

Eligibility for bankruptcy just became easier

Let's face it, sometimes businesses fail for no particular reason. Whether it's an unexpected increase in costs of goods sold, or too much competition within the local economy, good businesses with good management do fail (a phenomenon known as a "routine business failure.") The good news for these companies is that they can be saved in many instances by utilizing Subchapter V, Chapter 11 Bankruptcy (a so-called "Sub Five" or "SubV.")

SubV bankruptcy was designed specifically for small to mid-size businesses when our Federal lawmakers recognized the expense and complexity of a "regular" Chapter 11 bankruptcy was an impracticable option. Ultimately, small businesses were being denied access to the Bankruptcy Court because they were being "priced out" of the Chapter 11 bankruptcy process. As a result, small businesses in distress had no viable options other than to shut down, fire their employees and close the company.

Kudos to Congress. They came to the rescue by creating SubV, which implemented the following cost saving measures in comparison to a regular chapter 11 bankruptcy:

The SubV process is much quicker than a regular chapter 11 case. A plan under SubV must be filed within the first 90 days of the case. This a strict deadline.

- In SubV, the Debtor does not need to file a legal document known as a "Disclosure Statement." Disclosure Statements are very complicated documents and are tantamount to a "prospectus," which is issued by companies before they solicit public investors. Congress recognized that in most small business cases, these documents were unnecessary.

- In a "regular" chapter 11 case, the Debtor has to pay quarterly fees to the Office of the United States Trustee. These fees add up and can be substantial depending on the size of the Debtor. SubV has eliminated these fees.



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- When a "regular" chapter 11 case is filed, creditors are solicited to join an Official Committee of Unsecured Creditors ("Committee.") If a Committee is formed, the Debtor becomes responsible for the legal fees that are incurred by counsel for the Committee. SubV has eliminated the formal formation of a Committee and the Debtor need not pay these additional legal expenses.

When SubV bankruptcies came into effect—in February 2020—one of the eligibility requirements was that the SubV Debtor could not have more than \$2,725,625 in total debt. For a myriad of reasons pertaining to the COVID-19 pandemic, Congress raised that debt limit to \$7.5 million soon after the SubV process came into effect. The increased debt limit was meant to be temporary. However, Congress recently extended the increased debt limit so that the \$7.5 million threshold remains intact. More companies, therefore, now have access the SubV process. Unfortunately, however, the extended \$7.5 million debt limit is scheduled to expire on June 21, 2024.

Financially distressed small to mid-sized companies with more than \$2,725,625 in debt will be precluded from utilizing the SubV process—and forced to use the much more expensive regular chapter 11 process— after June 21, 2024.

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