

Small Business Bankruptcy Relief

(2/26/2021)

In February 2020, the Small Business Relief Act created a new, streamlined, more cost-effective “SubChapter V” Chapter 11 case available for businesses and individuals with business debts totaling no more than \$2,700,000. In late March 2020, in response to the COVID crisis, as part of the Cares Act, Congress increased that debt limit, making SubChapter V bankruptcy relief available to businesses and individuals with debts totaling no more than \$7,500,000. However, those debt limits are set to expire on March 27, 2021, dropping SubChapter V eligibility back to its original \$2,700,000 debt limit.

On February 25, 2021, Senators Durbin Grassley introduced the COVID-19 Bankruptcy Relief Extension Act, bipartisan legislation that, if passed, will extend for another year the increased \$7,500,000 SubChapter V debt limit and also extend other relief, including:

- Amend the definition of income for Chapters 7 and 13 to exclude federal COVID-related relief payments from being treated as “income” for purposes of filing bankruptcy.
- Clarify that the calculation of disposable income for purposes of confirming a Chapter 13 plan does not include COVID-related relief payments.
- Permit individuals and families in Chapter 13 to seek payment plan modifications for plans confirmed before the date of enactment of this extender bill if they are experiencing a material financial hardship due to the coronavirus pandemic.

In addition, the bill would extend, until March 27, 2022, several additional COVID bankruptcy relief provisions that were included in the December omnibus/COVID relief package and that are set to expire in December 2021. These provisions do the following:

- Provide that federal COVID relief payments to individuals are exempt from being treated as property of the estate in bankruptcy proceedings.
- Ensure that families in Chapter 13 bankruptcy plans who have made all plan payments but have missed three or fewer mortgage payments because of the pandemic are not denied a discharge for their other debts (though the mortgage payments would continue to be owed).
- Ensure that families that are or were in bankruptcy proceedings are not ineligible from CARES Act mortgage forbearance and eviction moratorium provisions.

- Set forth a process for creditors to file a proof of claim for payments deferred during forbearance periods granted under the CARES Act and permit modification of a Chapter 13 plan to account for such proofs of claim.
- Prevent the termination of utility services in bankruptcy by ensuring that individuals and families will not be required to furnish a security deposit to maintain utility services during bankruptcy.
- Exempt customs brokers who collect and pay duties to Customs and Border Patrol on behalf of importers from the clawback provisions of the Bankruptcy Code when an importer files bankruptcy.