CARES Act Amendments to the U.S. Bankruptcy Code

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On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief and Economic Security ("CARES") Act, the largest piece of legislation ever enacted by Congress. The CARES Act aims to provide financial assistance to individuals and businesses during the COVID-19 pandemic. Along with the other benefits provided by the CARES Act, Section 1113 of the CARES Act amends certain provisions of the Bankruptcy Code.

First, the CARES Act expands the definition of "debtor" for purposes of Subchapter V of chapter 11 of the Bankruptcy Code. The CARES Act increases the debt limit for debtors filing under Subchapter V such that companies holding noncontingent liquidated secured and unsecured debts of $7,500,000 or less (up from $2,725,625) may qualify under Subchapter V as a "small business debtor."

This expanded definition will allow a greater number of businesses to benefit from Subchapter V and reorganize more easily, more quickly, and at a lower cost than through a traditional chapter 11 case. Subchapter V, first added to the Bankruptcy Code by the Small Business Reorganization Act of 2019, offers a myriad of benefits to small businesses, including:

- Mandating that only the debtor may file a chapter 11 plan (§ 1189(a));
- Allowing business owners to retain equity in the reorganized debtor without adhering to the absolute priority rule (§§ 1181(a), 1191);
- Exempting the debtor from paying U.S. Trustee fees (28 U.S.C. 1930(a)(6)(A)); and
- Excusing the formation of an official unsecured creditors committee unless the court finds cause, thereby decreasing administrative costs (§ 1102(a)(3)).

Second, the new legislation excludes CARES Act payments from the definition of "current monthly income" in § 101(10A)(B)(ii) and "disposable income" in § 1325(b)(2). This ensures that such payments do not affect the means test and can be used for the debtor's full benefit, instead of simply increasing the funds that must be contributed to a chapter 13 plan.

Finally, Section 1113 of the CARES Act provides that chapter 13 plans confirmed prior to the enactment of the CARES Act may be modified if the debtor is currently experiencing or has experienced "a material financial hardship" due, either directly or indirectly, to COVID-19. Notably, this provision allows chapter 13 debtors to extend the length of a plan from the current statutory maximum of three or five years up to a total of seven years from the first plan payment.

On March 27, 2021 (one year after enactment of the CARES Act), all of the CARES Act amendments are scheduled to sunset; however, a number of newly enacted laws with sunset provisions never actually expire. It is therefore possible that after seeing a positive impact as a result of the CARES Act on the bankruptcy process (especially the raise to the debt ceiling for small business debtors), one or more of the CARES Act amendments could be extended.

As a final note, although the CARES Act provides several options for government loans to businesses, there is one important exception: mid-sized businesses with between 500 and 10,000 employees that are *currently in bankruptcy* are ineligible to receive a direct loan. As this is written, this issue is being addressed in various courts.