

New Bankruptcy Forms as a Result of the CARES Act

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For Small Business Debtor Reorganization Filings and for Chapter 13 Debtors.

As we have advised in prior blog posts, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), Pub. L. No. 116-136, 134 Stat. 28, modified the Small Business Reorganization Act of 2019, subchapter V of chapter 11 (“SBRA”, view prior post on SBRA), to provide a new definition of “debtor” for determining eligibility to proceed as a “small business debtor” and revised Voluntary Petition forms reflect that modification. Organized entities including corporations, partnerships and limited partnerships are all “non-individual” debtors.

A small business debtor is defined in 11 U.S.C. § 1182(1) as a debtor having aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) of less than \$7,500,000. When a debtor elects to proceed under the SBRA, the debtor must file a voluntary petition and also attach to its petition the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return. If those forms are not available, the debtor must file a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed. 11 U.S.C. § 1116. The election to be a small business debtor is now set forth in Line 13 of the Individual Petition (Form 101) and Line 8 of the Petition for Non-Individuals (Form 201).

The official bankruptcy forms amended to reflect the CARES Act changes, include the initial form required for filing bankruptcy – the Voluntary Bankruptcy Petition. Official Forms 101 and 201. Specifically, Official Forms 122A-1 (Chapter 7 Statement of Monthly Income), 122B (Chapter 11 Individual Statement of Current Monthly Income) 122C-1 (Chapter 13 Statement of Monthly Income), have been modified to exclude payments made under the CARES Act or other COVID related legislation from (a) “monthly income” as defined in 11 U.S.C. §101(10A) and (b) “disposable income” as defined in §1325(b)(2). These amendments will terminate on March 27, 2021 – one year after the date of enactment of the CARES Act.

As of April 3, 2020, new Orders of Discharge under the SBRA to be used. Form 3180RV1 is the Order of Discharge under the SBRA for an Individual Whose Plan was Confirmed under § 1191(a). Form 3180RV2 is the form Order of Discharge for an Individual Whose Plan was Confirmed under § 1191(b), and Form 3180RV3 is the Discharge Order for Corporation or Partnership Whose Plan was Confirmed under § 1191(b). These discharge orders get entered after a debtor has completed payments under a plan.

Use this link to view the full list of forms, Committee Notes and Instructions.

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