

The CARES Act: Expansion of Bankruptcy Protections for Small Businesses

The newly enacted Coronavirus Aid, Relief and Economic Security Act (CARES Act) contains some significant bankruptcy-related provisions, including those which amend the Small Business Reorganization Act of 2019 (SBRA) to make bankruptcy relief available to an increased number of small businesses.

For those who are contemplating the need to develop a bankruptcy strategy - and for creditors evaluating a debtor's bankruptcy plan - it is important to understand these changes in the law.

SBRA, which became effective on February 19, 2020, was intended to streamline the reorganization process for small businesses as defined in the Act by eliminating several of the hurdles to reorganization and discharge of debt, and by reducing the cost of the process. SBRA also contains certain tradeoffs for facilitating the process in the form of more stringent requirements for obtaining a discharge (including post-petition earnings and property as "property of the estate") and limiting those businesses which are eligible to be debtors under SBRA.

Section 1113 of the CARES Act expands the debt limitations which previously existed to permit more businesses to access the beneficial aspects of SBRA, which is a voluntary reorganization chapter that can be filed only by a qualifying debtor. Additional changes were made to exclude from the definition of "income" in Chapter 7 and "disposable income" in Chapter 13 payments which may be received from the federal government as coronavirus-related payments.

The following is a summary of the new COVID-19-related provisions of SBRA as amended by the CARES Act:

In summary, the recent introduction of SBRA into law, in tandem with the bankruptcy-related provisions of the CARES Act, may provide small businesses with a more efficient, expansive and less expensive means of addressing the dramatic economic impacts of the COVID-19 pandemic.

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