

# **Possible Expiration of CARES Act Bankruptcy Provisions**

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Included in the CARES Act are many provisions impacting the bankruptcy system. A year later, on March 27, 2021, the President signed into law an amended version of the Act which extended provisions in Section 1113 (Bankruptcy) of the CARES Act for one year. Absent legislative action, these provisions will expire on March 27, 2022. The expiring provisions will affect debtor eligibility in Chapter 11 Subchapter V cases, calculation of “current monthly income” and “disposable income,” Chapter 13 practice, and Official Forms. Legislation pending to address this lapse and can be viewed [HERE](#). Specific changes are as follows.

## **Chapter 11 Subchapter V Eligibility**

- The CARES Act amended 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.
- On March 28, 2022, the eligibility threshold will return to \$2,725,625.
- Official Form 101 will revert to the Pre-CARES Act version on March 28, 2022.
- Official Form 201 will be updated with the Pre-CARES Act language and adjusted dollar amounts on April 1, 2022, as detailed under the “Official Forms” heading below.

## **“Current Monthly Income” and “Disposable Income”**

- The CARES Act modified 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” excluded 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” also excluded 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) was amended for the life of the CARES Act.
- These provisions altering the methods for determining “current monthly income” and “disposable income” will expire on March 27, 2022.

## **Chapter 13 Practice**

- The CARES Act added Subsection (d) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan, after notice and a hearing, if they were experiencing a “material financial hardship” due, “directly or indirectly,” to the COVID-19 pandemic. Debtors were given the ability to request a temporary suspension of plan payments and the life of a Chapter 13 plan was temporarily allowed to extend up to seven years after the first payment under the original confirmed plan became due.
- 11 U.S.C. § 1329(d) will expire on March 27, 2022.
- Local Form 33 (Request to Suspend Payments and Increase Duration of a Plan Confirmed Prior to March 27, 2021) will be removed from the Court’s library of Local Forms.

## **Official Forms**

- The expiring provisions of the CARES Act affect Official Forms 101, 122A-1, 122B-1, and 122C-1. These forms will revert to the pre-CARES Act versions on March 28, 2022.
- Official Form 201 is affected by the expiring CARES Act provisions and the triennial adjusted dollar amounts that become effective on April 1, 2022. To minimize confusion resulting from two forms changes in a short period, Official Form 201 will be updated on April 1, 2022, with the adjusted dollar amounts and the pre-CARES Act language if the CARES Act provisions are not extended.