agreements for, and expend funds for policies of insurance, letters of credit, lines of credit, or other forms of security issued by financial institutions for the payment of principal, premium, if any, and interest on the bonds. A public issuer of public bonds may also enter into contracts and pay for the services of underwriters, interest rate indexing agents, remarketing agents, trustees, financial consultants, depositories, and other services as determined by the governing body. In the case of general obligation bonds, fees for the services and costs of additional security and liquidity shall be considered incurred in lieu of interest and may be levied through the fund for payment of debt service on the bonds. Bonds issued under **this section** may be sold at public or private sale as determined by the governing body.

McKinney's Consolidated Laws of New York Annotated
Public Authorities Law (Refs & Annos)
Chapter 43-a. Of the Consolidated Laws
Article 5. Public Utility Authorities
Title 11. Metropolitan Transportation Authority (Refs & Annos)

McKinney's Public Authorities Law § 1269

§ 1269. Notes, bonds and other obligations of the authority

Effective: March 30, 2012
Currentness

1. (a) The authority shall have power and is hereby authorized from time to time to issue its bonds, notes and other obligations in such principal amount as, in the opinion of the authority, shall be necessary, convenient or desirable to effectuate any of its powers and purposes, including to provide sufficient funds for achieving its purposes, including the acquisition, establishment, construction, effectuation, operation, maintenance, renovation, improvement, extension, rehabilitation or repair of any transportation facility, the payment of principal, redemption premium and interest on bonds, notes and other obligations of the authority, establishment of reserves to secure such bonds [1] notes and other obligations, the provision of working capital and all other expenditures of the authority and its subsidiary corporations, and New York city transit authority and its subsidiary corporations incident to and necessary or convenient to carry out their purposes and powers. Such bonds, notes or other obligations may be issued for an individual transportation facility or issued on a consolidated basis for such groups or classes of facilities and projects as the authority in its discretion deems appropriate and be payable from and secured separately or on a consolidated basis by, among other things, all or any portion of such revenues and other monies and assets of the authority and its subsidiary corporations, and New York city transit authority and its subsidiary corporations as the authority determines in accordance with the provisions of section twelve hundred seventy-d of this title;

(b) The authority shall have power, from time to time, to issue renewal notes, to issue bonds to refund, redeem or otherwise pay, including by purchase or tender, notes of the authority and its subsidiary corporations, and New York city transit authority and its subsidiary corporations and whenever it deems refunding, redemption or payment expedient, to refund, redeem or otherwise pay, including by purchase or tender, any bonds of the authority and its subsidiary corporations, New York city transit authority and its subsidiary corporations and Triborough bridge and tunnel authority by the issuance of new bonds, whether the bonds to be refunded, redeemed or otherwise paid have or have not matured, and to issue bonds partly for such purpose and partly for any other purpose and to otherwise refund, redeem, acquire by purchase or tender, or in any other way repay any outstanding notes, bonds or other obligations of the authority, any of its subsidiary corporations, New York city transit authority, any of its subsidiary corporations and Triborough bridge and tunnel authority;

(c) Every issue of its notes, bonds or other obligations shall be general obligations or special obligations. Every issue of general obligations of the authority shall be payable out of any revenues or monies of the authority, subject only to any agreements with the holders of particular notes or bonds pledging any particular receipts or revenues. Every issue of special obligations shall be payable out of any revenues, receipts, monies or other assets of the authority and its subsidiary corporations, the New York city transit authority and its subsidiary corporations and the Triborough bridge and tunnel authority identified for such purposes in accordance with agreements with the holders of particular notes, bonds or other obligations. The authority may issue transportation revenue special obligation bonds, notes or other obligations as provided in section twelve hundred seventy-d of this title;

(j) any other matters, of like or different character, which in any way affect the security or protection of the notes, bonds or other obligations of the authority.

4. In addition to the powers herein conferred upon the authority to secure its notes, bonds and other obligations, the authority shall have power in connection with the issuance of notes, bonds and other obligations to enter into such agreements as the authority may deem necessary, convenient or desirable concerning the use or disposition of the monies or property of any of the authority, its subsidiary corporations, New York city transit authority, or any of its subsidiary corporations, or Triborough bridge and tunnel authority, including the mortgaging of any such property and the entrusting, pledging or creation of any other security interest in any such monies or property and the doing of any act (including refraining from doing any act) which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this title and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of the notes, bonds and other obligations of the authority.

5. It is the intention hereof that any pledge, mortgage or security instrument made by the authority shall be valid and binding from the time when the pledge, mortgage or security instrument is made; that the monies or property so pledged, mortgaged and entrusted and thereafter received by the authority, or any of its subsidiary corporations shall immediately be subject to the lien of such pledge, mortgage or security instrument without any physical delivery thereof or further act; and that the lien of any such pledge, mortgage or security instrument shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, or any of its subsidiary corporations, irrespective of whether such parties have notice thereof. Neither the resolution nor any mortgage, security instrument or other instrument by which a pledge, mortgage lien or other security is created need be recorded or filed and neither the authority nor, any of its subsidiary corporations shall be required to comply with any of the provisions of the uniform commercial code.

6. Neither the members of the authority, the New York city transit authority or the Triborough bridge and tunnel authority nor any person executing the notes, bonds or other obligations shall be liable personally on the notes, bonds or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof.

7. The authority, subject to such agreements with the holders of notes, bonds or other obligations as may then exist, shall have power out of any funds available therefor to purchase notes, bonds or other obligations of the authority. The authority may hold, cancel or sell such bonds, notes and other obligations, subject to and in accordance with agreements with such holders.

8. Neither the state nor the city of New York shall be liable on notes, bonds or other obligations of the authority and such notes, bonds and other obligations shall not be a debt of the state or the city of New York, and such notes, bonds and other obligations shall contain on the face thereof, or in an equally prominent place, a statement to such effect.

9. So long as the authority has outstanding any bonds, notes or other obligations issued pursuant to this section or any bonds, notes or other obligations issued or incurred pursuant to section twelve hundred sixty-six-c of this title, none of the authority or any of its subsidiary corporations, New York city transit authority or any of its subsidiary corporations, or Triborough bridge and tunnel authority shall have the authority to file a voluntary petition under chapter nine of the federal bankruptcy code or such corresponding chapter, chapters or sections as may, from time to time, be in effect, and neither any public officer nor any organization, entity or other person shall authorize the authority or any of its subsidiary corporations, New York city transit authority or any of its subsidiary corporations, or Triborough bridge and tunnel authority to be or become a debtor under chapter nine or said corresponding chapter, chapters or sections during any such period.