

American College of Bankruptcy



March 3, 2021

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The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, D.C. 20515

The Honorable Charles E. Schumer
Majority Leader
United States Senate
S-221, The Capitol
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
S-230, The Capitol
Washington, D.C. 20510

Dear Speaker Pelosi, and Leaders Schumer, McConnell, and McCarthy:

The American College of Bankruptcy is an honorary association of almost 900 bankruptcy and insolvency professionals. The College plays an important role in sustaining professional excellence in the bankruptcy field. College Fellows include commercial and consumer bankruptcy attorneys, judges, insolvency accountants, turnaround and workout specialists, law professors, government officials and others in the bankruptcy and insolvency community. Its Fellows share a commitment to the administration and improvement of the bankruptcy system. The College has no political orientation, and is highly selective in the issues on which it takes a position. The policy positions it does take are nonpartisan, focusing entirely on projects and issues that enhance the quality of bankruptcy practice.

We understand that Senators Durbin and Grassley have introduced bipartisan legislation—the “COVID-19 Bankruptcy Relief Extension Act”—to extend, for another year, bankruptcy relief provisions in the 2020 CARES Act and December 2020 omnibus appropriations bill, which otherwise would sunset later this month. We write to voice our enthusiastic support for their bill.

In 2019—with our support and with the overwhelming support of members of Congress on both sides of the aisle—Congress enacted amendments to chapter 11 of the Bankruptcy Code to make it more available and workable for small businesses. Congress enacted the Small Business Reorganization Act (Pub. L. No. 116-54), commonly known as the SBRA. As it was originally enacted, eligibility to seek relief under the SBRA, also known as Subchapter V, was limited to small businesses with aggregate liquidated, noncontingent secured and unsecured debt of about \$2.7 million, exclusive of debt owed to insiders.

But the SBRA's original effective date coincided with the onset of the COVID-19 pandemic, and the looming impact of that pandemic on the economy, and particularly on small businesses. In response, Congress passed an amendment to the SBRA, as part of the Coronavirus Aid, Relief and Economic Security Act (the CARES Act), raising the debt limit to \$7.5 million (with the same exclusions), making Subchapter V bankruptcy relief available to a dramatically larger number of deserving small businesses. But the greater debt limit had a sunset date in one year, and that sunset will occur later this month unless extended.

As you are well aware, the COVID-19 crisis has brought extraordinary hardship to countless businesses. But resort to bankruptcy—with the breathing spell it can provide—provides a critical means to keep small businesses alive, and to keep their workers employed. And for the small businesses eligible to invoke it, the SBRA has turned out to be a highly useful tool for doing so.

As recently noted in an article by the director of the Executive Office for U.S. Trustees, citing data collected for the American Bankruptcy Institute, “by all current measures, the SBRA is working as Congress intended.” The article notes that the percentage of cases with confirmed plans under the SBRA is six times higher than the percentage of cases with confirmed plans that did not proceed under Subchapter V; that early indications are that subchapter V cases are confirming more quickly than cases under the prior procedure; and that the majority of those confirmed plans were consensual, signaling that the SBRA is successful in driving consensus and cooperation, as intended.

And as beneficial as the SBRA is in normal times, it is even more important in the nation’s efforts to address the hardships resulting from the present COVID-19 crisis. As Senators Grassley and Durbin properly noted, extending these temporary bankruptcy provisions until March 2022 will provide critical relief to families and small business facing hardships due to the ongoing COVID-19 pandemic. The legislation to be extended also includes a considerable number of other salutary provisions, whose continuation we likewise support.

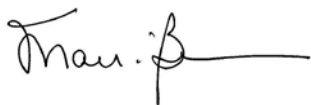
Avoiding the sunset of the existing legislation would serve the interests of debtors, creditors, and the American public at large. And it would significantly benefit the American bankruptcy system. We wholeheartedly support this important legislation.

We note that the views expressed in this statement are those of the American College of Bankruptcy, on whose behalf this statement is issued, and do not necessarily reflect the personal views, if any, of any judge or other Fellow of

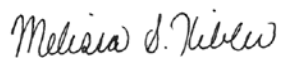
the College (or any firm or educational institution with which one or more Fellows may be affiliated).

We would be grateful if you would keep us abreast of developments in this area.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Bloom". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Mark D. Bloom, Chair

A handwritten signature in black ink, appearing to read "Melissa S. Kibler". The signature is written in a cursive style.

Melissa S. Kibler, President

cc: Senator Richard Durbin
Senator Charles Grassley
Representative Jerrold Nadler
Representative Jim Jordan

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