

Help is On the Way to Troubled Borrowers!

Articles, COVID 19: Answers to Business Challenges March 27, 2020

On March 25, 2020, the U.S. Senate passed the historic \$2 trillion “Coronavirus Aid, Relief and Economic Security Act” (“CARES Act”). The U.S. House is expected to pass the bill on Friday March 27, 2020, and it is anticipated that it will be quickly signed by President Trump.

The Cares Act contains provisions designed to enhance financial relief to many small businesses and consumers.

In the workout and insolvency arena, the CARES Act includes several sections of particular interest: i.e., Sections 1113, 3513 and 4013.

Section 1113: Amendments to the Bankruptcy Code

Section 1113 is designed to provide financially distressed small businesses and consumers with more opportunities for relief if they file bankruptcy.

Some of the bankruptcy provisions include:

- An increase in the eligibility threshold for businesses filing under the recently enacted “Small Business Reorganization Act of 2019” (commonly referred to as “SBRA”), whereby the eligibility cap for a subchapter V of chapter 11 is almost tripled from \$2,725,625 to \$7.5 million total non-contingent liquidated secured and unsecured debt.. The threshold will drop back to \$2,725,625 in one year. The Cares Act amends the definition of “debtor” in §1182 of the Bankruptcy Code (but not the definition of “small business debtor” in Bankruptcy Code § 101(51D).
- A protection for coronavirus-related payments to consumers from the federal government so that they will not be treated as “income” for purposes of filing bankruptcy chapters 7 and 13. This means that the payments to be made to individuals under the Care Act (up to \$1200 for an individual who earns less than \$75,000 annually) will not count as income for the means test and will not be counted as disposable income for purposes of confirming a chapter 13 plan.
- An opportunity for debtors who are currently in Chapter 13 to file motions to modify their plan payments based on a material financial hardship as the result of the coronavirus pandemic. The courts also can permit payments to continue up to seven years after the initial plan payment was due, rather than the current thirty-six to sixty months authorized by the Bankruptcy Code.

All of these Section 1113 provisions sunset in one year.

Section 3513: Temporary Relief for Federal Student Loan Borrowers

The CARES Act provides temporary relief for the vast majority of federal student loan borrowers by requiring the Secretary of Education to defer student loan payments, principal, and interest for 6 months, through September 30, 2020, without penalty to the borrower for all student loans held by the U.S. Department of Education. Additionally, interest will not accrue on any student loan for which payment has been suspended under the CARES Act. Involuntary collection of student loans such as garnishments, tax refund offsets and reduction of other federal benefits is also suspended during the period in which student loan payments are deferred.

Section 4013: Optional Suspension of Troubled Debt Restructurings Under GAAP

The CARES Act provides that through December 30, 2020 a financial institution may elect to suspend the GAAP principles for loan modifications related to coronavirus that would otherwise be categorized as a troubled debt restructuring (“TDR”). This is important to many distressed businesses (referred to as “troubled borrowers”) because lenders will have greater flexibility in restructuring loans. Lenders will not have to treat the TDR as an impaired loan when estimating loan or lease losses. Currently, financial institutions have to classify a TDR as substandard and, if it is found to be impaired, the loan must be written down. This makes lenders reluctant to agree to loan modifications such as reducing interest rates, extending maturity dates at a rate lower than the current market rate of a new loan with similar risks or providing for interest only loans per ASC 310-40 (formerly FAS 114).

Note: For assistance dealing with your financial concerns during this period of intense economic distress, attorneys at Tucker Arensberg, P.C. are available to help you address all of your business needs. Judge Judith Fitzgerald can be reached at 412-594-3933 and Beverly Weiss Manne can be reached at 412-594-5525.

Check our website for News and Insights updates on COVID-19.