



MEMORANDUM

To: Bankruptcy Practitioners in the Middle District of Georgia
From: Kyle George, Clerk of Court
Subject: Consolidated Appropriations Act – New Section 1328(i) March 17, 2021

1. The Consolidated Appropriations Act creates a new subsection (i) of section 1328 of the Bankruptcy Code, attached.
2. This new subsection permits a court to grant a regular (not hardship) Chapter 13 discharge, even if the debtor is not current on no more than three residential mortgage payments. In general terms, to qualify for a discharge under the new subsection, either (1) the debtor's defaults on mortgage payments (due on or after March 13, 2020) must have been caused by material financial hardship related to the pandemic, or (2) the plan must provide for curing of a default and the debtor must have entered into a forbearance agreement or loan modification agreement.
3. The debtor should request this type of discharge by motion, and the statute requires notice and a hearing. The court will consider the factors in section 1328(i) of the Bankruptcy Code when determining whether to grant a discharge under this new subsection.
4. This provision became effective upon enactment and will remain in effect through December 27, 2021.
5. A new event for Motion to Discharge Case Pursuant to 1328(i) has been created. Filers can find the event in the Court's CM/ECF system in the Motions category.

Consolidated Appropriations Act of 2021, Public Law No: 116-260 (12/27/2020)

Sec. 1001

(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).