

Federal Rules of Bankruptcy Procedure Amended In Response to Small Business Reorganization Act of 2019

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Financial Restructuring and Bankruptcy Alert

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On February 19, 2020, the Small Business Reorganization Act of 2019^[i] (SBRA) took effect after being signed into law in mid-2019. Among other things, the SBRA created a new subchapter (Subchapter V) to chapter 11 of title 11 of the United States Code (Bankruptcy Code). The primary intent of chapter 11 of the Bankruptcy Code is to permit business debtors to reorganize and restructure their debts in order to revive their businesses and emerge as going concerns.^[ii] However, Subchapter V creates a more streamlined and cost-effective avenue for “small businesses”^[iii] to achieve those same goals. In response to the SBRA, and the accompanying creation of Subchapter V, certain amendments were made to several of the Federal Rules of Bankruptcy Procedure (Bankruptcy Rules or Rules),^[iv] and one (1) Bankruptcy Rule was added.^[v] These changes to the Bankruptcy Rules took effect on December 1, 2022.

AMENDMENTS TO THE BANKRUPTCY RULES

The following Bankruptcy Rules were amended in response to the SBRA as set forth above:

- **Bankruptcy Rule 1007** – **Lists, Schedules, Statements, and Other Documents; Time Limits** – Under amended Bankruptcy Rule 1007(b)(5), an individual Subchapter V debtor is no longer required to file statements of current monthly income. Furthermore, under amended Bankruptcy Rule 1007(h) the duty to file a supplemental schedule terminates upon confirmation of a Subchapter V plan of reorganization or liquidation unless such plan is not accepted by an impaired class of claims. In that instance, the duty to file a supplemental schedule terminates upon discharge of the debtor.
- **Bankruptcy Rule 1020** – **Chapter 11 Reorganization Case for Small Business Debtors** – Under amended Bankruptcy Rule 1020(a), a debtor that files a voluntary petition under chapter 11 of the Bankruptcy Code has fourteen (14) days within which to elect to proceed under Subchapter V. Furthermore, Bankruptcy Rule 1020(c) is deleted, and Rule 1020(d) is redesignated as Rule 1020(c), and is revised to reflect that in most small business and Subchapter V cases there will not be a committee of creditors.
- **Bankruptcy Rule 2009** – **Trustees for Estates when Joint Administration Ordered** – Under amended Bankruptcy Rule 2009(a) and (b), where more than one Subchapter V case is jointly administered, the debtors’ creditors may not elect separate trustees for each separate jointly administered estate (as the office of the United States Trustee appoints a Subchapter V trustee). Furthermore, Rule 2009(c)(2), which addresses the appointment of trustees in jointly administered chapter 11 cases, is amended to make it applicable to cases under Subchapter V.
- **Bankruptcy Rule 2012** – **Substitution of Trustee or Successor Trustee; Accounting** – Under amended Bankruptcy Rule 2012(a), if a Subchapter V debtor-in-possession is removed pursuant to Bankruptcy Code section 1185(a), the Subchapter V trustee is substituted automatically as a party in any pending action, proceeding, or matter.
- **Bankruptcy Rule 2015** – **Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status** – Bankruptcy Rule 2015 is amended to add Rule 2015(b), which dictates the duties of a Subchapter V debtor-in possession, and former subdivisions (b), (c), (d), and (e) are redesignated (c), (d), (e), and (f) respectively.

- **Bankruptcy Rule 3010** – **Small Dividends and Payments in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13** – Bankruptcy Rule 3010(b) is amended to include Subchapter V cases as those in which no payment in an amount less than \$15 shall be distributed by the Subchapter V trustee to any creditor unless authorized by a local bankruptcy rule or order of the court.
- **Bankruptcy Rule 3011** - **Unclaimed Funds in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13** – The title of Bankruptcy Rule 3011 is amended to reflect the fact that Bankruptcy Code section 347(a) applies to Subchapter V cases.
- **Bankruptcy Rule 3014** – **Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case** – Bankruptcy Rule 3014 is amended to provide that the court shall establish a deadline to make an election under Bankruptcy Code section 1111(b), as Bankruptcy Code section 1125[vi] does not apply in Subchapter V cases.
- **Bankruptcy Rule 3016** - **Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case** – Bankruptcy Rule 3016(b) is amended to reflect that Subchapter V debtors are not required to file a disclosure statement (as is required of other chapter 11 debtors pursuant to Bankruptcy Code section 1125) unless ordered to do so by the court. Bankruptcy Rule 3016(d) is amended to include subchapter V cases as ones in which Official Forms are available for a plan of reorganization and, when required, a disclosure statement.
- **Bankruptcy Rule 30171** – **Court Consideration of Disclosure Statement in a Small Business Case or in a Case Under Subchapter V of Chapter 11** – The title and subdivision (a) of Bankruptcy Rule 3017.1 are amended to cover such cases when the court orders that Bankruptcy Code section 1125 (requiring chapter 11 debtors to file a disclosure statement) applies to a Subchapter V debtor.
- **Bankruptcy Rule 30172** – **Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement** – As noted above, Subchapter V debtors generally are not required to file a disclosure statement unless ordered by the court to do so. Bankruptcy Rule 3017.2 is added to the Rules to authorize the court in Subchapter V cases to act at a time other than when a disclosure statement is approved to set certain times and dates.
- **Bankruptcy Rule 3018** – **Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case** – Bankruptcy Rule 3018(a) is amended to take account of the court’s authority to set times under Rules 3017.1 and 3017.2 in Subchapter V cases.
- **Bankruptcy Rule 3019** – **Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case** – Bankruptcy Rule 3019(c) is added to govern requests to modify.

CONCLUSION

Subchapter V of the Bankruptcy Code provides unique advantages allowing small business debtors a streamlined and cost-effective method to navigate the chapter 11 bankruptcy process. Many times, amendments or additions to the Bankruptcy Code are accompanied by related amendments or additions to the Bankruptcy Rules in order to further the fundamental purposes thereof. A small business contemplating Subchapter V protection (or a creditor or other party in interest that may have to participate in a Subchapter V case) should consult with experienced counsel in order to navigate the intricacies that accompany the bankruptcy process.

If you have questions or would like additional information, please contact Travis Powers (powerst@whiteandwilliams.com; 212.868.4837).

[i] Pub. L. No. 116-54, 133 Stat. 1079 (2019).

[ii] Despite this primary intent, natural persons may seek chapter 11 protection, and business debtors may liquidate, rather than reorganize, under chapter 11.

[iii] Defined as (subject to certain exceptions) "a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor" 11 U.S.C. § 1182(1)(A). When Subchapter V first took effect, the debt limit was set at \$2,725,635. Congress passed the Coronavirus Aid, Relief, and Economic Security Act (Cares Act) in March 2020 in response to the COVID-19 pandemic. In the Cares Act, the Subchapter V debt limit was raised to \$7,500,000 for a one-year period, or to March 2021. Congress subsequently extended the raised debt limit to March 27, 2022, at which time it expired and reverted to the original \$2,725,625. However, on June 21, 2022, President Biden signed into law a bill that further extends the \$7,500,000 debt limit to June 21, 2024.

[iv] A "fundamental purpose" of the Bankruptcy Rules "is to set forth what process is due in various categories of bankruptcy matters." *A-Fab Eng'g. Inc. v. C.W. Mining Co. (In re C.W. Mining Co.)*, No. UT-09-017, 2009 Bankr. LEXIS 4055, at *20 (10th Cir. B.A.P. Dec. 30, 2009) (quoting *In re Stacy*, 405 B.R. 872, 878 (Bankr. N.D. Oh. 2009)).

[v] Four (4) additional Bankruptcy Rules were amended but those amendments are beyond the scope of this alert.

[vi] Among other things, Bankruptcy Code section 1125 requires a chapter 11 debtor to accompany a plan of reorganization or liquidation with a disclosure statement. Elections under Bankruptcy Code section 1111(b) are generally made at any time prior to the conclusion of the hearing on the disclosure statement. However, Subchapter V debtors are not required to file a disclosure statement. Therefore, amended Bankruptcy Rule 3014 notes that the court will set the applicable election deadline.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.