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# Locke Lord QuickStudy: Too Much of a Good Thing: Congress Allows Increased Subchapter 5 Eligibility Level to Expire

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Over the past few years, one of the universally celebrated success stories in the bankruptcy and restructuring world has been Subchapter V of the Bankruptcy Code. Created by the Small Business Reorganization Act of 2019 (the "SBRA"), Subchapter V provides a streamlined and (reasonably) economical pathway for the restructuring of a distressed but viable business. Assuming that the outstanding debts fall within a congressionally specified threshold, Subchapter V dramatically simplifies the pathway to a confirmed Chapter 11 plan. Debtors in a Subchapter V case need not file a disclosure statement, enjoy a more lenient plan confirmation process, and can make payments outside of the absolute priority rule. In short, a Subchapter V debtor can get to plan confirmation—the ultimate end point of a successful reorganization—in a quicker, simpler and cheaper manner than a typical Chapter 11 debtor.[1] Given these benefits, we might have reasonably expected Congress to expand the availability of Subchapter V relief. Without any clear legislative or policy justification, Congress has just done the opposite.

At the time of the SBRA's enactment, the debt threshold for Subchapter V eligibility was relatively modest. Small business debtors with a debt threshold under $2,725,625 were eligible to pursue a reorganization under Subchapter V. Through the enactment of the CARES Act at the heart of the COVID-19 pandemic in 2020, Congress increased the debt eligibility limit to $7.5 million for all cases pending, commenced on, or commenced after March 27, 2020. The financial devastation caused by the pandemic drove lawmakers to provide more relief to small businesses. This increase was extended twice by two additional acts through June 21, 2024.[2]

While seemingly a modest increase, the change in the debt threshold dramatically expanded the number of stressed and distressed companies seeking Subchapter V relief. In 2023 alone, Subchapter V cases accounted for 44% of all chapter 11 filings—more than a quarter of which would have surpassed the lower debt limit.[3] Research also shows that debtors in Subchapter V cases are more likely to confirm a plan than those in chapter 11.[4] Put simply, the SBRA has worked marvelously well and very much as intended by Congress, and the increased debt limit has afforded an opportunity to efficiently reorganize to a larger number of small businesses.

On April 17, 2024, the Bankruptcy Threshold Adjustment Extension Act, which would have further extended the debt limit increase through June 21, 2026, was introduced to the Senate. But a hold was placed on the bill, and the increased debt limit expired on June 21, 2024. As a result, those companies wishing to pursue a Subchapter V reorganization are no longer eligible for this relief if their aggregate debts exceeding the lower threshold

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established in 2019 when the SRBA was enacted. As adjusted pursuant to 11 U.S.C. § 104, this means Subchapter V debtors today cannot have debt in excess of $3,024,725.

No substantive reason or justification was provided for either the hold or the resulting lapse of the higher threshold. Bankruptcy professionals and judges alike are urging Congress for an increased debt limit to be permanent[5] and intend to resurface the blocked bill.[6] The sunset will certainly slow down business bankruptcy filings and could even cause disaster for small business debtors unless—or until—Congress takes a lasting stance on the Subchapter V debt limit.

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[1] This QuickStudy focuses primarily on the debt threshold levels for Subchapter V eligibility, and does not consider the other requirements of Subchapter V at length. We do note that, in addition to meeting the debt threshold, (1) the debtor must be a person engaged in commercial or business activities, and (2) the debt must be at least 50% comprised of commercial or business debt. 11 U.S.C. § 1182.

[2] See Pub. L. No. 116-136 (2020), as amended by Pub. L. No. 117-5 (2021), as further amended by Pub. L. No. 115-151 (2022).

[3] *See* Hon. Paul W. Bonapfel, et al., Subchapter V Task Force Report and Recommendations, 537 (Am. Bankr. Inst. 2024).

[4] *Id.* at 532. Important to note, though, is that the requirements for confirmation of a plan in Subchapter V cases are not as stringent as those in Chapter 11.

[5] *Id.* at 536.

[6] Dietrich Knauth, *Small business bankruptcy rules get tighter after US law expiration*, Reuters (June 21, 2024).

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