



FOR IMMEDIATE RELEASE

Re: NACBA's Update on Senate COVID-19 Legislation

March 26, 2020

WASHINGTON, D.C.,—The National Association of Consumer Bankruptcy Attorneys (NACBA) has been working hard advocating behind the scenes (while maintaining a safe social distance) with House and Senate Judiciary Members and staff to get bankruptcy provisions passed in the current legislation known as the [“CARES Act”](#).

NACBA is proud to announce that the following provisions we pushed hard for as an organization have passed. Please read bill text below also found on [page 77 of HR 748](#):

#### SEC. 1113. BANKRUPTCY.

##### (a) SMALL BUSINESS DEBTOR REORGANIZATION. —

(1) IN GENERAL.—Section 1182(1) of title 11, United States Code, is amended to read as follows: (1) DEBTOR.—The term ‘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 1 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, 78(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. 78c).

(2) APPLICABILITY OF CHAPTERS. —Section 103(i) of title 11, United States Code, is amended by striking “small business debtor” and inserting “debtor (as defined in section 1182)”.

(3) APPLICATION OF AMENDMENT. —The amendment made by paragraph (1) shall apply only with respect to cases commenced under title 11, United States Code, on or after the date of enactment of this Act.

(4) TECHNICAL CORRECTIONS. — (A) DEFINITION OF SMALL BUSINESS DEBTOR.—Section 101(51D)(B)(iii) of title 11, United States Code, is amended to read as follows: “(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. 78c)).” (B) UNCLAIMED PROPERTY. — Section 347(b) of title 11, United States Code, is amended by striking “1194” and inserting “1191”.

(5) SUNSET. —On the date that is 1 year after the date of enactment of this Act, section 1182(1) of title 11, United States Code, is amended to read as follows: “(1) DEBTOR. — The term ‘debtor’ means a small business debtor.” (b) BANKRUPTCY RELIEF.— (1) IN GENERAL.— (A) EXCLUSION FROM CURRENT MONTHLY INCOME.—Section 101(10A)(B)(ii) of title 11, United States Code, is amended—(i) in subclause (III), by striking “; and” and inserting a semicolon; (ii) in subclause (IV), by striking the period at the end and inserting “; and”; and (iii) by adding at the end the following: “(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).”.

(B) CONFIRMATION OF PLAN. —Section 1325(b)(2) of title 11, United States Code, is amended by inserting “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),” after “other than”.

(C) MODIFICATION OF PLAN AFTER CONFIRMATION.—Section 1329 of title 11, United States Code, is amended by adding at end the following: “(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(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).”.

(D) APPLICABILITY. — (i) The amendments made by subparagraphs (A) and (B) shall apply to any case commenced before, on, or after the date of enactment of this Act. (ii) The amendment made by subparagraph (C) shall apply to any case for which a plan has been confirmed under section 1325 of title 11, United States Code, before the date of enactment of this Act. (2) SUNSET.— (A) IN GENERAL.— (i) EXCLUSION FROM CURRENT MONTHLY INCOME.—Section 101(10A)(B)(ii) of title 11, United States Code, is amended—(I) in subclause (III), by striking the semicolon at the end and inserting “; and”; (II) in subclause (IV), by striking “; and” and inserting a period; and (III) by striking subclause (V). (ii) CONFIRMATION OF PLAN.—Section 1325(b)(2) of title 11, United States Code, is amended by striking “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).” (iii) MODIFICATION OF PLAN AFTER CONFIRMATION. —Section 1329 of title 11, United States Code, is amended by striking subsection (d). (B) EFFECTIVE DATE. —The amendments made by subparagraph (A) shall take effect on the date that is 1 year after the date of enactment of this Act.

In case you missed it, on March 24, 2020, [NACBA released a joint statement](#)—with support from NAACP, the National Military Family Association, National Consumer Law Center (on behalf of its low-income clients) and 12 other hardworking organizations, urging for bankruptcy relief for large numbers of families who never dreamed they would need it during this time. The unprecedented pandemic we are now experiencing will without doubt cause financial hardship to millions of Americans who had no hint that their otherwise stable economic situations would be disrupted so completely. Even with payment moratoria and temporary bans on foreclosures and evictions, their bills will eventually come due and in many cases, without income that is lost forever, those debts will be insurmountable.

There is still much to be done to provide bankruptcy relief to those who truly need it. NACBA will continue to educate, advocate and litigate on behalf of all our valued members and their consumer debtors.

For inquiries please [contact Krista D'Amelio](#), Director of Government Affairs & Communications

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The National Association of Consumer Bankruptcy Attorneys (NACBA) is the only organization dedicated to protecting and enhancing the rights of consumer bankruptcy debtors.