The CARES Act: Creditors' Rights & Bankruptcy

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On March 25, 2020, the United States Senate – and on March 27, 2020, the United States House of Representatives – passed the "Coronavirus Aid, Relief and Economic Security Act" ("CARES Act") to provide relief to small businesses and consumers harmed by the COVID-19 pandemic. The CARES Act is expansive in its scope, but there are important provisions lenders should know about that are related to bankruptcy.

The CARES Act provides more small businesses with access to the Small Business Reorganization Act of 2019 ("SBRA"), which was enacted by Congress in 2019 and became effective February 19, 2020. The CARES Act increased from $2,725,625.00 to $7,500,000.00 the amount of debt a business may carry and still be eligible for filing under SBRA. However, this debt limit increase only is temporary, and the SBRA debt limit returns to the original $2,725,625.00 after one year following enactment of the CARES Act.

The CARES Act also increased the rights of consumer debtors under the United States Bankruptcy Code. Specifically, the Cares Act excludes federal payments to individuals related to the COVID-19 pandemic from counting as "current monthly income" for the purposes of determining eligibility for filing bankruptcy, as well as from the calculation of "disposable income" in chapter 13 bankruptcy cases. The CARES Act further allows consumer debtors affected by the COVID-19 pandemic who currently are the subject of pending chapter 13 plans to modify their plans to include plan extensions for up to seven years from the time initial payment was due (the usual maximum length of a chapter 13 plan is 5 years). Like the SBRA-related amendments, these consumer amendments sunset one year after enactment.

Finally, the CARES Act also helps consumers who are student loan borrowers by authorizing the Secretary of Education to suspend student loan payments through September 30, 2020. Interest will not accrue for the suspended period, and involuntary collection related to these student loans also is suspended during this time.

Krieg DeVault LLP will continue to provide updates as creditors' rights are affected further by the COVID-19 outbreak. Should you have any questions relating to how COVID-19 may impact your business, we invite you to visit our Coronavirus (COVID-19) Resource Center, or contact any of our attorneys for guidance.