

**Bankruptcy Related Provisions Contained in the
Consolidated Appropriations Act of 2021 that expired on December 27, 2021**

Protecting Stimulus Payments

The CAA amends Section 541 of the Bankruptcy Code to exempt stimulus payments from the property of the estate. As a result of this revision, pandemic relief payments will not be available to satisfy obligations owed to creditors.

Chapter 13 Discharge Available Even if Certain Plan Payments Have Not Been Made

The CAA amends § 1328 of the Bankruptcy Code by authorizing the bankruptcy court, in its discretion, to grant a discharge to a Chapter 13 debtor who has:

- on or after March 13, 2020, defaulted on not more than three monthly residential mortgage payments because of a material COVID-19 related financial hardship; or
- entered into a qualifying loan modification or forbearance agreement with a residential mortgage lender even though the confirmed plan provides for curing defaults on such mortgage.

NOTE: the debtor will not be discharged of the mortgage debt but will be eligible for a plan discharge on other debts even though the debtor did not pay all mortgage payments when due under the plan.

CARES Forbearance Claims; Modification of Chapter 13 Plan

Under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) enacted on March 27, 2020, mortgagors under federally-backed residential and multifamily mortgages are able to request payment forbearance because of COVID-19 financial hardships. The forbearance period can be up to 12 months. At the end of the forbearance period, the mortgagor must pay the deferred mortgage payments in a lump-sum.

- Procedural and administrative problems arose in Chapter 13 cases as a result of these deferred mortgage payments.
- To address such issues, the CAA permits:
 - Qualified servicers to file a proof of claim for the deferred payments, even if the claims bar date has passed. See 11 U.S.C. § 501(f)(1);
 - Debtors to modify a confirmed Chapter 13 plan to address the deferred mortgage payment plans;
 - The U.S. Trustee, the Chapter 13 trustee, the court sua sponte, or any party in interest to move for such plan modification in the event the debtor fails to do so.

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No Discrimination Because of Bankruptcy Filing

The CAA amends § 525 of the Bankruptcy Code to provide that relief under three enumerated CARES Act provisions may not be denied solely because the person is or was a debtor in a bankruptcy case.

- These CARES Act provisions are:
 - The foreclosure moratorium and right to request forbearance (15 U.S.C. § 9056);
 - The forbearance of mortgage payments for multifamily properties (15 U.S.C. § 9057); and
 - The temporary moratorium on eviction filings (15 U.S.C. § 9058)

Utility Services for Individual Debtors

The CAA amends § 366 of the Bankruptcy Code to provide greater protection for individual debtors. New subsection (d) prohibits a utility from altering, refusing, or discontinuing utility services to an individual debtor as long as the debtor pays the utility company for services rendered in the twenty-day post-filing period and continues to make all other post-petition utility payments, even if the debtor has not otherwise provided the utility company with adequate assurance of payment.

Customs Duties

The CAA amends § 507(d) of the Bankruptcy Code to provide that a party that pays the United States government a customs duty on behalf of an importer is subrogated to the government's priority status for customs duties under § 507(b)(8)(F).

This provision is favorable to customs brokers and forwarders who often pay the customs duties on behalf of their importer-clients.