

Summary of the Amendments to the Bankruptcy Code Contained in the CARES Act

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Client Advisory

April 1, 2020 by James Gadsden and Leonardo Trivigno

On March 27, 2020, President Trump signed the Coronavirus Act, Relief and Economic Security Act ("CARES Act"), a \$2 trillion disaster-relief package intended to mitigate the economic impact of the COVID-19 pandemic. The CARES Act also amends certain provisions of the United States Bankruptcy Code, which are briefly described below.

1. The CARES Act amends the Small Business Reorganization Act of 2019 (SBRA) to increase the eligibility threshold for businesses filing under new subchapter V of Chapter 11 of the Bankruptcy Code. Prior to the passage of the CARES Act, a business qualified to file a case under Subchapter V if its debts totaled \$2,725,625 or less. The CARES Act raises the eligibility threshold to \$7.5 million. As a result of this amendment, many more businesses will be able to utilize the streamlined procedures of Subchapter V.
2. The CARES Act amends the definition of current monthly income in the Bankruptcy Code to exclude coronavirus-related payments from the federal government. As a result of this amendment, receipt of coronavirus-related payments will not affect a debtor's ability to file a petition for bankruptcy relief under Chapter 7, nor will it be used in the calculation to determine whether a Chapter 13 debtor will be required to make plan payments for a period longer than three years.[1]
3. The CARES Act provides that the calculation of disposable income for purposes of confirming a Chapter 13 plan excludes coronavirus-related payments from the federal government. As a result of this amendment, coronavirus-related payments are excluded from amounts that must be paid to creditors under the Chapter 13 debtor's plan of reorganization.
4. The CARES Act expressly permits debtors currently in Chapter 13 whose plans have been confirmed to seek payment plan modifications if they are experiencing a material financial hardship due to the coronavirus pandemic, including extending plan payments for up to seven years after the time the first payment under the original confirmed plan was due. The changes described in paragraphs 2-4 apply to pending bankruptcy cases. Absent further congressional action, all of the amendments described above will sunset on March 27, 2021.

Conclusion

As the legal landscape continues to rapidly evolve in the wake of the COVID-19 pandemic, businesses are encouraged to consult legal counsel to assist in assessing the applicability of the various statutes and regulations. The Carter Ledyard team is monitoring developments in this area and will continue to issue updates as the situation evolves.

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[1] The current monthly income test only applies to individuals, not businesses, who have filed a petition for bankruptcy relief under Chapter 7. See 11 U.S.C. 707(b). Only individuals may file a petition for bankruptcy relief under Chapter 13. See 11 U.S.C. 109(e).

*Carter Ledyard has created a COVID-19 Response Group to monitor the evolving legal landscape, address client questions and ensure client compliance with the laws and regulations issued in response to the COVID-19 pandemic. The Carter Ledyard COVID-19 Response Group consists of **Jeffery S. Boxer** (212-238-8626, boxer@clm.com), **Judith A. Lockhart** (212-238-8603, lockhart@clm.com), **Bryan J. Hall** (212-238-8894, hall@clm.com), **Alexander G. Malyshev** (212-238-8618, malyshev@clm.com), **Melissa J. Erwin** (212-238-8622, erwin@clm.com), and **Leonardo Trivigno** (212-238-8724, trivigno@clm.com). Clients should contact the attorneys listed above or their regular CLM attorney for any questions concerning legal obligations arising from the COVID-19 pandemic.*

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