

COVID-19

Bankruptcy Relief Extension Act of 2021

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American Rescue Plan 

The Small Business Reorganization Act of 2019

Unaware of the impending pandemic, in 2019, Congress enacted the Small Business Reorganization Act of 2019 (the “SBRA”). When enacted, it was scheduled to take effect on February 19, 2020, just as the pandemic was beginning. The purpose of the SBRA was to streamline the process by which small business debtors (including certain individuals) could reorganize, including by allowing debtors to confirm a plan without any votes by creditors in favor of the plan, in comparison to the “regular” Chapter 11 reorganization process, which requires certain affirmative votes. The SBRA established what is known as a “Subchapter V” case under Chapter 11 of the Bankruptcy Code.

Debt Limit Under the SBRA Increases Under the CARES Act

The SBRA established a debt limit of \$2,725,625 in order to qualify as a Subchapter V debtor. When the pandemic hit, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) increased the debt limit for Subchapter V cases to \$7,500,000. However, the increased debt limit was to sunset without further Congressional action, one year later, on March 27, 2021.

For certain entities and individuals, qualifying for relief under the SBRA makes a big difference. Indeed, since the enactment of the SBRA, parties have litigated issues concerning the debt limit, including whether or not debts arising out of a debtor’s rejection of a lease (which can be substantial), and amounts due on account of PPP loans (which may be forgiven), must be counted.

COVID-19 Bankruptcy Relief Extension Act of 2021 Extends Increased Debt Limit

On the last day before the sunset of the CARES Act, President Biden signed the COVID-19 Bankruptcy Relief Extension Act of 2021 into law. This Act extended the increased debt limit of \$7,500,000 for Subchapter V cases by another year, to March 27, 2022. There is conjecture that Congress may act to permanently increase the debt limit to \$7,500,000, or even to increase it, but time – and politics – will tell.

Some Statistics

Since the enactment of the SBRA, a total of 1,763 Subchapter V cases were filed nationwide (through March 20, 2021) according to the American Bankruptcy Institute. Not surprisingly, and probably due to the uncertainty as to whether the debt limit would revert to the lower amount, the highest relative number of Subchapter V cases were filed in March of 2021.



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