

Debt Ceiling Shrinks for Small Business Bankruptcies

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Subchapter V of Chapter 11 of the Bankruptcy Code, which took effect in February 2020, creates a more streamlined and less expensive Chapter 11 reorganization path for small business debtors. Under the law as originally passed, to be eligible for Subchapter V, a debtor (whether an entity or an individual) had to be engaged in commercial activity and its total debts -- secured and unsecured -- had to be less than \$2,725,625. At least half of those debts must have come from business activity.

In March 2020, in response to the COVID-19 pandemic, Congress passed the CARES Act, which raised the Subchapter V debt ceiling to \$7.5 million for one year. Congress extended it to March 27, 2022. A bipartisan Senate bill would make the Subchapter V debt limit permanent at \$7.5 million and index it to inflation. But Congress has not yet passed the legislation or sent it to President Biden for signature. So, for now, the debt ceiling has shrunk to the original \$2,725,625.

Subchapter V has proven popular, with over 3,100 cases filed in the last two years (78 in North Carolina). Many of those cases could not have proceeded under Subchapter V but for the higher debt limits. The American Bankruptcy Institute has reported that Subchapter V cases are experiencing higher plan-confirmation rates, speedier plan confirmation, more consensual plans, and improved cost-effectiveness than if those cases had been filed as a traditional Chapter 11. Anecdotally, most debtors in North Carolina are filing under Subchapter V if they are eligible.

We will continue to monitor legislative activity and report if Congress passes a law to reinstate the \$7.5 million debt ceiling.

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