

March 30, 2021

Updates to Bankruptcy Relief Provisions of the CARES Act

President Biden signed the *COVID-19 Bankruptcy Relief Extension Act* on Saturday, March 27, 2021 to extend critical bankruptcy relief provisions under the *CARES Act* that were set to expire on the same day. The bipartisan bill was introduced in late February 2021 and was passed by Congress just one day before the President signed it into law.

The bill extends a key provision that increased the small business debt limit and eligibility from \$2.7M to \$7.5M under the *CARES Act*—allowing more small businesses to file Chapter 11 bankruptcies under Subchapter V of the Code. Subchapter V cases offer businesses a more efficient and less costly route to reorganization.

The extension of the expanded debt limit is widely applauded by practitioners and vital to many small businesses in need of the protections offered under the Bankruptcy Code. The \$7.5M small business debt limit is now set to expire on March 27, 2022 at which time it will revert back to approximately \$2.7M. There is no guarantee or indication that another extension will take place at that time.

Interestingly, the Senate amended the bill by striking a provision that would have extended a few additional bankruptcy provisions under the *Consolidated Appropriations Act of 2021* which are set to expire on December 27, 2021. Some of those key provisions from the *Consolidated Appropriations Act of 2021* prevent utility service providers from discontinuing services to debtors in bankruptcy, limit preference attacks against commercial landlords, extend assumption/rejection periods for debtors, and exclude COVID-19 relief payments from the bankruptcy estate; all of these additional benefits will not be extended through 2022, but will expire on December 27, 2021 unless extended later this year.

Notably, these recent developments do not appear to clear up the confusion regarding a debtor's ability to receive PPP loans while in bankruptcy. The lack of clarity on this issue has been a source of frustration for bankruptcy courts and has led to conflicting decisions around the country. Unless the SBA

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Administrator issues an authorization letter, debtors remain restricted in their ability to obtain PPP funds after a bankruptcy case has been filed.

Our Creditors' Rights, Bankruptcy, Reorganization & Workouts team will continue to keep you apprised on ongoing developments with respect to the *COVID-19 Bankruptcy Relief Extension Act*. Do not hesitate to reach out to Justin Mertz, Reza Hajisanei, or your Michael Best attorney with any questions.

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