

**Most Code provisions applicable in non-subchapter V chapter 11 cases also apply in subchapter V cases. This chart focuses on provisions that differentiate subchapter V cases from other chapter 11 cases. In some instances, there are exceptions to the general rules summarized below.
(Chart prepared by Robert H. Jacobvitz, U.S. Bankruptcy Judge, DNM, 11-15-24)**

Sub V Feature	Explanation
Purpose	To give small businesses a simpler, more expeditious, cost-effective vehicle to reorganize and rehabilitate their financial affairs so they may remain in business for the benefit of owners, creditors, employees, suppliers, customers, and others who rely on the businesses.
Debtor in possession	The subchapter V debtor is a debtor in possession unless removed for cause. Cause includes dishonesty, incompetence, or gross mismanagement. §§1185(a), 1186(b). In general, the subchapter V debtor in possession has the same rights and powers as a debtor in possession in chapter 11 cases not governed by subchapter V. See §§ 1107 (a) and 1184.
Eligibility	<p>A debtor elects subchapter V in the petition for relief. Generally, an objection to the election is due 30 days after the conclusion of the § 341(a) meeting of creditors. Bankr. Rule 1020(a) and (b). An objection can be waived. Eligibility is not jurisdictional.</p> <p>A debtor is eligible for subchapter V if: (1) it is “engaged in commercial or business activities;” (2) the aggregate of its noncontingent and liquidated secured and unsecured debts does not exceed \$3,024,725 (adjusted for inflation, § 104(a)(1)); and (3) not less than 50 % of the debts arose from the debtor’s commercial or business activities.</p> <p>See §§101(51D) and 1182(1). Under the sunset provisions of the Bankruptcy Threshold Adjustment and Technical Corrections Act, § 1182(1) now defines “debtor” as a “small business debtor.” Section 101(51D), which defines “small business debtor,” now sets forth the subchapter V eligibility requirements.</p> <p>Courts are split regarding whether the future amount due under an unexpired lease is a noncontingent and liquidated debt. Other issues that can arise include what constitutes being “engaged in” commercial or business activities” and when is a disputed debt liquidated and noncontingent.</p> <p>If an affiliate of a subchapter V debtor is also a chapter 11 debtor, the affiliate’s debts count toward the debt eligibility limit. § 1182(1). A spouse must separately satisfy the subchapter V eligibility requirements.</p>
Timeline	<p>The debtor must file a plan within 90 days of the order for relief, unless the court extends the time based on “circumstances for which the debtor should not justly be held accountable.” § 1189(b). No plan payments are required prior to confirmation.</p> <p>The court must conduct a status conference within 60 days after the order for relief to further the expeditious and economical resolution of the case, unless extended. § 1188(a) and (b).</p> <p>The debtor must file a report not less than 14 days before the initial status conference that “details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization.” § 1188(c).</p> <p>There is no outside statutory deadline to confirm a subchapter V plan.</p>

Proof of claim bar date	<p>The court fixes the claims bar date. Bankr. Rule 3003(c)(3). Many courts fix a bar date around 70 days after the order for relief so claims are due before the plan is filed.</p> <p>The court cannot shorten the time for a governmental unit to file a proof of claim, which is 180 days after the order for relief. § 502(b)(9).</p>
Subchapter V Trustees	<p>The United States Trustee appoints a subchapter V trustee (either a standing trustee or a case trustee) who has statutory duties. § 1183(a) and (b).</p> <p><i>Duties of the subchapter V trustee include:</i></p> <ul style="list-style-type: none"> • To facilitate the development of a consensual plan. • To object to claims if it would serve a purpose and oppose discharge if advisable. • To appear and be heard at (1) the §1188(a) status conference and (2) any hearing concerning (a) the value of property subject to a lien; (b) confirmation of the plan; (c) modification of the plan after confirmation; and (d) the sale of property of the estate. § 1183(b). <p>The court for cause can give the subchapter V trustee expanded duties in lieu of removing the debtor as a debtor in possession. The subchapter V trustee has no duty to investigate the financial affairs of the debtor unless the court expands the subchapter V trustee's duties. § 1183(b)(2).</p> <p>If the debtor is removed as debtor in possession, the subchapter V trustee a role similar to, but does not have all the powers and duties, of a traditional chapter 11 trustee. See § 1183(b)(5).</p> <p>A standing subchapter V trustee is paid a commission on disbursements. 28 U.S.C. § 586(e). A case subchapter V trustee is paid pursuant to § 330(a).</p>
Committees	Unless the court for cause orders otherwise, no committees are appointed. § 1181(b).
UST fees	No UST fees. 28 U.S.C. §1930(a)(6)(B).
Property of the estate	Includes after acquired property and post-petition earnings from personal services acquired or earned before the cases is closed, dismissed, or converted. § 1186(a).
Small business debtor requirements	The subchapter V debtor must comply with various requirements imposed on the debtor in possession in a small business debtor case, including filing the § 1116(1)(A) and (B) documents upon electing subchapter V and complying with § 1116(2)-(7) and with the reporting requirements imposed by § 308. See § 1187(a).
Competing plans	No competing plans. Only the subchapter V debtor may file a plan. § 1189(a).
Disclosure statement	Unless the court for cause orders otherwise, no disclosure statement is required but the plan must contain statutorily required disclosures and the court may require enhanced disclosures in the plan. §§ 1181(b) and 1190(1).
Plan modifications	<p>The debtor may modify a <i>consensual plan</i> pre-confirmation or post confirmation before substantial consummation. § 1193(a) and (b).</p> <p>The debtor may modify a <i>nonconsensual plan</i> before the term of the plan expires. § 1193(a) and (b).</p> <p>Unlike in chapters 12 and 13, only the debtor may modify a confirmed plan, subject to court approval. Compare § 1193 with §§ 1229(a) and 1329(a).</p>

<p>§ 507(a)(8) priority tax claims</p>	<p>There is no change under subchapter V in the allowance and treatment of § 507(a)(8) priority tax claims. The plan must provide that priority tax claims be paid in regular installments in cash over a period ending not later than five years after the date of the order for relief in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than § 1122(b) “convenience class” claims). § 1129(a)(9)(C).</p> <p>A § 507(a)(8) priority tax claim is an unclassified claim (see § 1123(a)(1)) and thus (i) the holder of the claim cannot vote the claim and (ii) acceptance by the claimant is not a confirmation requirement. See 1129(a)(8) and 10), which apply only to classes of claims.</p> <p>A penalty relating to a priority tax claim is given priority only if it is in compensation for actual pecuniary loss. § 507(a)(8)(G).</p>
<p>Consensual versus non-consensual plans</p>	<p>A plan confirmed under § 1191(a) is known as a “consensual plan.” A plan confirmed under § 1191(b) is known as a “nonconsensual plan.”</p> <p>A confirmed plan is a <i>consensual plan</i> if (1) each class of claims has accepted the plan or is not impaired under the plan AND (2) if a class of claims is impaired under the plan, at least one impaired class of claims has accepted the plan, determined without including any acceptance of the plan by any insider. See § 1191(a).</p> <p>Otherwise, a confirmed plan is a <i>nonconsensual plan</i>. See § 1191(b). Section 1191(b) allows confirmation of a plan even if no impaired classes of claims accept the plan.</p> <p>Courts are split regarding whether nonvoting classes are deemed to have accepted the plan.</p>
<p>Cramdown of nonconsensual plans</p>	<p>Confirmation of a nonconsensual plan requires cramdown.</p> <p>There is no change under subchapter V in cramdown requirements for secured claims.</p> <p>The absolute priority rule does not apply for cramdown on unsecured claims, so the owners of a small business may retain their ownership and stay in control without satisfying a “new value” requirement. See § 1191(b).</p> <p>If § 1129(a)(8) or (10) is not met, cramdown on unsecured claims “includes”:</p> <p>(1) The debtor must commit all projected disposable income to fund the plan for three years, or such longer time not to exceed five years as the court may fix OR the value of the property to be distributed under the plan is not less than the projected disposable income over the 3 to 5-year period (same as chapter 12); and</p> <p>2. Either (i) the debtor will be able to make all payments under the plan OR (ii) there is a reasonable likelihood that the debtor will make payments under the plan. If only the latter, the plan must provide “appropriate remedies” to protect creditors if the debtor does not make plan payments, which may include the liquidation of nonexempt assets. § 1191(b)-(d).</p> <p>Section 1129(a)(15), which applies to individual debtors, does not apply in subchapter V cases. § 1181(a). Section 1129(a)(15) has a disposable income requirement that differs from the disposable income requirement set forth in § 1192(c)(2) for confirmation of nonconsensual subchapter V plans.</p>

<p>Cramdown of nonconsensual plans (continued)</p>	<p>The Code provides that confirmation of a nonconsensual plan “includes” a disposable income requirement or that the value of the property to be distributed under the plan is not less than the projected disposable income during the plan commitment period of 3 years or such longer period as the court may fix. § 1191(c). “Includes” is nonexclusive. § 102(3).</p> <p>The term “includes” is not used for the disposable income requirements in chapters 12 or 13 or in individual debtor chapter 11 cases. See §§ 1129(A)(15), 1225b(1)(B), 1325(b)(1)(B).</p> <p>Issues that can arise include whether the debtor at least in some circumstances should be required to pay actual disposable income if it turns out to be higher than projected disposable income or whether a debtor can modify a confirmed plan if actual disposable income is less than projected disposable income.</p> <p>The Code does not specify the standard for the court to apply to decide whether to fix a plan commitment period longer than 3 years.</p>
<p>Payment of administrative expenses</p>	<p><i>Consensual plan:</i> Allowed administrative expenses must be paid in full in cash on the plan effective date unless the claimant agrees otherwise. § 1129(a)(9)(A).</p> <p><i>Nonconsensual plan:</i> The debtor may pay administrative expenses, including professional and trustee’s fees, over the life of the plan. § 1191(e).</p>
<p>Plan disbursing agent</p>	<p><i>Consensual plan:</i> The debtor makes disbursements required by the plan.</p> <p><i>Nonconsensual plan:</i> Unless the plan or order confirming the plan provides otherwise, the subchapter V trustee makes payments to creditors under the plan. § 1194(b).</p>
<p>Modification of residential mortgages</p>	<p>Section 1190(3) permits modification of a claim secured by the debtor’s principal residence if (1) that the new value received in connection with the granting of the security interest was “not used primarily to acquire the real property” and the new value was “used primarily in connection with the small business of the debtor.”</p>
<p>Vesting of assets</p>	<p><i>Consensual plan:</i> Unless the plan or order confirming the plan provide otherwise, property of the estate vests in the debtor on confirmation. § 1141(b).</p> <p><i>Nonconsensual plan:</i> Property of the estate vests in the debtor upon completion of the plan. See § 1186(a).</p> <p><u>Comment.</u> When property of the estate vests it no longer is property of the estate. Therefore, the automatic stay no longer applies with respect to the property.</p>
<p>Discharge</p>	<p><i>Consensual plan:</i> The debtor is granted a discharge upon confirmation of the plan. § 1141(d)(1)(A).</p> <p><i>Nonconsensual plan:</i> The debtor is granted a discharge upon completion of all payments due under the plan. § 1192.</p> <p>There is a split of authority whether, based on the language of § 1192(2), the § 523(a) exceptions to discharge apply to a subchapter V debtor that is not an individual.</p>
<p>Termination of Subchapter Trustee’s Service</p>	<p><i>Consensual plan:</i> The services of the subchapter V trustee are terminated upon substantial consummation of the plan except the UST may reappoint the subchapter V trustee for limited purposes. § 1183(c).</p> <p><i>Nonconsensual plan:</i> The subchapter V trustee continues to serve during the life the plan.</p>