

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:

ADOPTION OF INTERIM
BANKRUPTCY RULES

GENERAL ORDER No. 20-01

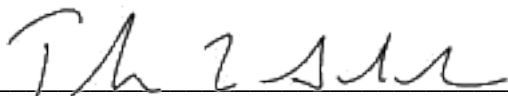
On August 23, 2019, the Small Business Reorganization Act of 2019 (the SBRA) was enacted into law. The SBRA makes many substantive and procedural changes to the Bankruptcy Code and requires changes to the Federal Rules of Bankruptcy Procedure to implement those changes. However, the February 19, 2020 effective date of the SBRA occurs long before the Bankruptcy Rules can be amended under the three-year process required by the Rules Enabling Act. Accordingly, the Advisory Committee on Bankruptcy Rules (the Advisory Committee) drafted, published for comment, and subsequently approved interim bankruptcy rules (the Interim Rules) for distribution to the courts. The Committee on Rules of Practice and Procedure approved the Interim Rules, and the Judicial Conference authorized distribution of the Interim Rules to courts for adoption locally to facilitate uniform implementation of the changes mandated by the SBRA.

NOW THEREFORE, pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 9029 of the Federal Rules of Bankruptcy Procedure, the Interim Rules are adopted in their entirety without change by the judges of this Court to be effective February 19, 2020. For cases and proceedings not governed by the SBRA, the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court, other than the Interim Rules, shall apply.

The Interim Rules shall remain in effect until further order of the Court.

IT IS SO ORDERED.

DATED: January 27, 2020.


Thomas L. Saladino, Chief Bankruptcy Judge

SUMMARY - Small Business Reorganization Act (SBRA)

Public Law 116-54, the Small Business Reorganization Act of 2019, establishes a new subchapter V within chapter 11 of the Bankruptcy Code. This new subchapter V will allow small business debtors to reorganize in Chapter 11 using a simplified and expedited process. This law will become effective 180 days from enactment on February 19, 2020.

Some of the new provisions under this new Subchapter V of Chapter 11 include:

- 11 U.S.C. § 1181 addresses the inapplicability of other sections of the Bankruptcy Code. 11 U.S.C. § 1181(b) provides that under Subchapter V there will generally be no creditor's committee appointed and no disclosure statement. 11 U.S.C § 1181(b) also provides that a discharge will not be granted until completion of plan payments.
- 11 U.S.C. §1182 defines the term debtor, for purposes of subchapter V, as a **small business debtor**.
- 11 U.S.C. §1183(a) addresses the appointment of a trustee in Subchapter V. This section states that "(I)f the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in cases under this subchapter, and if such individual qualifies as a trustee under section 322 of this title, then that individual shall serve as trustee in any case under this subchapter. Otherwise, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as trustee in the case, as necessary." Therefore, the United States Trustee may appoint a standing trustee for Subchapter V or may appoint a qualified individual to serve as trustee.
- 11 U.S.C. §1183(b) sets forth the duties of a trustee in a Subchapter V case, many of which are similar to those performed by a chapter 12 trustee. This section also requires the trustee to participate in certain conferences and hearings concerning matters pertaining to the value of property subject to a lien, confirmation of a reorganization plan and its modification post-confirmation, and the sale of property of the estate. The trustee must also ensure that the debtor commences making timely payments required under a confirmed plan.
- 11 U.S.C. 1183(c) provides that the trustee's service terminates upon substantial consummation of the plan and addresses the notice of substantial consummation, which must be filed by the debtor not later than 14 days after the plan is substantially consummated.
- 11 U.S.C. §1184 sets forth the rights and powers of a subchapter V debtor-in-possession.
- 11 U.S.C. §1185 provides for removal of the debtor-in-possession for cause.
- 11 U.S.C. §1186 addresses property of the estate and provides that if a plan is confirmed, property of the estate includes all property acquired by the debtor after the date the case was commenced, but before the case is either closed, dismissed, or converted. This section also includes all earnings from services performed by the debtor during the same period. Subsection (b) provides that the debtor remains in possession of all property of the estate unless the debtor is removed.
- 11 U.S.C. § 1187 provides for the duties and reporting requirements of a subchapter V debtor.
- 11 U.S.C. § 1188 requires the court to hold a status conference for Subchapter V cases not less than 60 days after the entry of the order of relief, unless the court extends this time period. This section also requires the debtor, not later than 14 days before the date of the status conference, to file a report with the court and serve it on the trustee and all parties in interest. This report should detail the efforts the debtor has undertaken and will undertake to reorganize.
- 11 U.S.C. § 1189 states that "only the debtor may file a plan under this subchapter." This section also sets a deadline of not later than 90 days after the order for relief, for the debtor to file the plan. This deadline can be extended by the court.

SUMMARY - Small Business Reorganization Act (SBRA) (CONT.)

- 11 U.S.C. § 1190 addresses the contents of the plan under Subchapter V. The plan must include: a brief history of the business operations of the debtor; a liquidation analysis; and projections regarding the debtor's ability to make payments under the proposed plan. The plan must also address future earnings, and the plan can modify the rights of a creditor whose claim is secured by a security interest in real property that is the principal residence of the debtor if the new value received in connection with the granting of the security interest was not used primarily to acquire the real property, but it was used primarily in connection with the small business of the debtor.
- 11 U.S.C. §1191 addresses confirmation of the plan under subchapter V. This section also defines "disposable income" to mean the income that is received by the debtor and that is not reasonably necessary to be expended for: (1) the maintenance or support of the debtor or a dependent of the debtor; (2) a domestic support obligation that first becomes payable after the date of the filing of the case; or (3) the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor. This section also addresses the payment of administrative expenses through the plan. In addition, assuming the plan meets with the requirements of section 1191, the so called "absolute priority rule" does not apply in SBRA cases, so ownership may retain control of the small business debtor post-confirmation, even when claims of the debtor's unsecured creditors have not been repaid in full.
- 11 U.S.C. §1192 requires the court to grant the debtor a discharge as soon as practicable after completion by the debtor of all payments under the plan within the first three years of the plan, or such longer period not to exceed five years if the court expands that time. This is different from a regular Chapter 11 case as a discharge is not typically granted in a chapter 11 filed by a non-individual. 11 U.S.C. § 1141(d)(1) provides that confirmation of a plan discharges a debtor from any debt that arose before the date of confirmation.
- 11 U.S.C. 1193 addresses modification of a plan before and after confirmation.
- 11 U.S.C. § 1194 addresses the trustee's responsibilities for collecting and distributing payments made by the debtor pursuant to the plan.
- 11 U.S.C. § 1195 addresses employment of professional persons who hold a claim against the debtor estate.
- The current language of 11 U.S.C. 101(51D) is amended to require at least 50 percent of a small business debtor's debt to arise from the commercial or business activities of the debtor.
- The current language of 11 U.S.C. § 547(b) is amended to address preferences in all chapters by requiring reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses prior to filing.
- The current language of 28 U.S.C. §1409(b), which addresses venue of proceedings arising under the Bankruptcy Code, is amended to increase the monetary limit of certain claims.
- The current language of 11 U.S.C. § 347(a) is amended to permit the trustee to deposit unclaimed funds with the Court.
- Section 4 of this law includes conforming amendments.
- This law does not specifically address bankruptcy administrators.
- 28 U.S.C. § 1930(a)(6)(A) is amended to make the payment of quarterly fees to the U.S. Trustee inapplicable to subchapter V cases.

RULES CHANGES - Small Business Reorganization Act of 2019 (SBRA)

This Act creates a new subchapter V of chapter 11 for the reorganization of small business debtors. It does not repeal existing chapter 11 provisions regarding small business debtors, but instead creates an alternative procedure that small business debtors may elect to use.

The President signed the legislation on August 23, 2019. It will go into effect on February 19, 2020.

In December 2019, the Executive Committee of the Judicial Conference approved a package of interim rules and recommended that they be distributed to the courts so that they can be adopted locally to facilitate uniformity. This package of interim rules was recommended by the Advisory Committee on Bankruptcy Rules and the Committee on Rules of Practice and Procedure. This [memorandum](#) from the Committee on Rules of Practice and Procedure details these interim rules, and includes a memorandum prepared by the Advisory Committee on Bankruptcy Rules summarizing the interim rules and also provides courts with a proposed court order for adopting these interim rules. Both [clean](#) and [redline](#) versions of the interim rules can be found on this [page](#) on uscours.gov.

Below is a list of each Interim Rule with a brief description.

Rule 1007 – As amended, subdivision (b)(5) of the rule includes an exception for subchapter V cases and clarifies that because §1129(a)(15) is inapplicable to subchapter V cases, there is no need for an individual debtor in a subchapter V case to file a statement of current monthly income. This rule is also amended to clarify when the duty to file a supplemental schedule is terminated. The Committee Note provides “Subdivision (h) is amended to provide that the duty to file a supplemental schedule under the rule terminates upon confirmation of the plan in a subchapter V case, unless the plan is confirmed under § 1191(b), in which case it terminates upon discharge as provided in § 1192.”

Rule 1020 – This rule, which addresses small business Chapter 11 reorganizations, is substantially amended to include the new option for a small business debtor to elect to be a debtor under subchapter V of chapter 11. Subdivision (a) is amended to require a small business debtor to state in its voluntary petition, or in a statement filed within 14 days after the order for relief is entered whether it elects to proceed under subchapter V. The rule does not address when or under what conditions a debtor can elect to proceed under subchapter V after the specified time. Subdivision (c) of this rule is removed as a creditor’s committee is no longer a requirement for small business debtor status. Subdivision (d) of this rule is redesignated, and the list of entities to be served is revised to reflect that in most small business and subchapter V cases there will not be a committee of creditors.

Rule 2009 – This rule, addressing trustees for estates when joint administration is ordered, is amended to reflect the new subchapter V of chapter 11. In cases under subchapter V, the new law requires the United States Trustee to appoint a trustee. Thus, this rule is amended to reflect this option.

Rule 2012 – This rule, addressing substitution of a trustee and successor trustee, is amended to conform to the SBRA.

RULES CHANGES - Small Business Reorganization Act of 2019 (SBRA) (CONT.)

Rule 2015 – This rule addresses the trustee or debtor-in-possession’s duty to keep certain records. This amendment adds a new subdivision (b) detailing the duties of the debtor-in-possession, trustee and debtor in a subchapter V case. These changes are necessary to reflect that in subchapter V cases, there will typically be a trustee and a debtor-in-possession. The other sections in this rule are redesignated.

Rule 3010 – This rule, which addresses small dividends and payments in cases under chapters 7, 12, and 13, would be amended to add language to subsection (b) to include cases filed under subchapter V of chapter 11. This change would clarify that no payment in an amount less than \$15 shall be distributed in these cases.

Rule 3011 – This rule addresses unclaimed funds in chapters 7, 12, and 13. This rule is amended so that it will also apply to subchapter V of chapter 11.

Rule 3014 – This rule is amended to provide that the court may set a deadline for making an election under § 1111(b) in a case under subchapter V of chapter 11.

Rule 3016 – This rule is amended to reflect that a disclosure statement is not required in a subchapter V case unless the court orders otherwise.

Rule 3017.1 - The rule is amended to reflect in the title and subdivision (a) of the rule that it applies to cases under subchapter V when the court orders that §1125 of the Code applies.

Rule 3017.2 - This rule is new and is added because there generally will not be a disclosure statement in a subchapter V case; thus, this rule authorizes the court in a subchapter V case to act at a time other than when a disclosure statement is approved to set certain times and dates.

Rule 3018 – This rule is amended to address the amendment to Rule 3017.1 and the new Rule 3017.2.

Rule 3019 – This rule is amended to add a new subdivision (c) to address requests to modify a plan after confirmation in such cases under § 1193(b) or (c) of the Bankruptcy Code.

FORMS CHANGES - Small Business Reorganization Act of 2019 (SBRA)

The Committee on Rules of Practice and Procedure recommended the changes to several Official Forms, as well as the creation of two new Official Forms and the update of one Director's Form.

Official Forms

[Official Form 101](#) (Voluntary Petition for Individuals Filing for Bankruptcy). Part 3, line 13 seeks information to determine if the debtor is a small business debtor. Line 13 is amended to provide space for a debtor that claims small-business status to indicate whether it elects to proceed under subchapter V of chapter 11.

[Official Form 201](#) (Voluntary Petition for Non-Individuals Filing for Bankruptcy). Same change to line 8 to provide space for a debtor that claims small-business status to indicate whether it elects to proceed under subchapter V of chapter 11.

[Official Form 309E1](#) (Notice of Chapter 11 Bankruptcy Case—For Individuals or Joint Debtors). This form is amended to add a '1' to the end of the form number. This form will continue to be used in chapter 11 cases other than subchapter V.

[Official Form 309F1](#) (Notice of a Chapter 11 Bankruptcy Case—For Corporations and Partnerships). This form is amended similar to changes to Form 309E. This form is amended to add a '1' to the end of the form number. This form will continue to be used in chapter 11 cases other than subchapter V.

[Official Form 314](#) (Ballot for Accepting or Rejecting Plan of Reorganization). The form is amended to include language (in brackets) regarding references to the disclosure statement that would not typically be included in the ballot for a subchapter V case.

[Official Form 315](#) (Order Confirming Plan). This form is amended to including conforming citations.

[Official Form 425A](#) (Plan of Reorganization for Small Business Under Chapter 11) is amended to include additional provisions if the plan is for a case under subchapter V.

New Official Forms

[Official Form 309E2](#) (Notice of Chapter 11 Bankruptcy Case (For Individual or Joint Debtor filing as a Small Business under Subchapter V of Chapter 11) This is a new form that is created to address a notice for a filing under subchapter V for a small business debtor who is an individual or a joint debtor. Because a trustee is always appointed in a subchapter V case, this form requires the name and contact information of the trustee to be provided.

FORMS CHANGES - the Small Business Reorganization Act of 2019 (SBRA) (CONT.)

[Official Form 309F2](#) (Notice of Chapter 11 Bankruptcy Case (For Small Businesses Corporation or Partnership Debtor under Subchapter V of Chapter 11) This is a new form that is created to address a notice for a filing under subchapter V for a small business that is a corporation or partnership. Because a trustee is always appointed in a subchapter V case, this form requires the name and contact information of the trustee to be provided.

Director's Forms

[Director's Form 2000](#) is updated to reflect that an individual debtor filing under subchapter V of chapter 11 does not need to complete or file Official Form 122B.