

Navigating Bankruptcy: Understanding Plan Confirmation Requirements Across Chapters Part 2

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For individuals and businesses facing financial distress, bankruptcy offers a structured path towards a fresh start or reorganization. A critical step in any bankruptcy case is the confirmation of a repayment or reorganization plan. Completion of the plan is typically what entitles the debtor to a discharge. The plan outlines how the debtor will address their debts, and its approval by the bankruptcy court is essential for the case to proceed. While the fundamental goal of confirmation remains consistent across different chapters, the specific requirements vary significantly depending on the type of bankruptcy filed.

This continuing series provides an overview today of the key requirements for confirming a bankruptcy plan under Chapter 11 Subchapter V of the U.S. Bankruptcy Code.

Chapter 13: Repayment

Chapter 13 bankruptcy, often called a wage earner's plan, is exclusively available to individuals with regular income who seek to reorganize their financial affairs over a three-to-five-year period. To be eligible, the individual debtor must have secured debts and unsecured debts below statutorily set limits (currently, \$1,580,125 and \$526,700, respectively), which are adjusted periodically for inflation. Unlike Chapter 11, Chapter 13 plans do not require a vote by creditors; instead, the court confirms the plan if it satisfies the mandatory requirements set forth in 11 U.S.C. § 1325(a).

Consensual Plans

A bankruptcy court shall confirm a consensual Subchapter V plan once all the requirements of a traditional Chapter 11 plan are met, apart from the absolute priority rule.²

- Impaired³ Class Acceptance: For a Subchapter V plan to be considered consensual, all impaired classes must accept the plan.⁴ This is consistent





- **Benefits of Consensus:** A Subchapter V debtor is strongly encouraged to negotiate a consensual plan due to specific advantages not available in a non-consensual context:
 - **Trustee Termination:** The service of a Subchapter V trustee terminates when a consensual plan is substantially consummated.⁵ This directly reduces the fees and expenses that would otherwise be incurred and paid by the estate over the plan's life.
 - **Immediate Discharge:** The debtor receives an immediate discharge upon confirmation of a consensual plan.⁶ This provides a faster financial fresh start compared to a cramdown plan.
- means similarly situated claims should receive comparable treatment, and any differences must have a reasonable basis and be proposed in good faith.¹⁰
- **Fair and Equitable Treatment:** The “fair and equitable” standard for dissenting classes of impaired claims is significantly altered in Subchapter V:
 - **Secured Claims:** For dissenting classes of impaired secured claims, the plan must still meet the existing “fair and equitable” requirements for secured claims under traditional Chapter 11 plans.¹¹
 - **Unsecured Claims: The Disposable Income Test:** For dissenting classes of unsecured claims, 11 U.S.C. § 1191(c)(2) establishes a unique disposable income test that replaces the absolute priority rule found in traditional Chapter 11. The plan must provide that, as of the effective date:
 - All of the debtor's projected disposable income received within the first three to five years of the plan will be applied to make payments under the plan; or
 - The value of the property distributed under the plan within the first three to five years is not less than the debtor's projected disposable income.
 - **“Disposable Income” Defined:** “disposable income” for Subchapter V plans means income not reasonably necessary for the maintenance or support of the debtor or their dependents, domestic support obligations payable post-

Cramdown Plans

Like traditional Chapter 11 cramdown plans, a Subchapter V cramdown plan may be confirmed over the objection of impaired classes so long as the plan does not “discriminate unfairly” and is “fair and equitable.” However, these standards are interpreted differently in the context of Subchapter V plans.

- **Fundamental Requirements:** A Subchapter V plan may be confirmed through the cramdown process once the requirements for a traditional Chapter 11 plan are satisfied, except for 11 U.S.C. §§ 1129(a)(8) (unanimous class consent),⁷ (10) (approval by at least one impaired class),⁸ and (15) (absolute priority rule).⁹
- **No Unfair Discrimination:** As in traditional Chapter 11 cramdowns, the plan must not discriminate unfairly against any impaired, non-consenting class. This

particularly in cramdown scenarios, by relaxing several stringent requirements found in general Chapter 11. However, these benefits are balanced by continued oversight and a delayed discharge in non-consensual cases.

Conclusion

Confirming a bankruptcy plan is a multifaceted process, with each chapter of the Bankruptcy Code presenting unique challenges and requirements. Understanding these distinctions is crucial for debtors, creditors, and legal professionals alike. While the “best interests of creditors” and “feasibility” tests are common threads, the nuanced differences, found in the cramdown provisions, for example, reflect the distinct purposes and policy considerations behind each bankruptcy Chapter.

While successfully navigating the plan confirmation process can seem overwhelming, Frost Law’s dedicated team of bankruptcy professionals is here to help clients meet these challenges, offering experienced and personalized guidance throughout the entire process. Contact our team today at [\(410\) 709-6981](tel:4107096981) or [schedule a confidential consultation](#).

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