

Creditors' Rights Restructuring and Bankruptcy

January 2021

9 Ways the Recent Stimulus Bill Affects Bankruptcy – Comparison of Temporary Changes

Among the provisions of this new act are a number focused on providing relief to American households and businesses, including temporary amendments to Title 11 of the United States Code (the Bankruptcy Code). New provisions cover the following principal areas:

- Definition of “Property of the Estate”
- Terms of discharge of debts
- Protection against discriminatory treatment
- Filing and allowance of proofs of claims or interests
- Plan modifications and confirmation (including for individuals and family farmers and fisherman)
- Executory contracts and leases
- Preference protection for “Covered Payments”
- Utilities and customs treatment
- Obtaining credit
- Allowance of administrative expenses

The temporary changes are summarized on redline against the existing Bankruptcy Code language below.

Citation	Topic	Redlined version of the Code – Title X –Bankruptcy Relief	Sunset date
11 U.S.C. 541(b)(9)-(10)	Property of the estate	(b) Property of the estate does not include— ... (11) recovery rebates made under section 6528 of the Internal Revenue Code of 1986.	One year after the date of enactment of this act, this clause reverts to its original language.
11 U.S.C. 1328	Discharge	(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic	One year after the date of enactment of this act, this clause reverts to its original language.

		<p>support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt— [...]</p> <p>(d) Notwithstanding any other provision of this section, a discharge granted under this section does not discharge the debtor from any debt based on an allowed claim filed under section 1305(a)(2) of this title if prior approval by the trustee of the debtor’s incurring such debt was practicable and was not obtained.</p> <p>...</p> <p>(i) Subject to subsection (d), after notice and a hearing, the court may grant a discharge of debts dischargeable under subsection (a) to a debtor who has not completed payments to the trustee or a creditor holding a security interest in the principal residence of the debtor if – (1) the debtor defaults on not more than three monthly payments due on a residential mortgage under section 1322(b)(5) on or after March 13, 2020, to the trustee or creditor caused</p>	
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		<p>by a material financial hardship due, directly or indirectly, by the coronavirus disease 2019 (COVID-19) pandemic; or</p> <p>(2)(A) the plan provides for the curing of a default and maintenance of payments on a residential mortgage under section 1322(b)(5); and</p> <p>(B) the debtor has entered into a forbearance agreement or loan modification agreement with the holder or servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) of the mortgage described in sub-paragraph (A).</p>	
11 U.S.C. 525	Protection against discriminatory treatment	(d) A person may not be denied relief under sections 4011 through 4042 of the CARES Act (15 U.S.C. 9056, 9057, 9058) because the person is or has been a debtor under this title.	One year after the date of enactment of this act, this clause reverts to its original language.
11 U.S.C. 501	Filing of proofs of claims or interests	<p>(b) If a creditor does not timely file a proof of such creditor's claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.</p> <p>(c) If a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim.</p> <p>(d) A claim of a kind specified in section 502(e)(2), 502(f), 502(g), 502(h) or 502(i) of this title may be filed under subsection (a), (b), or (c) of this section the same as if such claim were a claim against the debtor and had arisen before the date of the filing of the petition.</p> <p>...</p> <p>(f)(1) In this subsection—</p>	One year after the date of enactment of this act, this clause reverts to its original language.

		<p>(A) the term ‘CARES forbearance claim’ means a supplemental claim for the amount of a Federally backed mortgage loan or a Federally backed multifamily mortgage loan that was not received by an eligible creditor during the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057);</p> <p>(B) the term ‘eligible creditor’ means a servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) with a claim for a Federally backed mortgage loan or a Federally backed multifamily mortgage of the debtor that is provided for by a plan under section 1322(b)(5);</p> <p>(C) the term ‘Federally backed mortgage loan’ has the meaning given the term in section 4022(a) of the CARES Act (15 U.S.C. 9056(a)); and</p> <p>(D) the term ‘Federally backed multifamily mortgage loan’ has the meaning given the term in section 4023(f) of the CARES Act (15 U.S.C. 9057(f)).</p> <p>(2)(A) Only an eligible creditor may file a supplemental proof of claim for a CARES forbearance claim.</p> <p>(B) If an underlying mortgage loan obligation has been modified or deferred by an agreement of the debtor and an eligible creditor of the mortgage loan in connection with a mortgage forbearance granted under section 4022 r 4023 of the CARES Act (15 U.S.C. 9056 or 9057) in order to cure mortgage payments forborne under the forbearance, the proof of claim filed under subparagraph (A) shall include—</p> <p>(i) the relevant terms of the modification or deferral;</p>	
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<p>11 U.S.C. 502(b)(9)</p>	<p>Allowance of claims or interest</p>	<p>(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—</p> <p>...</p> <p>(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that—</p> <p>(A) a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide;</p> <p>(B) and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required; and</p> <p>(C) a CARES forbearance claim (as defined in section 501(f)(1)) shall be timely filed if the claim is filed before the date that is 120 days after the expiration of the forbearance period of a loan granted forbearance under</p>	<p>One year after the date of enactment of this act, this clause reverts to its original language.</p>

		<p>section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057).</p>	
11 U.S.C. 1329	Modification of plan after confirmation	<p>(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim.</p> <p>...</p> <p>(e)(1) A debtor of a case for which a creditor files a proof of claim under section 501(f) may file a request for a modification of the plan to provide for the proof of claim.</p> <p>(2) If the debtor does not file a request for a modification of the plan under paragraph (1) on or before the date that is 30 days after the date on which a creditor files a claim under section 501(f), after notice, the court, on a motion of the court or on a motion of the United States trustee, the trustee, a bankruptcy administrator, or any party in interest, may request a modification of the plan to provide for the proof of claim.</p>	<p>One year after the date of enactment of this act, this clause reverts to its original language.</p>
11 U.S.C. 365(d)	Executory contract and unexpired leases	<p>(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.</p> <p>(2) In a case under chapter 9, 11, 12, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such</p>	<p>Two years after the date of enactment of this act, this clause reverts to its original language.</p> <p>But these amendments apply in any case commenced under subchapter V of chapter 11 of title 11, United States Code, before the date that is 2 years after the date of enactment of this act.</p>

		<p>contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.</p> <p>(3)(A) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period, except as provided in subparagraph (B). This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.</p> <p>(B) In a case under subchapter V of chapter 11, the time for performance of an obligation described in subparagraph (A) arising under any unexpired lease of non-residential real property may be extended by the court if the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic until the earlier of—</p> <p>(i) the date that is 60 days after the date of the order for relief, which may be extended by the court for an additional period of 60 days if the court determines that the debtor is</p>	
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		<p>continuing to experience a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; or</p> <p>(ii) the date on which the lease is assumed or rejected under this section.</p> <p>(C) An obligation described in subparagraph (A) for which an extension is granted under subparagraph (B) shall be treated as an administrative expense described in section 507(a)(2) for the purpose of section 1191(e).</p> <p>(4)</p> <p>(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—</p> <p>(i) the date that is 120 210 days after the date of the order for relief; or</p> <p>(ii) the date of the entry of an order confirming a plan.</p> <p>(B)</p> <p>(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120 210-day period, for 90 days on the motion of the trustee or lessor for cause.</p> <p>(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.</p>	
<p>11 U.S.C. 547</p>	<p>Preferences (“Covered Payments”)</p>	<p>(b) Except as provided in subsections (c) and (i), (i), and (j) of this section, the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party’s known or reasonably knowable</p>	<p>Two years after the date of enactment of this act, this clause reverts to its original language.</p>

		<p>affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—</p> <ul style="list-style-type: none"> (1) to or for the benefit of a creditor; (2) for or on account of an antecedent debt owed by the debtor before such transfer was made; (3) made while the debtor was insolvent; (4) made— <ul style="list-style-type: none"> (A) on or within 90 days before the date of the filing of the petition; or (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and (5) that enables such creditor to receive more than such creditor would receive if— <ul style="list-style-type: none"> (A) the case were a case under chapter 7 of this title; (B) the transfer had not been made; and (C) such creditor received payment of such debt to the extent provided by the provisions of this title. <p>...</p> <p>(j)(1) In this subsection:</p> <ul style="list-style-type: none"> (A) The term ‘covered payment of rental arrearages’ means a payment of arrearages that— <ul style="list-style-type: none"> (i) is made in connection with an agreement or arrangement— <ul style="list-style-type: none"> (I) between the debtor and a lessor to defer or postpone the payment of rent and other periodic charges under a lease of nonresidential real property; and (II) made or entered into on or after March 13, 2020; (ii) does not exceed the amount of rental and other periodic charges agreed to under the lease of nonresidential real property described in clause (i)(I) before March 	<p>But these amendments apply <i>in any case</i> commenced under 11, United States Code, before the date that is 2 years after the date of enactment of this act.</p>
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<p>11 U.S.C. 366</p>	<p>Termination of utility services</p>	<p>(d) Notwithstanding any other provision of this section, a utility may not alter, refuse, or discontinue service to a debtor who does not furnish adequate assurance of payment under this section if the debtor—</p> <p>(1) is an individual;</p> <p>(2) makes a payment to the utility for any debt owed to the utility for service provided during the 20-day period beginning on the date of the order for relief; and</p> <p>(3) after the date on which the 20-day period beginning on the date of the order for relief ends, makes a payment to the utility for services provided during the pendency of case when such a payment becomes due.</p>	<p>One year after the date of enactment of this act, this clause reverts to its original language.</p>
<p>11 U.S.C. 507(d)</p>	<p>Customs duties</p>	<p>(d) An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) or subparagraphs (A) through (E) and (G) of subsection (a)(8) of this section is not subrogated to the right of the holder of such claim to priority under such subsection or subparagraph.</p>	<p>One year after the date of enactment of this act, this clause changes back to its original version.</p>
<p>11 U.S.C. § 364</p>	<p>Obtaining Credit</p>	<p>(a) If the trustee is authorized to operate the business of the debtor under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title, unless the court orders otherwise, the trustee may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of this title as an administrative expense.</p> <p>...</p> <p>(g)(1) The court, after notice and a hearing, may authorize a debtor in possession or a trustee that is</p>	<p>The amendments:</p> <p>(A) Take effect on the date on which the Administrator submits to the Director of the Executive Office for United States Trustees a written determination that, subject to satisfying any other eligibility requirements, any debtor in possession or trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of title</p>

		<p>authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of this title to obtain a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), and such loan shall be treated as a debt to the extent the loan is not forgiven in accordance with section 7A of the Small Business Act or subparagraph (J) of such paragraph (37), as applicable, with priority equal to a claim of the kind specified in subsection (c)(1) of this section.</p> <p>(2) The trustee may incur debt described in paragraph (1) notwithstanding any provision in a contract, prior order authorizing the trustee to incur debt under this section, prior order authorizing the trustee to use cash collateral under section 363, or applicable law that prohibits the debtor from incurring additional debt.</p> <p>(3) The court shall hold a hearing within 7 days after the filing and service of the motion to obtain a loan described in paragraph (1). Notwithstanding the Federal Rules of Bankruptcy Procedure, at such hearing, the court may grant relief on a final basis.</p>	<p>11, United States Code, would be eligible for a loan under paragraphs (36) and (37) of section 7(a) of the Small Business Act; and</p> <p>(B) Apply to any case pending on or commenced on or after the date described in subparagraph (A).</p> <p>But, if the amendments take effect, effective on the date that is 2 years after this act's enactment date, section 364 reverts to its original language.</p>
<p>11 U.S.C. § 503(b)</p>	<p>Allowance of Administrative Expenses</p>	<p>(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.</p> <p>(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—</p>	<p>The amendments:</p> <p>(A) Take effect on the date on which the Administrator [of the SBA] submits to the Director of the Executive Office for United States Trustees a written determination that, subject to satisfying any other eligibility requirements, any</p>

		<p>...</p> <p>(10) any debt incurred under section 364(g)(1) of this title [a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a))]</p>	<p>debtor in possession or trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of title 11, United States Code, would be eligible for a loan under paragraphs (36) and (37) of section 7(a) of the Small Business Act; and</p> <p>(B) Apply to any case pending on or commenced on or after the date described in subparagraph (A).</p> <p>But, if the amendments take effect, effective on the date that is 2 years after this act's enactment date, section 503(b) reverts to its original language.</p>
<p>11 U.S.C. § 1191</p>	<p>Confirmation of Plan for Reorganization</p>	<p>(a) Terms.--The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title are met.</p> <p>(b) Exception.--</p> <p>...</p> <p>(f) SPECIAL PROVISION RELATED TO COVID-19 PANDEMIC.--Notwithstanding</p>	<p>The amendments:</p> <p>(A) Take effect on the date on which the Administrator submits to the Director of the Executive Office for United States Trustees a written determination that, subject to satisfying any other eligibility requirements, any debtor in possession or trustee that is authorized to operate</p>

		<p>section 1129(a)(9)(A) of this title and subsection (e) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title [any debt incurred under section 364(g)(1) of this title, i.e. a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)] may be confirmed under subsection (b) of this section if the plan proposes to make payments on account of such claim when due under the terms of the loan giving rise to such claim.</p>	<p>the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of title 11, United States Code, would be eligible for a loan under paragraphs (36) and (37) of section 7(a) of the Small Business Act; and</p> <p>(B) Apply to any case pending on or commenced on or after the date described in subparagraph (A).</p> <p>But, if the amendments take effect, effective on the date that is 2 years after this act's enactment date, section 1191 reverts to its original language.</p>
<p>11 U.S.C. § 1225</p>	<p>Confirmation of Plan for Family Farmers and Fishermen</p>	<p>(a) Except as provided in subsection (b), the court shall confirm a plan if—</p> <p>...</p> <p>(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--</p> <p>(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;</p>	<p>The amendments:</p> <p>(A) Take effect on the date on which the Administrator submits to the Director of the Executive Office for United States Trustees a written determination that, subject to satisfying any other eligibility requirements, any debtor in possession or trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203,</p>

		<p>(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or</p> <p>(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.</p> <p>...</p> <p>(d) Notwithstanding section 1222(a)(2) of this title [payment in full of priority claims under Section 507 in deferred cash payments] and subsection (b)(1) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title [any debt incurred under section 364(g)(1) of this title, i.e. a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a))] may be confirmed if the plan proposes to make payments on account of such claim when due under the terms of the loan giving rise to such claim.</p>	<p>1204, or 1304 of title 11, United States Code, would be eligible for a loan under paragraphs (36) and (37) of section 7(a) of the Small Business Act; and</p> <p>(B) Apply to any case pending on or commenced on or after the date described in subparagraph (A).</p> <p>But, if the amendments take effect, effective on the date that is 2 years after this act's enactment date, section 1225 reverts to its original language.</p>
<p>11 U.S.C. § 1325</p>	<p>Confirmation of Plan for Individuals</p>	<p>(a) Except as provided in subsection (b), the court shall confirm a plan if--</p>	<p>The amendments: (A) Take effect on the date on which the Administrator submits</p>

		<p>(1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;</p> <p>...</p> <p>(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--</p> <p>(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or</p> <p>(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.</p> <p>...</p> <p>(d) Notwithstanding section 1322(a)(2) of this title [payment in full of priority claims under Section 507 in deferred cash payments] and subsection (b)(1) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title [any debt incurred under section 364(g)(1) of this title, i.e. a loan under paragraph (36) or (37) of section 7(a) of the</p>	<p>to the Director of the Executive Office for United States Trustees a written determination that, subject to satisfying any other eligibility requirements, any debtor in possession or trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of title 11, United States Code, would be eligible for a loan under paragraphs (36) and (37) of section 7(a) of the Small Business Act; and</p> <p>(B) Apply to any case pending on or commenced on or after the date described in subparagraph (A).</p> <p>But, if the amendments take effect, effective on the date that is two years after this act's enactment date, section 1325 reverts to its original language.</p>
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To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or Paul Laurin at 310-284-3785 or paul.laurin@btlaw.com, Allison Scarlott at 317-231-7833 or allison.scarlott@btlaw.com, or Molly Sigler at 612-367-8728 or molly.sigler@btlaw.com.

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