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Exploring the Expansion of the Bankruptcy Code under the CARES Act

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The Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, provides widespread economic relief for individuals and businesses adversely affected by the coronavirus outbreak and includes several key modifications and amendments to the U.S. Bankruptcy Code. We explore how these revisions will immediately impact the bankruptcy landscape for both individual debtors and small businesses below.

Revisions to Chapter 7 and 13 Filings

The CARES Act provides short-term relief to individual debtors filing petitions under Chapters 7 and 13. Notably, the CARES Act amends the definition of “Current Monthly Income” to exclude coronavirus-related federal stimulus payments from being treated as disposable income when determining whether a debtor is eligible to file for bankruptcy under either chapter. Under the CARES Act, Chapter 13 debtors with confirmed plans can amend and extend their plans for up to seven years from when the first payment was due under the confirmed plan, following presentation of a material financial hardship suffered as a result of the COVID-19 pandemic. Any amendment to a confirmed plan requires notice to all creditors, a hearing, and court approval. The amendments apply to pending Chapter 7 and Chapter 13 filings and will apply for one year from the effective date of the CARES Act.

It remains unclear what the courts will consider a “material financial hardship” when granting modifications of confirmed plans, but we expect courts to allow most debtors to meet the standard due to the widespread effects of the pandemic.

Revisions to Chapter 11 Filings

One of the more important amendments provides enhanced protections for small businesses. The CARES Act amended the Small Business Reorganization Act of 2019 (SBRA) to increase the debt threshold for small businesses filing under newly added Subchapter V of Chapter 11 of the U.S. Bankruptcy Code from $2.7 million to $7.5 million in aggregate debt. This amendment expands bankruptcy protection for small businesses suffering economic distress during the pandemic.

Nationwide, many small businesses are likely to take advantage of the streamlined reorganization provisions of the SBRA as amended by the CARES Act. However, this increased debt threshold applies only to cases filed *after* the CARES Act became effective and will expire on March 27, 2021, after which the debt threshold will decrease back to $2.7 million.

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