

The CARES Act and Bankruptcy

On March 27, 2020, President Donald Trump signed the “Coronavirus Aid, Relief and Economic Security Act” (CARES Act) into law. The CARES Act is a \$2 trillion coronavirus economic stimulus bill with far reaching provisions looking to ease the economic stress placed on individuals, small businesses, and large corporations during the COVID-19 public health crisis. Included among these provisions are some that impact the bankruptcy system.

This information is meant as an informative resource for members of the bankruptcy bar and debtors in the Eastern District of Missouri. As with all legislation, there may be multiple interpretations of a specific section, provision, clause, etc. No information contained within this document shall be construed as the United States Bankruptcy Court for the Eastern District of Missouri providing legal advice or advisory opinions.

Subchapter V of Chapter 11 Eligibility

- The CARES Act amends the Small Business Reorganization Act of 2019 (SBRA) to increase the eligibility threshold for businesses filing under Subchapter V of Chapter 11 of the U.S. Bankruptcy Code from \$2,725,625 of debt to \$7,500,000.
- All other eligibility requirements remain the same. After one year the eligibility threshold will return to \$2,725,625.
- The Voluntary Petition for Individuals Filing for Bankruptcy (Official Form 101) and the Voluntary Petition for Non-Individuals Filing for Bankruptcy (Official Form 201) have each been amended to reflect the change in debtor eligibility.

Exclusion of Stimulus Payments from “Current Monthly Income” and “Disposable Income”

- The CARES Act modifies the definition of “current monthly income” for Chapter 7 and Chapter 13 debtors found in 11 U.S.C. § 101(10A)(B)(ii) to exclude payments made under federal law relating to the national emergency declared by the President in response to COVID-19.
- The modification to “current monthly income” will exclude such stimulus payments from inclusion in the 707(b) Means Test for determining the eligibility of a debtor to proceed under Chapter 7.
- The modification to “current monthly income” will also exclude such stimulus payments from inclusion in the “disposable income” analysis for Chapter 13 debtors seeking to determine the amount of funds required to be committed to their Chapter 13 plan. Thus, the definition of “disposable income” found in 11 U.S.C. § 1325(b)(2) has been amended to reflect these changes.
- These provisions apply to cases filed before or after enactment. Specifically, for Chapter 13 debtors the amended definition of “disposable income” is applicable to current chapter 13 debtors without a confirmed plan as of the date of enactment of the CARES Act, as well as future chapter 13 debtors.
- Stimulus payments may still be property of the estate but might be exempt under state or federal law.

Chapter 13 Plan Modification

- The CARES Act permits Chapter 13 debtors with plans confirmed as of the date of enactment of the CARES Act to seek modifications of their plan due to hardships experienced as a result of COVID-19.
- Subsection (d)(1) has been added to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan, after notice and a hearing, if they are experiencing a “material financial hardship” due, “directly or indirectly,” to the COVID-19 pandemic.
- Importantly, a plan may be modified to extend the plan period up to seven years after the first payment under the original confirmed plan became due. The Court may approve such a modification upon request of a debtor.
- Chapter 13 debtors with plans confirmed prior to the enactment date will be able to seek to modify their plans consistent with the CARES Act for one year from March 27, 2020.

Student Loan Treatment

- The CARES Act provides temporary relief for federal student loan borrowers. The Secretary of Education shall defer student loan payments, principal, and interest for 6 months, through September 30, 2020, without penalty to the borrower.
- This deferment only applies to loans held by the Department of Education.
- Deferred payments will be treated as paid for purposes of involvement in any loan forgiveness program or loan rehabilitation program and for purposes of credit reporting.