

Insights

New Bankruptcy Code Amendments Change Legal Landscape for Creditors

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On Friday, August 23, 2019, the President signed into law the first major amendments to the United States Bankruptcy Code since 2005. These promise to change the legal landscape for creditors.

H.R. 2336, the “Family Farmer Relief Act of 2019,” which is effective immediately, updates chapter 12 of the Bankruptcy Code to increase the debt limit used to determine whether a family farmer is eligible for relief under chapter 12 from \$4.4 million (current adjusted amount) to \$10 million. It is anticipated this amendment will increase substantially the number of family farmers seeking chapter 12 relief, especially given the current distressed status of the agricultural economy.

H.R. 3311, the “Small Business Reorganization Act of 2019 ” (“SBRA”), which is effective February 19, 2020, establishes a new subchapter within chapter 11 of the Bankruptcy Code under which small business debtors (defined as a person in commercial or business activity with aggregate or noncontingent liquidated secured and unsecured debts as of its bankruptcy filing date of not more than \$2,725,625, and excluding a person whose primary business is the owning or operating of real property) can reorganize using more simplified and expedited procedures. SBRA’s innovations include:

- Elimination of the “one impaired class” rule for plan confirmation: a SBRA plan may be confirmed if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.
- New deadlines: an initial status conference will be held not later than 60 days after the filing of the SBRA petition, which is to be used for case planning purposes; the SBRA debtor must file its proposed plan not later than 90 days after the petition, unless extenuating circumstances justify an extension.
- Three (or five) year plan duration: a SBRA plan must provide that all of the projected disposable income of the debtor to be received within 3 years of the first distribution under the plan, or such longer period not to exceed 5 years as the court may fix, will be applied to make payments under the plan.
- No disclosure statement or creditors’ committee: Unless the court for cause orders otherwise, no disclosure statement is required, or a creditors’ committee permitted, in a SBRA case.
- Trustee appointed: the U.S. Trustee is required to appoint a trustee in a SBRA case, who will not operate the debtor, but rather will supervise the debtor’s plan confirmation process (much like a chapter 12 or 13 trustee).

- Expanded definition of property of the estate: property subject to the SBRA plan includes property the debtor acquires, and earnings from services the debtor receives, post-bankruptcy.
- Preference reform: although not limited to SBRA cases, the Act also amends the Bankruptcy Code's existing preference rules by requiring that a preference complaint only can be filed following the completion of "reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses", meaning that the "shotgun" filing of preference complaints on the eve of the expiration of the statute of limitations no longer is permitted. In addition, the Act increases the threshold for suing a preference defendant outside of its district from \$10,000 to \$25,000.

SBRA's touted benefits are efficiency, low-cost, and the ability to confirm a plan over the objections of creditors so long as SBRA's statutory requirements are met. It is anticipated that when SBRA becomes effective February 19, 2020, it may be selected by as many as half of debtors which previously would have filed "regular" chapter 11 cases. It is not anticipated that SBRA will significantly affect the interests of secured creditors.

H.R. 2938, the "Honoring American Veterans in Extreme Need Act of 2019" ("HAVEN Act"), which is effective immediately, excludes from the calculation of monthly income, for purposes of the Bankruptcy Code's means test in consumer bankruptcy cases, Department of Veterans Affairs and the Department of Defense disability payments, thereby bringing the treatment of these payment in line with the Bankruptcy Code's current exclusion of social security payments from means testing.

H.R. 3304, the "National Guard and Reservists Debt Relief Extension Act of 2019," which is effective immediately, extends for 4 years, through December 18, 2023, the exemption from certain bankruptcy means-testing in consumer bankruptcy cases for qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

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