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The CARES ACT and Its Impact on Bankruptcy

Speakers

Hon. Marvin Isgur
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The CARES Act and Its Impact on Bankruptcy in the United States

In response to the financial turmoil resulting from the COVID-19 pandemic, the federal government quickly passed the Coronavirus Aid, Relief, and Economic Security Act or CARES ACT.¹ Among other things, the ACT provided temporary legislation to help Americans struggling with financial hardship to help keep their heads above water.

Among the temporary provisions were several changes to the U.S. Bankruptcy Code. These were intended to increase accessibility to debt restructuring assistance and participation in federal bankruptcy relief programs for businesses and individuals struggling due to the pandemic. It also provided mechanisms to salvage and increase the feasibility of chapter 13 plans.

The CARES Act

On March 25, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act. The act was created in direct response to the financial hardship and economic downturn caused by the COVID-19 pandemic.²

The act's goal was to offer various means of support to American workers, families, industries, and small businesses facing direct or indirect financial hardship caused by the coronavirus pandemic. The Act was signed into law on March 27, 2020. The act contained a sunset provision where most provisions were initially slated to expire after one year.³

The act established several supports for Americans struggling financially in relation to the pandemic, including loans, unemployment insurance, tax changes and credits, and the well-known \$1,200 stimulus payments to most American citizens ("Economic Impact Payments"). At \$2 trillion, the CARES Act is the largest rescue package in U.S. history.⁴

In addition to direct financial support for Americans affected by COVID-19, the CARES Act made several amendments to the U.S. Bankruptcy Code. The goal of which was to

¹ H.R.748 - 116th Congress (2019-2020): CARES ACT.” *Congress.gov*, 27 Mar. 2020, www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf

² [About the CARES Act and the Consolidated Appropriations Act | U.S. Department of the Treasury](#)

³ H.R.748 §1113(a)(5)

⁴ Davis, Susan, et al. "Senate Passes \$2 TRILLION Coronavirus Relief Package." *NPR*, NPR, 25 Mar. 2020, www.npr.org/2020/03/25/818881845/senate-reaches-historic-deal-on-2t-coronavirus-economic-rescue-package.

allow more debtors affected by the pandemic to file for bankruptcy and account for increased debt due to the pandemic. The amendments predominantly affected Chapter 7, 11, and 13 bankruptcy cases.

Most of the key provisions relating to enhanced bankruptcy relief were set to expire on March 27, 2021. However, the 117th Congress passed the COVID-19 Bankruptcy Relief Extension Act of 2021 (hereinafter "Extension Act").⁵ This essentially did two major things for debtors in bankruptcy. Not only did the Extension ACT extend the additional bankruptcy relief options for an additional year, but it also modified who is eligible for the enhanced "COVID" plan modifications. One key provision of the Extension Act is that it broadened the available relief to plans that were confirmed as of the Extension Act. As a bankruptcy practitioner, I have no doubt that this was welcomed news to many debtors that were in active bankruptcy plans confirmed after March 27, 2020 but before the extension act. It allowed many additional Debtors that were financially affected by COVID-19 with enhanced bankruptcy protections and a life-line to keep their cases from failing.

New Definitions for "Current Monthly Income" and "Disposable Income"

The CARES Act temporarily modified the Bankruptcy Code's definition of "current monthly income." This granted debtors an added layer of protection. The amended definition, excludes coronavirus stimulus payments. Therefore, the enhanced financial benefits could not affect a debtor's eligibility to file for bankruptcy. Now under the revised and temporary definition of "current monthly income" you will find the following additional exclusion:

(V) Payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19).

11 U.S.C.A. § 101 (West)

Therefore, under the CARES Act, any COVID-19 related payments from the federal government cannot be considered income. As such, they are not be counted in a "means test" to determine a consumer debtor's eligibility to file for Chapter 7 bankruptcy or to determine a debtor's repayment period (or minimum payment requirement) in a Chapter 13 case. In addition, as a result of this provision, Chapter 7 debtors could not be forced into a Chapter 11 or 13 case just because they received COVID-related financial assistance.⁶ See H.R. 748 §1113 (b)

⁵<https://www.congress.gov/117/plaws/publ5/PLAW-117publ5.pdf>

⁶ H.R.748 - 116th Congress (2019-2020): CARES ACT.” *Congress.gov*, 27 Mar. 2020, www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf

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