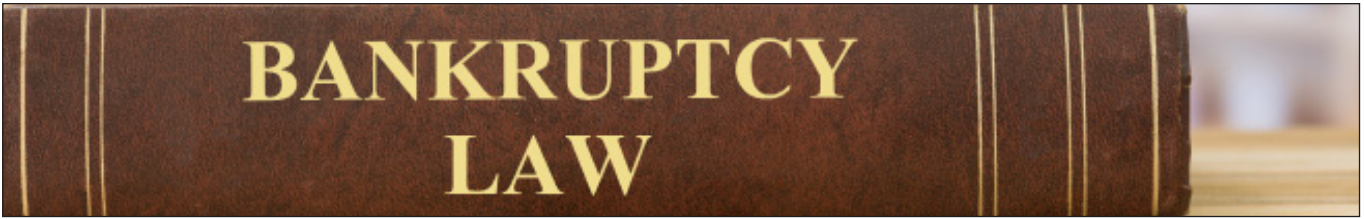


NEWS ALERT

BANKRUPTCY & CREDITORS' RIGHTS



Bankruptcy Relief for Small Businesses Under Latest Stimulus Bill

By Taruna Garg, Robert E. Kaelin and Jonathan M. Horne | January 14, 2021

The Consolidated Appropriation Act of 2021 (“CAA”) enacted on December 27, 2020 bolsters the bankruptcy relief available to small businesses in several key ways. In June 2020, we [outlined here](#) ways in which the Small Business Restructuring Act of 2020 (“SBRA”) offered small businesses having aggregate debts up to \$7.5 million a less costly and more streamlined alternative to restructuring under chapter 11 of the United States Bankruptcy Code. The CAA furthers those benefits in several important ways for two years until December 27, 2022:

- **PPP Loan Eligibility:** After the passage of the CARES Act in March 2020, the Small Business Administration and several bankruptcy courts rejected efforts by small business debtors from receiving loans under the Paycheck Protection Program (“PPP”) administered by the Small Business Administration. The CAA remedies that issue by amending section 364 of the Bankruptcy Code to authorize small business debtors to obtain PPP loans. A PPP loan obtained by a small business debtor after bankruptcy is granted administrative expense priority, and thus must be repaid before most other unsecured debts. The CAA does not address the question of how PPP loans obtained before the bankruptcy filing should be treated in the chapter 11 bankruptcy case.
- **Lease Performance Extension:** Section 365(d)(3) of the Bankruptcy Code requires debtors to “timely perform” all obligations under a lease of non-residential real property within 60 days after the filing, thus forcing debtors to make full lease payments shortly after its bankruptcy filing. The CAA now authorizes bankruptcy courts to grant solely to small business debtors an additional 60-day extension to perform under a lease if the debtor has experienced material hardship directly or indirectly due to COVID-19. For all debtors, including small businesses, the CAA lengthens from 210 days to 300 days the maximum extended deadline the debtor may obtain to assume or reject a lease of nonresidential real property.
- **Preference Protection to Landlords and Suppliers:** The Bankruptcy Code allows debtors and trustees to avoid and recover payments to creditors made within 90 days of the bankruptcy filing, subject to certain limited defenses. The CAA amends section 547 of the Bankruptcy Code to prohibit avoidance of preferential payments made by a debtor to landlords or suppliers under agreements to defer or postpone payments entered into with a debtor after March 12, 2020. This protection affords greater flexibility to landlords and suppliers to work with struggling debtors without fear that extending a payment deadline will result in having to disgorge the payment.
- **Other Amendments:** In addition to the aforementioned amendments specifically dealing with small businesses, there are several other amendments impacting bankruptcy. For example, the CAA amends section 366 of the Bankruptcy Code to prohibit a utility from discontinuing utility services to an individual debtor because of failure to provide adequate assurance of payment during the bankruptcy case, so long as the individual debtor pays the utility company for services supplied in the 20 day post-filing period and continues to make all other post-petition utility payments.

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