



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, in an effort to provide support to both individuals and businesses during this unprecedented time in our country's history. Along with expanding unemployment benefits, providing for special government loans, and granting tax credits for certain taxpayers, the CARES Act provides specific assistance to consumer and "small business" debtors who may benefit from these funding provisions.

EXPANDED ELIGIBILITY UNDER SUBCHAPTER V

Section 1113 of the CARES Act expands the definition of "small business debtor" under 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 easier, 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:

- Preventing non-debtors from filing a chapter 11 plan;
- Allowing small business owners the opportunity to retain their ownership interests in the reorganized company so long as the plan of reorganization does not discriminate unfairly and is "fair and equitable";
- Exempting the debtor from paying U.S. Trustee fees; and
- Excusing the formation of an official unsecured creditors committee unless the court finds cause, thereby decreasing administrative costs.

On March 27, 2021 (one year after enactment of the CARES Act), the expanded definition provision will sunset, and the debt limitation will return to \$2,725,625 as originally enacted.

EXCLUSION OF CARES ACT PAYMENTS FROM THE DEFINITION OF "INCOME"

The new legislation also excludes payments made under the CARES Act from the definition of "current monthly income" in § 101(10A)(B)(ii) and "disposable income" for chapter 13 plan purposes in § 1325(b)(2). This ensures that such payments do not affect the means test for qualification under chapter 7 of the Bankruptcy Code and can be used for the debtor's full benefit, instead of simply increasing the pot of money available to pay the debtor's creditors. Further, it provides that debtors who confirmed chapter 13 plans prior to the enactment of the CARES Act may modify such plans for the next year — even to extend the length of the plan over a total of seven years from their first plan payment, rather than the current Bankruptcy Code maximum of five years — if the debtor is currently experiencing or has experienced "a material financial hardship" due, either directly or indirectly, to COVID-19. Like the small business provisions, these consumer-focused provisions also sunset in one year.

(continued on next page)



GRAY REED®
ATTORNEYS & COUNSELORS

THE IMPACT OF THE CARES ACT ON THE U.S. BANKRUPTCY CODE

by Amber Carson
April 7, 2020

Although all of the CARES Act amendments include sunset provisions, 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 cap for small business debtors), one or more of the CARES Act amendments will be extended.

As a final note, current debtors should keep in mind that, 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.

If your business has been disrupted by COVID-19 and you are considering bankruptcy or have questions about how the CARES Act may affect your business, please [contact us](#).

ABOUT THE AUTHOR



Amber Carson, Associate - acarson@grayreed.com

As an advisor for debtors, creditors, official committees, trustees and other parties in interest, Amber represents clients in all facets of bankruptcy, creditors' rights and federal bankruptcy-related litigation matters. She has guided clients in many different industries, including healthcare, retail, construction, oil and gas, restaurant and manufacturing to successful outcomes in many courts in Texas and across the country.