

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA



FILINGS UNDER THE SMALL BUSINESS REORGANIZATION ACT OF 2019

February 2020

BACKGROUND

The Small Business Reorganization Act of 2019 (Public Law No 116-54) establishes a new subchapter V within chapter 11 of the Bankruptcy Code. This new subchapter V will allow small business debtors to elect to reorganize in Chapter 11 using a simplified and expedited process.

The Small Business Reorganization Act 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.

EFFECTIVE DATE


The Small Business Reorganization Act (SBRA) will take effect **February 19, 2020**.

INTERIM BANKRUPTCY RULES IMPLEMENTING SBRA

Because the effective date of the SBRA is long before the three-year approval process for amending the Federal Rules of Bankruptcy Procedure under the Rules Enabling Act, the Advisory Committee on Bankruptcy Rules drafted and subsequently approved interim rules, to be adopted by courts to implement the SBRA until the Bankruptcy Rules can be amended.

By General Order dated February 7, 2020, the judges (En Banc) adopted Interim Bankruptcy Rules 1007, 1020, 2009, 2012, 2015, 3010, 3011, 3016, 3017.1, 3017.2, 3018 and 3019.

The full text of the interim rules, as well as a link to the redlined version of the rules, can be found on the court's website after Part IX of the Local Rules:

Federal Rules of Bankruptcy Procedures	<h2>Small Business Reorganization Act Interim Rules</h2>
National Forms	By <u>General Order</u> entered February 7, 2020, the Judges of the United States Bank Minnesota adopted the following Interim Bankruptcy Rules implementing the Sm
Local Rules ▼	A redlined version of the Interim Rules is available here .
View All Local Rules	
Part I: Commencement of Case; Petition; Order for Relief; Dismissal and Conversion of Cases	Interim Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Lim
Part II: Officers and Administration; Notices; Meetings; Examinations; Elections; Professional Persons	Interim Rule 1020. Chapter 11 Reorganization Case for Small Business Debtors Interim Rule 2009. Trustees for Estates When Joint Administration Ordered Interim Rule 2012. Substitution of Trustee or Successor Trustee; Accounting Interim Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case Interim Rule 3010. Small Dividends and Payments in Cases Under Chapter 7, Sub and Chapter 13 Interim Rule 3011. Unclaimed Funds in Cases Under Chapter 7, Subchapter V of C Interim Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Mu Case Interim Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipi Interim Rule 3017.1. Court Consideration of Disclosure Statement in a Small Busi Subchapter V of Chapter 11 Interim Rule 3017.2. Fixing of Dates by the Court in Subchapter V Cases in Which Interim Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or Interim Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a
Part III: Claims and Distribution; Plans	Interim Rule 1007. Lists, Schedules, Statements, and Other Documents; Tim
Part IV: The Debtor: Duties and Benefits	...
Part V: Courts and Clerks	(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.
Part VI: Collection and Liquidation of the Estate	...
Part VII: Adversary Proceedings	(5) An individual debtor in a chapter 11 case (unless under subchapter V) shall file income, prepared as prescribed by the appropriate Official Form.
Part VIII: Appeals	...
Part IX: General Provisions	(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. If, as provided by § 541(a)(becomes entitled to acquire any interest in property, the debtor shall within 14 da
 Small Business Reorganization Act Interim Rules	

SBRA ELECTION

To enable the subchapter V debtor to comply with the requirements of Interim Rule 1020, the petition forms have been revised to allow the debtor to state whether the debtor is a small business and elects to proceed under subchapter V.

Official Form 101 (Voluntary Petition for individuals) provides for this election in Part 3, Question 13:

13. **Are you filing under Chapter 11 of the Bankruptcy Code and are you a small business debtor?**

For a definition of *small business debtor*, see 11 U.S.C. § 101(51D).


If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

No. I am not filing under Chapter 11.

No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.

Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I do not choose to proceed under Subchapter V of Chapter 11.

Yes. I am filing under Chapter 11, I am a small business debtor according to the definition in the Bankruptcy Code, and I choose to proceed under Subchapter V of Chapter 11.



Official Form 201 (Voluntary Petition for non-individuals) provides for this election in Question 8:

8. **Under which chapter of the Bankruptcy Code is the debtor filing?**

Check one:

Chapter 7


Chapter 9

Chapter 11. Check all that apply:

Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,725,625 (amount subject to adjustment on 4/01/22 and every 3 years after that).

The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). If the debtor is a small business debtor, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if all of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and it chooses to proceed under Subchapter V of Chapter 11.



The Administrative Office of the U.S. Courts is communicating these changes to all major petition preparation software providers, but attorneys should verify these updates with their own software provider.

STATEMENT OF CURRENT MONTHLY INCOME NOT REQUIRED

Interim Rule 1007(b)(5) indicates that an individual subchapter V debtor need NOT file a statement of current monthly income.

STATUS CONFERENCE

11 U.S.C. § 1188 requires that the court hold a status conference in Subchapter V cases not less than 60 days after the entry of the order for relief. A **Notice of Chapter 11 Bankruptcy Case** specific to subchapter V cases will include:

1. The date, time and location for the meeting of creditors;
2. The date, time and location for the status conference; and
3. The deadline for submission of the pre-status conference report (see below).

At the status conference, the judge will discuss with the parties the setting of the deadlines outlined in Interim Rules 3014, 3017.1 and 3017.2. The court will formalize these deadlines in a scheduling order issued after the status conference.

PRE-STATUS CONFERENCE REPORT

Under 11 U.S.C. § 1188, the Subchapter V debtor must file a status report not later than 14 days **before** the date of the status conference and serve the report on the trustee and all parties in interest. The report should detail the efforts the debtor has undertaken and will undertake to reorganize.

Attorneys should use the **Pre-Status Conference Report** event in CM/ECF (under *Bankruptcy/Post-Petition Events/Other Court Events*) to file the status report.

PROOF OF CLAIM DEADLINE

Under 11 U.S.C. § 1189, the subchapter V debtor must file a plan not later than 90 days after the order for relief. Therefore, the proof of claim deadline for creditors, notice of which will be included in the **Notice of Chapter 11 Bankruptcy Case**, will be 60 days after the entry of the order for relief.

SUBCHAPTER V TRUSTEES

The United States Trustee will appoint several individuals to serve as Subchapter V case trustees. These trustees will NOT be assigned in rotation, as chapter 7 trustees are, but rather, the US Trustee will assign these trustees on a case-by-case basis and will file a ***Notice of appointment of trustee*** in each subchapter V case.

If the plan is consensually confirmed under 11 U.S.C. § 1191(a), the service of the trustee is terminated when the plan is substantially consummated.

If the plan is non-consensually confirmed, the trustee will make all payments under the plan, unless the plan or the order confirming the plan provides otherwise.

SUBCHAPTER V PLAN

Under 11 U.S.C. § 1189, the debtor is required to file a plan **no later than 90 days** after the order for relief.

The debtor may modify a plan at any time prior to confirmation. After confirmation, the debtor may modify the plan prior to substantial consummation of the plan.