

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

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2020 APR -1 P 11:18

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Interim Procedures for Relief to Mitigate
the Effects of COVID-19
(Chapter 13 cases)

OPERATING ORDER 20-06

Due to the national health emergency involving the 2019 novel coronavirus (COVID-19) and the considerable financial impact thereof, the Court hereby establishes certain interim procedures to streamline Chapter 13 processes regarding payment and default. The following interim procedures for relief to mitigate the effects of COVID-19 for Chapter 13 cases are adopted and remain in effect until further order of this Court. Any judge may subsequently issue an order altering these procedures if he or she deems it necessary and appropriate. This Operating Order supplements and does not replace Chambers Guidelines for any judge, which remain in effect. To the extent this Operating Order conflicts with Chambers Guidelines, this District's local bankruptcy rules, and forms or prior operating orders regarding procedures, this Operating Order controls. Any party affected by the provisions of this Order may object or otherwise raise any issue of concern before the appropriate judge by filing pleadings in the affected case.

IT IS HEREBY ORDERED that the following interim procedures are adopted:

Plan Payment Relief

Moratoriums considered liberally. As a result of COVID-19, moratorium requests filed early in a case and second requests for a moratorium in cases in which a prior moratorium was granted will be considered. In cases with a confirmed plan providing for payment to a mortgage creditor through the conduit procedure, requests for moratoriums may be submitted through the filing of a form motion.¹

¹ A form motion will be published and must be served on all interested parties. This Order suspends the requirements of section IV.F.10 and footnote 10 of Operating Order 18-03 (*In re Conduit Mortgage Payments in Chapter 13 Cases*),

Extension of time to cure plan payment delinquencies. The Court will consider twelve (12) months or longer for a debtor to cure any plan payment delinquencies during the moratorium period.

Suspension of wage orders. Upon a request to the trustee or submission of an amended order, requirements under an existing wage order or electronic account deduction program may be temporarily suspended. Furthermore, a debtor in a new case may be exempted from any wage order requirements upon the Court's approval of such a request or upon the consent of the trustee.

Suspension of requirement that debtor be current on plan payments at confirmation. Any requirement that a debtor be current on payments to the trustee under the proposed plan as a condition of confirmation is temporarily suspended.

Dismissal for Non-Payment. Trustees may elect to delay motions to dismiss for non-payment if the default is attributable to COVID-19, and shall work with debtors and their counsel who are actively communicating to resolve any case-related issues prior to submitting a dismissal request or related proposed order, including the enforcement of *ex parte* provisions in prior agreements and orders.

Up to Seven-Year Plan Term. According to § 1113 of the CARES Act (P.L. 116-136), enacted on March 27, 2020, 11 U.S.C. § 1329(d)(1) is temporarily modified to allow a debtor experiencing a material financial hardship due, directly or indirectly, to the coronavirus (COVID-19) pandemic to modify a previously confirmed plan for up to seven years after the date of the first payment under the originally confirmed plan. The relationship of the plan modification to the effects of COVID-19 should be demonstrated in the motion to modify the plan.

Other Payment Relief

Limitations on terms in proposed settlement orders under 11 U.S.C. § 362. For any proposed settlement order submitted to resolve a 11 U.S.C. § 362(d) motion, the Court may strike or reject an order that includes a provision providing for *ex parte* relief upon default on the terms of a settlement order. Instead the following language may be used:

In the event of a default under the terms of this Order, Movant may file an affidavit of default and request for further hearing, and a hearing will be scheduled to determine whether relief from stay is warranted.

Default on post-petition fees as a basis for relief. The Court may strike or reject proposed settlement orders that include provisions providing for relief from stay for the failure to pay post-petition fees, expenses, and charges that are to be noticed under Fed. R. Bankr. P. 3002.1(c).

Hearing upon default of previously entered settlement orders. For settlement orders that predate this order and provide for *ex parte* relief upon default, on an interim basis, the Court may elect to (but is not obligated to) schedule a further hearing to determine if relief is appropriate if

and section IV.F.9 of Operating Order 16-03 (revised Oct. 2, 2019), which provide that a moratorium in a conduit case must be sought through the filing of an amended plan and a debtor cannot retroactively modify past plan payments through a moratorium.

the affidavit of default or any response provides that the default is recent or appears to be the result of COVID-19.

Approval to Incur Debt

Approval of loans from the Small Business Administration or other approved lender. A debtor may seek approval to obtain a loan from the Small Business Administration or other approved lender issued in response to the COVID-19 crisis in amounts of \$50,000 or less under the procedure set forth in SC LBR 3015-8(a) (providing for approval to incur debt through the consent of the Chapter 13 Trustee). For loans from these lenders in an amount greater than \$50,000, the Court will provide for an expedited hearing or shortened notice for the motion to incur debt, if necessary.

AND IT IS SO ORDERED this 1st day of April 2020.

/s/ Helen E. Burris

Chief United States Bankruptcy Judge

/s/ John E. Waites

United States Bankruptcy Judge

/s/ David R. Duncan

United States Bankruptcy Judge