

Comparison of Subchapter V With Chapter 13 and Chapter 11

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I. Introduction

A debtor who is eligible to be a debtor under subchapter V of chapter 11 has the option of seeking relief under other provisions of the Bankruptcy Code. Subchapter V applies only if the debtor elects it.

All debtors eligible for subchapter V may be a chapter 7 debtor, and debtors who qualify as family farmers or fishers may file a chapter 12 case. These materials compare subchapter V with the chapter 11 and 13 alternatives.

Which options are available depends on whether the debtor is an individual and the amount of debt.

Chapter 13 is available only for an individual with regular income whose noncontingent, liquidated debts do not exceed specified debt limits. The debt limits under § 109(e) effective as of April 1, 2022, as adjusted under § 104, were \$ 465,275 for unsecured debts and \$ 1,395,875 for secured debts, a total of \$ 1,861,150.

Effective June 21, 2022, the debt limit in a chapter 13 case temporarily increased to \$ 2,750,000 for both secured and unsecured debts under the Bankruptcy Threshold Adjustment and Technical Corrections Act (“BTATCA”).¹ On June 21, 2024, the debt limits return to \$ 465,275 for unsecured debts and \$ 1,395,875 for secured debts.

Individuals and entities may file a chapter 11 case. Absent a subchapter V election, the type of chapter 11 case will depend on the amount of the debtor’s noncontingent, liquidated debts.

If the debt is less than \$ 3,024,725, adjusted as of April 1, 2022, under § 104, the debtor is a “small business debtor” under § 101(51D),² and the debtor is in a “small business case.” § 101(51C).

The Bankruptcy Code has provisions that apply specifically in a small business case. A debtor does not elect to be in a small business case; the provisions for small business cases apply if the debtor is a small business debtor and does not elect subchapter V. If the debt exceeds the small business limit, the debtor is in a traditional chapter 11 case.

¹ Bankruptcy Threshold Adjustments and Technical Corrections Act § 2(a), Pub. L. No. 117-151, 136 Stat. 1298 (June 21, 2022) (hereinafter “BTATCA”). The increased debt limits apply retroactively in any bankruptcy case commenced on or after March 27, 2020, that is pending on the date of BTATCA’s enactment. *Id.* § 2(h)(2(A)).

II. Subchapter V and Chapter 13

Chapter 13 is an option only if the debtor is (1) an individual with (2) regular income (3) whose debts are within the debt limits discussed above. § 109(e). Key differences between cases under chapter 13 as compared to subchapter V include the following.

Noneligible spouse cannot be a debtor in a joint subchapter V case

The spouse of a debtor eligible for chapter 13 is eligible to be a debtor in a jointly filed chapter 13 case, even if the spouse does not have regular income.² Subchapter V does not have a provision that permits a noneligible spouse to file jointly with an eligible debtor. Although an affiliate of a subchapter V debtor is eligible to be a subchapter V debtor, a spouse is not an affiliate.³

Chapter 13 is simpler, and attorney's and trustee's fees may be lower in a chapter 13 case

In general, a chapter 13 case is likely to be simpler and cheaper than a subchapter V case. A chapter 13 debtor files a plan in the form the court requires, and creditors do not vote. The case moves promptly to confirmation.

Preparation of a subchapter V plan will likely involve more drafting time. Official Form 425A is a form that can be used in a subchapter V case, but it does not provide specific language for treatment of claims. In addition, the plan must contain a brief history of the business operations of the debtor, a liquidation analysis, and projections that show the ability of the debtor to make plan payments. § 1190(1). Official Form 425A requires information concerning projected disposable income, although subchapter V does not specifically require this provision.

² See § 1322(b)(5). See W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE § 12:7.

³ *In re Johnson*, 2021 WL 825156 (Bankr. N.D. Tex. 2021).

Subchapter V contemplates voting on the plan by creditors. To achieve consensual confirmation, the debtor, attorney for the debtor, or both, may need to solicit acceptances from creditors and encourage them to file ballots.

The chapter 13 process, therefore, may thus require less time for the debtor's attorney, resulting in a lower attorney's fee.

The chapter 13 trustee receives a commission based on disbursements under the plan. In a subchapter V case, the subchapter V trustee receives compensation based on services rendered. Depending on how much money will be disbursed to creditors and the percentage commission the chapter 13 trustee charges, the chapter 13 trustee's fees may be lower.

The additional expenses may not make any difference to the debtor. If unsecured creditors will be paid only what is left after payment of secured, priority, and administrative claims from the debtor's fixed payments under the plan, the amount of fees and expenses of professionals and of the trustee reduces what unsecured creditors receive but does not increase what the debtor must pay.

It does make a difference if the plan provides for payment of unsecured claims in full or if it provides for no payments to unsecured creditors. Similarly, it makes a difference if unsecured creditors are to receive a fixed percentage of their claims. In these situations, the amount of the administrative expense claims affects the debtor because all other claims are fixed.

The same considerations are applicable in a chapter 13 case.

Section 1187 imposes the duties and reporting requirements of § 1116 on the debtor. Although a debtor in a chapter 13 case who is engaged in business may be subject to reporting requirements that the chapter 13 trustee or the court requires, compliance with § 1116 will likely require more time and effort.

Subchapter V provides more flexibility for modification of secured claims

Subchapter V differs from chapter 13 in its provisions for the treatment of certain secured claims.

Chapter 13 has provisions that prevent the “strip-down” of a residential mortgage⁴ and that require certain secured claims to be paid in full, regardless of the value of the collateral. For example, a chapter 13 debtor cannot “strip down” a claim secured by a purchase-money security interest in a vehicle purchased within 910 days of the filing of the petition under the so-called “hanging paragraph” to § 1325(a)(5), which prohibits bifurcation under § 506(a) of such claims.⁵

In a subchapter V case, § 1190(3) permits modification of a residential mortgage if the two circumstances specified in subparagraphs (A) and (B) exist. The requirement of subparagraph (A) is that the new value received in connection with the granting of the security interest was “not used primarily to acquire the real property.” Subparagraph (B) requires that the new value have been “used primarily in connection with the small business of the debtor.”

For example, assume that the debtor’s principal residence is worth \$ 300,000 and is encumbered by a first mortgage in the amount of \$ 270,000 and a second mortgage that secures a debt of \$ 100,000 that the debtor incurred for use in the debtor’s business. A debtor cannot reduce the secured portion of the business debt to \$ 30,000 in a chapter 13 case but can do so in a subchapter V case.

⁴ § 1322(b)(5). See W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE § 5:26.

⁵ See W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE § 5:20.

Subchapter V does not contain a special provision like the “hanging paragraph” that prohibits bifurcation of certain secured claims. Thus, for example, if the debtor owns a motor vehicle subject to the “hanging paragraph” worth \$ 15,000 encumbered by a \$ 25,000 debt, the subchapter V debtor may pay the value of the vehicle, with interest, and treat the \$ 10,000 deficiency as an unsecured claim. In a chapter 13 case, the debtor must treat the entire claim as secured.

On the other hand, the § 1111(b)(2) election is applicable in a subchapter V case. It permits an undersecured creditor to elect to treat its claim as fully secured, unless the collateral is of “inconsequential value.”⁶ In this circumstance, if the debtor is retaining the property, cramdown requires that the creditor retain its lien⁷ and receive payments over time that (1) have a value that equals the value of the collateral and (2) total the amount of the entire claim.⁸

In the mortgage example, assuming an interest rate of six percent, a monthly payment of \$ 1,667 for five years,⁹ or \$ 883 for ten years,¹⁰ meets the payment requirement. Monthly payments are \$ 555 over 15 years and \$ 417 over 20.¹¹

⁶ SBRA Guide § VIII(E)(1).

⁷ § 1129(b)(2)(A)(i)(I), applicable under § 1191(b)(1).

⁸ § 1129(b)(2)(A)(i)(II), applicable under § 1191(b)(1).

⁹ The value of the collateral is \$ 30,000. The monthly payment to amortize that amount over five years with six percent interest is \$ 580, a total of \$ 34,800. This satisfies the requirement that the creditor receive payments with a value equal to the value of the collateral. For the creditor to receive payments that total the amount of its claim, the creditor must receive another \$ 65,200, which can be paid in monthly payments over five years of \$ 1,067. The total monthly payment is \$ 1,667 (\$ 580 + \$1,067).

¹⁰ The value of the collateral is \$ 30,000. The monthly payment to amortize that amount over ten years with six percent interest is \$ 333, a total of \$ 39,968. This satisfies the requirement that the creditor receive payments with a value equal to the value of the collateral. For the creditor to receive payments that total the amount of its claim, the creditor must receive another \$ 60,032, which can be paid in monthly payments over ten years of \$ 500. The total monthly payment is \$ 833 (\$ 333 + \$ 500).

¹¹ SBRA Guide VIII(E)(1) contains a table that shows calculations for monthly payments for the terms stated in the text and for terms of 25 years (\$ 333), and 30 years (\$ 278). Amortization of

In a chapter 13 case, the plan generally must provide for a secured claim either by (1) curing prepetition arrearages during the term of the plan and providing for the continuation of regular postpetition payments, which may extend beyond the term of the plan under § 1322(b)(5) or (2) paying the amount of the allowed secured claim, with interest, over the term of the plan, which may not exceed five years,¹² under § 1325(a)(5)(B).¹³ The second alternative requires that the monthly payments be in equal amounts.

Subchapter V, however, does not have a restriction on the term of the plan or a requirement for equal monthly payments.

The subchapter V PDI test is more favorable to debtors

Both chapter 13 and subchapter V have “projected disposable income” (“PDI”) tests, but they differ.

In a chapter 13 case, if a plan provides for less than full payment of unsecured claims, a debtor must pay “projected disposable income” to unsecured creditors if the trustee or a creditor objects to confirmation. § 1325(b). (The chapter 13 trustee always objects.)

The PDI requirement in a subchapter V case applies only in the cramdown situation. If all classes of impaired creditors accept the plan, the PDI requirement is not applicable.¹⁴ In a cramdown case, the requirement is applicable regardless of whether an objection is filed.

\$ 30,000 with interest at six percent over 53 years requires monthly payments of \$ 156.43, which results in payments that total \$ 100,113.

¹² § 1322(d). See W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE § 4:9

¹³ See W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman CHAPTER 13 PRACTICE AND PROCEDURE § 5:10, 5:13.

¹⁴ See *In re Walker*, 628 B.R. 9 (Bankr. E.D. Pa. 2021), discussed in SBRA Guide VIII(D)(8). In *Walker*, the debtor’s plan provided for the debtor to make payments for three years, resulting in a distribution to general unsecured creditors of approximately 7.5 percent. All classes of creditors accepted the plan, but one creditor objected to its confirmation on the ground that it did not meet the good faith requirement of § 1129(a)(3) because the distribution to unsecured

Subchapter V has a different method for the calculation of disposable income.

In a chapter 13 case, the calculation of disposable income is based on the debtor's "current monthly income,"¹⁵ and an "above-median" debtor¹⁶ must use the so-called "means test" standards in calculating permissible deductions.¹⁷

In a subchapter V case, § 1191(d) defines disposable income as "income that is received by the debtor and that is not reasonably necessary to be expended" for support, payment of domestic support obligations, and business expenditures. The PDI definition in subchapter V does not use "current monthly income," and it does not require the "means test" standards.¹⁸ Further, although the chapter 13 PDI test involves consideration of a non-filing spouses' income and expenditures, the subchapter V calculation does not expressly include it. Pre-BAPCPA cases under chapter 13 dealing with income and expenditures of a non-filing spouse, however, indicate that the non-filing spouse's income and expenses be included.

The "applicable commitment period" for the payment of projected disposable income in a chapter 13 case under § 1325(b)(4) is three years for a "below-median" debtor and five years for an "above-median" debtor. The required time for payment of PDI in a subchapter V case is a minimum of three years and a maximum of five years. § 1191(c)(2). The court determines the

creditors was inadequate. The creditor urged the court to extend the time for payment of PDI to five years. The court on the facts held that the creditor had not shown a lack of good faith.

¹⁵ Section 101(10A) defines "current monthly income." It is the average of the debtor's income (as the statute defines it) in the full six months preceding the filing of the petition. *See generally* W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE §§ 8:8, 8:9, 8:10.

¹⁶ W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE § 8:12.

¹⁷ W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE § 8:30.

¹⁸ SBRA Guide VIII(B)(4)(i).

length of the period, but the statute provides no standards for making the decision.¹⁹ For an above-median debtor, therefore, the *maximum* period for payment of PDI in a subchapter V case is five years, the *minimum* (and only) period in a chapter 13 case.

Finally, a debtor cannot “prepay” PDI in a chapter 13 case and end the case; the case must remain open for the entire applicable commitment period.²⁰ The subchapter V PDI test permits the debtor to pay the value of projected disposable income, thus permitting payment in a lump sum or over a shorter period. § 1191(c)(2)(B).

Times for filing of plan and commencement of payments

In a chapter 13 case, the debtor must file the plan within 14 days of the filing of the petition (or the date of conversion to chapter 13, if originally filed under another chapter), Bankruptcy Rule 3015(b), and must commence payments under the plan within 30 days, § 1326(a), unless the court orders otherwise.

The time for the filing of a subchapter V plan is 90 days, unless the court extends it. § 1189(b). Subchapter V does not require payments before confirmation.

Payment of administrative and priority claims under the plan; interest on priority tax debts.

Chapter 13 permits payment of administrative and priority claims in deferred payments over the term of the plan. § 1322(b)(2). The debtor does not have to pay postpetition interest on unsecured priority tax claims.²¹

¹⁹ SBRA Guide VIII(B)(4)(ii).

²⁰ *E.g.*, Whaley v. Tennyson (*In re Tennyson*), 611 F.3d 873 (11th Cir. 2010) (Above-median debtor with no disposable income must remain in chapter 13 case for five years.). See W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE § 8:66.

²¹ See W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE § 6:16.

In a chapter 11 case, a plan must pay administrative and priority claims, other than priority tax claims, in full on the effective date, unless the creditor agrees to different treatment, § 1129(a)(9)(A), (B), except that, in the case of cramdown confirmation of a plan in a subchapter V case, the plan may provide for payment of administrative expenses under the plan. § 1191(e). For example, although a chapter 13 plan may provide for payment of a prepetition domestic support obligation over the term of the plan, a subchapter V debtor must pay it in cash on the effective date.

Section 1129(a)(9)(C) permits payment of a priority tax claim in installments but requires payment of interest at the applicable governmental rate. The plan must provide for its payment within five years of the date of the filing of the petition.

Only the debtor may propose a postconfirmation modification of the plan in a subchapter V case

In a chapter 13 case, the trustee or an unsecured creditor, as well as the debtor, may propose a postconfirmation modification of a plan. § 1329(a). The trustee or a creditor may do so, for example, to require the debtor to increase payments based on higher earnings or reduced expenses or the debtor's receipt of proceeds from the postpetition sale of an asset.²² Only the debtor may propose a postconfirmation modification in a subchapter V case. § 1193(b), (c).²³

Postpetition assets and earnings as property of the estate

In a chapter 13 case, postpetition assets and earnings are property of the estate under § 1306(a). Depending on the terms of the plan and the confirmation order and the court's

²² See W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE §§ 11:12, 11:13.

²³ SBRA Guide VIII(C).

interpretation of the vesting provisions of § 1327(b), postpetition assets and earnings may continue to be property of the estate after confirmation.²⁴

Postpetition assets and earnings are not property of the estate in a subchapter V case when it is filed.²⁵ If the court confirms a plan under the “cramdown” provisions of § 1191(b), however, postpetition assets and earnings are included in property of the estate. § 1186(a).

An important consequence of these rules is what happens in the event of conversion of the case to chapter 7.

In a chapter 13 case converted to chapter 7, postpetition assets and earnings are not property of the chapter 7 estate, § 348(f)(1)(A), unless the case is converted in bad faith. § 348(f)(2).²⁶ Absent bad faith, therefore, a chapter 13 debtor retains all postpetition earnings and assets upon conversion to chapter 7, regardless of whether conversion occurs before or after confirmation.

Preconfirmation conversion of a subchapter V case has the same consequence, except that the debtor’s bad faith is not a consideration. Conversion to chapter 7 after confirmation of a *consensual* plan has the same result, because confirmation of a consensual plan does not put postpetition assets and earnings into the estate.

When conversion of a subchapter V case occurs after cramdown confirmation under § 1191(b), the issue is more complicated. Section 1186(a) states that, if a plan is confirmed under § 1191(b), property of the estate includes postpetition assets and earnings. Accordingly,

²⁴ See W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE §§ 4:19, 10:11, 10:12.

²⁵ SBRA Guide XI.

²⁶ W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE § 20:11.

the chapter 7 estate at the time of conversion would include the debtor's postpetition assets and earnings.

Section 1141(b), however, provides that confirmation of a chapter 11 plan vests property of the estate in the debtor, unless the plan or confirmation order provides otherwise. If property of the estate vested in the debtor at confirmation, that property would remain property of the debtor upon postconfirmation conversion to chapter 7. SBRA did not change the applicability of § 1141(b) in subchapter V cases.

Section § 1141(b) conflicts with § 1186(a). Presumably, the later and more specific provisions of § 1186(a) prevail over § 1141(b) in a subchapter V case.²⁷ Under this view, the debtor's postpetition assets and earnings are property of the chapter 7 estate upon conversion.

Timing and scope of discharge

Discharge in a chapter 13 case occurs under § 1328(a) after the debtor completes payments or under § 1328(b) if the court at the end of the case permits a hardship discharge based on the debtor's justified inability to complete plan payments.

In a subchapter V case, discharge occurs upon confirmation of a consensual plan.²⁸

In the cramdown situation, discharge does not occur until the debtor completes payments due within the first three to five years of the plan, as the court determines. § 1192.²⁹ A chapter 13 discharge after completion of plan payments under § 1328(a) applies to more debts than a discharge in a chapter 7 case,³⁰ and a subchapter V discharge is subject to the same exceptions

²⁷ SBRA Guide XI(B)(1).

²⁸ SBRA Guide X(A).

²⁹ SBRA Guide X(B).

³⁰ See W. Homer Drake, Jr., Paul W. Bonapfel, and Adam M. Goodman, CHAPTER 13 PRACTICE AND PROCEDURE §§ 21:16, 21:18.

as a chapter 7 discharge.³¹ The § 1328(a) discharge, therefore, discharges some debts that are excepted in a subchapter V case.

Under § 1328(c), the exceptions to a “hardship discharge” under § 1328(b) are the same as in a chapter 7 or subchapter V case.

Subchapter V has no provision for a hardship discharge. If cramdown confirmation occurs, however, the debtor may seek a postconfirmation modification of the plan if the debtor cannot make plan payments.

III. Subchapter V vs. Chapter 11 Small Business Case

If a debtor eligible for subchapter V has debts less than \$ 3,024,725, the debtor in a chapter 11 case who does not elect subchapter V will be a “small business debtor” under § 101(51D) and the case will be a “small business case” under § 101(51C).

A. Advantages of Small Business Case

A small business case offers some advantages for the debtor.

There is no trustee. The debtor has a longer time to file a plan, 300 days instead of 90.

“Cramdown” confirmation in a small business case does not require satisfaction of the projected disposable income test for an entity. (A creditor’s objection in the case of an individual will trigger a PDI requirement. § 1129(a)(15)).

A small business debtor that is an entity receives its discharge upon confirmation of the plan, regardless of whether it is consensual or cramdown. § 1141(d)(1). The same rule applies in a subchapter V case when the court confirms a consensual plan under § 1191(a).³² Upon cramdown confirmation of a plan, however, the subchapter V debtor does not get a discharge

³¹ SBRA Guide X.

³² SBRA Guide X(A).

until completion of payments for three to five years, as the court determines. § 1192.³³ In addition, it is clear that the exceptions to discharge in § 523(a) do not apply to an entity in a small business case or in a subchapter V case when consensual confirmation occurs,³⁴ whereas courts disagree as to whether the exceptions apply in the case of an entity.³⁵

B. Disadvantages of Small Business Case

A small business case has significant disadvantages for a debtor, especially an individual.

Requirement of § 1125 disclosure statement

Section 1125 requires the proponent of a chapter 11 plan to provide a disclosure statement to creditors prior to the solicitation of votes on the plan containing “adequate information” to enable creditors to make an informed judgment about the plan. The court must approve the disclosure statement after notice and a hearing.

In a small business case, § 1125(f) permits the court to determine that the plan itself provides “adequate information” and allows the court to conditionally approve the disclosure statement, with a hearing on final approval occurring at the confirmation hearing.

Section 1125 does not apply in a subchapter V case unless the court orders otherwise. Instead, subchapter V requires only that the plan contain a brief history of the business operations of the debtor, a liquidation analysis, and projections regarding the ability of the debtor to make payments under the proposed plan. § 1190(1). The subchapter V plan does not have to include “adequate information,” and the court’s approval of the information is not

³³ SBRA Guide X(B).

³⁴ SBRA Guide X(A).

³⁵ SBRA Guide X(B).

required. Presumably, materially inaccurate or misleading information could result in a court finding that the plan is not proposed in good faith.

Deadline for confirmation

In a small business case, the court must confirm the plan within 45 days of its filing under § 1129(f), unless the court extends the time under the conditions stated in § 1121(e)(3).

The order extending time must be signed before the deadline expires. § 1121(e)(3)(C).

Subchapter V contains no deadline for confirmation.

Cramdown confirmation is more difficult for a debtor in a small business case

Confirmation in a chapter 11 case requires that at least one impaired class of creditors, determined without regard to the votes of insiders, accept the plan. § 1129(a)(10).

If this requirement is met but one or more classes do not accept the plan, § 1129(b) permits cramdown if the plan is “fair and equitable.” With regard to a class of unsecured creditors, § 1129(b)(2)(B) contains the “absolute priority rule.” The absolute priority rule provides that, unless the claims are paid in full, holders of equity interests may not receive or retain anything under the plan.

Neither obstacle exists in a subchapter V case. The court may confirm a plan even if no impaired class of creditors accepts, and the absolute priority rule is eliminated. § 1191(b), (c).³⁶

Instead, cramdown requires satisfaction of a projected disposable income test,³⁷ a heightened feasibility finding,³⁸ and the inclusion in the plan of “appropriate remedies” for creditors in the event of default.³⁹ The projected disposable income rules apply to cramdown confirmation in the case of an entity as well as in the case of an individual.

³⁶ SBRA Guide VIII(B).

³⁷ §1191(c)(2). SBRA Guide VIII(B)(4)

³⁸ § 1191(c)(3)(A). SBRA Guide VIII(B)(5).

³⁹ § 1191(c)(3)(B). SBRA Guide VIII(B)(5).

Provisions with regard to the cramdown of secured claims are the same. § 1191(c)(1).

Subchapter V permits modification of a residential mortgage in some circumstances

In a traditional chapter 11 case, as in a chapter 13 case, a plan cannot modify a claim secured only by real estate that is the debtor’s principal residence. § 1123(b)(5). Accordingly, a plan may not “strip down” a residential mortgage claim to the value of the collateral and treat the deficiency claim as unsecured.

In a subchapter V case, § 1190(3) permits modification of such a claim if the two circumstances specified in subparagraphs (A) and (B) exist. The requirement of subparagraph (A) is that the new value received in connection with the granting of the security interest was “not used primarily to acquire the real property.” Subparagraph (B) requires that the new value have been “used primarily in connection with the small business of the debtor.”⁴⁰

Only the debtor may file a plan or plan modification in a subchapter V case

In a small business case, a party other than the debtor may file a plan after the expiration of the debtor’s exclusivity period of 180 days. § 1121(e). The court may extend the period or order otherwise for cause. Only the debtor may file a plan in a subchapter V case. § 1189(a). Further, only the debtor may modify a plan. § 1193. In an individual small business case, an unsecured creditor, a trustee, or the United States trustee may request postconfirmation of a plan under § 1127(e).

⁴⁰ Query whether an individual whose debts exceed the limits for qualification as a “small business debtor” under § 101(51D)(A) but who qualifies for subchapter V under the temporary \$ 7.5 million debt limit under the CARES Act and BTATCA meets the requirement in (B) for use of loan proceeds for the debtor’s “small business” because such a debtor is not a “small business debtor.”

In an individual small business case, property of the estate includes postpetition assets and earnings

In a traditional chapter 11 case, § 1115(a) includes postpetition assets and earnings in the estate of an individual.⁴¹ An important consequence for the debtor is that, if the case converts to chapter 7, the chapter 7 estate includes postpetition assets and earnings.⁴²

Section 1115(a) is not applicable in a subchapter V case. § 1181(a). Section 1186(a) provides, however, that if the court confirms a plan under the cramdown provisions of § 1191(b), property of the estate includes postpetition assets and earnings.

If a subchapter V case of an individual is converted to chapter 7 prior to confirmation, it is clear that the chapter 7 estate does not include postpetition earnings and assets. As the earlier discussion of the issue in connection with chapter 13 cases indicates, however, it is likely that postpetition assets and earnings will be property of the chapter 7 estate if conversion occurs after cramdown confirmation.

A single unsecured creditor may invoke the PDI requirement in an individual's small business case

Section 1129(a)(15) provides that confirmation of a plan in an individual case requires the debtor to commit projected disposable income to the plan if a creditor objects, unless the plan provides for payment in full. The requirement is applicable if a single creditor objects, even if the class of unsecured creditors has accepted the plan. If the PDI requirement is applicable, the debtor must use PDI to make plan payments for the longer of five years or the term of the plan.

⁴¹ SBRA Guide XI(A).

⁴² *Id.*

Section 1129(a)(15) is inapplicable in subchapter V cases. §§ 1181(a), 1191(a), 1191(b). Thus, the PDI requirement is not applicable at all if all impaired classes accept the plan.⁴³ Moreover, when the PDI requirement applies in the cramdown situation, the *maximum* period for the payment of PDI is five years, even if the plan extends for a longer period.

Discharge of an individual in a subchapter V case occurs at confirmation of a consensual plan; no “hardship” discharge in subchapter V

In a chapter 11 case, discharge of an individual does not occur until completion of payments under the plan under § 1141(d)(5)(A), or the court grants a “hardship” discharge at the end of the case under § 1141(d)(5)(B).

Section 1141(d)(5) does not apply in a subchapter V case. § 1181(a). Accordingly, if the court confirms a consensual plan under § 1191(a), confirmation results in a discharge under § 1141(d)(1)(A). As a result, an individual gets a discharge upon confirmation of a consensual plan.

If cramdown confirmation occurs, the debtor’s discharge does not occur until completion of payments for three to five years, as the court determines, under § 1192.

Subchapter V does not contain a provision for a hardship discharge. It is not necessary in the case of consensual confirmation because discharge occurs at confirmation. In the case of cramdown confirmation, the debtor may seek postconfirmation modification of the plan under § 1193(b) to deal with postconfirmation inability to make payments.

⁴³ See *In re Walker*, 628 B.R. 9 (Bankr. E.D. Pa. 2021), discussed in SBRA Guide VIII(D)(8) and *supra* note 14.

Automatic stay is effective in later case filed by subchapter V debtor, but not by debtor in a small business case

Section 362(n) generally provides that the automatic stay of § 362(a) does not apply in a case in which the debtor was the debtor in a small business case that was dismissed in the two years preceding the filing of the current case or in which a plan was confirmed during that period. Because it applies to a debtor in a “small business case,” it does not apply to a debtor in a subchapter V case.

V. Subchapter V vs. Traditional Chapter 11

If a debtor eligible for subchapter V is not a small business debtor (*i.e.*, its debts exceed the debt limit for a small business debtor), it will be in a traditional chapter 11 case if it does not elect application of subchapter V.

A traditional chapter 11 case generally has the same advantages and disadvantages for a debtor as a small business case, with these differences.

1. No deadline for confirmation exists in a traditional chapter 11 case.
2. The modifications to the disclosure statement rules applicable in a small business case under § 1125(f) do not apply.
3. The exclusivity period for the debtor to file a plan is 120 days, rather than 180.
§ 1121(b).
4. The rules in § 1116 for the filing and reporting of financial and other information that govern a small business case, which apply in a subchapter V case, § 1187(a), do not apply in a traditional chapter 11 case.
5. The provision for elimination of creditors’ committees, unless the court orders otherwise, apply only in subchapter V and small business cases.