

B-4008-3
Extension of Deadline for Filing Reaffirmation Agreements

(a) An order deferring the entry of discharge or extending the deadline for filing complaints objecting to discharge shall also operate as a similar extension of the deadline for filing reaffirmation agreements.

(b) An order extending the deadline for filing reaffirmation agreements, if entered prior to discharge, shall also operate to defer the entry of discharge until the day after the extended deadline.

Commentary

The proposed rule addresses the problem caused by the fact that two different deadlines for reaffirmation agreements are found at two different places. Section 524(c)(1) requires the agreement to be "made before the granting of the discharge," while Bankruptcy Rule 4008(a) requires the agreement to "be filed no later than 60 days after the first date set for the meeting of creditors," which is usually the deadline for objecting to discharge. Both deadlines can be extended but unless they are kept together problems can arise. The entry of discharge is often deferred to facilitate negotiating reaffirmation agreements, but unless the deadline for filing such agreements is also extended they will be untimely under Rule 4008(a), creating uncertainties as to their validity. If the deadline for filing reaffirmation agreements is extended, without a similar extension or deferral of the discharge, the agreement may not be made prior to the granting of discharge, making it untimely and unenforceable under § 524(a)(1). Frequently motions to extend these deadlines will address only one of them – usually the entry of discharge – not both of them, leading to problems which may or may not be solvable. The proposed rule will prevent that from happening by keeping the deadline for entry of discharge and the deadline for filing reaffirmation agreements together, insofar as it is possible to do so.

HISTORICAL AND REGULATORY NOTES

This new rule was adopted pursuant to Order Amending Local Bankruptcy Rules dated November 7, 2016.