

How Subchapter V Bill May Change Restructuring Analysis

By **Robert Charbonneau** (September 3, 2026, 1:02 PM EDT)

The U.S. Senate's passage of the Bankruptcy Threshold Adjustment Act on Aug. 3 has understandably focused attention on one number: \$7.5 million.[1] The companion bill cleared the House Judiciary Committee in late March and now awaits a floor vote.[2]

If enacted, the legislation would restore the higher debt limit for Subchapter V of Chapter 11, more than doubling the current cap[3] and significantly expanding the pool of businesses eligible to use the streamlined restructuring process.[4]

But its most significant impact may have less to do with expanding eligibility than with the strategic decisions it may influence before and during a business restructuring.

By way of background, in 2019, the Small Business Reorganization Act set the threshold at \$2,725,625. Three months later, the CARES Act raised it to \$7.5 million. After a congressional extension in 2022, the \$7.5 million eligibility threshold sunset on June 21, 2024. Unlike the 2022 legislation that last set the limit at \$7.5 million, the pending bill contains no sunset.

For the past two years, many financially distressed companies have occupied an uncomfortable middle ground. Their debt exceeded the Subchapter V eligibility threshold, yet the cost and complexity of a traditional Chapter 11 made reorganization economically impractical. Some pursued out-of-court workouts. Others delayed restructuring efforts while attempting to preserve liquidity. Still others found themselves with few realistic options.

The American Bankruptcy Institute estimates that roughly 1,475 small businesses were ineligible to file under Subchapter V because of the lower threshold between June 22, 2024, and March 15, 2026.[5]

If the Bankruptcy Threshold Adjustment Act becomes law, that strategic landscape will change. Companies that previously viewed a traditional Chapter 11 as their only restructuring alternative may gain access to a process that better aligns with the size and economics of their business. Creditors will likewise need to reassess their negotiating strategies, recognizing that debtors who once faced restructuring costs they could not absorb may gain access to a court-supervised proceeding they can afford.



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The legislation, therefore, has the potential to influence how distressed businesses, lenders, and restructuring professionals evaluate restructuring alternatives long before a bankruptcy petition is filed.

A wide range of businesses are likely to benefit.

Much of the discussion surrounding the proposed legislation has understandably focused on "small businesses." That description, however, oversimplifies the group of companies most likely to be affected.

Many businesses carrying debt between the current eligibility threshold and the proposed \$7.5 million limit are neither startups nor neighborhood retailers. They are established operating companies with substantial assets, meaningful workforces and otherwise viable business models that have encountered financial pressure because of changing market conditions, rising interest rates, litigation exposure, supply chain disruptions or declining revenues.

Manufacturers, wholesale distributors, specialty and mechanical contractors, staffing and professional services firms, auto dealerships, trucking and logistics companies, restaurant groups, franchise operators, and family-owned businesses that expanded during periods of inexpensive credit are typical. Each can easily carry debt above the current Subchapter V threshold while remaining well below the debt levels typically associated with large Chapter 11 cases.

The debt test is narrower than it sounds. Eligibility counts noncontingent, liquidated secured and unsecured debt measured at the petition date, and it excludes debt owed to insiders and affiliates. Unliquidated litigation claims generally do not count, so a company that looks well over the line on its balance sheet may sit under it. Affiliated debtors are measured as a group, which is a trap for owners who hold assets in several single-purpose entities.

Real estate deserves caution. Subchapter V is not available to a debtor whose primary activity is owning single-asset real estate. An entity that holds a single office building, shopping center or apartment complex and does nothing but collect rent will usually meet that definition, and it will remain ineligible no matter where Congress sets the debt limit.

The pending legislation carries that exclusion forward unchanged. The exclusion turns on what the debtor does rather than on what it owns. An owner that runs an operating business on the property — a hotel, a restaurant, a marina, an assisted living facility — and conducts substantial business beyond operating the real property can qualify.

Structure matters as well. A property company that leases its building to an affiliated operating company is the passive owner the exclusion targets, even though the group as a whole runs a business.

Many of these businesses share a common characteristic. Their underlying operations may remain fundamentally viable even though their capital structure no longer reflects present economic realities.

In many restructuring matters, the primary challenge is not preserving the business itself; it is preserving enterprise value while modifying obligations that have become unsustainable because of inflation, higher borrowing costs, reduced demand or changing market conditions.

For businesses that fall within the proposed eligibility range, expanded access to Subchapter V may

change the way businesses and their creditors evaluate restructuring alternatives before financial distress reaches a critical stage.

Consider, for example, a family-owned hotel operator carrying approximately \$5 million in combined secured and unsecured debt after several years of higher borrowing costs and uneven occupancy. Because the company operates a hotel rather than simply holding the real estate, the single-asset real estate exclusion does not reach it.

Under the current eligibility threshold, management may conclude that the expense and complexity of a traditional Chapter 11 outweigh the potential benefits of restructuring, leaving the business to pursue increasingly difficult workout negotiations while liquidity continues to erode.

If the proposed legislation becomes law, that same company may have a realistic opportunity to pursue Subchapter V. The significance extends beyond the availability of another restructuring process. Simply having that option available may influence discussions with lenders, shape restructuring planning and create opportunities to preserve enterprise value before a bankruptcy filing becomes necessary.

Strategic planning should not wait for congress.

The possibility of the proposed increase in the debt limit also raises an understandable question for businesses currently evaluating restructuring options: Should they postpone a bankruptcy filing while Congress considers the legislation?

The answer is rarely straightforward.

Waiting for Congress to act is not, by itself, a restructuring strategy.

Timing carries a hard consequence. The bill, as passed by the Senate, applies only to cases commenced on or after the date of enactment. A company that files a traditional Chapter 11 before the president signs cannot elect Subchapter V afterward. For a business near the line, the question is whether it can hold enterprise value together long enough to file after enactment.

Financial distress rarely develops in isolation. Liquidity may continue to deteriorate. Vendors may tighten payment terms. Key employees may leave. Secured lenders may exercise remedies. Customers may lose confidence. Enterprise value can erode long before a business reaches the courthouse.

For some companies, preserving value may require immediate action regardless of pending legislation. For others, sufficient liquidity and operational stability may provide the flexibility to evaluate whether expanded eligibility could materially improve restructuring outcomes if the legislation becomes law.

The better question, therefore, is whether additional time is likely to preserve or diminish enterprise value. That analysis requires evaluating available liquidity, projected cash flow, lender relationships, covenant compliance, pending litigation, vendor confidence, customer retention and operational performance. Companies should also model multiple restructuring scenarios rather than assume a particular legislative outcome or timetable.

They should assess the relative advantages of negotiated workouts, refinancing opportunities, operational changes, asset sales and formal restructuring proceedings as part of a broader strategy

designed to preserve enterprise value. The current legislative uncertainty simply adds another variable to that analysis.

Expanded eligibility will influence creditor strategy.

Much of the discussion surrounding the proposed legislation has focused on the additional options available to debtors. The practical implications for creditors deserve equal attention.

When restructuring alternatives expand, negotiating dynamics change. A business that previously lacked a realistic path to an affordable Chapter 11 may now have a credible alternative to accepting unfavorable workout terms. That does not necessarily improve the debtor's bargaining position in every case, but it does change the strategic considerations during restructuring negotiations.

Lenders, landlords, trade creditors and other stakeholders should recognize that more businesses may have the ability to pursue a court-supervised restructuring rather than continue negotiating exclusively out of court. As a result, creditors may find greater value in engaging borrowers earlier, evaluating consensual restructuring opportunities before financial distress becomes more acute, and reassessing recovery expectations in light of a different procedural landscape.

The legislation may also influence how secured lenders evaluate enforcement strategies. In some situations, exercising remedies quickly may remain the appropriate course. In others, preserving enterprise value through a negotiated restructuring may produce a better economic outcome than forcing a liquidation that diminishes recoveries for all parties.

A commercial mortgage-backed securities special servicer, working within the timelines and reporting obligations of a pooling and servicing agreement, operates under a different set of constraints than a community bank lender with a direct relationship to the borrower and broad discretion to negotiate a forbearance or restructuring support agreement.

Once a petition is filed, however, the automatic stay halts enforcement regardless of what the servicing agreement directs. Expanded access to Subchapter V does not eliminate the different treatment by creditor types, but it may influence how each creditor evaluates the relative benefits of negotiation versus litigation.

Similarly, trade creditors and critical vendors should recognize that preserving an operating business often produces better long-term results than accelerating collection efforts that further strain liquidity. Businesses that remain operational retain customers, employees, contracts and goodwill. Once those assets begin to erode, they are often difficult, if not impossible, to restore.

The broader point is that expanded Subchapter V eligibility should not be viewed solely as a debtor-focused development. It changes the strategic considerations for every participant in the restructuring process.

The most important decisions may occur before bankruptcy.

One of the more significant implications of the proposed legislation is that its greatest impact may occur before a bankruptcy case is ever filed. By the time a business enters Chapter 11, many of the most consequential decisions have already been made. The potential expansion of Subchapter V reinforces

the importance of that planning process.

Businesses that may become eligible under the proposed legislation should use this period to evaluate their financial condition, understand how the increased debt threshold could affect available restructuring options, and prepare for multiple possible outcomes.

Likewise, creditors should not assume that pending legislation merely delays the inevitable. Understanding how expanded eligibility could influence negotiations, recoveries and timing allows parties to make more informed decisions regardless of whether a bankruptcy filing ultimately occurs.

In many cases, the value created through careful planning exceeds the value created by any particular restructuring tool. Expanded access to Subchapter V is not a substitute for thoughtful restructuring planning. It simply broadens the range of considerations that businesses and creditors should evaluate as they navigate financial distress.

Businesses should look beyond the debt limit.

Much of the discussion surrounding the Bankruptcy Threshold Adjustment Act has understandably focused on restoring the Subchapter V debt limit to \$7.5 million, the broader significance, however, lies in how it may influence restructuring strategy.

For businesses that have spent the past two years operating above the eligibility threshold, expanded access to Subchapter V may create meaningful opportunities to reconsider how and when they pursue a restructuring. Creditors, lenders and other stakeholders may likewise need to reevaluate negotiation strategies, recovery expectations and the value of pursuing consensual resolutions before financial distress deepens.

Perhaps one of the legislation's most significant, yet least obvious, consequences is that some businesses made eligible for Subchapter V may never need to use it. The availability of a more practical restructuring alternative may encourage earlier and more productive negotiations, increasing the likelihood that some financial distress can be resolved outside of bankruptcy altogether.

Whether the legislation ultimately becomes law or not, it serves as a reminder that successful restructurings rarely hinge on a single legal mechanism. They depend on thoughtful planning, realistic financial analysis and a willingness to evaluate available alternatives before circumstances narrow the available paths.

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[1] S. 3977, 119th Cong. (2026) (passed Senate Aug. 3, 2026).

[2] H.R. 7730, 119th Cong. (2026), Bill Summary & All Actions, Congress.gov, <https://www.congress.gov/bill/119th-congress/house-bill/7730/all-info> (last visited Aug. 7, 2026).

[3] Adjustment of Certain Dollar Amounts Applicable to Bankruptcy Cases, 90 Fed. Reg. 8941 (Feb. 4, 2025). The limit is adjusted for inflation every three years, with the next adjustment due April 1, 2028.

[4] The bill also increases the debt limits under chapter 13, but a discussion of those changes is beyond the scope of this article.

[5] Rita Garwood, ABI Backs Bill to Expand Subchapter V Access, ABF J. (Mar. 26, 2026), <https://www.abfjournal.com/abi-backs-bill-to-expand-subchapter-v-access/> (last visited Aug. 7, 2026).