

Impact of the CARES Act on Chapter 13 Debtors

Catherine Stone Curtis
Partner
Pulman, Cappucio & Pullen, LLP
(956) 467-1900 ext. 402
ccurtis@pulmanlaw.com

Introduction: CARES Act and Chapter 13

The Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**” or referred to herein as the “**Act**”) was signed into law on March 27, 2020,ⁱ and provided several relief packages for distressed Americans. Most importantly, the Act provided relief for those who are already debtors in bankruptcy. This article focuses on the new options available to debtors to modify their confirmed plans in chapter 13 bankruptcy.

Requirements of Chapter 13 Plans Generally

Before the enactment of the CARES Act, chapter 13 debtors, whether above or below median income, could not propose a plan longer than sixty months in length.ⁱⁱ The plan’s contents must meet other requirements, such as the requirement to submit all disposable income,ⁱⁱⁱ full payment for priority claims under most circumstances,^{iv} and provide the same treatment for claims within a particular class.^v All of the other requirements regarding the plan’s contents in section 1322 of the Bankruptcy Code (the “**Code**”) must also be met, including the requirement that the disposable income calculated under the “means test” be paid within the proscribed five-year period.^{vi} Any holder of a secured claim that has accepted or rejected a plan prior to confirmation is deemed to have accepted or rejected, as the case may be, an amended plan filed by the debtor before confirmation, unless the amendment provides for a change in the rights, and the secured claimant changes its previous acceptance or rejection.^{vii} Section 1325(a) of the Code lays out the requirements for the court’s confirmation of a chapter 13 plan.^{viii}

CARES Act Provisions

Under the CARES Act, a debtor whose chapter 13 plan was confirmed prior to March 27, 2020, may modify their chapter 13 plan to a seven-year term, if he or she meets certain requirements laid out in Title 1, Section 1113 of the Act. Specifically, a debtor may modify their chapter 13 plan to a seven-year term if 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 hearing.

...

(3) Sections 1322(a), 1322(b), 1323(c), and the requirements of 1325(a) shall apply to any modification under paragraph (1).^{ix}

The CARES Act contains a “sunset” provision that ends the ability of debtors to make modifications for a seven-year period one year after the CARES Act was enacted.^x

Qualification for CARES Act Modifications

It is likely that a majority of chapter 13 debtors will be affected, either directly or indirectly, by COVID-19’s impact on the economy. More than 1.3 million people were reported as unemployed in March 2020 alone, with unemployment spiking from 3.5% nationally to more than 4.25% in a

single month.^{xi} Given the requirement that a debtor in chapter 13 be an “individual with regular income,”^{xii} the massive shift in unemployment in recent months will undoubtedly impact many debtors.

Term of CARES Act Modifications

The term for a modified plan under the CARES Act is “7 years after the time that the first payment under the original confirmed plan was due.”^{xiii} The debtor must commence making payments not later than thirty days after the date the plan was filed or the date of the order for relief, whichever is earlier.^{xiv} So, practically speaking, the debtor will modify the plan for the seven-year term beginning on the date that is thirty days after the petition date.

Disposable Income Requirement

The debtor’s disposable income requirement pursuant to the “means test” is not subsumed into the requirements of a CARES Act-modified plan.^{xv} Thus, the debtor is not required to extend payments of his or her disposable income for the seven-year period, which may result in lowered payments for the debtor on home mortgage arrears and payments to other classes of creditors. However, section 1322(a) is still required to be met by debtors who wish to submit CARES Act modifications, and debtors must submit “all or such portion of [their] future earnings or other future income” to the chapter 13 trustee.^{xvi}

Sunset Provision

Additionally, the “sunset” provision limits the timeframe that debtors may seek CARES Act modifications of their chapter 13 plans to the period between March 27, 2020, to March 27, 2021. The Act appears to specifically require that the proposed modification be “approved after notice and a hearing” during within the one-year timeframe, but there is no case law yet on the subject.^{xvii}

CARES Act Modifications After the Sunset Provision

The “sunset” provision begs the question: what of modifications beyond sixty months in CARES Act modified plans after the “sunset” date in the Act? Neither the CARES Act nor the current Code provisions expressly address this issue. Those debtors who default on CARES Act modifications beyond the sixty-month period but after the “sunset” provision of the Act may find themselves in uncharted territory regarding their modifications. However, assuming further legislation is not enacted to directly address this issue, the current Code provides some guidance for debtors and courts on these issues.

First, the debtors will likely be able to meet the first requirement of proposing a modification: proposing the modification prior to the completion of payments under their plan. Even though the additions to section 1329 of the Code under the Act are stricken after March 27, 2021, section 1329 provides that “[a]t any time after confirmation of the plan *but before the completion of payments* under such plan, the plan may be modified. . . .”^{xviii} So long as a debtor who defaults under a confirmed plan providing for eighty-four (or more than sixty and less than eighty-four) months of payments is proposing a modification prior to the completion of payments under *that plan*, then he or she meets this requirement.

An issue that is not directly resolved by existing statutes is whether a debtor who proposes a modification beyond month sixty in a CARES Act modified plan violates section 1329(c) of the Code. On its face, the statute explicitly mandates that “[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).”^{xix} Section 1325(b)(1)(B) refers, generally, to the requirement that the debtor submit his disposable income for the applicable commitment period under the plan.^{xx} The author submits that, since the disposable income requirement under 1322(d) is not extended in CARES Act modified plans, the commitment period was never altered, and is not relevant to the analysis of whether a debtor who defaults beyond month sixty in the plan may modify it after the sixtieth month. In that case, a debtor would likely propose a modification to lower payments on claims of a particular class (likely, unsecured creditors), which is permissible under section 1329(a)(1).

Conclusion

For many debtors, the CARES Act will provide some relief from the intense economic distress caused by the disruption in income from COVID-19.

ⁱ Public Law No. 116–136, *see also* Congress.gov H.R.748 – CARES Act, (accessed April 19, 2020), <https://www.congress.gov/bill/116th-congress/house-bill/748>.

ⁱⁱ 11 U.S.C. § 1322(d)(1)(C),(2)(C).

ⁱⁱⁱ *Id.* at § 1322(a)(1).

^{iv} *Id.* at § 1322(a)(2),(4).

^v *Id.* at § 1322(a)(3).

^{vi} *Id.* at § 1322(d).

^{vii} *Id.* at § 1323(c).

^{viii} *Id.* at § 1325(a).

^{ix} Public Law No. 116–136, §1113(b)(1)(C).

^x *Id.* at § 1113(b)(2)(A)–(B).

^{xi} U.S. Bureau of Labor Statistics (accessed April 19, 2020), <https://www.bls.gov/cps/>; *see also* U.S. Bureau of Labor Statistics, Databases, Tables & Calculators by Subject from 2019 to 2020 (accessed on April 19, 2020), <https://data.bls.gov/pdq/SurveyOutputServlet>.

^{xii} 11 U.S.C. § 109(e).

^{xiii} Public Law No. 116–136, §1113(b)(1)(C).

^{xiv} 11 U.S.C. § 1326(a).

^{xv} Public Law No. 116–136, § 1113(b)(1)(C).

^{xvi} 11 U.S.C. § 1322(a)(1).

^{xvii} Public Law No. 116–136, § 1113(b)(1)(C), *cf. id.* at § 1113(b)(2)(A)–(B).

^{xviii} 11 U.S.C. § 1329(a) (emphasis added).

^{xix} *Id.* at § 1329(c).

^{xx} *Id.* at §1325(b)(1)(B) (“If the trustee or holder of an allowed unsecured claimed objects to confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan...the value of the property to be distributed...is not less than the amount of such claim; or the plan provides that all of the debtor’s projected disposable income to be received 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 in this case.”).