
CARES Act Provides Assistance For Small Businesses And Consumer Debtors in Bankruptcy

Section 1113 of the Coronavirus Aid, Relief and Economic Security Act (CARES Act) expands the eligibility of small businesses to utilize a recently-created subchapter under Chapter 11 of the federal Bankruptcy Code (commonly referred to as “Subchapter V”) that is intended to simplify the reorganization process and make it faster, more affordable and less litigious for many business owners. Specifically, the CARES Act significantly raises the maximum allowable debt level for small businesses to take advantage of the Small Business Reorganization Act (the “SBRA”), from the current limit of approximately \$2.7 million to \$7.5 million. The \$2.7 million debt limit of the SBRA was widely criticized for being too low to provide meaningful relief to “small businesses” in the modern U.S. economy. This change under the CARES Act, urged by a nonpartisan group of attorneys, law professors and bankruptcy judges, dramatically expands the availability of the SBRA and provides a useful tool as small businesses weather current and future economic volatility created by the coronavirus.

The SBRA, which went into effect on February 19, 2020, was enacted primarily because the substantial costs associated with a traditional Chapter 11 reorganization proceeding were prohibitive for many smaller struggling companies, leading to preventable business closures and liquidations. Some of the major changes implemented by the SBRA include:

- Expediting the reorganization timeline, including requiring an initial status conference with the Bankruptcy Court 60 days after a bankruptcy petition is filed, with an outline of the debtor’s plan of reorganization (the “Plan”) due 14 days before the initial conference and a requirement that the debtor file a Plan within 90 days after the petition date;
- Removing the burdensome and expensive requirement of filing a disclosure statement with the Plan;
- Exempting small business debtors from paying quarterly U.S. Trustee fees;
- Eliminating the requirement for an unsecured creditors’ committee; and
- Allowing business owners a greater ability to retain control of the business post-bankruptcy, even though all creditors may not be paid in full, if the Plan is “fair and equitable” and “does not discriminate unfairly”; unless the business is being sold, the Plan may provide for unsecured creditors to receive only a pro rata share of the disposable income of the business over a three- or five-year period.

With the increase in the maximum debt level contained in the CARES Act, many more small businesses may qualify for the more favorable treatment allowed under the SBRA through Subchapter V.

The CARES Act provides relief for consumer debtors, as well. First, it excludes payments related to coronavirus relief from being treated as “income” in the means test calculation that determines a debtor’s eligibility to file a Chapter 7 bankruptcy case. The CARES Act also clarifies that such relief payments will not, for purposes of confirming a Chapter 13 bankruptcy plan, be considered “disposable income” – generally, the monthly income remaining after the payment of certain allowable living or business expenses of the debtor that must be contributed to the payment of unsecured creditors under a plan. Additionally, Chapter 13 debtors who have already confirmed a payment plan will be able to modify their plans if the coronavirus pandemic causes them material financial hardship, including by extending their plan payments to up to seven years after the initial plan payment was due, rather than the existing three- or five-year payment periods.

The bankruptcy relief provisions under the CARES Act will expire one year after enactment. The SBRA will survive; however, eligibility will again be subject to the lower debt ceiling.

Please reach out to a member of Maynard Cooper's [Bankruptcy & Restructuring Practice](#) if you have any questions about the content provided here or other related COVID-19 and business concerns.

Maynard Cooper’s [COVID-19 Coronavirus Task Force](#) is closely monitoring all updates to legislation related to the COVID-19 pandemic. We are dedicated to providing client-focused services, and it is the goal of the Task Force to continue this level of service to each and every client as they face challenges about planning for and responding to the threats posed by the virus. If you have any questions, please reach out to your relationship partner or any of the attorneys serving on the [Task Force](#).

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