

Subchapter V Bankruptcy: What You Need to Know

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Prior to the enactment of the Small Business Reorganization Act of 2019 ("SBRA"), signed into law on August 23, 2019, small business debtors faced significant hurdles to restructure under the Bankruptcy Code. Crucially, the high costs and complexities of standard Chapter 11 cases marred the appeal of restructuring, leaving a Chapter 7 liquidation as the only feasible option. With this in mind, the SBRA created a new subchapter of Chapter 11 ("Subchapter V"), which provides less stringent requirements for small business debtors seeking to restructure in bankruptcy. This article will discuss beneficial distinctions of Subchapter V and recent developments.

Eligibility under Subchapter V is provided by Section 1182 of the Bankruptcy Code. This Section states that a Subchapter V debtor must be a person (including a corporation) engaged in commercial or business activity that incurred more than half of its debt from commercial or business activities. Excluded as debtors are single asset real estate debtors and debtors that have in excess of \$3,024,725 in secured and unsecured debt.



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While not defined in the Bankruptcy Code, engaging in commercial or business activities has been broadly interpreted by bankruptcy courts, depending on the jurisdiction.

Procedurally, Subchapter V is quicker and less complex as its Chapter 11 contemporary. A plan of reorganization must be filed within 90 days of commencement of the case and may only be filed by the debtor. When a debtor files for relief, the debtor must designate in the petition commencing the case whether it is a small business debtor filing under Subchapter V. Administratively, a Subchapter V trustee is appointed upon the filing of a petition designated under Subchapter V, in contrast to an unsecured creditors committee (only appointed for cause) and the Office of the United States Trustee that are involved in a traditional Chapter 11 case. Under Subchapter V, the debtor avoids paying costly quarterly fees and simply compensates the Subchapter V trustee on an hourly basis. The duties of the Subchapter V trustee are to ensure that the debtor remains on track; the debtor still maintains control and operation of its business. In contrast to the Chapter 11 plan confirmation process, a debtor filing under Subchapter V is not required to file a disclosure statement. Accordingly, confirmation is fast-tracked. Confirmation of the plan is also less onerous because the absolute priority rule does not apply under Subchapter V. This means that a Subchapter V debtor may retain its ownership interest in its business as long as the plan does not discriminate unfairly

and is fair and equitable to creditors. Even with objections by creditors, a debtor may still confirm a plan if all projected disposable income will be applied to plan payments.

While the COVID-19 pandemic led Congress to temporarily increase the Subchapter V debt limit to \$7,500,000 under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, this increase expired on March 27, 2022. On April 7, 2022, the Senate passed the Bankruptcy Threshold Adjustment

and Technical Corrections Act, which increases the Subchapter V debt limit to \$7,500,000 for the next two years. As of June 7, 2022, this legislation was approved by the House and Senate. The legislation will now be sent to President Biden to be signed into law. If signed into law, the Bankruptcy Threshold Adjustment and Technical Corrections Act will expand availability of this streamlined Chapter 11 process to a wider population of small businesses in distress.

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