

CARES Act Raises Small Business Bankruptcy Debt Ceiling to \$7,500,000

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March 27, 2020



We previously informed you that if you are a small business that needed to file bankruptcy to save your company, then you may be able to take advantage of Subchapter V of Chapter 11 of the Bankruptcy Code.

The new subsection, which took effect in February, creates a more streamlined and less expensive Chapter 11 reorganization path for small business debtors. The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), which passed the United States Senate unanimously and is expected to be passed by the House of Representatives and signed by the President, will expand the number of small business eligible for relief during the COVID-19 outbreak.

[Ed. Note: The CARES Act was signed into law on March 27, 2020.]

Currently, to be eligible for Subchapter V, a debtor (whether an entity or an individual) must be engaged in commercial activity and its total debts -- secured and unsecured -- must be less than \$2,725,625. At least half of those debts must come from business activity. Under the CARES Act, the debt ceiling will be raised to \$7,500,000. At least half of those debts must still come from business activity (excluding debts owed to affiliates or insiders), and the debtor's principal activity cannot be a single-asset real estate operation. The small business would need to file bankruptcy within one year of the effective date of the CARES Acts and elect to proceed under Subchapter V.

Bankruptcy should not be a first option for any business, big or small, but this generous expansion of Subchapter V eligibility is a potential lifeline for companies that may have no other alternative to closing their doors permanently.

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