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# Small Business Reorganization Act Provides New Options to Businesses in Bankruptcy During COVID-19 Pandemic

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David A. Lerner
(248) 901-4010
dlerner@plunkettcooney.com

On March 27, the "Coronavirus Aid, Relief and Economic Security Act" (CARES Act) was signed into law. The Act provides a $2 trillion economic stimulus for companies and individuals affected by the coronavirus.

Among the provisions are direct checks to individuals, payroll protection programs for small companies and sole proprietorships, and emergency loans and funding to assist the airlines and other industries. This is likely not the last piece of legislation to address the effects of the coronavirus.

Tucked into the CARES Act are provisions that amend the Bankruptcy Code to expand relief to individuals and companies.

Significantly, the CARES Act expands the Small Business Reorganization Act (SBRA), which became effective Feb. 19, 2020. The SBRA is a new subchapter of Chapter 11 that is designed to streamline Chapter 11 for individuals and companies engaged in business with less than $2,725,625 of debt. Notably, under the SBRA, plans:

- May only be filed by the debtor
- Are due 90 days after the petition is filed
- There are no disclosure statements
- An impaired class does not need to accept the plan
- Plans last from three to five years
- The owner may retain its interest in the company
- There are no U.S. Trustee fees

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The majority of current Chapter 11 cases would qualify to be filed under the SBRA. There have been a number of bankruptcy judges who have allowed pending Chapter 11 cases to opt to proceed under the SBRA. A bankruptcy judge in the 6th Circuit permitted an individual who was in a Chapter 11 to opt to proceed under the SBRA, given the more debtor-friendly provisions in the SBRA.

The CARES Act amends the SBRA debt limit by increasing it from $2,725,625 to $7,500,000. The eligibility threshold will return to $2,725,625 after one year. This will greatly increase the eligibility for debtors to file for relief under the SBRA.

Given the state of the economy, it is widely believed that more bankruptcies will be filed, and the SBRA is an attractive option for debtors because of its debtor-friendly provisions. While the 2005 amendments to the Bankruptcy Code were geared toward creditor protections, the SBRA is geared toward debtor relief. The SBRA could not have been enacted at a better time to help debtors, and the CARES Act greatly expands the availability making the vast majority of Chapter 11 filings eligible to file under the SBRA.

The CARES Act also amends the definition of “income” in the Bankruptcy Code for Chapters 7 and 13 to exclude coronavirus-related payments from the federal government from being treated as “income” for purposes of filing bankruptcy. In addition, the calculation of disposable income for purposes of confirming a Chapter 13 plan shall not include coronavirus-related payments. These provisions help individual debtors in that the stimulus checks will not count against the debtors in determining eligibility and plan funding.

Further, the Act permits debtors currently in Chapter 13 to extend their plan payments up to seven years (from the current five year limit). Coupled with the moratorium on mortgage payments being offered by lenders of up to a year, Chapter 13 plans may well be modified to account for the mortgage moratorium by extending the plans to account for the period when mortgage payments are not being made. In addition, given the moratorium on foreclosures, lenders may opt not to file motions to lift stay in Chapter 7 cases with the inability to proceed with a foreclosure in state or federal court.

The bankruptcy provisions of the CARES Act, which are listed above, sunset within one year. It remains to be seen if the provisions will be extended, especially the increase in dollar limit for debtors in Chapter 11 under the SBRA. Other provisions of the Bankruptcy Code, namely Chapter 12, had sunset provisions that were extended and made permanent provisions of the code.

One of the significant parts of the $2-trillion stimulus package is the $350 Billion Payroll Protection Program (PPP) that provides small businesses up to $10 million in loans (that are forgivable under certain conditions) to pay payroll, employee benefits, utilities, rent and mortgage payments. The PPP loan applications were made available starting on April 3.


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The application form is short (two pages) and requires little documentation. However, one of the provisions in the loan application is an apparent exclusion for borrowers “involved in any bankruptcy” from qualifying for these loans. Unfortunately, the most vulnerable of businesses, those already in bankruptcy, appear to be excluded from the very relief the CARES Act was designed to help.

At this early juncture in the implementation of the PPP, there is confusion whether the PPP really excludes borrowers “involved in any bankruptcy,” or whether the application form is an overreach. Time will tell how banks and other lenders participating in the PPP handle applications of borrowers that are “involved in any bankruptcy.” It is assumed that a borrower that merely is a creditor in a bankruptcy is not ineligible for the PPP loan.

The $2-trillion stimulus is designed to help individuals and companies weather the coronavirus storm that has wrecked the economy and placed all of our lives in a strange new normal of “social distancing” and “sheltering in place“ to “flatten the curve” and search in vain for toilet paper and hand sanitizer.

The CARES Act provides much needed relief for individuals and companies and contains important amendments to the Bankruptcy Code, greatly expanding the eligibility of the new SBRA and protecting stimulus checks, as well as modifying Chapter 13 plans to extend plans up to seven years.

With the anticipated increase in bankruptcy filings, the CARES Act bankruptcy provisions seek to account for the anticipated increase in filings and plan modifications. Given the increased eligibility for SBRA, more pending Chapter 11 cases may opt to proceed under the SBRA with its more debtor-friendly provisions.


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