

Subchapter V Corner

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The \$7,500,000 debt ceiling for Subchapter V filings ended in the spring of 2022.

With the enactment of Subchapter V of Chapter 11 (Sub V) of the Bankruptcy Code, viable small and medium-sized businesses have a more cost-efficient restructuring mechanism. Who is eligible? – Businesses and individuals engaged in commercial or business activities with no more than \$2,725,625 of noncontingent liquidated secured and unsecured debt as of the date of filing or the order for relief. The business or individual cannot have owning of single-asset real estate as its primary activity. The CARES Act, however, increased the debt ceiling to \$7,500,000 until March 27, 2021, and further extended it until March 27, 2022, with the COVID-19 Bankruptcy Relief Extension Act of 2021, Democrats and Republicans are now weighing an extension of Subchapter V's \$7.5 million debt limit before it is due to sunset back to the previous amount under the Code. Without another renewal, the increased debt limit applies only to cases filed after the effective date of the CARES Act and before March 27, 2022.

What is the advantage of a Subchapter V filing? There are several modifications of the traditional restructuring process that make a Subchapter V proceeding a more straightforward and cheaper path to reorganization:

It allows the owner of the business to preserve their equity even when the business is not in a position to pay in full its secured and unsecured creditors (i.e., abrogates the so-called "absolute priority rule").

The creditors' ability to block confirmation is significantly weakened because Subchapter V eliminates the traditional requirement that at least one impaired class of creditors accepts the reorganization plan. A reorganization plan will be deemed fair and equitable to objecting unsecured creditors if the debtor pays projected disposable income to be received over at least three years.

A Subchapter V plan may provide for later payment of administrative expenses (i.e., payment through the plan) as opposed to payment on the effective date of the plan.

Only the debtor can file a plan (i.e., eliminates the ability of creditors to propose their own restructuring plan).

It eliminates US Trustee quarterly fees and other procedural and reporting burdens.

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