

United States Bankruptcy Court, Southern District of Alabama
Quarterly Bankruptcy Section Meeting
May 12, 2020

The CARES Act and Bankruptcy

On March 27, 2020, President Donald Trump signed the “Coronavirus Aid, Relief and Economic Security Act” (CARES Act) into law. The CARES Act is a \$2 trillion coronavirus economic stimulus bill with far reaching provisions looking to ease the economic stress placed on individuals, small businesses, and large corporations during the COVID-19 public health crisis. Included among these provisions are some that impact the bankruptcy system.

* The following information is meant as an informative resource for members of the bankruptcy bar in this district. As with all legislation, there may be multiple interpretations of a specific section, provision, clause, etc. No information contained herein should be construed as the United States Bankruptcy Court for the Southern District of Alabama providing legal advice or advisory opinions.

Eligibility for Subchapter V of Chapter 11

- The Act amends the Small Business Reorganization Act of 2019 (SBRA) to increase the eligibility threshold for businesses filing under Subchapter V from \$2,725,625 of debt to \$7,500,000. All other eligibility requirements remain the same. After one year the eligibility threshold will return to \$2,725,625.

Stimulus payments

- The Act provides for emergency payment of up to \$1,200 per adult plus additional amounts for children.
- The Act modifies the definition of “current monthly income” for chapter 7 and chapter 13 debtors found in 11 U.S.C. § 101(10A)(B)(ii) to exclude these stimulus payments.
- The modification to “current monthly income” will exclude such stimulus payments from inclusion in the 707(b) Means Test for determining the eligibility of a debtor to proceed under chapter 7.

- The modification to “current monthly income” will also exclude such stimulus payments from inclusion in the “disposable income” analysis for chapter 13 debtors seeking to determine the amount of funds required to be committed to their chapter 13 plan. Thus, the definition of “disposable income” found in 11 U.S.C. § 1325(b)(2) has been amended to reflect these changes.
- These provisions apply to cases filed before or after enactment. Specifically, for chapter 13 debtors the amended definition of “disposable income” is applicable to current chapter 13 debtors without a confirmed plan as of the date of enactment of the Act, as well as future chapter 13 debtors.

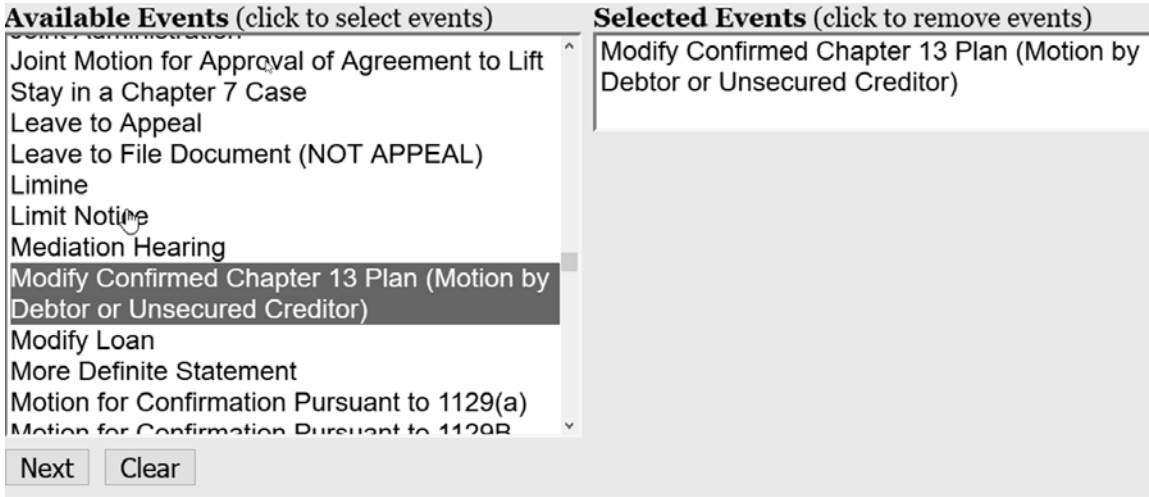
NOTE: In this district, debtors are free to use the stimulus funds as needed and do not need to file “motions to disburse” or “motions for instructions” regarding those payments.

Chapter 13 plan extensions

- The Act allows chapter 13 debtors whose cases were confirmed on or before 3/26/20 and who are experiencing or have experienced material financial hardship due to the coronavirus to extend their plans for up to 7 years (84 months). This window to seek a plan extension expires a year from enactment.

NOTE: The court has created a new filing event for CARES Act extensions. The event is under the regular motion to modify a confirmed plan. The CARES Act choice will allow a requested extension of up to 84 months. Step-by-step instructions are included on the following pages.

IMPORTANT: If you are seeking to change the treatment of a secured claim as part of a CARES Act plan extension, you must also choose that dropdown and serve the affected secured creditor with the motion.

Step	Procedure
1	Click Bankruptcy Menu
2	Click Motions/Applications
3	Enter Case Number <ul style="list-style-type: none"> • Ensure case name and number match the document you are filing • Click Next
4	Select Modify Confirmed Chapter 13 Plan (Motion by Debtor or Unsecured Creditor)  Click Next
5	Click Next at the Joint Filing with Other Attorney screen (Do not check mark the box)
6	At the Select the Party screen select the party you represent (e.g., Debtor 1 and Debtor 2 if applicable), and click Next
7	Browse for the PDF document, verify and attach the document Click Next

<p>8</p>	<p>Make the appropriate selection:</p> <div style="background-color: #f0f0f0; padding: 10px; border: 1px solid #ccc;"> <p>Does the motion to modify plan you are filing seek to (check all that apply):</p> <p><input type="checkbox"/> Increase the plan payments</p> <p><input checked="" type="checkbox"/> Reduce the plan payments</p> <p><input checked="" type="checkbox"/> Change the term of the plan</p> <p><input type="checkbox"/> Change the treatment of a secured or priority claim (includes surrender of collateral)</p> <p><input type="checkbox"/> Change the percentage paid on unsecured claims</p> <p><input type="checkbox"/> Other</p> <p><input type="button" value="Next"/> <input type="button" value="Clear"/></p> </div> <p>In this scenario, the debtor(s) are asking to reduce the play payments and change the term of the plan; therefore, the filer would select Reduce the plan payments and Change the term of the plan.</p>
<p>9</p>	<p>If the motion asks that the plan be extended, answer Yes</p> <div style="background-color: #f0f0f0; padding: 10px; border: 1px solid #ccc;"> <p>Are you extending the term of the plan?</p> <p><input type="radio"/> No</p> <p><input checked="" type="radio"/> Yes</p> <p><input type="button" value="Next"/> <input type="button" value="Clear"/></p> </div> <p>Click Next</p>
<p>10</p>	<p>Select the length of requested plan extension</p> <div style="background-color: #f0f0f0; padding: 10px; border: 1px solid #ccc;"> <p>Length of requested plan extension:</p> <p><input type="radio"/> up to 66 months</p> <p><input checked="" type="radio"/> between 67 and 84 months due to financial hardship caused by the COVID-19 pandemic (requires amended schedules I & J)</p> <p><input type="button" value="Next"/> <input type="button" value="Clear"/></p> </div> <p>Remember to file amended schedules I & J immediately after filing the Motion to Modify Confirmed Chapter 13 Plan. Use event Schedules to file the amended schedules.</p>

<p>11</p>	<p>Review the instructions, ensuring that you can continue.</p> <div style="background-color: #e0e0e0; padding: 10px;"> <p>The plan was confirmed on 08/15/2019 .</p> <p>If the plan was confirmed on or before 03/26/2020, you may continue. The CARES Act allows chapter 13 debtors who are experiencing or have experienced material financial hardship due to the coronavirus to extend their plans for up to 7 years (84 months).</p> <p>However, if the plan was confirmed after 3/26/2020, STOP! Plans confirmed on or after the date of enactment of the CARES Act cannot be extended beyond 66 months.</p> <p><input type="button" value="Next"/> <input type="button" value="Clear"/></p> </div> <p><u>Remember:</u> If the plan was confirmed on or before 3/26/2020, you may continue to file the motion. If the plan was confirmed <u>after</u> 3/26/2020, STOP, as the plan was confirmed after the date of enactment of the CARES Act.</p>
<p>12</p>	<p>Make appropriate selection:</p> <div style="background-color: #e0e0e0; padding: 10px;"> <p>Show how you are serving the motion to modify confirmed chapter 13 plan (change(s) sought: increase the plan payments or reduce the plan payments or change the term of the plan) by checking the box below:</p> <p><input type="checkbox"/> As shown on the certificate of service, I am serving the chapter 13 trustee and debtor(s).</p> <p><input type="button" value="Next"/> <input type="button" value="Clear"/></p> </div> <p>Click Next</p>
<p>13</p>	<p>Review final docket text Click Next</p>
<p>14</p>	<p>NEF Displays, containing the date of electronic distribution and identification of the United States Bankruptcy Court for the Southern District of Alabama as the sender.</p> <p>The NEF is transmitted via e-mail by the NextGen CM/ECF system to the filer’s e-mail address on record with the court. You may view the filed documents once without charge (free look). The free look is only available for 15 days.</p>

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
) Case No. _____
)
 Debtor(s).)

**PLAN OF REORGANIZATION UNDER SUBCHAPTER V OF CHAPTER 11
(SMALL BUSINESS REORGANIZATION ACT)**

Background

Description and history of the Debtor's business. The Debtor is a [corporation, partnership, etc.]. Since [insert year operations commenced], the Debtor has been in the business of _____. [Describe the Debtor's business].

Liquidation analysis. To confirm the Plan, the court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to the Plan as Exhibit ____.

Ability to make future plan payments and operate without further reorganization. The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments and operate the debtor's business. The Plan Proponent has provided projected financial information as Exhibit _____. The Plan Proponent's financial projections show that the Debtor will have projected disposable income (as defined by Bankruptcy Code § 1191(d)) for the period described in § 1191(c)(2) of \$_____. The final Plan payment is expected to be paid on _____.

[Summarize the numerical projections, and highlight any assumptions that are not in accord with past experience. Explain why such assumptions should now be made.]

You should consult with your accountant or other financial advisor if you have any questions pertaining to these projections.

Article 1: Summary

This Plan of Reorganization (“the Plan”) under chapter 11 of the Bankruptcy Code (“the Code”) proposes to pay creditors of [insert the name of the Debtor] (“the Debtor”) from [specify sources of payment, such as an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income].

This Plan provides for: _____ classes of priority claims;
_____ classes of secured claims;
_____ classes of non-priority unsecured claims; and
_____ classes of equity security holders.

Non-priority unsecured creditors holding allowed claims will receive distributions which the proponent of this Plan has valued at approximately _____ cents on the dollar. This Plan also provides for the payment of administrative and priority claims.

All creditors and equity security holders should refer to Articles 3 through 6 of this Plan for information regarding the precise treatment of their claim. Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

Article 2: Classification of Claims and Interests

2.01 Class 1. All allowed claims entitled to priority under Code § 507(a) (except administrative expense claims under § 507(a)(2) and priority tax claims under § 507(a)(8)).

[Add classes of priority claims, if applicable]

2.02 Class 2. The claim of _____, to the extent allowed as a secured claim under Code § 506.

[Add other classes of secured creditors, if any.]

2.03 Class 3. All non-priority unsecured claims allowed under Code § 502.

[Add other classes of unsecured claims, if any.]

2.04 Class 4. Equity interests of the Debtor. [If the Debtor is an individual, change this heading to *The interests of the individual Debtor in property of the estate.*]

Article 3: Treatment of Administrative Expense Claims, Priority Tax Claims, and Quarterly and Court Fees

3.01 Administrative expense claims. Each holder of an administrative expense claim allowed under Code § 503 will be paid in full on the effective date of this Plan, in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

or

Each holder of an administrative expense claim allowed under Code § 503 will be paid [specify terms of treatment, including the form, amount, and timing of distribution, consistent with Code § 1191(e)].

[Note: the second provision is appropriate only in a subchapter V plan that is confirmed non-consensually under § 1191(b).]

3.02 Priority tax claims. Each holder of a priority tax claim will be paid [specify terms of treatment consistent with Code § 1129(a)(9)(C)].

3.03 Statutory fees. All fees required to be paid under 28 U.S.C. § 1930 that are owed on or before the effective date of this Plan have been paid or will be paid on the effective date.

3.04 Quarterly fees. All quarterly fees required to be paid under 28 U.S.C. § 1930(a)(6) or (a)(7) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code.

Article 4: Treatment of Claims and Interests Under the Plan

Claims and interests shall be treated as follows under this Plan:

<u>Class</u>	<u>Impairment</u>	<u>Treatment</u>
Class 1 – Priority claims excluding those in Article 3	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of priority claims in this Class, including the form, amount and timing of distribution, if any.

For example: “Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan, or the date on which such claim is allowed by a final non-appealable order. Except: _____.”]
 [Add additional classes of priority claims if applicable]

Class 2 – Secured claim of [insert name of secured creditor.]	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of secured claim in this Class, including the form, amount and timing of distribution, if any.] [Add additional classes of secured claims if applicable]
Class 3 – Non-priority unsecured creditors	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of unsecured creditors in this Class, including the form, amount and timing of distribution, if any.] [Add administrative convenience class if applicable]
Class 4 – Equity security holders of the Debtor	<input type="checkbox"/> Impaired <input type="checkbox"/> Unimpaired	[Insert treatment of equity security holders in this Class, including the form, amount and timing of distribution, if any.]

Article 5: Allowance and Disallowance of Claims

5.01 Disputed claim. A disputed claim is a claim that has not been allowed or disallowed by a final non-appealable order, and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

5.02 Delay of distribution on a disputed claim. No distribution will be made on account of a disputed claim unless such claim is allowed by a final non-appealable order.

5.03 Settlement of disputed claims. The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Federal Rule of Bankruptcy Procedure 9019.

Article 6: Provisions for Executory Contracts and Unexpired Leases

6.01 Assumed executory contracts and unexpired leases. The Debtor assumes (and if applicable assigns) the following executory contracts and unexpired leases as of the effective date: [List assumed (or if applicable assigned) executory contracts and unexpired leases.]

6.02 Rejected executory contracts and unexpired leases. Except for executory contracts and unexpired leases that have been assumed (and if applicable assigned) before the effective date or under section 6.01 of this Plan, or that are the subject of a pending motion to assume (and if applicable assign), the Debtor will be conclusively deemed to have rejected all

executory contracts and unexpired leases as of the effective date. A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than 60 days after the date of the order confirming this Plan.

Article 7: Means for Implementation of the Plan

[Insert provisions regarding how the plan will be implemented as required under Code § 1123(a)(5). For example, provisions may include those that set out how the plan will be funded, including any claims reserve to be established in connection with the plan, as well as who will be serving as directors, officers, or voting trustees of the reorganized Debtor.]

Article 8: General Provisions

8.01 Definitions and rules of construction. The definitions and rules of construction set forth in Code §§ 101 and 102 shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions: [Insert additional definitions if necessary.]

8.02 Effective date. The effective date of this Plan is the first business day following the date that is 14 days after the entry of the confirmation order. If, however, a stay of the confirmation order is in effect on that date, the effective date will be the first business day after the date on which the stay expires or is otherwise terminated.

8.03 Severability. If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

8.04 Binding effect. The rights and obligations of any entity named or referred to in this Plan will be binding upon and will inure to the benefit of the successors or assigns of such entity.

8.05 Captions. The headings contained in this Plan are for convenience or reference only and do not affect the meaning or interpretation of this Plan.

8.06 Controlling effect. Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of Alabama govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.

8.07 Corporate governance. [If the Debtor is a corporation, include provisions required by Code § 1123(a)(6).]

8.08 Retention of jurisdiction. The court retains jurisdiction with respect to matters involving the interpretation, consummation, execution, or administration of the confirmed plan.

Article 9: Discharge

[If the Debtor is an individual]

If the Debtor's Plan is confirmed consensually under § 1191(a), on the effective date of the Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in Code § 1141(d)(1)(A). The Debtor will not be discharged from any debt: (i) imposed by this Plan; or (ii) excepted from discharge under Code § 523(a), except as provided in Federal Rule of Bankruptcy Procedure 4007(c).

If the Debtor's Plan is confirmed nonconsensually under § 1191(b), confirmation of the Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments due within the first 3 years of this Plan, or as otherwise provided in Code § 1192. The Debtor will not be discharged from any debt: (i) on which the last payment is due after the first 3 years of the plan, or as otherwise provided in § 1192; or (ii) excepted from discharge under § 523(a) of the Code, except as provided in Federal Rule of Bankruptcy Procedure 4007(c).

[If the Debtor is a partnership]

If the Debtor's Plan is confirmed consensually under § 1191(a), on the effective date of the Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in Code § 1141(d)(1)(A). The Debtor will not be discharged from any debt imposed by this Plan.

If the Debtor's Plan is confirmed nonconsensually under § 1191(b), confirmation of the Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments due within the first 3 years of this Plan, or as otherwise provided in Code § 1192. The Debtor will not be discharged from any debt: (i) on which the last payment is due after the first 3 years of the plan, or as otherwise provided in § 1192; or (ii) excepted from discharge under Code § 523(a), except as provided in Federal Rule of Bankruptcy Procedure 4007(c).

[If the Debtor is a corporation (including LLC)]

If the Debtor's Plan is confirmed consensually under § 1191(a), on the effective date of the Plan, the Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent specified in Code § 1141(d)(1)(A), except that the Debtor will not be discharged of any debt: (i) imposed by this Plan; or (ii) to the extent provided in § 1141(d)(6).

If the Debtor's Plan is confirmed nonconsensually under § 1191(b), confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments due within the first 3 years of this Plan, or as otherwise provided in Code § 1192. The Debtor will not be discharged from any debt: (i) on which the last payment is due after the first 3 years of the plan, or as otherwise provided in § 1192; or (ii) excepted from

discharge under Code § 523(a), except as provided in Federal Rule of Bankruptcy Procedure 4007(c).

Article 10: Other Provisions

[Insert other provisions, as applicable.]

Respectfully submitted,

[Signature of the Plan Proponent]

[Printed Name]

[Signature of the Attorney for
the Plan Proponent]

[Printed Name]