

A PRIMER ON
THE SMALL BUSINESS REORGANIZATION ACT OF 2019

by:
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Introduction

- Effective February 19, 2020
- Designed for economy and speed
- Subchapter V only applies if the small business debtor *elects* to be governed by the provisions of subchapter V
- CARES Act broadens eligibility to \$7.5mil in debt

The Big 7

- Elimination of creditor sponsored plans;
- Elimination, for the most part, of a creditor's committee in all small business cases including those that proceed under subchapter V;
- Elimination of the Absolute Priority Rule;
- Ability of a Debtor to modify a non-purchase money security interest or mortgage in a residence used in connection with a Debtor's business;
- Confirmation of a Plan can be obtained without the support of any class of claims, so long as the plan meets certain requirements;
- The serial filer no-automatic-stay provision of § 362(n) does not apply;
- Subchapter Trustee fees instead of U.S. Trustee fees.

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Eligibility The “small business case”

- A § 101(51C) “small business case” is the statutory trigger for mandatory application of the BAPCPA small business reorganization provisions which remain in place.

(51C) The term “small business case” means a case filed under chapter 11 of this title in which the debtor is a small business debtor *and has not elected that subchapter V of chapter 11 of this title shall apply.*

- Under the SBRA, however, a § 101(51D) “small business debtor” can *opt out* of the BAPCPA regime by electing for the case to proceed as a Subchapter V case.

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Eligibility

The “small business debtor” (CARES Act Amendments)

The provisions of subchapter V apply in cases in which a small business debtor elects them. The operative statutory provision is new § 103(i). As amended by the CARES Act, it provides:

Subchapter V of chapter 11 of this title applies only in a case under chapter 11 in which a **debtor** (as defined in section 1182) elects that subchapter V of title 11 shall apply.

SBRA inserted new subsection (i) in § 103 and renumbered existing subsections (i) through (k) as (j) through (l). Before enactment of the CARES Act, new § 103(i) provided:

Subchapter V of chapter 11 of this title applies only in a case under chapter 11 in which a **small business debtor** elects that subchapter V of title 11 shall apply.

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Eligibility

The “small business debtor”

SBRA added new § 1182, which defined “debtor” in subsection (1) as meaning a “small business debtor,” a term defined in § 101(51D).

SBRA also revised the § 101(51D) definition of “small business debtor.”

The CARES Act amended § 1182(1) so that its definition of “debtor” is the same as the definition of “small business debtor” in revised § 101(51D), (excluding public companies), except that the amount of the debt limit is increased to \$ 7.5 million. **The debt limit in revised § 101(51D) is unchanged.**

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