



LEGAL UPDATES

COVID-19 Update: The CARES Act Expands Access to Bankruptcy Relief

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On March 27, 2020, President Donald J. Trump signed a \$2 trillion stimulus package in response to the unprecedented chilling impact of COVID-19 on the U.S. economy. With the goal of providing widespread economic relief to an economy which unexpectedly has ground to a halt, the Coronavirus, Aid, Relief and Economic Security Act ("CARES Act") temporarily provides greater access to bankruptcy relief for small businesses.

The CARES Act expands the eligibility of small businesses to elect to proceed under Subchapter V of the new Small Business Reorganization Act of 2019 ("SBRA") by raising the debt limit for eligibility from \$2,725,625 to \$7,500,000 for one year. Enacted in April 2019, the SBRA took effect on February 19, 2020 and provides a streamlined process for small businesses to reorganize and rehabilitate their financial affairs under chapter 11. Creating a new "Subchapter V" under chapter 11, the SBRA differs significantly from chapter 11 in several ways. For example, where the small business debtor elects to proceed under Subchapter V: (1) only the debtor may file a plan; (2) a committee of unsecured creditors is not appointed unless the court orders otherwise; and (3) the court may confirm a plan even if all classes reject it. In addition, several bankruptcy courts in California and across the country have concluded that small business debtors in pending cases may amend their chapter 11 petitions to proceed under Subchapter V of the SBRA, subject to challenges to their eligibility.

The CARES Act also expands protections for individuals in bankruptcy. For a one year period, the definition of "income" in the Bankruptcy Code shall exclude coronavirus-related payments from the federal government as part of the stimulus package from being treated as "income" for purposes of filing for bankruptcy under chapter 7 and 13. In addition, the calculation of "disposable income" under chapter 13 shall expressly exclude corona-related payments. Finally, if they are experiencing a material financial hardship due to the COVID-19 pandemic, chapter 13 debtors with confirmed payment plans may seek to modify their plans to extend their payment term for up to seven years after their initial plan payment was due.

The CARES Act's amendments to U.S. bankruptcy laws end after one year. We anticipate that many small businesses and individuals may take advantage of the

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CARES Act's expanded bankruptcy protections before they expire. The attorneys in Hopkins & Carley's Financial Institutions and Creditors Rights group have extensive experience in advocating for creditors in bankruptcy, including in cases proceeding under the new SBRA. We stand ready to help our creditor clients enforce their rights and remedies in bankruptcy during these challenging and fluid times.