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Client Alert: Subchapter V Surge: What Florida Trade Creditors and Lenders Need to Know About the New Small Business Bankruptcy Landscape

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Elizabeth R. Brusa

MEDIA CONTACT

Wendy M. Byrne
wbyrne@shumaker.com

Florida lenders and trade creditors are confronting a rapidly shifting landscape in small business insolvency. In the first quarter of 2026 alone, small business elections under Subchapter V of Chapter 11 surged 67 percent year over year, according to **Epiq AACER data**. This is not a blip. It is a sustained, accelerating trend that fundamentally alters how creditors interact with financially distressed borrowers and the timeline within which they must act to protect their recoveries. For regional banks, credit unions, fintechs, and trade creditors serving Florida's small business economy, understanding Subchapter V is no longer optional. It is an operational imperative.

The Numbers: A Broad-Based Acceleration in Filings

According to Epiq AACER data, Subchapter V elections for small businesses totaled 833 in the first quarter of 2026, compared with just 499 in the same period of 2025. Total commercial Chapter 11 filings rose 37 percent, from 1,764 to 2,422, while overall commercial bankruptcies climbed 14 percent to 8,436.

Critically, this distress is not concentrated in a single industry. The increase in Subchapter V filings is broad

and sector spanning, with elevated risk in retail, food service, transportation, and construction. Epiq AACER has flagged “large pockets of concentrated increases within creditor portfolios,” underscoring the need for proactive receivables monitoring across diverse lending and credit exposures.

How Subchapter V Differs from Traditional Chapter 11

No Creditors’ Committee

Perhaps the most significant departure is the elimination of the unsecured creditors’ committee unless specific “cause” exists to appoint one. Under traditional Chapter 11, a committee is appointed as a matter of course, providing a collective voice and investigative capacity funded by the estate. In Subchapter V, no committee is formed unless the court orders one “for cause” under 11 U.S.C. § 1181(b), an exceedingly rare occurrence. This removes a critical institutional check on debtor conduct and places the burden of vigilance squarely on individual creditors.

Reduced Disclosure and Debtor-Exclusive Plan Rights

Subchapter V eliminates the disclosure statement requirement, reducing debtor cost and time but correspondingly reducing the information available to creditors. Although the Subchapter V debtor must include background and financial details in its plan, the level of information required in a traditional Chapter 11 disclosure statement is typically not presented. Additionally, only the debtor may file a plan of reorganization—no competing creditor plans are permitted—and that plan must be filed within 90 days of the order for relief unless extended for cause under 11 U.S.C. § 1189. Creditor participation in plan approval is limited to objections, negotiations, and voting and input.

Elimination of Absolute Priority and Non-Consensual Confirmation

The absolute priority rule does not apply. Equity holders may retain ownership even if unsecured creditors are not paid in full, so long as the debtor commits projected disposable income over the plan’s life. Most consequentially, a plan can be confirmed non-consensually (i.e., “crammed down”) even if no class of creditors votes to accept it and over creditor objections, provided the court finds it “fair and equitable” under 11 U.S.C. § 1191(b). A Subchapter V trustee is appointed in every case, but the trustee’s primary role is to facilitate consensus, not to advocate for creditors. A creditor’s ability to object to confirmation may be its only practical means of protecting its interests in a Subchapter V case.

Pending Legislation: The Bankruptcy Threshold Adjustment Act of 2026

What the Bill Would Do

The Bankruptcy Threshold Adjustment Act of 2026 (S. 3977), introduced March 3, 2026, would permanently raise the Subchapter V debt eligibility threshold to \$7.5 million, up from the current inflation-adjusted threshold of approximately \$3.42 million, which reverted down after the pandemic-era temporary cap expired on June 21, 2024. On August 3, 2026, the bill unanimously passed in the Senate and will next be considered by the House. A companion bill in the House advanced out of the House Judiciary Committee, indicating previous initial bipartisan approval of raising the debt cap.

PORTFOLIO EXPOSURE ALERT: PENDING THRESHOLD INCREASE

If enacted, the \$7.5 million threshold would substantially expand the pool of borrowers eligible for the faster, committee-free Subchapter V process.

- Current threshold: ~\$3.42 million
- Proposed threshold: \$7.5 million (permanent)

Action: Identify borrowers in the \$3.42 million–\$7.5million debt range who would become newly eligible.

Outcomes: Higher Confirmation, Lower Dismissal

Despite the compressed timeline and reduced creditor protections, Subchapter V produces materially better reorganization outcomes than its predecessors. According to 2024 data from the American Bankruptcy Institute’s Subchapter V Task Force, approximately 50 percent of Subchapter V cases that reach disposition result in a confirmed reorganization plan. By comparison, traditional small business Chapter 11 cases confirmed at a rate of roughly 23 to 25 percent before Subchapter V’s enactment.

For creditors, the higher confirmation rate means reorganization plans are more likely to be imposed, making early engagement critical. But the faster timeline and improved debtor viability also mean that creditors who engage strategically may recover more than they would from the protracted and often unsuccessful traditional process.

Practical Strategies for Creditor Protection

Given the accelerated timelines, reduced institutional safeguards, and the debtor’s enhanced leverage under Subchapter V, creditors must be proactive. The following strategies are essential:

Strategy	Action
Monitor Early Warning Signs	Intensify covenant monitoring, track late payments and forbearance requests, and watch sector-level distress indicators, particularly in retail, food service, transportation, and construction where filings are concentrated.
Engage the Sub V Trustee	Without a creditors’ committee, the trustee is the primary neutral party. Build a cooperative relationship early and provide relevant financial information to influence plan negotiations.
Use Rule 2004 Examinations	With no disclosure statement requirement, affirmatively seek production of financial information via Bankruptcy Rule 2004 to investigate debtor finances, asset valuations, and projections.
Object on Disposable Income / Fair and Equitable Grounds	Scrutinize financial projections, challenge overly optimistic assumptions, and argue for higher distributions where evidence supports them.
Negotiate Cash Collateral Terms Immediately	Secured creditors must move quickly to establish adequate protection and negotiate favorable cash collateral orders before collateral value erodes.
Coordinate Portfolio-Wide Monitoring	Implement systematic monitoring across diversified portfolios to identify clusters of risk and respond proactively to sector-spanning distress.

CREDITOR ACTION CHECKLIST

- ☑ Flag all borrowers in sectors with elevated Sub V filings (retail, food service, transportation, construction)
- ☑ Identify portfolio exposures in the \$3.42 million-\$7.5 million range (newly eligible if threshold bill passes)
- ☑ Establish internal protocols for 90-day plan timeline response
- ☑ Pre-identify counsel and Rule 2004 discovery request templates for rapid deployment
- ☑ Calendar adequate protection and cash collateral motions within first 14 days of any filing

Looking Ahead

The Subchapter V surge is not a temporary phenomenon. It reflects structural economic pressures that show no sign of abating, legislative momentum toward expanding eligibility, and a process that, by design, favors speed and debtor rehabilitation over creditor deliberation. Florida lenders and trade creditors who invest now in understanding the Subchapter V framework, building internal monitoring capabilities, and developing rapid response protocols will be far better positioned to protect their interests when—not if—a borrower in their portfolio elects this path.

If you have questions or need more information regarding protecting your rights in a Subchapter V case, please contact Elizabeth Brusa.