

TNMB Clerk's Office **Bulletin**

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**For more information and updates, please visit our website
www.tnmb.uscourts.gov.**

New 11 U.S.C. § 1328(i) Discharge & ECF Event

Expires December 27, 2021

The Consolidated Appropriations Act, signed into law on December 27, 2020 (Pub. L. No. 116-260), created a new subsection (i) of Section 1328 of the Bankruptcy Code.

This subsection permits a court to grant a chapter 13 debtor a standard discharge, if the debtor has defaulted on not more than three monthly payments that came due on or after March 13, 2020 on a residential mortgage that is being cured or payments maintained under § 1322(b)(5), and the failure to make the mortgage payments was caused by a “material financial hardship due, directly or indirectly, by the coronavirus disease 2019 (COVID-19) pandemic.”

This subsection also permits a court to grant a chapter 13 debtor a standard discharge, if the debtor’s plan provides for the curing of a default and maintenance of payments on a residential mortgage under § 1322(b)(5) and the debtor has entered into a forbearance agreement or loan modification agreement with the mortgage holder or servicer.



TITLE X—BANKRUPTCY RELIEF

SEC. 1001. BANKRUPTCY RELIEF.

(b) DISCHARGE.—

(1) IN GENERAL.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

“(i) Subject to subsection (d), after notice and a hearing, the court may grant a discharge of debts dischargeable under subsection (a) to a debtor who has not completed payments to the trustee or a creditor holding a security interest in the principal residence of the debtor if—

“(1) the debtor defaults on not more than 3 monthly payments due on a residential mortgage under section 1322(b)(5) on or after March 13, 2020, to the trustee or creditor caused by a material financial hardship due, directly or indirectly, by the coronavirus disease 2019 (COVID-19) pandemic; or

“(2)(A) the plan provides for the curing of a default and maintenance of payments on a residential mortgage under section 1322(b)(5); and

“(B) the debtor has entered into a forbearance agreement or loan modification agreement with the holder or servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) of the mortgage described in subparagraph (A).”

(2) SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act, section 1328 of title 11, United States Code, is amended by striking subsection (i).

A debtor must request a discharge under Section 1328(i) by filing a motion pursuant to Local Rule 9013-1 using a specific CM/ECF event: Bankruptcy Events > Motions > LBR 9013 Motions with Notice > Discharge Pursuant to Section 1328(i) – BK Motion.

If granted, the Court will issue a form discharge order.

This new subsection will expire by its terms on December 27, 2021.

ask us >>>

Q: What’s new in ECF?

A: We have a new automatically-generated ECF event that searches nationwide for a debtor’s prior bankruptcy case filings and summarizes them in one entry, *e.g.*,

Notice of Debtor's Prior Filings

Debtor	Case No	Note
	19-05874	Ch13 filed in Tennessee Middle on 09/12/2019, Dismissed for failure to make plan payments on 03/18/2021
	16-06266	Ch7 filed in Tennessee Middle on 09/01/2016, Standard Discharge on 03/08/2017
	09-14505	Ch13 filed in Tennessee Middle on 12/21/2009, Standard Discharge on 03/28/2013
	04-07870	Ch7 filed in Tennessee Middle on 06/29/2004, Standard Discharge on 10/26/2005

The Clerk’s Office has developed several guides for commonly-used ECF filing events, which are maintained on the Court’s website at <http://www.tnmb.uscourts.gov/instructions-specific-ecf-filing-events>.

Among these are step-by-step guides related to the new ECF event for § 1328(i) discharges:

- Docketing LBR 9013-1 Motions with Notice
- Docketing Responses/Objections to LBR 9013-1 Motions.



CARES Forbearance Claim and New Proof of Claim Form

The Consolidated Appropriations Act also temporarily amends 11 U.S.C. § 501 to add subsection (f). This subsection allows a mortgage lender/servicer to file a claim for the amount of the loan forbore under a CARES Act loan forbearance.

In turn, the Consolidated Appropriations Act also temporarily amends 11 U.S.C. § 1001(e) to allow the plan to be amended to provide for the claim.

These amendments will expire by their terms on December 27, 2021.

TITLE X—BANKRUPTCY RELIEF

SEC. 1001. BANKRUPTCY RELIEF.

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(d) CARES FORBEARANCE CLAIMS.—

(1) **FILING OF PROOFS OF CLAIMS OR INTERESTS.**—Section 501 of title 11, United States Code, is amended by adding at the end the following:

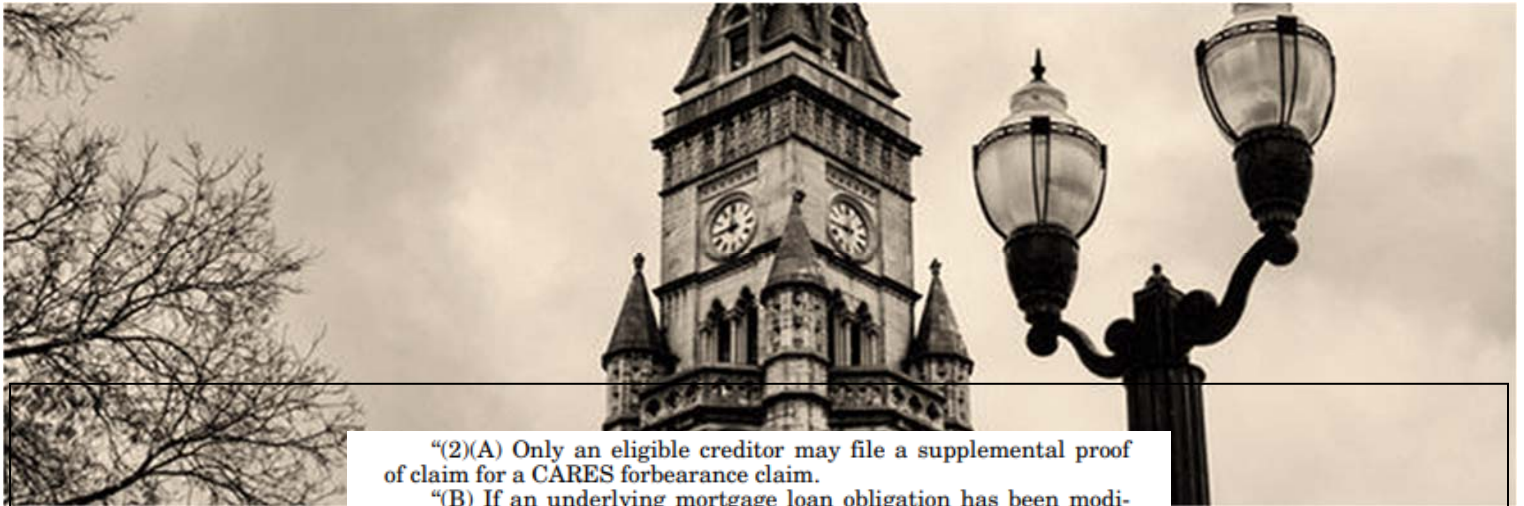
“(f)(1) In this subsection—

“(A) the term ‘CARES forbearance claim’ means a supplemental claim for the amount of a Federally backed mortgage loan or a Federally backed multifamily mortgage loan that was not received by an eligible creditor during the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057);

“(B) the term ‘eligible creditor’ means a servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) with a claim for a Federally backed mortgage loan or a Federally backed multifamily mortgage loan of the debtor that is provided for by a plan under section 1322(b)(5);

“(C) the term ‘Federally backed mortgage loan’ has the meaning given the term in section 4022(a) of the CARES Act (15 U.S.C. 9056(a)); and

“(D) the term ‘Federally backed multifamily mortgage loan’ has the meaning given the term in section 4023(f) of the CARES Act (15 U.S.C. 9057(f)).



“(2)(A) Only an eligible creditor may file a supplemental proof of claim for a CARES forbearance claim.

“(B) If an underlying mortgage loan obligation has been modified or deferred by an agreement of the debtor and an eligible creditor of the mortgage loan in connection with a mortgage forbearance granted under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057) in order to cure mortgage payments forborne under the forbearance, the proof of claim filed under subparagraph (A) shall include—

“(i) the relevant terms of the modification or deferral;

“(ii) for a modification or deferral that is in writing, a copy of the modification or deferral; and

“(iii) a description of the payments to be deferred until the date on which the mortgage loan matures.”.

(2) ALLOWANCE OF CLAIMS OR INTERESTS.—Section 502(b)(9) of title 11, United States Code, is amended to read as follows:

“(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) or under the Federal Rules of Bankruptcy Procedure, except that—

“(A) 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;

“(B) 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; and

“(C) a CARES forbearance claim (as defined in section 501(f)(1)) shall be timely filed if the claim is filed before the date that is 120 days after the expiration of the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057).”.

(3) SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act—

(A) section 501 of title 11, United States Code, is amended by striking subsection (f); and

(B) section 502(b)(9) of title 11, United States Code, is amended—

(i) in subparagraph (A), by adding “and” at the end;

(ii) in subparagraph (B), by striking “; and” and inserting a period; and

(iii) by striking subparagraph (C).

(e) MODIFICATION OF PLAN AFTER CONFIRMATION.—

(1) IN GENERAL.—Section 1329 of title 11, United States Code, is amended by adding at the end the following:

“(e)(1) A debtor of a case for which a creditor files a proof of claim under section 501(f) may file a request for a modification of the plan to provide for the proof of claim.

“(2) If the debtor does not file a request for a modification of the plan under paragraph (1) on or before the date that is 30 days after the date on which a creditor files a claim under section 501(f), after notice, the court, on a motion of the court

or on a motion of the United States trustee, the trustee, a bankruptcy administrator, or any party in interest, may request a modification of the plan to provide for the proof of claim.”

(2) SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act, section 1329 of title 11, United States Code, is amended by striking subsection (e).

Form 4100S Supplemental Proof of Claim for CARES Forbearance Claim is available on the TNMB website under Forms > Federal Bankruptcy Forms and on the United States Courts website at <https://www.uscourts.gov/forms/bankruptcy-forms>.

Fill in this information to identify the case:	
Debtor 1	_____
Debtor 2 (Spouse, if filing)	_____
United States Bankruptcy Court for the _____ District of _____ (State)	
Case number	_____

Form 4100S

Supplemental Proof of Claim for CARES Forbearance Claim

02/21

This Supplemental Proof of Claim is filed in compliance with the requirements of 11 U.S.C. § 501(f)(1) as the Debtor was granted a forbearance under the CARES Act (15 U.S.C. § 9056 or 9057). “Creditor” in this form means “eligible creditor” under 11 U.S.C. § 501(f). File this form as a supplement to your proof of claim.

Name of creditor: _____

Court claim no. (if known): _____

Last 4 digits of any number you use to identify the debtor’s account: _____

Property address: _____

Number Street

City State ZIP Code

Part 1: Amount of Loan That Was Not Received During Forbearance Period

List of payments not received during forbearance period:

Date: _____	Amount: _____	Date: _____	Amount: _____
Date: _____	Amount: _____	Date: _____	Amount: _____
Date: _____	Amount: _____	Date: _____	Amount: _____
Date: _____	Amount: _____	Date: _____	Amount: _____
Date: _____	Amount: _____	Date: _____	Amount: _____
Date: _____	Amount: _____	Date: _____	Amount: _____

Total of payments due under the forbearance: _____

Part 2: Information About Agreement to Modify or Defer Loan Obligation

Have the Debtor and Creditor entered into an agreement to modify or defer the loan obligation in connection with the forbearance?

Yes. Include the information required by 11 USC § 501(f)(2)(B)(i)-(iii) and attach copies of the writing outlining the modification or deferral:

The loan was modified as follows:

The amount of forbome payments and the deferral date:

No. Debtor or their counsel should contact the Creditor about any resolutions that may be available to the Debtor.

Motions to Approve Compromise

For the parties to an adversary proceeding or a contested matter, frequently settlement is the final step. For the Clerk's Office, it is helpful to know if the parties consider the adversary proceeding or contested matter completely resolved as to all parties and all claims. Particularly for adversary proceedings, the language in the order assists the Clerk's Office in determining whether the adversary proceeding should be closed.



When filing a motion to approve compromise or settlement, please state whether all claims as to all parties are being resolved or whether only a *partial* settlement has been reached. Best practice is to include in the submitted order whether a notice or stipulation of dismissal will be filed separately or whether the adversary proceeding is dismissed on entry of the order granting the motion to approve compromise.

Reminder: "Any motion or order to approve a compromise or settlement must be filed in the bankruptcy case and in any related proceeding where the complaint or action originated." (LBR 9019-1.)

Moving for a Clerk's Entry of Default?

Don't forget to file Submitted Entry of Default (Form 2600). The form is available on the TNMB website under Forms > Federal Bankruptcy Forms and on the United States Courts website at <https://www.uscourts.gov/forms/bankruptcy-forms>.

The ECF event is Adversary Events → Proposed Order → Submitted /Expedited - Submitted Agreed / Submitted Agreed Expedited Orders → Submitted Entry of Default (Clerk's signature).

Serving a Summons?

ECF has specific events for filing a summons returned executed or unexecuted:

Adversary Events → Complaint → Complaint & Summons → Summons Service Executed - AP

and

Adversary Events → Complaint → Complaint & Summons → Summons Service Unexecuted - AP.

These events create the correct docket entry text and are more precise than using the general event Adversary Events → Miscellaneous → Other → Certificate of Service.

*final*thoughts...

Please remember that TNMB continues to adhere to the COVID-19 procedures implemented in March 2020.

Attorneys, litigants, and interested parties should routinely check the Court's website at www.tnmb.uscourts.gov for any changes in Court procedures.

UPCOMING EVENTS:

The next meeting of the Nashville Bar Association Bankruptcy Court Committee will be held via Zoom on Wednesday, April 7, 2021 at noon.

Questions?

Please direct any questions to

(615) 736-5584

Monday – Friday

8:00 a.m. to 4:00 p.m.

Intake Counter Remains Closed Until Further Notice

There is no in person receipt of filings or payments. The use of ECF, U.S. Mail or other mail delivery options is highly encouraged. The mailing address of the Clerk's Office is:

United States
Bankruptcy Court
Middle District of Tennessee
701 Broadway, Room 170
Nashville, TN 37203.

Using the Dropbox...

The public may submit filings or payments between the hours of 7:30 a.m. and 4:00 p.m. through a drop box located inside the rear entrance to the Customs House. The drop box will be checked daily during regular business hours.

Filings will be processed in line with the Clerk's usual business practices. Instructions for use of the drop-box have been posted at the drop box location.

If a filing is time sensitive, please call Karin Wolfe at 615-695-4230 or the Clerk's Office at 615-695-4224, and we will assist you.

The *TNMB Clerk's Office Bulletin* is a publication of the Clerk of Court for the United States Bankruptcy Court for the Middle District of Tennessee. Any views or opinions expressed are those solely of the Clerk of Court and not of the Judges of the United States Bankruptcy Court for the Middle District of Tennessee or of the Administrative Office of the United States Courts.