



CLLA LEGISLATIVE DAY

October 4, 2022

PERMANENCY OF SUBCHAPTER V

1. EVOLUTION OF SUBCHAPTER V

The Small Business Reorganization Act of 2019 (SBRA), in effect as of February 19, 2020, was enacted to provide small business debtors with a more streamlined path for restructuring their debts. SBRA introduced an innovation: Subchapter V of Chapter 11, a new type of bankruptcy designed to make reorganization under the Bankruptcy Code faster and less expensive for America’s small businesses. Subchapter V defined a “small business debtor”¹ as “a person engaged in commercial or business activities . . . that has aggregate noncontingent liquidated secured and unsecured debts . . . in an amount not more than \$2,725,625.” At least half of those debts must have been incurred from business activity. About a month after the SBRA’s February 2020 effective date, the COVID-19 pandemic upended the country. In response, Congress and the President acted swiftly to enact the CARES Act,² which increased Subchapter V’s debt limits to \$7.5 million for two years.³ When Subchapter V’s increased debt limits lapsed in March of 2022, Congress and the President acted again, albeit not as swiftly as before, and enacted the Bankruptcy Threshold Adjustment and Technical Corrections Act (the “Act”)⁴ on June 21, 2022, extending the increased \$7.5 million Subchapter V debt limit for another 2 years.⁵As Congress was considering the Act, the CLLA wrote a letter to members of Congress, expressing its support of this proposed legislation.

¹ For purposes of Subchapter V. Bankruptcy Code section 101(51C) defines a small business case slightly more broadly than Subchapter V, and meeting this definition allows debtors the option to use the Bankruptcy Code’s previous (and unrepealed) small business provisions of the Bankruptcy Code. However, dissatisfaction with the ineffectiveness of those provisions helped motivate the SBRA and Subchapter V.

² Coronavirus Aid, Relief, and Economic Security Act. Public Law 116-123.

³ The initial expiration of the \$7,500,000.00 Subchapter V debt limit was March 27, 2022.

⁴ Public Law No. 117-151.

⁵ The \$7,500,000.00 Subchapter V debt limit will expire on March 27, 2024.



2. THE PROBLEM

Last year there were 31.7 million small businesses⁶ in the United States. Between 2000 and 2019, these small businesses created 10.5 million net new jobs and accounted for 65.1% of the net new job creation since 2000.⁷ Small businesses face many challenges, and yet make such a large impact on the country's economy. Since the SBRA's enactment, as of September 8, 2022, 3839 debtors have filed under Subchapter V.⁸ In an American Bankruptcy Institute article surveying Subchapter V cases from SBRA's inception through June 30, 2021, it was reported that more than 50% of the plans in those Subchapter V cases had been confirmed and that such confirmations were achieved within six months of filing.⁹ In comparison, prior to enactment of SBRA, only 25% of Chapter 11 Plans were being confirmed at median of 16 months from the petition date.¹⁰ The benefits of and need for Subchapter V are clearly expressed in the foregoing numbers. Although the debt limit of \$7.5 million was extended for an additional two years, it is imperative that the higher debt limit be made permanent. The CLLA supports an increase in the debt limits for Subchapter V to align with those of Family Farmer bankruptcies (Chapter 12) which was recently increased to \$10 million.¹¹ Such an increase would make Subchapter V available to a much greater number of small businesses that would benefit from the expedited, less costly, and less onerous Subchapter V process.

3. THE SOLUTION

Through further Subchapter V legislation, Congress should support the restructuring needs of American small businesses by: (i) increasing the Subchapter V debt limit to match that of Chapter 12; and (ii) making that increased debt limit permanent.

⁶ Defined by the U.S. Small Business Administration, Office of Advocacy as an independent business having fewer than 500 employees. <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/11/05122043/Small-Business-FAQ-2020.pdf>

⁷ *Id.*

⁸ SBRA statistics maintained by ABI.org <https://app.powerbi.com/view?r=eyJrIjoiNzJmYWJlNDQ0tMGNlMy00MDA5LTNmZWMtODU5YTQyMDRjYWUjIiwidCI6ImI0NDh0WmYlThjNmYtNGNIYS1iYzI1LWYyZTI0MGJjNGI1ZCIslmMiOjF9>

⁹ Hon. Michelle M. Harner, Emily Lamasa and Kimberly Goodwin-Maigetter: "Subchapter V Cases by the Numbers"; ABI Journal, October 2021.

¹⁰ Ed Flynn, "Chapter 11 is for Individuals and Small Businesses?"; ABI Journal, December 2018.

¹¹ This amount is adjusted every three years pursuant to 11 U.S.C. § 104.