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Insights

Distress Is Moving Down-Market: What Lenders Need to Know About Rising Small-Business Filings and the Bankruptcy Threshold Adjustment Act

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Bottom Line

Bankruptcy activity is rising, and the growth is concentrated in small and middle-market borrowers. Subchapter V elections are up 46% year over year, and Congress has sent the President legislation that would permanently restore the Subchapter V debt ceiling to $7.5 million, more than double the current $3,424,000 limit.

Subchapter V is a streamlined Chapter 11 process for eligible small-business debtors. **If signed, the legislation could allow a significantly larger share of commercial borrowers, guarantors, and real estate investors to restructure in streamlined proceedings that give secured and unsecured creditors less leverage than a traditional Chapter 11**. Lenders should re-examine their portfolios, documentation, and enforcement timing now, before the new thresholds reshape negotiating dynamics.

Key Developments

- **Filings continue to climb.** Total bankruptcy filings reached 469,719 in the first nine months of 2026, an 11% increase over the same period in 2025. Chapter 11 filings also rose 11% during that same period.
- **Small businesses are driving the increase.** Subchapter V elections rose 46%, from 1,672 to 2,442, while Chapter 11 actually fell month-over-month, suggesting that the growth is concentrated among smaller debtors rather than across the commercial market generally.

The Bankruptcy Threshold Adjustment Act (H.R. 7730)

The bipartisan bill passed the House on September 16 and the Senate by unanimous consent on September 28, and has been sent to the President for signature. As passed, it would:

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- **Permanently restore the Subchapter V debt limit to $7.5 million.** The enhanced CARES Act-era limit sunset in June 2024; the current adjusted limit is $3,424,000.
- **Raise the Chapter 13 debt limit to $2.75 million** and eliminate the separate secured and unsecured debt caps for eligibility purposes.

The practical significance for creditors is considerable. Subchapter V is designed to be faster and less expensive for debtors. It streamlines many of the features of a traditional Chapter 11 case - only the debtor may propose a plan, a creditors' committee is not appointed, and a plan may be confirmed over creditor objection without satisfying the absolute priority rule, allowing owners to retain equity.

Raising the debt ceiling to $7.5 million brings many owner-operated businesses, family real estate holding companies, and multi-property operators back within reach of these tools. On the consumer side, the combined $2.75 million Chapter 13 limit will make Chapter 13 available to more individual guarantors and real estate investors whose mortgage debt previously disqualified them.

Risks and Opportunities for Lenders

- **Less control over timing and outcome.** Borrowers with debts in the $3.4 million to $7.5 million range will be able to file Subchapter V rather than face a traditional Chapter 11 or a state-court foreclosure or receivership. Expect more filings timed to stay pending foreclosure sales and receivership motions.
- **Real estate-secured exposure.** Single asset real estate debtors remain ineligible for Subchapter V, but operating businesses that own their real estate, and individuals who own investment properties, are not. Secured lenders should expect valuation disputes, cramdown proposals, and pressure on default interest and fees.
- **Guarantor recoveries.** The revised Chapter 13 limits may allow more individual guarantors to restructure personal liability, affecting the value of guaranty-based recovery strategies.
- **Opportunity for prepared creditors.** Streamlined cases move quickly. Lenders with clean documentation, current valuations, and an early seat at the table are best positioned to shape plan terms, credit bid, or acquire distressed assets on favorable terms.

Recommended Next Steps

- **Review the portfolio** to identify commercial borrowers and guarantors with aggregate debts between roughly $3.4 million and $7.5 million, as well as individual obligors who may newly qualify for Chapter 13.
- **Audit loan documents and collateral.** Confirm perfection of liens, including on cash collateral and rents, update appraisals, and review guaranty and cross-default provisions.
- **Reassess enforcement timing.** For distressed credits, weigh whether to accelerate state-court remedies, seek a receiver, or negotiate a consensual workout.
- **Prepare a bankruptcy playbook.** Be ready to act early on cash collateral, adequate protection, plan feasibility, and valuation, given Subchapter V's compressed timeline.
- **Have counsel monitor the legislation.** As drafted, H.R. 7730 will become effective for all new bankruptcy cases commenced after it becomes law.

How We Can Help

Lowndes' bankruptcy, restructuring, and creditors' rights attorneys represent lenders and creditors in commercial bankruptcy cases, state-court enforcement actions, receiverships, and real estate litigation. To discuss how these developments affect your portfolio or a specific credit, please contact **Michael Provenzale**.