



CLLA LEGISLATIVE DAY

March 6, 2024

PERMANENCY OF SUBCHAPTER V AND CHAPTER 13 DEBT LIMITS

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. The 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” 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,¹ which increased Subchapter V’s debt limits to \$7.5 million for two years.² When Subchapter V’s increased debt limits lapsed in March of 2022, Congress enacted the Bankruptcy Threshold Adjustment and Technical Corrections Act (the “Technical Corrections Act”)³ on June 21, 2022, extending the increased \$7.5 million Subchapter V debt limit for another 2 years and increased the Chapter 13 debt limits to \$2,750,000,⁴ without distinction as to whether the debts are secured or unsecured.⁵

2. THE PROBLEM

As of March 2023, there were 33,185,550 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

¹ Coronavirus Aid, Relief, and Economic Security Act. Public Law 116-123.

² The initial \$7,500,000 Subchapter V debt limit increase expired on March 27, 2022, but was resurrected three months later under the Technical Corrections Act.

³ Public Law No. 117-151.

⁴ The \$7,500,000 Subchapter V and \$2,750,000 Chapter 13 debt limit increases will sunset on June 21, 2024.

⁵ Prior to the Act, debtors were only eligible to file under Chapter 13 if they had noncontingent, unsecured debts of less than \$419,275 and noncontingent, secured debts of less than \$1,257,850.

⁶ Defined by the U.S. Small Business Administration, Office of Advocacy as an independent business having fewer than 500 employees. <https://advocacy.sba.gov/2023/03/07/frequently-asked-questions-about-small-business-2023/#:~:text=There%20are%2033%2C185%2C550%20small%20businesses,net%20jobs%20created%20since%201995.>



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 February 29, 2024, 6,860 debtors have filed under Subchapter V.⁸ According to statistics maintained by the Office of the United States Trustee, 47% of the Subchapter V plans filed between 2020 and 2023 had been confirmed and that such confirmations were achieved within six months of filing. 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.⁹ The benefits of and need for Subchapter V are clearly expressed in the foregoing numbers. Although the debt limits for Subchapter V and Chapter 13 were extended for an additional two years, it is imperative that the higher debt limits be made permanent.

The permanent increase would continue to 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. Some of the reasons why Subchapter V has been successful include:

- A plan must be filed within 90 days after the case is commenced;
- Reduced expenses of administration and creditor interference;
- Small Business Debtor stays in control of its operations;
- A Trustee is appointed (usually with the Debtor's input on selection) to facilitate plan discussions between the debtor and creditors;
- No one other than the Debtor is permitted to propose a plan; and
- The "Absolute Priority Rule" required under a Chapter 11 plan is not applicable, allowing business owners to retain their ownership interests in the Debtor.

While the rate of inflation has dropped recently, inflation is still at its highest rate in more than 40 years. Maintaining Chapter 13 debt limits at \$2,750,000 will allow more financially troubled homeowners and consumers to get the help they need from the bankruptcy courts in reorganizing their finances.

3. THE SOLUTION

Congress must act expeditiously to introduce and pass legislation to make permanent the increased debt limits for Subchapter V and Chapter 13 before the increases under the Technical Corrections Act sunset on March 27, 2024. The Commercial Law League of America supports the current debt limits and encourages Congress to pass legislation to make them permanent.

⁷ *Id.*

⁸ SBRA statistics maintained by ABI.org
<https://app.powerbi.com/view?r=eyJrIjoiaNzJmYWJlNDQzMGNIMy00MDA5LTNmZWmtODU5YTQyMDRjYWVjIiwidCI6ImI0NDZhOWMyLTljNmYtNGNlYS1iYzIiLWYzZTI0MGJjNGI1ZCIslmMiOjF9>

⁹ Ed Flynn, "Chapter 11 is for Individuals and Small Businesses?", ABI Journal, December 2018.