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Senate Bill Introduced to Make Permanent Bankruptcy Code's $7.5 Million Debt Limit for Subchapter V Cases

On March 14, 2022, Senator Charles Grassley of Iowa introduced Senate Bill 3823 entitled the "Bankruptcy Threshold Adjustment and Technical Corrections Act" into the United States Senate (the "Bill"), which proposes amendments to Subchapter V of Chapter 11 of the United States Bankruptcy Code (the "Code") and to Chapter 13 of the Code. The Bill is initially co-sponsored on a bipartisan basis by Senators John Cornyn of Texas, Dick Durbin of Illinois, and Sheldon Whitehouse of Rhode Island.

The Bill proposes to make permanent the debt limit of $7,500,000 provided by Section 1182(1) of the Code for debtors to qualify for relief under Subchapter V (the fast-track small business bankruptcy option provided by the Small Business Reorganization Act of 2019 (the "SBRA")). The debt limit is currently set to expire on March 27, 2022.

Originally, the debt limit to qualify under Subchapter V was $2,725,625 of non-contingent, liquidated, secured and unsecured debts (excluding debts owed to affiliates or insiders). Under the Coronavirus Aid, Relief and Economic Security Act signed into law on March 27, 2020, the limit was temporarily increased to $7.5 million for one year. That increase was extended for one additional year by the COVID-19 Bankruptcy Relief Extension Act of 2021 and will expire March 27th without passage of the Bill or other legislation to extend it.

Additionally, the Bill seeks to index the $7.5 million debt limit to inflation allowing for the limit to be adjusted upwards every three (3) years to account for changes in the Consumer Price Index for All Urban Consumers, published by the Department of Labor. The Bill does not propose adjusting the debt limit on April 1, 2022, when other adjustments will be made.

Among other amendments, the Bill also seeks to make clear that in Subchapter V cases where a debtor ceases to be a "debtor in possession," the Subchapter V Trustee is authorized by the Code to operate the debtor's business.

For Chapter 13 cases (for individuals seeking to reorganize versus liquidate their debts and assets in Chapter 7), the Bill proposes a new, increased, and combined debt limit of $2,750,000 for both secured and unsecured, non-contingent debts. Under current law, the debt limit for such cases is lower and split between secured debts ($1,257,850) and unsecured debts ($419,275). The Bill, therefore, increases by over $1 million the debt limit for Chapter 13 cases and simplifies the eligibility requirement. This change will expand the number of individuals eligible and could result in individuals who would otherwise have to file individual Chapter 11 bankruptcy cases to file under Chapter 13. As a result, creditors, especially banks, credit unions, and other lending institutions may become more frequently involved in Chapter 13 cases than before and may need additional awareness and guidance on how to navigate the Chapter 13 case and plan process.

The Bill will need to pass the Senate and the House of Representatives before it can be considered for signing by the President. The Bill can be tracked here.

Additional information about the SBRA and Subchapter V is available in these articles by Spencer Fane Attorneys:

- "Small Business, Big Debt: SBRA allows more efficient Chapter 11 bankruptcies"
- "Missouri Bankruptcy Court Holds Debtor Must Be Currently Engaged in Commercial or Business Activities to Be Eligible to Make Subchapter V Election"
- "Guidance for Arizona Banks on the Small Business Reorganization Act of 2019"

This blog post was drafted by Eric Van Horn, an attorney in the firm's Bankruptcy, Restructuring, and Creditors' Rights practice group. This practice group has over 30 attorneys across the country, including several who are current or former Chapter 7 and Subchapter V Bankruptcy Trustees. Spencer Fane is a full-service law firm with nearly 400 attorneys in 22 offices across the country, and Eric works in the Dallas, TX office. For more information, visit www.spencerfane.com.