

CARES Act Sunset Provisions

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Public Law 116-136, the “*Coronavirus Aid, Relief, and Economic Security Act*” or the “*CARES Act*,” signed into law on March 27, 2020, expanded bankruptcy relief for individuals and small businesses affected by the Covid-19 pandemic. The *CARES Act* also contained a number of “sunset” provisions that automatically terminate, effective one year after the date of enactment of the *Act*, most of the bankruptcy relief that it effected. Below is the relevant text of Title 11 as changed by the *CARES Act* sunset provisions.

Update: Public Law 117-5, the “*COVID–19 Bankruptcy Relief Extension Act of 2021*,” signed into law on March 27, 2021, extended the *CARES Act* sunset provisions for an additional year.

Section 1113(b)(2)(A)(i) of the *CARES Act* sunsets portions of 11 U.S.C. § 101(10A). Below is the text of 11 U.S.C. § 101(10A) showing the additions to text in blue and deletions in red.

§ 101. Definitions

In this title the following definitions shall apply:

(10A) The term “current monthly income”—

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor’s spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B)(i) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor’s spouse), on a regular basis for the household expenses of the debtor or the debtor’s dependents (and, in a joint case, the debtor’s spouse if not otherwise a dependent); and

(ii) excludes—

(I) benefits received under the Social Security Act (42 U.S.C. 301 et seq.);

(II) payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;

(III) payments to victims of international terrorism or domestic terrorism, as those terms are defined in section 2331 of title 18, on account of their status as victims of such terrorism; and

(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title; and.

~~**(V)** Payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19).~~

Section 1113(a)(5) of the *CARES Act* sunsets portions of 11 U.S.C. § 1182(1). Below is the text of 11 U.S.C. § 1182(1) showing the additions to text in blue and deletions in red.

§ 1182. Definitions

In this subchapter:

(1) Debtor.—The term “debtor” — means a small business debtor.

~~(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor; and~~

~~(B) does not include—~~

~~(i) any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$7,500,000 (excluding debt owed to 1 or more affiliates or insiders);~~

~~(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or~~

~~(iii) any debtor that is an affiliate of an issuer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78e).~~

(2) Debtor In Possession.—The term “debtor in possession” means the debtor, unless removed as debtor in possession under section 1185(a) of this title.

Section 1113(b)(2)(A)(ii) of the CARES Act sunsets portions of 11 U.S.C. § 1325(b)(2). Below is the text of 11 U.S.C. § 1325(b)(2) showing the additions to text in blue and deletions in red.

§ 1325. Confirmation of plan

(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—

(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

(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.

(2) For purposes of this subsection, the term “disposable income” means current monthly income received by the debtor (other than ~~payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19)~~, child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of “charitable contribution” under section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

Section 1113(b)(2)(A)(iii) of the *CARES Act* sunsets 11 U.S.C. § 1329(d). Below is the relevant text of 11 U.S.C. § 1329 showing the additions to text in blue and deletions in red.

§ 1329. Modification of plan after confirmation

(c) A plan modified under this section may not provide for payments over a period that expires after the applicable commitment period under section 1325(b)(1)(B) after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

~~**(d)(1)** Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—~~

~~**(A)** the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and~~

~~**(B)** the modification is approved after notice and a hearing.~~

~~**(2)** A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.~~

~~**(3)** Sections 1322(a), 1322(b), 1323(e), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).~~