BANKRUPTCY LAW: OVERVIEW AND LEGISLATIVE REFORMS

HEARING

BEFORE THE

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE, REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

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C O N T E N T S

TUESDAY, JULY 15, 2025

OPENING STATEMENTS

Page

The Honorable Scott Fitzgerald, Chair of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of Wisconsin 1
The Honorable Jerrold Nadler, Ranking Member of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of New York 2
The Honorable Jamie Raskin, Ranking Member of the Committee on the Judiciary from the State of Maryland 4

WITNESSES

Douglas G. Baird, Harry A. Bigelow Distinguished Service Professor, University of Chicago Law School
Oral Testimony 8
Prepared Testimony 10
The Hon. Paul M. Black, Chief United States Bankruptcy Judge, Western District of Virginia
Oral Testimony 16
Prepared Testimony 18
The Hon. Michelle M. Harner, United States Bankruptcy Judge, District of Maryland
Oral Testimony 21
Prepared Testimony 23
Melissa B. Jacoby, Graham Kenan Professor of Law, University of North Carolina, Chapel Hill
Oral Testimony 39
Prepared Testimony 41
Edith Hotchkiss, Professor of Finance, Boston College
Oral Testimony 46
Prepared Testimony 48
Megan W. Murray, Attorney, Founding Shareholder, Underwood Murray P.A.
Oral Testimony 57
Prepared Testimony 59

LETTERS, STATEMENTS, ETC. SUBMITTED FOR THE HEARING

All materials submitted for the record by the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust are listed below 83

Materials submitted by the Honorable Jamie Raskin, Ranking Member of the Committee on the Judiciary from the State of Maryland, for the record
An article entitled, "Older Americans at risk as government restarts Social Security garnishment on student loan debt," May 15, 2025, *PBS News*
A report entitled, "I. Effectuating the Fresh Start," *American Bankruptcy Institute*

Page

Materials submitted by the Honorable J. Luis Correa, a Member of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of California, for the record
- A letter to the Honorable J. Luis Correa, a Member of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of California, from the National Consumer Law Center (NCLC), Jul. 11, 2025
- A letter to the Honorable J. Luis Correa, a Member of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of California, from National Association of Consumer Bankruptcy Attorney (NACBA), Jul. 11, 2025
- An article entitled, "One in three student loan borrowers risk default asdelinquency rates soar," Jun. 24, 2025, *The Guardian*
- A press release entitled, "U.S. Department of Education to Begin Federal StudentLoan Collections, Other Actions to Help Borrowers Get Back into Repayment," Apr. 21, 2025, *U.S. Department of Education*
- An article entitled, "Credit scores decline as student loan collections restart—NBC Connecticut," Jun. 16, 2025, *The Associated Press*

A Memorandum from The Community Service Society (CSS), New York, Jul. 15, 2025, submitted by the Honorable Jerrold Nadler, Ranking Member of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of New York, for the record

Materials submitted by the Honorable Scott Fitzgerald, Chair of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of Wisconsin, for the record
- A statement from Commercial Law League of America (CLLA), Jul. 15, 2025
- A letter to the Honorable Scott Fitzgerald, Chair of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of Wisconsin, and the Honorable Jerrold Nadler, Ranking Member of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of New York, from the Defense Credit Union Council (DCUC), Jul. 14, 2025
- A letter to the Honorable Scott Fitzgerald, Chair of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of Wisconsin, and the Honorable Jerrold Nadler, Ranking Member of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of New York, from the Public Citizen, Jul. 15, 2025
- A letter to the Honorable Jim Jordan, Chair of the Committee on the Judiciary from the State of Ohio, and the Honorable Jamie Raskin, Ranking Member of the Committee on the Judiciary from the State of Maryland, from the National Association of Insurance Commissioners (NAIC), Jul. 15, 2025
- A letter to the Honorable Scott Fitzgerald, Chair of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of Wisconsin, and the Honorable Jerrold Nadler, Ranking Member of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of New York, from National Association of Chapter Thirteen Trustees (NACTT), Jul. 14, 2025

An article entitled, "Company's PO box allows it to file for bankruptcy in Texas, judge rules," Mar. 11, 2024, *Reuters*, submitted by the Honorable Zoe Lofgren, a Member of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of California, for the record

Page

APPENDIX

Materials submitted by the Honorable Jamie Raskin, Ranking Member of the Committee on the Judiciary from the State of Maryland, for the record

A letter to the Honorable Scott Fitzgerald, Chair of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of Wisconsin, the Honorable Jerrold Nadler, Ranking Member of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust from the State of New York, and the Member of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust, from Student Borrower Protection Center (SBPC), Jul. 15, 2025

A statement from International Council of Shopping Centers (ICSC), Jul. 15, 2025

BANKRUPTCY LAW: OVERVIEW AND LEGISLATIVE REFORMS

Tuesday, July 15, 2025

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE, REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to notice, at 10:05 a.m., in Room 2141, Rayburn House Office Building, the Hon. Scott Fitzgerald [Chair of the Subcommittee] presiding.

Present: Representatives Fitzgerald, Issa, Cline, Harris, Nadler, Raskin, Correa, Balint, Garcia, Lofgren, and Johnson.

Mr. FITZGERALD. The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time. We welcome everyone to today's hearing on bankruptcy law and potential legislative reforms.

I will now recognize myself for an opening statement.

Today's hearing will examine the effectiveness of the bankruptcy system and help determine if narrowly tailored legislative updates are warranted to ensure that the bankruptcy system continues to work as intended. The bankruptcy system in this country is designed to provide debtors with a fresh start. The entrepreneurs and small businesses are the lifeblood of the economy, and the calculated risks they take are responsible for so much of the innovation in this country. These risks are often funded by debt. While many entrepreneurs and small businesses succeed, some of them fail.

Instead of being perpetually saddled with the unsustainable levels of debt, the bankruptcy system allows debtors to enter bankruptcy, reorganize their debts, maybe discharge some of it, and exit bankruptcy in a position to continue to innovate and take additional risks. The same is true for consumers. Some consumers get themselves in an unsustainable financial position, and the bankruptcy system throws them a lifeline.

While bankruptcy can greatly benefit debtors, creditors are also entitled to repayment. Therefore, the bankruptcy system must strike a balance between preserving the rights of creditors to receive repayment and the opportunity for debtors to start fresh. We

have proposals before this Committee that will change how the bankruptcy system works in the future.

Nearly 30 temporary bankruptcy judgeships will begin expiring in 2026. While judges will not be kicked out of their seats, certainly, new judges cannot be appointed when a judge's term expires. We must determine whether those judgeships remain necessary, and we will hear testimony from two sitting bankruptcy judges to help inform our decision.

Also, the pay-per-case for Chapter 7 trustees has not been increased in over 30 years. Chapter 7 trustees play a critical role in our bankruptcy system, liquidating a debtor's assets, disbursing funds to creditors, and ensuring that the only eligible debtors enter Chapter 7 bankruptcy. We also must determine whether to increase the debt limit for Subchapter V cases.

In 2020, shortly after enactment, Congress increased the debt limit for Subchapter V cases to $7.5 million. Last July, this increased debt limit expired and reverted to around $3 million. We must determine whether we should allow that number to remain or whether the cap should again be raised, either temporarily or permanently, to ensure small businesses can continue to seek their avenue for reorganization.

We must also figure out what, if anything, we should do about student loans in bankruptcy. Under the Biden–Harris Administration, there were thousands of student loans that were forgiven by largely waiving the bankruptcy code's undue hardship requirement. As a result, we saw the number of student loans discharged in bankruptcy increase by 330 percent. While the cost of education has skyrocketed—it's something the Subcommittee has already begun to examine—American taxpayers should not be on the hook for someone who took out loans to get a potentially useless undergraduate degree from a private university and now cannot pay it back.

Finally, we will examine whether our bankruptcy laws as written can sufficiently capture the treatment of genetic information in bankruptcy proceedings. We should have robust debates and, if proven necessary, enact narrowly tailored changes to the Bankruptcy Code to make sure that the system works better for small businesses, consumers, and creditors alike.

I want to thank Ranking Member of the Subcommittee, Mr. Nadler, for agreeing to hold a bipartisan hearing today. I think that working together on bankruptcy reform will greatly benefit the American people.

I also want to thank the witnesses for appearing here today. We have assembled a large panel of bankruptcy experts who are well-equipped to answer all our questions, and I look forward to hearing what each of them has to say today.

I want to now recognize the Ranking Member, Mr. Nadler, for his opening statement.

Mr. NADLER. Thank you, Mr. Chair, and thank you for holding this bipartisan hearing.

Thank you, as well, to our distinguished panel of witnesses for contributing their time and expertise to assist the Committee in its efforts to streamline and improve our bankruptcy system. I am pleased that we have come together in a bipartisan fashion today

to consider a variety of proposals to make our bankruptcy system more accessible to individuals and businesses in financial distress. These reforms can ensure that the Bankruptcy Code is more efficient and beneficial for debtors and creditors alike, and will help businesses, especially small businesses, restructure in the face of potential financial disaster.

One important issue that our hearings will touch on is increasing the debt limit under Subchapter V of Chapter 11 of the Bankruptcy Code. In 2020, eligibility for Subchapter V bankruptcy treatment was temporarily increased to $7.5 million from approximately $3 million, allowing a significantly greater number of businesses to access relief under this part of the code, which generally provides debtors an efficient and successful restructuring plan. Unfortunately, this provision was allowed to lapse in June of last year.

Data shows that the debt limit increase was a clear success. While it was in effect, Subchapter V cases had doubled the planned confirmation rate and a 20 percent lower dismissal rate in relation to non-Subchapter V, Chapter 11 cases. This means that small businesses were able to keep their doors open and their employees on staff while ensuring that the creditors were fairly compensated. I hope we can work together to reinstate this important provision.

Congress similarly passed a temporary debt limit increase for Chapter 13 filings, allowing for combined unsecured and secured debt of $2.75 million. Chapter 13 bankruptcy is the best path for many filers because it's less expensive and more efficient than pursuing relief under Chapter 11. Unfortunately, although this provision proved to be successful, it also expired last year and has not been renewed.

Now, debtors must meet significantly lower levels of both unsecured and secure debt, leaving many people without access to the courts and needed relief. Resurrecting the higher Chapter 13 debt limit would serve individuals and families with regular income, who are facing higher housing prices, medical costs, and other debts that present substantial financial hardship, yet put them over the current debt limit.

In addition to facing higher prices, Americans are also facing mountains of student loan debt. Under the Bankruptcy Code, however, unlike nearly every other unsecured debt, such as credit cards or auto loans, it is nearly impossible to discharge student loans, leaving millions of Americans deeply in debt with little hope of ever regaining financial security.

Nearly 43 million Americans have Federal student loan debt, with the total Federal student loan portfolio exceeding $1.6 billion. Under current law, educational debt can only be discharged in bankruptcy if the borrower demonstrates that continued repayment of the debt would impose an, quote, "undue hardship on the debtor and the debtor's dependents."

In practice, this standard has proven a nearly impossible hurdle to overcome in the courts. There is no reason that this one category of debt should be singled out for special treatment that makes relief under the Bankruptcy Code virtually impossible. It is a long past time to repeal the current limitation on educational debt and to place it on the same footing as other debt—similar debt.

While the picture of student loan debtors is traditionally of young recent college graduates, the reality is that a significant population of student debt—of student loan debtors are older Americans whose wages and Social Security checks are being garnished toward loans that they will never be able to repay. Student loan bankruptcy reform therefore would benefit a wide swath of Americans, including the most vulnerable borrowers in our society, who have no prospect of being able to repay their debts incurred decades ago.

Finally, we will consider reforms to compensation for attorneys and trustees in Chapter 7 cases, which would expand access to justice for low-income debtors. Chapter 7 is a critical lifeline for low-income individuals in the most severe financial distress, offering the most direct and immediate path to a fresh start. It eliminates unsecured debts without the burden of a multiyear repayment plan, and its streamlined structure makes it the only viable option for many households facing wage garnishment, utility shutoffs, or eviction.

Yet, the current framework makes it exceedingly difficult for those same individuals to access legal counsel. Chapter 7 debtors with attorneys are nine times more likely to obtain a discharge than those without representation. As a result of a clerical error in the law, however, attorneys representing Chapter 7 debtors are generally ineligible for compensation from the bankruptcy estate unless formally retained by the trustee. Therefore, most debtors seeking a Chapter 7 pathway have to pay for their representation upfront and in full, despite their being insolvent, which either pushes them to the less sufficient Chapter 13 or forces them to continue without representation. I hope that our witnesses will help us examine solutions to this problem.

A similar access-to-justice issue arises with respect to trustee compensation. Under current law, trustees appointed by the courts to administer Chapter 7 bankruptcy are paid just $60 per case. Additional compensation comes only when the case involves liquidation of assets, which happens only rarely in Chapter 7 cases. A fee of just $60 is clearly inadequate to compensate trustees for a role that requires them to review filings, conduct meetings with creditors, and identify potential circumstances of abuse of fraud.

This results in experienced trustees not being able to afford to take on no-asset cases or being unwilling to invest their time in complex cases that would require their knowledge and expertise. We must work to increase this fee to ensure that debtors have the assistance they need to navigate the complicated world of bankruptcy proceedings.

Today's hearing is an opportunity to discuss bipartisan paths forward to increasing access and opportunity provided to Americans under the bankruptcy system. I thank the Chair for holding this important hearing. I look forward to the testimony from our distinguished panel of witnesses, and I yield back the balance of my time.

Mr. FITZGERALD. I now recognize the Ranking Member of the Full Committee, Mr. Raskin, for his opening statement.

Mr. RASKIN. Mr. Chair, thank you very much. Thanks for holding this bipartisan hearing.

Thanks to our esteemed witnesses, who bring to us exceptional insight into one of the most consequential institutions of the American economy.

Too often bankruptcy is spoken of in hush tones or buried in the back pages of law journals. It's not a footnote to the American economy; at its core, it's a critical guardrail for the life and dignity of the American people. Even President Trump has repeatedly used the bankruptcy law six times in Chapter 11 alone. This is where law meets hardship and where financial distress is tempered by both process and principle.

More than a simple mechanism for discharging debt, our bankruptcy system has moral implications. It affirms that failure should not be fatal, and that dignity should not surrender in the face of financial hardship and emergency. As Justice McReynolds observed, its purpose is to relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh.

At the same time, the bankruptcy system must recognize the moral hazard of incentivizing bankruptcy and financial recklessness. Although the Framers of the Constitution may not have lingered long over the Bankruptcy Clause during their debates in Philadelphia, they enshrined it for good reason. As Madison said in the *Federalist 42*, the power to enact uniform bankruptcy laws, quote, "provides for the harmony and proper intercourse among the States." It is so intimately connected with the regulation of commerce and will prevent so many frauds that the expediency of it seems not likely to be drawn into question.

Today, Mr. Chair, we do not call into question the expediency of a strong bankruptcy system. What we question is whether that system as currently constituted fulfills its democratic and economic promise. Does it reach the people it was designed to protect? Is it responsive to the existence and power of today's credit-industrial complex, where profits are systematically wrung from the pockets of working families?

Across the country, small businesses and working families are shouldering debts that would have once been considered extraordinary but today reflect the mere cost of staying afloat. Although it remains a remedy of the last resort, our bankruptcy system must be equipped to provide relief when economic pressures collapse the margins of household and commercial stability. A well-calibrated system does not punish misfortune or entrench failure. It provides a lawful path forward when all else fails.

The hearing presents a chance to honestly assess the challenges to our bankruptcy system and advance solutions in a bipartisan way. Take Subchapter V of the Bankruptcy Code, the streamlined bankruptcy process for small businesses to reorganize and restructure. For five years, it offered small businesses a path back to viability by providing a simpler pathway to restructure debt, save jobs, and continue serving in the community. Regrettably, that path is now narrowing, not because the policy failed but because, in June of last year, the debt limit set by Congress, the maximum debt small businesses can have and still be eligible for Subchapter V's process, lapsed and dropped by 60 percent, from $7.5 million to $3 million.

Despite data in near unanimous agreement among the bankruptcy bar that the $7.5 million debt limit was a success for both small businesses and their creditors, reverting to the old debt limit excludes way too many of the very small businesses Subchapter V was designed to support. Without a workable path to reorganize under Subchapter V, all that remains of these businesses is used equipment and unpaid bills. This tremendous loss in value is lost not only for business owners but also for their employees, creditors, and entire communities. I'm heartened by the bipartisan agreement that restoring the $7.5 million debt limit is both sensible and long overdue. The Committee should markup this legislation and send it to the House floor quickly.

There is the million-strong class of student borrowers whose staggering debt resulting from student loans lingers stubbornly for decades beyond the end of their college education, preventing investment in home mortgages or small businesses. Student loan debt is the only type of consumer debt not dischargeable under bankruptcy, and this was only made so in 1976.

Although our bankruptcy system was built with robust safeguards, judicial oversight, and, in some cases, stringent means testing, it effectively treats all student borrowers as presumptive abusers unless proven otherwise through an almost mythical standard of undue hardship. This vague and undefined standard has been interpreted by the courts and hardened over decades into a nearly insurmountable burden of proof resulting in nondischarge for greater than 99 percent of borrowers.

Among the most affected are seniors. As of 2024, nearly three quarters of one million student borrowers are remarkably over the age of 71, collectively holding $28 billion in student debt. Many have spent decades in repayment only to fall into default as interest compounds and the balances balloon.

Seniors now represent the fastest growing demographic of student borrowers, and they face the highest rates of delinquency and therefore default. For many of those older Americans who live on a fixed income, the consequences are severe: Garnished Social Security checks, skipped medications, and postponed retirements. We've got to fix this. I hope my colleagues will join us in restoring basic fairness to the bankruptcy system by putting student debt on the same footing as virtually every other kind of debt, all of which are dischargeable.

This is not the only place where the system strains under the weight of its design. Families who exceed the Chapter 13 debt limit are legally barred from filing under that chapter no matter how regular their income or sincere their repayment intentions, nor can they turn to Chapter 12, which is limited to farmers and fishermen; or 15, which is limited to international cases; or Subchapter V, which requires you to be a small business. Because of Chapter 13's expired debt limit, we risk pushing working people into Chapter 11. It's a system that was never meant for someone trying to save their home while paying down medical bills and putting kids through school.

Chapter 7, finally, which should offer the most straightforward form of relief, is weighed down by barriers of its own. Debtors often have to pay their lawyers upfront even when they can't pay their

rent, locking many people out of even applying for bankruptcy relief. Our Chapter 7 trustees, the watchdogs of our system, are still doing critical work under a compensation structure that's not been updated in more than three decades.

None of this is new, and none of it is unfixable. We have bipartisan legislation. The Bankruptcy Administration Improvement Act is ready to go. It would raise trustee pay and extend the temporary judgeships that keep our courts functioning. In Maryland, we're on track to lose three out of seven temporary bankruptcy judges. That's nearly half our bench, and it's happening at the very moment filings are arising.

This is the moment to reaffirm a founding promise that in the U.S. financial hardship must never strip a person of their rights, dignity, or their future. By my count, Congress has rewritten the code five times in the last two centuries before arriving at the current framework. This is one of the most dynamic areas of our law, and there's no reason we should not act now again to refine it and improve it. We've got the facts and the tools. We have a bipartisan agreement on the principal fixes. The road ahead is clear for us.

Thank you, Mr. Chair. I yield back.

Mr. FITZGERALD. The Ranking Member yields back.

Without objection, all their opening statements will be included in the record. We will now introduce today's witnesses.

Professor Douglas Baird. Mr. Baird is the Harry A. Bigelow Distinguished Service Professor of Law at the University of Chicago Law School. He joined the University of Chicago Law School faculty in 1980, served as dean between 1994–1999, and has served as a Visiting Professor at the Law School of Stanford, Harvard, and Yale. Professor Baird has authored more than a dozen books on bankruptcy and commercial and debtor-creditor law.

The Honorable Paul Black. Judge Black has served as United States Bankruptcy Judge for the Western District of Virginia since 2014. He currently serves as Chief Judge of that court. Prior to joining the bench, Judge Black was also the Co-Chair of the bankruptcy and creditor rights practice group at Spilman Thomas & Battle. He previously served as Chair of the Litigation Section and the bankruptcy section of the Virginia State Bar Association.

The Honorable Michelle Harner. Judge Harner has served as a United States bankruptcy judge for the district of Maryland since 2017. She previously served as the Francis King Carey Professor of Law at the University of Maryland Francis King Carey School of Law, where she taught courses on bankruptcy and creditors' rights, also business associations, business planning, and corporate finance. Judge Harner has served in various roles with the American Bankruptcy Institute, the Administrative Office of the United States Courts, and as the United Editor in Chief of the American Bankruptcy Law Journal.

Professor Melissa Jacoby. Ms. Jacoby is the Graham Kenan distinguished Professor of law at the University of North Carolina School of Law, where she teaches commercial and bankruptcy law. From 2021–2024, she assisted in the Federal Judicial Center on educational programming for bankruptcy judges and has been elected to the American Law Institute, the National Bankruptcy

Conference, the American College of Bankruptcy, and the American College of Commercial Finance Lawyers.

Dr. Edith Hotchkiss. Dr. Hotchkiss is a Professor in the Seidner Department of Finance at the Boston College Carroll School of Management. Her research focuses on corporate finance, bankruptcy procedures, restructuring mechanisms for financially distressed firms, and the transparency and efficiency of the corporate bond market. Professor Hotchkiss previously served as a Visiting Professor at New York University and worked as an Assistant Vice President at Standard & Poor's Corporation.

Ms. Megan Murray. Ms. Murray is an attorney and a founding shareholder of the Underwood Murray, a law firm focusing on bankruptcy and restructuring and solvency-related litigation, also distressed asset acquisitions and other corporate matters. She has nearly 20 years of experience in corporate—excuse me, reorganizations and currently serves on the Board of Directors of the American Bankruptcy Institute.

We welcome our witnesses and thank them for appearing today. We will begin by swearing you in. Would you please rise and raise your right hand?

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief so help you God?

Let the record reflect that the witnesses have answered in the affirmative.

Thank you, and you can be seated.

Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes.

Professor Baird, you may begin.

STATEMENT OF DOUGLAS G. BAIRD

Mr. BAIRD. I thank you, Chair Fitzgerald—

Mr. FITZGERALD. Microphone, Professor. Professor, can you hit the mike, hit the button there.

Mr. BAIRD. Yes. Chair Fitzgerald, Ranking Member Nadler, and the other Members of the Committee, I'm Douglas Baird, Professor of Law at the University of Chicago and Chair of the National Bankruptcy Conference.

My comments today, I wish to emphasize the need to increase the existing debt cap for small businesses seeking to reorganize under Subchapter V. Subchapter V has been an unequivocal success in providing a more streamlined and less costly means of resolving financial distress for small businesses. It has fulfilled the goals of the bipartisan legislation enacted in 2019.

A small business regime, like Subchapter V, must distinguish those businesses which are eligible. Some sort of line needs to be drawn between large businesses and small businesses. This requires figuring out what we mean by small business and how to establish that line. The simplest way to think about a small business is it's that type of business whose continued existence depend on the current owners remaining in place. These are businesses like a mom-and-pop restaurant, whose value cannot be separated from those who own and run it anymore than people can be sepa-

rated from their shadows. A mom-and-pop restaurant without mom and pop is just used kitchen equipment.

What's perhaps less appreciated is the businesses that depend on their owner managers are often quite substantial. These businesses can carry debt that easily exceeds the $3.5 million Subchapter V debt cap. Just to give some examples, a decent-sized restaurant or brewpub can easily cost several million dollars just to build and equip. A single unforeseen setback, such as a catastrophic storm or an outbreak of foodborne illness, can sink the entire enterprise.

To give another example, a general contractor often enters into a web of contracts that exposes it to multimillion dollar liabilities if things go wrong in building a large structure. Even a single subcontractor can make a costly mistake, fail, and leave the general contractor responsible for fixing the mess.

The owner of a small manufacturing operation might have a plant with equipment that itself costs multiple millions. When such a manufacturer goes through a run of bad luck, it can face substantial mortgage obligations, environmental and tax liabilities, and unpaid bills from suppliers.

Another example, personal service firms, such as medical practices or small law firms, can have substantial debt and reverses that leave them unexpectedly without the revenues that were reasonably anticipated. Without the ability to reorganize under Chapter 5—all these firms will likely face liquidation, an outcome that will yield little, if anything, to general creditors, landlords, trade creditors, or employees.

Subchapter V is good for debtors, but it's also good for creditors. Many businesses eligible for relief under Subchapter V are similar to family farms that are permitted to reorganize under Chapter 12. The Chapter 12 debt limit is $12.5 million. It's hard to identify a principled reason for the Subchapter V debt limit to be only a small fraction of the one for Chapter 12.

Subchapter V is a relatively new statute, and in any such statutory regime, it may require some adjustment as cases reveal imperfections, uncertainties, or abuses in its operation. Nothing in our experience, however, suggests that increasing the debt cap would itself be a source of mischief. We believe that increasing the cap gives more small businesses, for which it was intended, a viable and highly reliable remedy.

Now, I should also say, there are other areas of bankruptcy and bankruptcy adjacent reform where I think incremental reform is possible and would also enjoy broad support. These reforms include potentially changes to rules governing State insurance insolvencies. They also include technical corrections to Chapter 15. There are also possibilities to have a reorganization regime that allows a class of funded debt to be restructured without interfering with other classes.

Again, these are all opportunities, and the National Bankruptcy Conference stands ready as always to help you here with these kinds of valuable incremental reforms that will improve our bankruptcy laws. Thank you very much.

[The prepared statement of Mr. Baird follows:]

Statement of Douglas G. Baird*

on behalf of the

NATIONAL BANKRUPTCY CONFERENCE

at the Hearing on

Bankruptcy Law: Overview and Legislative Reforms

Before the

Subcommittee on Antitrust, Commercial and Administrative Law

of the Committee on the Judiciary

U.S. House of Representatives

Washington, D.C., July 15, 2025

* Chair, National Bankruptcy Conference and Harry A. Bigelow Distinguished Service Professor, University of Chicago Law School. The views expressed in this testimony are expressed on behalf of the National Bankruptcy Conference.

I am grateful to be able to speak to you today on behalf of The National Bankruptcy Conference. The Conference was established in the 1930s, and it is a voluntary, non-profit, non-partisan, self-supporting organization of approximately sixty lawyers, law professors, and judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and proposed changes to those laws.

In my comments today, I wish to emphasize principally the need to increase the existing cap for small businesses seeking to reorganize under subchapter V. The empirical evidence suggests that Sub V has led to quicker reorganizations, at lower cost, and with a higher rate of success than possible under a traditional Chapter 11. See American Bankruptcy Institute, Final Report of the American Bankruptcy Institute Subchapter V Task Force (2024). Some, however, have speculated that distressed debtors might enjoy the benefit of Sub V at the expense of creditors. If creditors do worse under Sub V, in theory at least, creditors might be forced to raise interest rates, and this might in turn harm potential entrepreneurs. The empirical evidence to date, however, does not suggest that this is happening.

Sub V has been an unequivocal success in providing a more streamlined and less costly means of resolving financial distress and has fulfilled the principal goals of the legislation. Fully 52% of subchapter V debtors successfully confirm plans. This stands in contrast to the 31% of comparable debtors who used chapter 11 before subchapter V was put in place. And the reorganizations are faster. Time to confirmation for small businesses is lower as well. Moreover, bankruptcy judges dismiss cases that are not going to succeed more quickly.

Under subchapter V, creditors continue to have the protections available in a traditional chapter 11 case, including the ability to seek dismissal or conversion of the case, removal of the debtor in possession, and relief from the automatic stay. Secured creditors enjoy the same protection for the value of their collateral in subchapter V that they enjoy in large chapter 11s. The plan must satisfy the same provisions of §1129(b)(2)(A) of the Bankruptcy Code, and creditors have a right to contest confirmation of any plan they oppose. A nonconsensual plan can be confirmed only if the plan gives secured creditors at least the value of their collateral.

Nor is there a qualitative difference in the way subchapter V treats unsecured creditors. The only significant change lies in a modification

of the long-standing right of old equity to participate in return for providing new value. In traditional reorganizations, old equityholders must contribute new value "in money or money's worth" to receive any recovery under a plan if a class of unsecured creditors rejects the plan. *Case v. Los Angeles Lumber Products*, 308 U.S. 106 (1939). Subchapter V similarly requires principals to provide new value, but it permits that value to take on a different form. Instead of cash, old equity holders can contribute sweat equity. In return for giving up income that they generate by running the business *in the future*, they are allowed to retain their ownership and their jobs in the company.

For unsecured creditors, from a purely business perspective, the prospect of a monthly check in payment of their claims is usually a better bargain than foreclosure and the risks associated with it (such as responsibility for taxes and insurance) that come with a transfer of ownership to the creditors under the absolute priority rule.

Landlords are treated fairly in subchapter V as well. They enjoy the same protections in subchapter V that they do in a traditional chapter 11, including the ability to seek relief from the automatic stay, the ability to force the debtor to decide whether to assume or reject the lease, and the ability to compel the debtor to pay postpetition rent as set forth in §365. In addition, landlords benefit from a more streamlined process in subchapter V as compared with a traditional chapter 11. The plan must be filed within 90 days of the petition, and subchapter V cases move forward faster and are concluded by confirmation or dismissal more quickly than in traditional chapter 11s.

A small business bankruptcy regime must set out which businesses are eligible. Some sort of line needs to be drawn that distinguishes small businesses from larger ones. It currently stands at $3,424,000. Subchapter V is centered around those businesses whose continued existence depends on the current owners remaining in place. These are the businesses whose value cannot be separated from those who own and run it any more than people can be separated from their shadows. But these businesses that depend upon a single owner-manager are often quite substantial. Indeed, even when small businesses are broadly conceived to include all businesses with 500 or fewer employees, 37 percent are owned by a single person and in 93 percent of these, this sole owner manages the business. *See* James Ang, Rebel Cole, and Daniel Lawson, *The Role of Owner in Capital Structure Decisions: An Analysis of Single-Owner Corporations*, 14 J. Entrepreneurial Fin. 1 (Fall 2010).

These businesses can carry substantial debt that can easily exceed the current subchapter V debt cap.

- A decent-sized restaurant or brew pub easily can cost several million dollars just to build and equip. A single unforeseen setback such as a catastrophic storm or an outbreak of food-born illness can sink the entire enterprise.
- A general contractor for a commercial building often enters into a web of contracts that exposes it to multi-million-dollar liabilities if things go wrong. Even a single subcontractor can make a costly mistake, fail, and leave the general contractor responsible for fixing the mess.
- The owner of a small manufacturing operation might have a plant with equipment that itself costs multiple millions. When such a manufacturer goes through a run of bad luck, it can face substantial mortgage obligations, environmental and tax liabilities, and unpaid bills from suppliers.
- Personal service firms, such as medical practices or small law firms, can have substantial debt and reverses that leave them unexpectedly without the revenues that were reasonably anticipated. A scrupulously honest owner can have the bad luck to hire one bad actor, and that single employee can embezzle so much that the entire business is put at risk.

Without the ability to reorganize under subchapter V, such firms will likely face liquidation, an outcome that will yield little, if anything, to creditors, particularly trade creditors, and employees.

Many businesses eligible for relief under subchapter V are similar to family farms that are permitted to reorganize under chapter 12. In 2019, Congress enacted a permanent increase to the chapter 12 debt cap. That cap currently stands at $12,562,250. It is hard to identify a principled reason for the subchapter V debt limit being only a small fraction of the one for chapter 12.

Subchapter V is a relatively new statute, and as in any such statutory scheme, it may require some adjustment as cases reveal imperfections, uncertainties, or abuses in its operation. Nothing in our experience, however, suggests that increasing the cap would be a source of mischief. We believe that increasing the cap gives small businesses a viable remedy that is proving to be highly workable for those businesses that subchapter V was intended to serve, as well as valuable for their stakeholders.

There are other areas of bankruptcy and bankruptcy-adjacent law where incremental reform is worth studying as well. Consider, for example, an issue with respect to state insurance insolvencies that has only recently captured attention.

Under state insurance insolvency regulation, the United States can itself have a claim. The United States Code contains a provision that gives the United States an absolute right to priority over other creditors. 31 U.S.C. §3713. The statute provides nothing in the way of providing procedural rules to implement this priority. In bankruptcy cases, the Bankruptcy Code displaces the statute with rules that protect the priority right of the United States without disrupting the process. There is, however, no comparable process for state insurance insolvency proceedings.

When the United States fails to appear in a state insurance insolvency, receivers may be reluctant to liquidate the assets, as the receivers themselves are potentially personally liable if the United States later appears and makes a claim. Section 3713(c) provides that "a representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government."

To be sure, courts have held that the representative "must have knowledge of the debt owed by the estate to the United States or notice of facts that would lead a reasonably prudent person to inquire as to the existence of the debt owed before making the challenged distribution or payment," United States v. Coppola, 85 F.3d 1015, 1020 (2d Cir. 1996). Moreover, the Supreme Court has held that the McCarren-Ferguson Act may allow for state insurance insolvency statutes to "reverse preempt" the Federal Priority Act. See U.S. Dept. of Treasury v. Fabe, 508 U.S. 491 (1993). The reach of this precedent, however, is unclear. Representatives of insolvent insurance companies may be reluctant to expose themselves to liability when there is any doubt.

The absence of any special provision for state insurers is not a deliberate policy choice by Congress. Instead, 31 U.S.C. §3713 merely reflects the ancient nature of the law. The Federal Priority Act now found in 31 U.S.C. §3713 existed in substantially similar form in Revised Statute §3466. Revised Statute §3466 is in turn based on the Act of March 3, 1797, §5, 1 Stat. 515. Like other eighteenth century congressional enactments, it was skeletal and underdeveloped and has remained that way in subsequent enactments.

Congress did address the difficulties Revised Statute §3466 posed in bankruptcy cases in the Bankruptcy Reform Act of 1978. See Bankruptcy Reform Act of 1978, §322, Pub. L. No. 95-958, 92 Stat. 2679 (1978), but as far as we know Congress has not focused on the difficulties the Federal Priority Statute poses in other insolvency regimes. Hence, it is reasonable to consider legislation that addresses this difficulty in the case of state insurance insolvencies.

There are also other areas where more ambitious reform might be possible. The success of Chapter 11 has led to the modernization of insolvency laws across the world. Chapter 11 has been widely imitated. Businesses with operations both in the United States and abroad often choose to file in the United States and reorganize under Chapter 11. Large transnational businesses, however, now have a choice among jurisdictions, and some find advantages in reorganizing elsewhere. Examination of these other regimes points to one way in which existing bankruptcy law is too inflexible.

In the United States, it is not possible to restructure principal or interest payments on a bond issuance outside of bankruptcy without the unanimous support of the bondholders. The restructuring cannot take place outside of bankruptcy because of the Trust Indenture Act. It can take place in Chapter 11, but at the cost of involving all the other creditors and bringing major disruptions to all constituencies from suppliers to landlords to workers.

By contrast, in the United Kingdom, it is possible to reorganize a single tranche of funded debt without affecting the business's other creditors, its workers, or any other aspect of its operations. The English scheme of arrangement allows for a limited restructuring of discrete tranches of debt with just enough judicial oversight to ensure that the supermajority of bondholders is not taking advantage of the dissidents.

Adding a comparable, limited restructuring regime to the Bankruptcy Code that allows bondholders to restructure their debt without disrupting the rest of the business appears to be a sensible bankruptcy reform.

As always, the National Bankruptcy Conference stands ready to help provide advice or technical assistance with respect to these issues or other questions of bankruptcy reform.

Mr. FITZGERALD. Thank you, Professor Baird. Judge Black, you may begin.

STATEMENT OF THE HON. PAUL M. BLACK

Mr. BAIRD. Chair Fitzgerald, Ranking Member Nadler, and the Members of the Subcommittee, I'm Paul Black, United States Bankruptcy Judge for the Western District of Virginia. I want to thank you for the opportunity to speak today.

I went on the bench in January 2014, and many of my cases are Chapter 13 repayment plans, where debtors are trying to maintain their home, or Subchapter V cases, where small businesses debtors are trying to save their businesses and keep their employees on the job. A part of my district is in Appalachia, and many of the debtors who appear before me have a very limited income, including those on nothing but some form of Social Security. In the cases I see, work at Congress makes an impact with new bankruptcy legislation.

First, the Subchapter V debt limit. I will state for the record today that the Small Business Reorganization Act is one of the best pieces of legislation in the bankruptcy world in many years. Congress did a good thing. When the SBRA went into effect in February 2020, the debt limit was approximately $2.7 million. The pandemic hit, and it increased to $7.5 million. The debt limit increase had a sunset, and it was extended through June 21, 2024, when it reverted to its original limit, adjusted for inflation.

What a small business may be in Southwest Virginia, where I live, may be very different than what a small business may be in Denver, Chicago, or New York, where the cost of living, property values, real estate taxes, and debt loads may be significantly higher. The $7.5 million debt limit was effective and appropriate. The businesses with debt up to this level simply struggle to afford the Chapter 11 process without the SBRA. The increased debt limit brings opportunity for small businesses to take advantage of the less costly and streamlined provisions of the Bankruptcy Code enabling the debtors to more quickly get a plan confirmed and exit the court system, also maintaining entrepreneurial value and keeping employees on the job.

The participation of the Subchapter V trustees has proven very effective in getting these cases to a consensual confirmation. Were these small business cases forced to go the route of a regular Chapter 11 case, with its attendant increased costs and procedural steps, many would likely just fold the tent and go home. They just can't afford it. The SBRA works, and it works at increased debt levels. I encourage Congress to make the $7.5 million debt limit, which was so effective in operation, a permanent addition to the Bankruptcy Code.

Second, the bifurcation of fees in Chapter 7 cases. This, to me, is an access to justice issue. The pro se debtor filing rate varies across the country. Some districts are significantly higher than others. One constant, however, is that pro se cases, which are ones which are filed without the assistance of counsel, they often struggle. They also tie up the clerk's office staff when we are in difficult budget times and the clerk's offices are being asked to do more with less.

Why is this a problem? Chapter 7 debtors often have difficulty coming up with a lump sum attorney's fee necessary to pay counsel to file liquidating Chapter 7 bankruptcy case. In the Chapter 13 plan, debtors can and often do pay their fees over time. Some debtors simply should not be in those cases for no other reason than to pay their attorneys' fees. The Supreme Court has held that a Chapter 7 attorneys' fees cannot be treated as an administrative expense, meaning that the debtor's attorney cannot be prioritized ahead of other creditors. Further, several circuits have held that a prepetition agreement to pay attorney's fees is subject to the automatic stay, and any fee still owed post filing is subject to discharge.

What would help Chapter 7 debtors to more readily obtain counsel, as opposed to filing without a counsel going into an unnecessary Chapter 13 plan? Allow them to bifurcate their fees and pay some portion before filing and some portion afterwards. I have set forth in my written statement proposed ways to do that. We want to encourage counsel to take these cases by allowing them to get paid with court oversight to prevent overreaching, which would benefit the entire system.

Third, Chapter 7 trustees' fees. The last no-asset fee increases for Chapter 7 trustees received was in 1994 from $45–$60. The responsibilities of trustees have increased substantially over this period, especially since the adoption of BAPCPA in 2005. Pending before the House is H.R. 3867, the Bankruptcy Administration Improvement Act of 2025, which has bipartisan support to date. It has a Senate counterpart also with bipartisan support.

This bill would raise the no-asset fee for trustees to $120 in such cases. The Chapter 7 trustees are the boots on the ground that makes the system work. The bill has a funding mechanism built in to pay for these fees by raising the fees in certain Chapter 11 cases by 0.03 percent and would also extend certain temporary judgeships already in place around the country, including some that have looming expirations.

I'm also concerned about the aging of the Chapter 7 trustee panels around the country, a common concern I hear from many of the colleagues at the bench at national meetings. We need to encourage younger bankruptcy practitioners to be willing to serve on these panels, but it needs to be financially viable for them to do so.

Thank you for your time, and I welcome your questions on the matters discussed.

[The prepared statement of Mr. Black follows:]

**TESTIMONY OF THE HONORABLE PAUL M. BLACK,
CHIEF UNITED STATES BANKRUPTCY JUDGE
FOR THE WESTERN DISTRICT OF VIRGINIA
BEFORE THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,
REGULATORY REFORM, AND ANTITRUST**

HEARING ON "BANKRUPTCY LAW: OVERVIEW AND LEGISLATIVE REFORMS"

JULY 15, 2025

Chairman Fitzgerald, Ranking Member Nadler, and members of the Subcommittee, I am Paul Black, Chief United States Bankruptcy Judge for the Western District of Virginia. I am here today on my own behalf as a Judge and these comments reflect my own opinions. I do not represent other members of the judiciary, the Judicial Conference, the Administrative Office of the U.S. Courts, or the National Conference of Bankruptcy Judges, of which I am currently President-Elect.

Prior to being appointed to the bench, I was a bankruptcy practitioner for 28 years, having started as a bankruptcy court law clerk in 1985. Thereafter, I primarily represented secured creditors in commercial bankruptcies and distressed loan workouts. I did quite a bit of work in consumer bankruptcy cases over the years as well, primarily representing automotive and home mortgage lenders. I went on the bench in January 2014, and while I have had large cases both in my Court and others where I sit as a conflict judge, my docket in recent years is heavily consumer and small business focused. Many of my cases are Chapter 13 repayment plans where debtors are trying to maintain their home, or Subchapter V cases where small business debtors are trying to save their businesses and keep their employees on the job. Part of my district is in Appalachia, and many of the debtors who appear before me have very limited income, including those on nothing but some form of social security. I have empathy for the people who appear before me. My own grandfather was a coal miner.

The question arises: where could Congress really make an impact with new bankruptcy legislation?

I. <u>The Subchapter V debt limit</u>

Congress often does not get enough credit for the things it does well, but I will state for the record today the Small Business Reorganization Act (SBRA) is one of those things Congress did very well. This is one of the best pieces of legislation in the bankruptcy world in many years. When the SBRA went into effect in February, 2020, the debt limit was $2,725,625. The pandemic hit, and several weeks later, it was increased to $7,500,000. The debt limit increase had a sunset, and it was extended through June 21, 2024, when it reverted to its original limit, adjusted for inflation. What a small business may be in Southwest Virginia where I live may be very different than what a small business may be in Denver, Chicago, or New York, where costs of living, property values, real estate taxes and debt loads may be significantly higher.

The $7,500,000 debt limit was effective and appropriate. Businesses at this level simply struggle to afford the Chapter 11 process without the SBRA. The Chapter 11 bar is proficient in bringing those cases before the court, as the debt limit was at $7,500,000 far longer than not. The increased debt limit brings opportunity for small businesses to take advantage of the less costly and streamlined provisions of the Bankruptcy Code, enabling the debtors to more quickly get a plan confirmed and exit the court system, maintain entrepreneurial value and keep employees on the job. The vast majority of Subchapter V cases before me, 95%, are consensual plans. They are often two-party disputes, and in lieu of the cost of a creditors' committee, each case has a trustee who has a duty to be heard on the fairness of the plan to all parties, including creditor constituencies. The participation of these trustees has proven effective in getting these cases to a consensual confirmation. Were these small business cases forced to go the route of a regular Chapter 11 case, with its attendant increased costs and procedural steps, many would likely just fold the tent and go home. They just can't afford it. The SBRA works and it works at the increased debt levels. I encourage Congress to make the $7,500,000 debt limit which was so effective in operation a permanent addition to the Bankruptcy Code.

II. Bifurcation of Fees in Chapter 7 Cases

This is, to me, an access to justice issue. The *pro se* debtor filing rate varies across the country. Some districts are significantly higher than others. One constant, however, is that *pro se* cases, ones filed without the assistance of counsel, often struggle. They also tie up the Clerk's Office staff, who spend inordinate amounts of time dealing with *pro se* debtors at the counter or who filed documents through electronic self-representation. It is a real drain on the system, when we are in difficult budget times and the clerk's offices are being asked to do more with less.

Why is this a problem? Chapter 7 debtors often have difficulty coming up with a lump sum attorney's fee necessary to pay counsel to file a liquidating Chapter 7 bankruptcy case. In a Chapter 13 plan, debtors can and often do pay their fees over time. Some debtors simply should not be in those cases for no other reason than to pay their attorney's fees. In the *Lamie* case, the Supreme Court held that a Chapter 7 debtor's attorney fees cannot be treated as an administrative expense, meaning that the debtor's attorney cannot be prioritized ahead of other creditors.[1] They are entitled to receive the same pro rata share of assets as other unsecured creditors. In a no-asset case, they will get nothing at all just like anyone else. Further, several circuits have held that a pre-petition agreement to pay attorney's fees is subject to the automatic stay and any fee still owed post filing is subject to discharge.

What would help Chapter 7 debtors to more readily obtain counsel, as opposed to filing without counsel or going into an unnecessary Chapter 13 plan? Allow them to bifurcate their fees and pay some portion before filing and some portion afterwards. This would entail an amendment to the Bankruptcy Code that would (1) except from discharge Chapter 7 debtors' attorney fees due under any agreement for payment of such fees; (2) add an exception to the automatic stay to allow for post-petition payment of Chapter 7 debtors' attorney fees; and (3) provide for judicial

[1] *Lamie v. U.S. Trustee*, 540 U.S. 526 (2004).

review of fee agreements at the beginning of a Chapter 7 case to ensure reasonable Chapter 7 debtors' attorney fees. We want to encourage counsel to take these cases by allowing them to get paid, with court oversight to prevent overreaching, which would benefit the entire system.[2]

III. Chapter 7 Trustee Fees

In 2018, Judge Alan Stout from Louisville, KY, testified before this Committee, advocating for an increase in compensation for Chapter 7 Trustees in no-asset cases. Then, like today, the no-asset fee is $60 a case. The last no-asset fee increase the Chapter 7 Trustees received was in 1994, from $45 to $60. Judge Stout pointed out 7 years ago that the responsibilities of trustees have increased substantially over this period, especially since adoption of the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") in 2005.

Pending before the House is H.R. 3867, the Bankruptcy Administration Improvement Act of 2025, which has bipartisan support to date. It has a Senate counterpart, also with bipartisan support. This bill would raise the no-asset fee for the Trustees to $120 in such cases. Bankruptcy confers great relief and provides a safety net for individuals in financial distress. Indeed, one of the basic tenants of bankruptcy is to provide a "fresh start" to honest but unfortunate debtors. The Chapter 7 Trustees are the boots on the ground that make the system work. The bill has a funding mechanism built in to pay for these fees by raising the fees in certain Chapter 11 cases by .03 percent, and it would also extend certain temporary judgeships already in place around the country, including some which have looming expirations. I am also concerned about the aging of the Chapter 7 Trustee panels around the country, a common concern I hear from many of my colleagues on the bench at national meetings. We need to encourage younger bankruptcy practitioners to be willing to serve on these panels, but it needs to be financially viable for them to do so.

I realize I have limited time. I welcome your questions on the matters I have outlined, and any other matters I can appropriately discuss.

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[2] Although I do not speak for the Judicial Conference of the United States (JCUS), my understanding is that the JCUS is supportive of a legislative solution to this issue, which has previously been conveyed to Congress.

Mr. FITZGERALD. Thank you, Judge Black. Judge Harner.

STATEMENT OF THE HON. MICHELLE HARNER

Ms. HARNER. Chair Fitzgerald, Ranking Member Nadler, and the Members of the Subcommittee, good morning. My name is Michelle Harner, and I am a United States bankruptcy judge for the District of Maryland. I am honored to be here this morning to share information and data with you concerning the U.S. bankruptcy system.

I'm in a unique position to do that because I have been a partner at the law firm of Jones Day representing both debtors and creditors in bankruptcy. I have been a law professor at two different law schools, and I am now a bankruptcy judge. I should say I am here in my individual capacity, and I do not speak for the United States Judicial Council, the Administrative Office of the United States Courts, or any other individual organization.

With my allotted time, I would like to do three things:

First, I want to talk about Subchapter V; next, Chapter 13 cases; and, finally, the student loan debt. Before doing so, however, I want to underscore the basic fact that, every year, hundreds of thousands of Americans, whether as an individual debtor, a business debtor, or a creditor, uses the United States Bankruptcy Code that this Congress has enacted to address issues stemming from financial distress. It's not perfect. We probably could do things better. During our conversation today, I do not want us to lose sight of the fact that the Bankruptcy Code helps everyday Americans.

On that point, in 2024, over 500,000 bankruptcy cases were filed, and the recent study shows that one out of every 11 Americans will at some point turn to the bankruptcy system for help. With respect to Subchapter V, since its effective date in 2020, over 10,000 cases have been filed. Subchapter V helps smaller companies reorganize and pay their creditors quicker. The data shows that Subchapter V debtors confirm plans in over 50 percent of the cases; and, of those plans, over 60 percent are consensual, meaning that they met the requisite creditor support. The process is quicker, cheaper, and more effective.

Unfortunately, at the moment, the data also shows that the current level of the debt cap, which gauges eligibility for Subchapter V, is excluding numbers of smaller companies, and they cannot use the subchapter to keep their business or to repay their creditors.

With respect to Chapter 13, in 2024, there were over 197,000 Chapter 13 cases filed. Chapter 13 allows individuals to repay their creditors under a 3–5-year plan. The national data shows that Chapter 13 debtors complete their repayment plans in 40–50 percent of these cases. I know from talking to my colleagues, many districts have much higher completion rates.

Similar to Subchapter V, the current debt cap in Chapter 13, which, again, is the eligibility gate for Chapter 13, is set at a level and bifurcated in a way that excludes many individuals, approximately 2,000 every year, from using Chapter 13. In addition, those individuals also might be foreclosed from Chapter 7 because of the means test.

Finally, with respect to student loans, the outstanding amount of student loan debt and the defaults they're under continue to rise.

Yet, individuals cannot use the bankruptcy system to address student loan debt. Moreover, student loan debt may actually keep an individual out of the bankruptcy system. For example, the student loan debt of an individual may be so high that the debtor doesn't qualify under the debt cap for Chapter 13. That Chapter 13 would-be debtor can't file and can't repay the creditors.

A path to addressing student loan debt in bankruptcy actually as a result might help not only debtors but all the debtors' other creditors. That kind of path would serve the dual objectives of the Bankruptcy Code. The Bankruptcy Code strives to provide the honest, but unfortunate debtor with a fresh start and pay as much as possible to all the creditors.

Thank you, and I look forward to your questions.

[The prepared statement of Ms. Harner follows:]

Statement of Michelle M. Harner*

at the Hearing on

Bankruptcy Law: Overview and Legislative Reforms

Before the

Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

of the Committee on the Judiciary

U.S. House of Representatives

Washington, D.C., July 15, 2025

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* United States Bankruptcy Judge, District of Maryland.

Chairman Fitzgerald, Ranking Member Nadler, and members of the Subcommittee, I am Michelle M. Harner, United States Bankruptcy Judge for the District of Maryland. I would like to preface my remarks by saying that I am testifying on my own behalf as a bankruptcy professional and Judge, and that my comments are my own and intended to inform and help explain certain matters relating to U.S. bankruptcy law. I do not represent other members of the Judiciary, the Judicial Conference of the United States, the Fourth Circuit Judicial Council, the Administrative Office of the U.S. Courts, or any other governing body or organization.

I have been a bankruptcy professional for over 30 years. I was first introduced to bankruptcy law in law school at The Ohio State University College of Law, and I have been a diligent student of bankruptcy law ever since. Despite my many roles in the bankruptcy community—from a Partner at the law firm Jones Day, to a tenured Law Professor at the University of Maryland Francis King Carey School of Law, to now a bankruptcy judge—I have never stopped studying, analyzing, and dissecting our bankruptcy laws. I served as the Reporter to the American Bankruptcy Institute Commission to Study the Reform of Chapter 11 (2012–2014), the Chair of the Working Group on Individual Bankruptcy Reform of the National Bankruptcy Conference (2021–2022), and the Co-Chair of the American Bankruptcy Institute Subchapter V Task Force (2023–2024). I also served as the Associate Reporter to, and am now a member of, the Advisory Committee on the Federal Rules of Bankruptcy Procedure.

Based on those experiences, I would like to provide the Subcommittee with information and data concerning three areas of bankruptcy law that I understand are of interest to the Subcommittee: (i) subchapter V of chapter 11 of the Bankruptcy Code; (ii) chapter 13 of the Bankruptcy Code; and (ii) the treatment of student loans in bankruptcy. Before addressing each of these three topics, however, I also offer the following general information about the U.S. bankruptcy system:

- During the 2024 calendar year, 517,308 bankruptcy cases were filed in the United States. Notably for purposes of today's hearing, approximately 2,582 of those were filed under subchapter V of chapter 11, and approximately 197,244 were filed under chapter 13.[1]
- Drilling down on the numbers for purposes of today's hearing, all the chapter 13 cases (by definition) and 399 of the subchapter V cases involved individual debtors.

[1] The data included in this Statement generally come from one of two sources: (i) U.S. Courts, Statistical Reports, referred to herein as "U.S. Courts Data" and available at Bankruptcy Filings Statistics; and/or (ii) Ed Flynn, Consultant, American Bankruptcy Institute, referred to herein as "ABI Data" and attached as Appendix A to this Statement.

In addition, approximately, 298,049 chapter 7 cases involved individual debtors. (ABI Data/U.S. Courts)

- A recent law review article concludes that "overall, taking into account estimates of repeat filers, *one in eleven adults* in the United States has turned to the bankruptcy system for help at some point during their lives."[2]
- When faced with economic or financial crisis, individuals and businesses turn to the U.S. bankruptcy system for assistance. For example, in the period after the 2007–2008 financial crisis, the respective numbers of bankruptcy cases filed in the United States were as follows: 1,117,771 in 2008; 1,473,675 in 2009; 1,593,081 in 2010; 1,410,653 in 2011; and 1,221,091 in 2012. (U.S. Courts Data)
- On an average annual basis, creditors receive over $5 billion in recoveries in individual bankruptcy cases and even greater recoveries in business cases. (ABI Data)
- The dual objectives in every bankruptcy case are to provide the "honest but unfortunate" debtor with a fresh financial start and to maximize returns to the debtor's creditors.

As suggested by these data, the U.S. bankruptcy system affects thousands of individuals and businesses (both as debtors and creditors) every year. It is important to the U.S. economy, as well as to American families, businesses, and communities. The bankruptcy system works, but like most things, is not perfect. I appreciate the Subcommittee holding this hearing to focus on the bankruptcy system and how it can be made even better.

I. Subchapter V Cases

Smaller businesses are the backbone of the U.S. economy. Indeed, as of 2024, the United States was home to approximately 34,752,434 small businesses, representing over 99% of all U.S. businesses.[3] These businesses employ individuals; contribute to local, national, and global markets; support their communities; and often represent family or other small entrepreneurial enterprises. Yet, these businesses also encounter financial distress, and until 2019, the United States did not have an effective bankruptcy option for smaller businesses.

In fact, as early as 1996, judges and commentators were calling for bankruptcy reform to help smaller businesses reorganize and pay back their creditors.[4] During the 2012–2014 study of the American Bankruptcy Institute Commission to Study the Reform of Chapter 11 (the "ABI

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[2] Pamela Foohey, *The Periphery of Bankruptcy Law: The Importance of Non-Bankruptcy Issues in Consumer Bankruptcy*, 98 AM. BANKR. L.J. 527, 528–529 (2024) (emphasis added).

[3] Data from https://advocacy.sba.gov/2024/07/23/frequently-asked-questions-about-small-business-2024/.

[4] *See, e.g.*, A. Thomas Small, *Suggestions for the National Bankruptcy Review Commission: Small Business Reorganization Chapter*, 4 AM. BANKR. INST. L. REV. 550, 550 (1996).

Commission"), the ABI Commission heard testimony from judges, practitioners, financial consultants, and academics regarding how chapter 11 of the Bankruptcy Code failed smaller businesses and the dire need for reform. The ABI Commission studied the data and previous proposals put forth by, among others, the National Bankruptcy Conference, and included reform recommendations in its Final Report for what it called SMEs (small or medium-sized enterprises).[5]

Congress enacted the Small Business Reorganization Act of 2019 (SBRA) on August 23, 2019.[6] SBRA was codified as subchapter V of chapter 11 of the Bankruptcy Code and became effective on February 19, 2020.[7] Under subchapter V, a smaller business can file and seek court approval (i.e., confirmation) of a plan of reorganization that proposes to repay its creditors (typically over a period of three to five years). A subchapter V trustee is appointed in every case to help facilitate the negotiation of a consensual subchapter V plan.

By all objective measures, subchapter V is working well. The subchapter streamlines the reorganization process for smaller businesses, allowing them to exit bankruptcy and begin repaying their creditors more quickly. According to the ABI Data, "[b]etween February 19, 2020, and June 30, 2025, there were 10,269 chapter 11 cases filed under Subchapter V. They accounted for more than one quarter of all chapter 11 case filings (37,106) during this period." In addition, debtors confirm plans of reorganization in over 50% of subchapter V cases, with over 60% of those confirmations being achieved on a consensual basis under section 1191(a) of the Bankruptcy Code.

One issue currently facing financially distressed smaller businesses is whether they are eligible to file a subchapter V bankruptcy case. At present, a business must have less than $3,424,000 in noncontingent, liquidated debt to file a subchapter V case. 11 U.S.C. § 101(51D). The ABI Commission *in 2014* determined that smaller businesses with approximately $10 million in noncontingent, liquidated debt needed assistance and were not well-suited for reorganization under a traditional chapter 11 case. Likewise, a prior bill on smaller business reorganizations introduced *in 2010* (and based on the recommendation of the National Bankruptcy Conference) suggested a $7.5 million limit.[8]

Notably, subchapter V used a $7.5 million debt cap for eligibility during most of its existence, through June 21, 2024. The ABI Data shows that approximately 26.2% of subchapter V cases filed prior to June 2024 were in between the lower debt cap and $7.5 million of debt, and that *those businesses were confirming subchapter V plans at a higher rate than businesses with*

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[5] Am. Bankr. Inst. Comm'n to Study the Reform of Chapter 11, 2012–2014, Final Rep. & Recommendations (2014) 275–283, http://commission.abi.org/full-report.

[6] Small Business Reorganization Act of 2019, Pub. L. No. 116-54, 133 Stat. 1079 (Aug. 23, 2019) (effective Feb. 19, 2020).

[7] *See id.*

[8] *See* Whitehouse Bill, S. 3675, 111th Cong. (2010).

lower debt caps.[9] These higher success rates are beneficial to creditors as well. Before subchapter V, general creditors in small business cases did not typically receive significant distributions because "administrative costs and priority tax claims frequently consume the bulk of unencumbered property in confirmed Chapter 11s."[10] Subchapter V, by design, substantially reduces these costs, thereby making reorganization more feasible for smaller businesses and providing the opportunity to increase recoveries to general creditors.

Based on the data, many smaller businesses no longer have a viable restructuring opportunity under the Bankruptcy Code. The issues with chapter 11 identified by the ABI Commission in 2014 remain for those excluded businesses (and their creditors).

II. Chapter 13 Cases

Chapter 13 of the Bankruptcy Code allows an individual to repay creditors under a three- to five-year repayment plan. The Bankruptcy Code contains certain requirements for confirmation of a chapter 13 plan and provides a debtor with a discharge of most prepetition debt upon completion of the repayment plan. A chapter 13 debtor, like a chapter 7 individual debtor, cannot seek to discharge certain debt, including domestic support obligations, certain taxes, and, in most cases, student loan debt.

An individual most often files a chapter 13 case to try to save a home or a car.[11] Chapter 13 generally allows the debtor to retain possession of most all assets, while the debtor can usually retain only exempt assets in a chapter 7 case. Chapter 13 provides an opportunity for a debtor to repay some debt while keeping most assets under the protection of the automatic stay of section 362 of the Bankruptcy Code.

As noted above, individuals filed 197,244 chapter 13 cases in 2024. This represents an increase in filings over 2023. It is somewhat difficult to gauge the outcomes of chapter 13 cases, but the ABI Data over the past ten years suggest that between 40–50% of chapter 13 debtors complete their plan payments. A chapter 13 trustee generally is responsible for distributing plan payments to secured creditors, administrative creditors, and unsecured creditors.

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[9] For a thorough discussion of the history of subchapter V, the effectiveness of subchapter V, and the debt caps used for subchapter V eligibility, see Final Report of the American Bankruptcy Institute Subchapter V Task Force (2023–2024), available at abi.org. For the recommendation of the National Bankruptcy Conference, see Letter dated December 8, 2023, http://nbconf.org/wp-content/uploads/2023/12/Maintaining-Sub-V-Cap-12.5.2023.pdf (recommending a debt cap of $7.5 million).

[10] *A Proposal for Amending Chapter 12 to Accommodate Small Business Enterprises Seeking to Reorganize*, National Bankruptcy Conference (Dec. 17, 2009), at 5, http://nbconf.org/wp-content/uploads/2015/07/NBC-Small-Business-Rept-Dec-17-2009.pdf, (citing, *inter alia*, Douglas G. Baird, Arturo Bris & Ning Zhu, The Dynamics of Large and Small Chapter 11 Cases: An Empirical Study 5, 33 (Int'l Ctr. for Fin. at Yale Sch. of Mgmt., Working Paper No. 05-29, 2007), http://ssrn.com/abstract=866865).

[11] The debtor also may file a chapter 13 case because the debtor is ineligible to file a chapter 7 case under the means test of section 707 of the Bankruptcy Code.

To be eligible for chapter 13, an individual currently must have less than $526,700 in noncontingent, liquidated unsecured debt and less than $1,580,125 in noncontingent, liquidated secured debt. For several years prior to June 21, 2024, individuals were eligible for chapter 13 if they had less than $2,750,000 in noncontingent, liquidated debt. That single debt cap eliminated eligibility litigation over the bifurcation of secured claims into secured and unsecured, as permitted by section 506 of the Bankruptcy Code, and permitted individuals with debt that exceeded one of the two debt caps under current law to still file a chapter 13 case.[12]

The existing unsecured and secured debt cap amounts also may not be adequate given that all debt—not just that subject to discharge—must be counted for eligibility purposes. Thus, tax debt and student loan debt, which might be substantial, count in calculating the amount of unsecured and secured debt in a chapter 13 case. According to the ABI Data, approximately 2,000 individuals per year are no longer eligible for chapter 13 under the reduced eligibility caps. Notably, those 2,000 individuals are also likely ineligible for chapter 7 (because of the means test) and not well-suited for a chapter 11 case. Thus, like some of the smaller businesses discussed above, some financially distressed individuals may be shut out of the bankruptcy system.[13]

III. Student Loans

As generally known, it is difficult to discharge student loan debt in a bankruptcy case.[14] Thus, despite the $1.8 trillion in outstanding student loan debt, most individuals cannot seek to reduce that debt or discharge it through the bankruptcy process. Section 523(a)(8) of the Bankruptcy Code provides that a bankruptcy case does not discharge student loan debt, "unless

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[12] In general, a creditor's claim is secured to the value of the underlying collateral and is unsecured for any amounts above that collateral value; the latter is commonly referred to as a deficiency claim. For example, if a debtor's mortgage debt is $400,000.00 and the debtor's home is valued at $200,000.00, the creditor's claim may be bifurcated for purposes of determining the debtor's eligibility for chapter 13, even though the debtor may not be able to modify the mortgage claim in the chapter 13 case.

[13] For the recommendation of the National Bankruptcy Conference, see Letter dated May 18, 2023, http://nbconf.org/wp-content/uploads/2023/12/2023-05-18-NBC-Recommendation-on-Chap-13-Debt-Cap.pdf (recommending a single, higher debt cap).

[14] The history of student loans in bankruptcy is interesting in that student loans were originally dischargeable under the Bankruptcy Act of 1898, like any other unsecured debt. The law has changed over time, but it is not clear whether that change has fostered greater repayment on student loans. Indeed, the Federal Student Loan Portfolio breakdown by age and debt size suggests that a large portion of the outstanding student loan debt is held by Americans age 62 or older. *See* Appendix B; also available at https://studentaid.gov/data-center/student/portfolio.

Notably, many of the reported bankruptcy cases suggest that individuals seeking a discharge of their student loan debt are older and are not necessarily new or recent graduates. *See, e.g.*, *Educ. Credit Mgmt. Corp. v. Waterhouse*, 333 B.R. 103 (W.D.N.C. 2005) (reversing, in part, bankruptcy court decision, and denying discharge of entirety of student loan debt for 51 year debtor); *In re Blake*, 377 B.R. 502 (E.D. Tex. 2007) (reversing bankruptcy court decision that discharged student loan debt and remanding proceeding involving 48 year old debtor); *In re Randall*, 628 B.R. 772, 775 (Bankr. D. Md. 2021) (granting partial discharge of student loan debt for 68 year old debtor); *In re Bell*, 633 B.R. 164 (Bankr. W.D. Va. 2021) (granting discharge of student loan debt for 67 year old debtor); *In re Little*, 607 B.R. 853, 856 (Bankr. N.D. Tex. 2019) (denying discharge of student loan debt for 58 year old debtor).

excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents . . . ."[15] 11 U.S.C. § 523.

The Bankruptcy Code does not define the term "undue hardship." The courts generally have developed two standards to evaluate undue hardship: the *Brunner* test and the totality of circumstances test. The *Brunner* test stems from a decision from the United States Court of Appeals for the Second Circuit in *Brunner v. New York State Higher Education Services, Corp.*, which is followed by a majority of circuits.[16] The United States Court of Appeals for the Eighth Circuit and certain lower courts follow the totality of circumstances test.[17] Commentators debate the meaningful difference between the two tests, though the Eighth Circuit has suggested that its approach is "less restrictive."

Under either test, the presumption is that student loan debt (as identified in the Bankruptcy Code) is not dischargeable. It is worth noting that, in addition to the undue hardship standard, a debtor also must file a complaint to commence an adversary proceeding against the lender and bears the burden of proof to demonstrate that the undue hardship standard of section 523(a)(8) of the Bankruptcy Code is satisfied. As a result, relatively few student loan debts are addressed or discharged in bankruptcy. Yet, as noted above, student loan debt is included in calculating an individual's debt for chapter 13 eligibility and may also impact an individual's means test calculation for purposes of chapter 7 eligibility.[18]

In closing, I want to again thank the Subcommittee for holding today's hearing. I would be happy to provide any additional information or data that might be helpful to the Subcommittee on these or other bankruptcy-related topics.

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[15] Specifically, the statute described nondischargeable student loan debt as debt for

> **(A)(i)** an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
>
> **(ii)** an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
>
> **(B)** any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

11 U.S.C. § 523(a)(8).

[16] 831 F.2d 395 (2d Cir. 1987). Under the *Brunner* test, the Court must evaluate the following three factors:

> (1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.

[17] *See, e.g.*, *In re Long*, 322 F.3d 549, 554–55 (8th Cir. 2003).

[18] For the recommendation of the National Bankruptcy Conference, see Study of Individual Bankruptcy Cases (2022) 12–13, http://nbconf.org/wp-content/uploads/2022/11/Consolidated-Report-Individual-Debtor-Reform-Project-NBC_Final_Nov-15-2022.pdf (recommending changes to the standard for discharging student loans in bankruptcy).

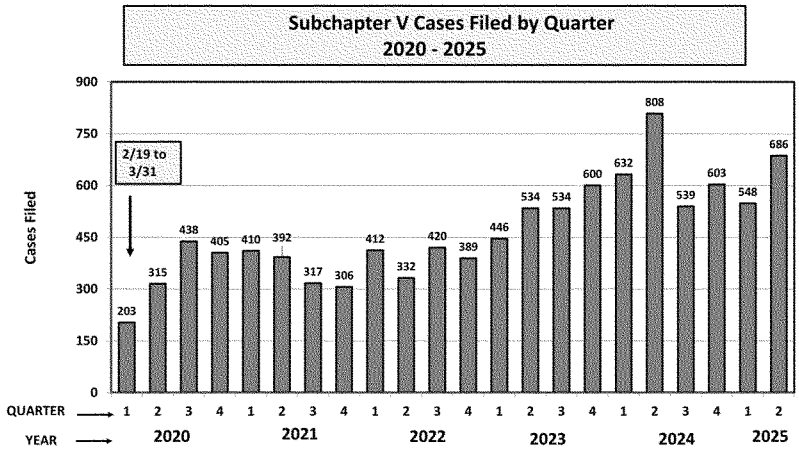
APPENDIX A

The data set forth in this Appendix are based on the research of Ed Flynn, a consultant with the American Bankruptcy Institute, Alexandria, Virginia.

Subchapter V Cases

Data on Subchapter V comes from two primary sources. Data on filings is compiled by the ABI based on a review of PACER records, which is usually done within a few days of case filing. Information on case outcomes is from the EOUST. This database was last updated with information through December 31, 2024. Also, some of this data comes from the AOUSC and is subject to an agreement between the two agencies that limits the disclosure of certain information.

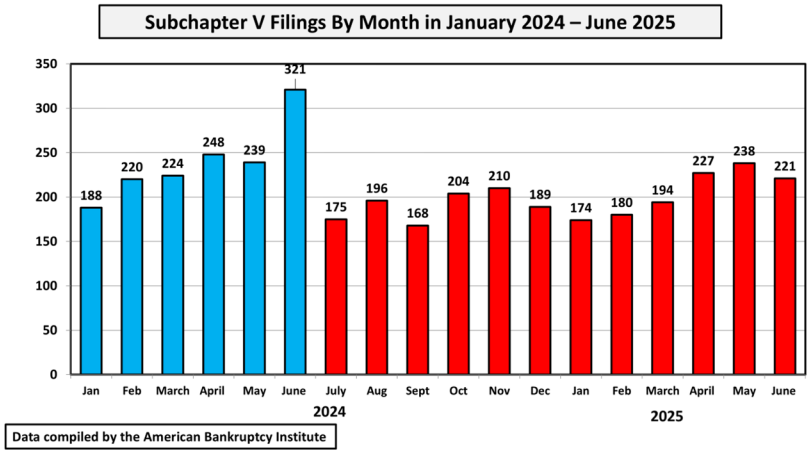
Filings: Between February 19, 2020, and June 30, 2025, there were 10,269 chapter 11 cases filed under Subchapter V. They accounted for more than one quarter of all chapter 11 case filings (37,106) during this period. As the following chart shows, Subchapter V filings were at record levels in the first half of 2024 but dropped off after because of the lower debt ceiling eligibility level.



Impact of the Lower Debt Ceiling: When Subchapter V took effect on February 19, 2020, it had a debt ceiling of $2,725,625 for small businesses looking to proceed under subchapter V. (This amount was subsequently adjusted to $3,024,725 pursuant to 11 U.S.C. § 104, and then to $3,424,000 in April 2025.) That debt cap was raised in 2020 to $7.5 million.

After not receiving another extension prior to June 21, 2024, the subchapter V debt eligibility limit statutorily receded from $7.5 million to $3,024,725 (adjusted to $3,424,000 in April 2025). The effect on

filings was immediate. Subchapter V filings during the second half of 2024 were down by 20 percent from the first half of the year. So far in 2025, Subchapter V filings are trending up, but have still been below the monthly totals in early 2024.



Debt Amounts: The following chart includes only cases filed during the periods when the Subchapter V debt ceiling was $7.5 million.[19] About 26.2% of Subchapter V cases have been between the old and new debt limits.

[19] These data are based on raw numbers, with no independent investigation concerning whether the court or the parties subsequently determined the debt amounts to be higher or lower in the particular case. Thus, for example, a case showing on the docket as initially reporting debt above $7,500,000, may not in fact have noncontingent and liquidated debt above that amount.

Subchapter V Cases By Debt Amount 2/19/2020 to 6/30/2023				
	Under $2,725,625	Up to $7,500,000	Over $7,500,000	Not Reported
Total Filed	2,597	989	192	1,014
Cases Still Open	1,288	529	114	476
Total Closed or Converted	1,309	460	78	538
Confirmed	525	204	45	172
Dismissed	543	161	17	297
Converted and Closed	75	29	4	9
Converted & Still Open	142	62	12	37
Other Outcomes	24	4	0	23

The confirmation rate has been higher for cases with debts above the original limit. This gap is expected to rise slightly as more cases are closed by the courts.

Subchapter V Cases By Debt Amount 2/19/2020 to 6/30/2023				
	Under $2,725,625	Up to $7,500,000	Over $7,500,000	Not Reported
ɔtal Filed	2,597	989	192	1,014
ɨtal Closed or Converted	1,309	460	78	538
ɛrcent Closed or Converted	50.4%	46.5%	40.6%	53.1%
ɔnfirmed	40.1%	44.3%	57.7%	32.0%
smissed	41.5%	35.0%	21.8%	55.2%
ɔnverted and Closed	5.7%	6.3%	5.1%	1.7%
ɔnverted & Still Open	10.8%	13.5%	15.4%	6.9%
ɛher Outcomes	1.8%	0.9%	0.0%	4.3%

Outcomes: The EOUST reports that: "Compared to other (non-subchapter V) chapter 11 small business cases, subchapter V cases have had approximately double the percentage of confirmed plans and a 20 percent lower dismissal percentage, as well as a shorter time to confirmation. Of subchapter V cases with confirmed plans, 68 percent of the confirmed plans have been consensual plans."

Chapter 11 Outcomes Through December 31, 2024:

Disposition	Chapter 11 Small Business (Non-Subchapter V)		Subchapter V
	FY 2017 – FY 2019	FY 2020 – FY 2023	FY 2020 – FY 2023
Pending Without Confirmed Plan	1%	2%	3%
Plan Confirmed	31%	23%	52%
Converted	15%	22%	13%
Dismissed	54%	53%	32%
Total	100%	100%	100%
Median Months to Confirmation	10.8	10.4	6.6
Median Months to Dismissal	6.0	4.2	4.9

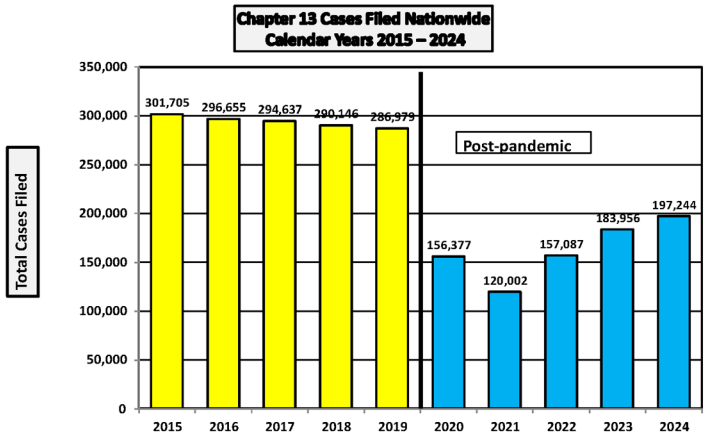
Refilings: Two different methods give rather different results. The ABI has reviewed the PACER record for all chapter 11 case filings. From February 19, 2020 through June 30, 2025 there were 10,054 unique Subchapter V cases filed. Of these cases, 203 ended up refiling, generating a refiling rate of two percent.

The AOUSC has begun to track Subchapter V cases, and this data is now included in the IDB. Debtors report if they have filed an earlier case in any chapter during the past eight years. Of the 2,611 cases filed during 2024, 253 reported an earlier filing (9.7%). This is comparable to the refiling rate for non-Subchapter V chapter 11 cases; it also could include a prior case under the Bankruptcy Code prior to the enactment of Subchaptyer V.

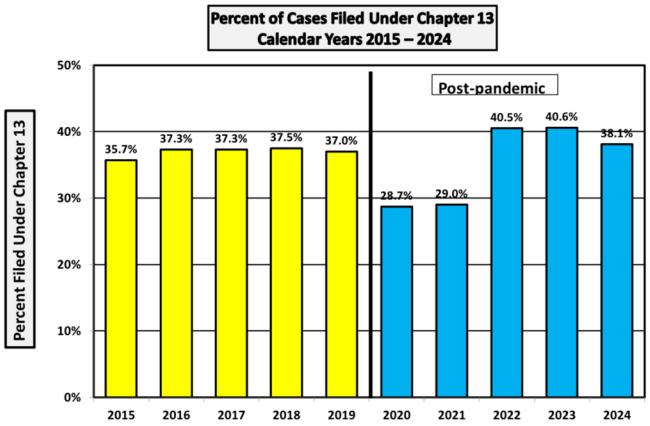
Chapter 13:

There are two sources for the following data on chapter 13 cases. Filing statistics are from the Administrative Office of the United States Courts (AOUSC). Data on collections and distributions is from the Executive Office for United States Trustees (EOUST). The EOUST data is for Fiscal Years ending September 30 and does not include any cases filed in North Carolina and Alabama, which are under the Bankruptcy Administrator Program.

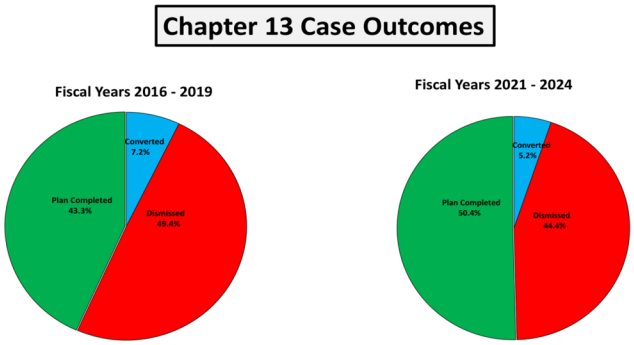
Filings: Chapter 13 case filings fell off sharply after March 2020 due to the pandemic. Filings started to rebound in 2022 but are still well below pre-pandemic levels.



The drop in chapter 13 filings early in the pandemic resulted in a lower percentage of all bankruptcy cases being filed under chapter 13. This changes in 2022, because chapter 13 filings began their post-pandemic rebound about a year before chapter 7 filings started to increase.



Outcomes: The percentage of chapter 13 cases that were closed after successful repayment plan completion has increased since the pandemic. However, these data may be skewed by the fact that cases with completed plans have a longer lifespan than cases that are converted or dismissed.



Chapter 13 Debt Limits: The debt ceiling for chapter 13 eligibility is set pursuant to 11 USC Section 109(e). On June 21, 2024, the chapter 13 debt ceiling was reduced from $2.75 million in total debt to $465,275 in unsecured debt and $1,395,875 in secured debt. Those amounts were adjusted in April 2025 to $526,700 and $1,580,125, respectively. The higher debt ceiling had been in effect for two years prior to the reduction. Based on a review of data from the Integrated Data Base, which is made available by the Federal Judicial Center, the following findings emerge:

- Prior to June 21st nearly two percent had debts higher than the current limits, compared to less than one percent of the post-June 21 filers. (These debtors will be referred to as high debt debtors.)

- About 2,000 would-be chapter 13 debtors per year are no longer eligible for chapter 13 due to the lower debt ceiling.

- Based on the characteristics of the high debt cases, they appear to be the types of cases that would be highly successful in chapter 13.

- There are three possible options for the debtors who are not eligible for chapter 13:

    1. File under chapter 11
    2. File under chapter 7
    3. Not file at all

- Chapter 11 filings by individuals did increase slightly after the chapter 13 debt ceiling reduction.

- There was also a small increase in chapter 7 cases in which the debts were above the new chapter 13 debt ceiling.

- However, it appears that the majority of the people who are now barred from chapter 13 chose not to file at all.

Student Loans

Data on student loans owed by bankruptcy debtors are not included in any Government database. However, a rough estimate can be made based on the amount of general unsecured debt that is not discharged in bankruptcy. Nearly all this non-discharged debt consists of student loans.

If this methodology is valid, during 2024 about 30 percent of chapter 13 debtors and slightly under 30 percent of chapter 7 debtors had student loan debt, nearly all of which will not be discharged in bankruptcy.

Chapter 13 Cases Filed in 2024

Amount of Student Loan Debt	Percent of Chapter 13 Debtors	Percent of Debtors with Student Loans
None	69.9%	
Under $10K	6.4%	21.2%
$10K - $25K	6.3%	21.0%
$25K - $50K	6.1%	20.3%
$50K - $100K	6.6%	21.8%
Over $100K	4.7%	15.7%

Chapter 7 Cases Filed in 2024

Amount of Student Loan Debt	Percent of All Chapter 7 Debtors	Percent of Chapter 7 Debtors Who Have Student Loan Debt
None	70.3%	
Under $10K	7.2%	24.1%
$10K -$25K	6.9%	23.3%
$25K - $50K	6.4%	21.6%
$50K - $100K	5.9%	19.9%
Over $100K	3.3%	11.2%

APPENDIX B

Age and Debt Size Student Loan Debt Chart

	24 or Younger		25 to 34	
Debt Size	**Dollars Outstanding (in billions)**	**Borrowers (in millions)**	**Dollars Outstanding (in billions)**	**Borrowers (in millions)**
Less than 5K	$4.83	1.67	$6.09	2.13
5K to 10K	$13.63	1.90	$17.70	2.39
10K to 20K	$24.12	1.67	$46.53	3.19
20K to 40K	$34.69	1.32	$106.49	3.74
40K to 60K	$6.15	0.13	$67.57	1.38
60K to 80K	$3.08	0.04	$44.10	0.65
80K to 100K	$2.04	0.02	$25.91	0.29
100K to 200K	$5.88	0.04	$79.30	0.57
200K+	$1.87	0.01	$93.59	0.31

	35 to 49		50 to 61		62 and Older	
Debt Size	**Dollars utstanding in billions)**	**3orrowers n millions)**	**Dollars utstanding in billions)**	**3orrowers n millions)**	**Dollars utstanding in billions)**	**3orrowers n millions)**
Less than 5K	$5.29	2.02	$2.28	0.88	$1.27	0.52
5K to 10K	$13.91	1.87	$6.29	0.84	$3.26	0.44
10K to 20K	$37.88	2.60	$15.90	1.09	$7.29	0.50
20K to 40K	$87.26	3.01	$34.36	1.19	$13.99	0.49
40K to 60K	$87.70	1.78	$34.13	0.69	$12.96	0.26
60K to 80K	$81.97	1.19	$33.00	0.48	$12.25	0.18
80K to 100K	$57.73	0.65	$27.26	0.31	$10.33	0.12
100K to 200K	$143.55	1.04	$78.54	0.57	$31.67	0.23
200K+	$131.28	0.43	$58.31	0.20	$28.47	0.10

Notes:
Due to rounding and timing differences, the total figures may differ slightly from those in the Portfolio Summary report.

Source: This page is a reproduction of the chart at "Portfolio by Age and Debt Size" at https://studentaid.gov/data-center/student/portfolio (visited on July 11, 2025)

Mr. FITZGERALD. Thank you, Judge Harner. Professor Jacoby.

STATEMENT OF MELISSA B. JACOBY

Ms. JACOBY. Good morning. We're here because the Constitution empowers Congress expressly to enact uniform laws of bankruptcy, which coordinate responses to financial distress, and, thus, the responsibility to update those laws when the need is required.

My written statement discusses several issues that are of interest to this Subcommittee, including support for the Bankruptcy Administration Improvement Act of 2025, and including a brief discussion of the 23andMe bankruptcy, which is of interest to some of you.

Right now, I will focus on two issues. The first is to continue the discussion of small business bankruptcy. The law that's been discussed by my fellow witnesses is of relatively recent vintage, but it reflects decades of development and thought. As implemented, that law truly is the bankruptcy system at its best.

I used to describe Subchapter V as having fewer creditor requirements, and I did have some concerns. That framing turned out to be misleading because Subchapter V swaps some types of requirements that would be less effective in this context with those that work more effectively in this context, such as a trustee. Restoring eligibility to the rate it's been most of the time this law has been in effect would make this law accessible, especially in high-cost areas, to the benefit of workers, creditors, and, of course, the small businesses themselves.

Let me return then to the thorny issue of student loans. The bankruptcy law has treated student loans differently from other kinds of debts since the 1970s, but that statement in and of itself is misleading because the details of that law have changed dramatically through uncoordinated incremental movements.

There used to be three paths to relief from student loans, and now there's just one. As you've already heard, it doesn't work well at all. The path is broken. In addition, the scope of student loans that get special protection has broadened well beyond the initial rationale for having this exception to discharge.

Highlighting some other issues that are relevant to reform in this area, please remember that, since 2005, all personal bankruptcy filers have been subject to additional layers of scrutiny. Widespread undue hardship we could find among all bankruptcy filers essentially if measured in an appropriate way. We also must consider the demography. We're not just talking about an issue of youth with decades of potential income in their futures. A big proportion of older student loan debtors in the United States continues to grow, and that really affects the kinds of tools you would want to think about in developing further a rational student loan policy and bankruptcy.

In the 1990s, I worked on bankruptcy policy with former Representative Caldwell Butler. He's a Republican from Roanoke, Virginia. The law around student loans was more forgiving than it is now. Yet, Congress and Butler advocated for full repeal of the special treatment of student loans. He thought the general bankruptcy requirements were sufficient to ensure legitimate use.

I recognize that one may not be willing to go that far, although that is an important option on the table, but there truly is a menu of narrowly tailored and sensible middle ground proposals that I hope could get bipartisan support from this subcommittee. Thank you.

[The prepared statement of Ms. Jacoby follows:]

United States House of Representatives

Committee on the Judiciary

Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

Hearing on Bankruptcy Law: Overview and Legislative Reforms

July 15, 2025

Written Statement of Melissa B. Jacoby

The charge of this hearing is to "examine whether bankruptcy law is continuing to strike the correct balance between the rights of creditors and debtors or whether narrowly tailored updates are necessary to maintain the viability of the bankruptcy system for small businesses, consumers, and creditors." In this statement, I first discuss two narrowly tailored proposals with bipartisan support that warrant swift enactment. Then I address two challenging topics that have prompted calls for reform.

Before diving into the details, let us reflect on the broader context: Article 1 Section 8 of the United States Constitution expressly authorizes national bankruptcy laws. While I favor a relatively narrow interpretation of this authority, the main topics for the hearing fall squarely into this category. Effective and fair bankruptcy relief is of critical importance to the economy and to maintaining the legitimacy of the legal system.

Promoting Fair and Effective Small Business Reorganization: Restoring Broader Eligibility for Subchapter V of Chapter 11

In 1978, a bipartisan group of law makers enacted major reforms to American bankruptcy law, including a reimagining of corporate reorganization. The new Chapter 11 was meant to preserve and enhance a company's economic value and keep alive viable businesses for the benefit of creditors of various kinds, workers, and other stakeholders.

For small businesses, often described as the backbone of the economy, these aspirations applied well but Chapter 11 itself did not. For decades, experts have recognized that Chapter 11 was too costly and cumbersome for smaller businesses and their creditors. Fifteen years ago, Judge A. Thomas Small (Bankruptcy E.D.N.C.), former in-house bank counsel with deep expertise in small business and farm bankruptcies, testified that Chapter 11 continued to fall short on its objectives in small business cases, and that the 2005 amendments to the Bankruptcy Code made small business reorganization even less feasible.[1] That's why the Small Business

[1] Testimony of A. Thomas Small on behalf of the National Bankruptcy Conference before the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts, Hearing on Could Bankruptcy Reform Help Preserve Small Business Jobs, March 17, 2010.

Reorganization Act, signed into law by President Trump in 2019, was such an important development.

SubChapter V, the small business reorganization track created by that law, became effective in February 2020. Very shortly thereafter, the Coronavirus Aid, Relief, and Economic Security Act expanded eligibility for SubChapter V. That expanded eligibility has since expired, reducing accessibility of this important law for small businesses and their creditors.

At issue is a simple proposal: permanent restoration of the $7.5 million debt cap (indexed for inflation) for SubChapter V cases. My initial ambivalence about broader eligibility has been overcome based on the research, published case law, and hearing the experiences of judges and lawyers around the country. The track record makes clear that this simple amendment is among the most important steps Congress could take to ensure bankruptcy plays its crucial economic and legal role, and I fully support it. There is no reason to stay anchored to the eligibility limit to which the statute has reverted (approximately $3 million).

It is often noted that SubChapter V lacks some of the requirements that traditional Chapter 11 contains. That is true, particularly in the plan confirmation process. But the drafters filled any gaps with powerful, and arguably more effective and well targeted, protections for creditors and other stakeholders. For example, trustees are appointed in SubChapter V cases, a significant monitor rarely seen in traditional Chapter 11. Moreover, the provisions of SubChapter V do not exist in a vacuum – an array of oversight mechanisms and requirements built into the architecture of the bankruptcy system more generally apply here as well.

As the research of other hearing witnesses illustrates, the justifications for restoring broader eligibility for SubChapter V are independent of a pandemic or other such crisis. SubChapter V could be valuable in response to future crises, but I know of no justification for deferring restoration.

Funding Congressional Mandates: Updating Base Compensation for Chapter 7 Trustees

As suggested above, operation and oversight of the bankruptcy system depends on a mixture of public and private institutions and actors. The private parties who agree to serve as trustees, with government oversight, play a central role. The list of duties for trustees in the most common type of case, Chapter 7, is long and has grown over time. Among other roles, trustees help ensure that creditors' claims are valid under applicable nonbankruptcy law, a matter that is important to all participants in a bankruptcy case and to the system as a whole.

To date, Congress has expanded Chapter 7 trustee responsibilities without adjusting their base compensation, not even for inflation.[2] Importantly, H.R. 3867, the Bankruptcy

[2] A temporary measure for supplemental compensation (currently section 330(e) of the Bankruptcy Code), is by design not a reliable source of payment and is set to expire in 2026.

Administration Improvement Act of 2025, provides this much-needed update without raising the fees for financially distressed families to access Chapter 7 filing.

The Treatment of Student Loans of Financially Distressed Bankruptcy Filers

Although federal bankruptcy law provides relief from many kinds of obligations, there have always been exceptions. The section of the Bankruptcy Code governing student loans, section 523(a)(8), has been amended so many times that it operates almost completely differently from its original terms.[3] Several details should be kept in mind when considering reform.

Scope: The classic justification for restricting discharge of student loans is to protect the public fisc, particularly public funds dedicated to educational advancement. But since 2005, section 523(a)(8) protects for-profit lenders making completely private educational loans. As researchers have explored, private student loans are an entirely different type of financial product, with a different origination process, from traditional student loans.[4] One approach to rationalizing this provision is to amend section 523(a)(8) to exclude private student loans and focus on government- made, insured, or guaranteed educational loans.[5]

Criteria and procedure for relief from student loans in bankruptcy: Even when the scope of protected student loans was narrower, there was a time when American bankruptcy law provided three paths to student loan discharge.

- Path One related to the age of the student loan. For example, starting in the 1970s, bankruptcy law provided that if the loan was first subject to repayment at least five years before the bankruptcy filing, it could be discharged. Congress later extended that time period to seven years and then eliminated Path One. It would have been particularly relevant to many older Americans carrying student loan debt today.[6]
- Only if a loan was more recent would Path Two become relevant: bring a lawsuit alleging that the student loan imposed an "undue hardship" on the debtor and dependents.

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[3] Student loans are one example of how costly and complex personal bankruptcy has become without evidence of corresponding benefits. For an analysis by economists of the system's needless complexity, and a proposal for simplification supported by historical practices, see Richard M. Hynes & Nathaniel Pattison, A Modern Poor Debtor's Oath, 108 Va. L. Rev. 915 (2022).

[4] Xiaoling Ang & Dalié Jiménez. 2015. "Private Student Loans and Bankruptcy: Did Four-Year Undergraduates Benefit from the Increased Collectability of Student Loans?" In Student Loans and the Dynamics of Debt, Brad Hershbein and Kevin M. Hollenbeck, eds. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, pp. 175-234. See generally Melissa B. Jacoby, A Dose of Common Sense in the Treatment of Private Loans in Bankruptcy, New America Higher Ed Watch, May 19, 2010.

[5] E.g., H.R. 423, Private Student Loan Bankruptcy Fairness Act of 2025.

[6] E.g., Tia Caldwell & Sarah Sattelmeyer, Why Do So Many Older Americans Owe Student Loans, New America, May 31, 2023 (using credit bureau, GAO, Department of Education, and Federal Reserve Bank of Philadelphia data, among other sources).

- Path Three involved initiating and completing a Chapter 13 repayment plan, to which section 523(a)(8) did not apply (today it does apply to Chapter 13).

In other words, earlier iterations of bankruptcy law offered some financially distressed individuals relief from student loans without filing and winning an undue hardship lawsuit. Notably, key case law narrowly interpreting the term undue hardship developed during this time when there were other paths to discharge.

M. Caldwell Butler, Republican Congressman from Roanoke Virginia, a principal co-sponsor of the Bankruptcy Reform Act of 1978, ultimately found even this more forgiving approach to student loans difficult to justify. After returning to private practice, Congressman Butler, a member of the National Bankruptcy Review Commission in the 1990s, led a majority of that commission to propose the complete repeal of section 523(a)(8).[7]

The procedure underlying section 523(a)(8), the provision governing student loan nondischargeability, also bears emphasis. To effectuate some other exceptions to discharge in the Bankruptcy Code, the *creditor* must initiate a lawsuit and prove that the exception is met. Under section 523(a)(8), the *debtor* must file (and win or settle) an undue hardship lawsuit.[8] Even if a financially distressed individual has struggled to stay current on a student loan and lives in a circuit with a slightly more flexible undue hardship standard, there's a good chance a court will never even get the chance to consider undue hardship because the debtor cannot afford to hire a lawyer to bring the lawsuit, which is separate from the fee for preparing the bankruptcy filing.

Broader personal bankruptcy context: The student loan exception to discharge and the undue hardship standard long precede the 2005 amendments that imposed many new requirements on all individuals and families who file for bankruptcy – including a means test in Chapter 7 that is also used in some Chapter 13 cases to determine payment plans. All personal bankruptcy filers are subject to scrutiny and submit documentation of their financial distress.

Customer Data Privacy and the Role of Applicable Nonbankruptcy Law

Although this hearing is largely focused on the most common types of bankruptcy (personal bankruptcy and small business), the bankruptcy filing of 23andMe, a direct-to-consumer genetic testing company, has generated legislative interest.[9] 23andMe's bankruptcy attracted attention not only because its database includes the genetic and personal information of millions of customers, and not only because it recently experienced a major cybersecurity breach, but because it entered bankruptcy with the stated intention to sell itself on a fast track and

[7] Report of the National Bankruptcy Review Commission Proposal 1.4.5, October 20, 1997. See also Student Borrower Relief Act of 2024 H.R. 9931 (118th Cong. Oct. 4, 2024).
[8] The procedures by which the Department of Justice and Department of Education may be willing to settle these lawsuits are provided here.
[9] See, e.g., S. 1916, Don't Sell My DNA Act, introduced May 22, 2025.

has taken some positions on the (in)applicability of data privacy laws of concern to state attorneys general and others.

To the extent Congress adds more robust customer data privacy protections to federal law, as some privacy experts endorse, those protections should apply whether or not bankruptcy is the forum for the transaction.[10] I would be glad to field questions on this topic, along with the others that fall more squarely in the intended scope of the hearing.

[10] Sara Gerke, Melissa B. Jacoby, & I. Glenn Cohen, Bankruptcy, Genetic Information, and Privacy, 392 New England Journal of Medicine 937-939 (March 6, 2025); Sara Gerke, Melissa B. Jacoby, & I. Glenn Cohen, 23andMe's Bankruptcy Raises Concerns About Privacy in the Era of Big Data, 389 British Medical Journal 1071 (May 27, 2025).

Mr. FITZGERALD. Thank you, Professor Jacoby. Dr. Hotchkiss, you're next.

STATEMENT OF EDITH HOTCHKISS

Ms. HOTCHKISS. Thank you. I am very honored to have the opportunity to speak with you today. I am an economist, and I'm here mostly to talk with you about the empirical research that we've been doing related to SubV. I'll add that SubV falls squarely in the realm of research that I have been doing for more than 30 years looking at the overall efficiency of the U.S. Bankruptcy Code as well as globally.

Now, we've completed a study where we have, with a lot of help, gone in and looked at nearly all the outcomes for business SubV cases for firms—I should say Chapter 11 cases for firms under $15 million in total liabilities and documented the outcomes and tried to get a better understanding of a couple of things.

First, it gives us an understanding of how great the extent of a problem that we have because we also compare SubV cases to traditional Chapter 11s. We can look at whether Chapter 11—sorry, SubV has achieved its goals so far. Also, I can speak a bit about the $7.5 million threshold and some of the safeguards that might be in place that help prevent future abuse of that threshold.

Second, to give you an extent of the magnitude of the problem we would have absent SubV, and I'm not going to inundate you with the facts, but I just want to share a couple of factoids with you. First, in the period before the enactment of SubV, so 2010–2019, the 70 percent of small businesses with less than $7.5 million in total liabilities went directly into Chapter 11 liquidation—so not even attempt to reorganizing. To look at the ones that attempt a Chapter 11 reorganization, only one-third of those are successful in confirming a plan, and that's probably overstating their success rates, because very often those plans are liquidating plans. Then, last, the vast majority of firms we know from the U.S. Census simply shut down their doors out of court and don't even bother to enter the bankruptcy system.

This raises the natural question of why is a traditional chapter so unfriendly to small businesses and why SubV is necessary. There's this couple of simple explanations for that. One is that Chapter 11 is very expensive, very time consuming. SubV addresses that issue by reducing certain requirements for expensive disclosures, seting timelines, et cetera. Many small businesses, as Professor Baird has already mentioned, wouldn't continue to exist without that small business owner remaining in place.

Last, for small firms, it's often very difficult to get agreement from creditors, particularly when that creditor might be a single bank. In these instances, the role of the SubV trustee becomes particularly important. This has led, not surprisingly, to the introduction of SubV as a simplified procedure for small businesses. I should say not unlike what's been done in, I believe it's 11 other countries in the last 10 years have also introduced similar types of fast tracks, simplified procedures for small business.

I want to very quickly summarize the findings of our work. Basically, what we find is that SubV more than doubles the probability of confirming a plan of reorganization. We find there is no evidence

of any harm to unsecured creditor recoveries in the SubV cases, and that we interpret as saying that the unsecured creditors can also share in the gains from preserving viable businesses.

We look at the post-emergence survival rates of these businesses because the concern might be that SubV is helping a lot more firms reorganize, but these companies are just going to fail anyway, and we find no evidence of excessive continuation. I'll note here that the SubV's role in coming up with the plan and its feasibility is particularly important to the process.

I want to speak about the issue of the threshold and how our evidence might speak to that. We don't find any evidence in what's happened so far of what we call bunching below this threshold, meaning firms manipulating to find themselves just below the eligibility requirement. In my last seconds here, I do want to note that it is a valid concern for larger firms potentially to manipulate liabilities to use this threshold. The FSX–FSS *Alex Jones* case is probably the most egregious example of that. There are safeguards within the process that reduce the likelihood of that happening, particularly the judicial discretion so that when there are other claims as the predominant liability those are not allowed to use Subchapter V.

Thank you very much.

[The prepared statement of Ms. Hotchkiss follows:]

Statement of Edith Hotchkiss

Accenture Professor
Seidner Department of Finance
Carroll School of Management, Boston College

Hearing, "Bankruptcy Law: Overview and Legislative Reforms"

Subcommittee on Antitrust, Commercial and Administrative Law
of the Committee on the Judiciary

U.S. House of Representatives
Washington, D.C., July 15, 2025

As a Professor of Finance at Boston College, my research focuses on empirical studies of corporate restructurings. I have written extensively regarding the efficiency of U.S. Chapter 11. My testimony will summarize the findings of my recent research paper examining the impact of Subchapter V (SubV) on reorganizations and survival of small businesses, addressing the following economic questions:

I. What is SubV intended to "fix" and why?
II. Has SubV achieved its goals thus far?
III. How can our research inform decisions about an appropriate liability threshold for SubV eligibility? What safeguards are important in avoiding abuse of eligibility requirements?

Summary: Subchapter V substantially increases the likelihood of reorganization for small businesses (under $7.5 million in non-contingent liabilities). We find no evidence that the gains to small business owners come at the expense of recoveries to unsecured creditors. Post-emergence survival rates for firms reorganized using SubV are significantly higher than for firms reorganized using a traditional Chapter 11.

I. Small business liquidation rates and the enactment of SubV.

An over-arching concern in designing bankruptcy law is to strike the "right" balance between enabling viable firms (i.e. those with a high going concern value) to avoid liquidation, while not enabling excessive continuation of firms worth more in a liquidation. Neither liquidation values or going concern values are observable ex-ante.

Subchapter V addresses the problem that a traditional Chapter 11 leads to too many liquidations of viable "small" firms (requiring a definition of "small"). It has been well documented in prior research that the majority of small firms in the U.S. attempting to reorganize in bankruptcy are unable to do so. This can also be seen from filing statistics from the Federal Judicial Center (FJC) for business bankruptcy cases:

- 70% of small businesses (less than $7.5M in total liabilities) entering bankruptcy from 2010 to 2019 filed directly for Chapter 7 liquidation.
- Among these small businesses that did enter Chapter 11, only about one-third successfully reorganized, with the other two-thirds either being liquidated in Chapter 7 or dismissed from court.
- At the other extreme, liquidations are rare for large, often public, U.S. corporations (Figure 1 below).

Figure 2 below shows pre-SubV plan confirmation rates for cases filed between 2017 and 2019 for firms with up to $15 in total liabilities. While confirmation rates rise somewhat over this size range, the overall confirmation rate is only 30%. At the same time, the number of Chapter 11 cases is substantially higher for relatively smaller firms in this size range.

Our study discusses the main explanations for the high liquidation rates of small businesses, and the specific provisions of SubV intended to reduce impediments to small firms' survival:

Chapter 11 bankruptcy is expensive. The high fixed costs, and costs which increase with the time in bankruptcy, can quickly dissipate the value of a small business. SubV removes costly and time-consuming requirements, such as the appointment of a creditors' committee and requiring a disclosure statement. Our study (further described below) shows that SubV cases reach reorganization plan 35% faster relative to traditional Chapter 11 cases.

Retaining pre-bankruptcy owners is often necessary to preserve the business. SubV allows for confirmation of a plan under which equity owners retain up to 100% of their ownership, even when dissenting creditors do not receive a 100% recovery.

Reaching consensus with creditors (sometimes a single bank) is often difficult for small businesses. Creditors who prefer even partial repayment in a liquidation have little incentive to negotiate an agreement and may disagree regarding the viability of a reorganized firm. SubV trustees can serve to mediate the process, reducing information and coordination problems.

The uptake in firms with less than $7.5 million in total liabilities that utilize SubV starting in 2020 is rapid and striking, substantially displacing traditional Chapter 11 filings (Figure 3). More than 75% of small businesses entering Chapter 11 elect to use SubV instead of a traditional Chapter 11. Filings are geographically widespread across 92 U.S. Bankruptcy courts.

II. Analysis of outcomes of SubV versus non-SubV small business cases.

Our research paper, "Can Small Businesses Survive Chapter 11" (see Appendix), is a comprehensive study of outcomes of 6,431 bankruptcy cases filed from 2017 to 2024. Our key findings, and interpretation, can be summarized as follows:

- Based on 999 Chapter 11 cases filed from 2020 to 2024 with non-contingent liabilities between $4 and $11 million, SubV more than doubles the probability of reorganization. SubV increases the likelihood of reorganization by between 32 and 49 percentage points, relative to firms just above the threshold which reorganize only 17% of the time.
- Expected recovery rates to unsecured creditors are 11.9% higher in SubV relative to similar non-SubV cases. Under unrealistically conservative assumptions about recoveries in dismissed cases, recoveries are not lower in SubV cases. This is consistent with unsecured creditors sharing in the benefits of value preserved from avoiding liquidation.
- Post-emergence survival rates are not lower, and arguably are 21% higher, for debtors using SubV. These findings are inconsistent with the concern that SubV enables excessive continuation of firms that are not viable, at the expense of pre-bankruptcy creditors. In other words, we find no evidence SubV tips the scales too far in favoring debtors' attempts to reorganize, relative to traditional Chapter 11 cases. The original owner retains at least some equity in the reorganized business for 91% of SubV cases, while in traditional Chapter 11 this is true only 65% of the time.

The key statistics described here are based on firms in the $4 to $11 million *non-contingent* liability range, i.e. above the $7.5 million threshold in place during our sample period. This design specifically enables us to make causal statements about the impact of SubV. This well studied econometric method is based on demonstrating that firms above/below the eligibility threshold are similar in terms of observable characteristics. In other words, we can compare firms that do/do not have the ability to use SubV, controlling for firms' choice to use SubV, for firm-level characteristics, and for changes in outcomes or firm characteristics over time.

Our estimates are not affected by the Covid-19 period. In fact, dropping 2020 entirely from our analysis has no economic impact on our estimates.

III. Eligibility for SubV.

Because of our research design, our study also provides some insights in reviewing an appropriate eligibility threshold for SubV.

First, we see no "bunching" of filings just below the threshold. Although one can point to individual cases, this means that there is no empirical indication to date that a significant number of borrowers were able to manipulate their liabilities to be just below the threshold.

Second, there are only a small number of cases we study where the exclusion of non-contingent liabilities from the eligibility threshold enables firms to use SubV. Still, it is important to consider valid concerns of gaming of the threshold, which increase for larger, more sophisticated borrowers.

One concern is the ability to replace existing debt with insider debt close to the time of filing, strategically making the firm eligible for SubV. This valid concern applies largely to private equity owned firms, where capital may be available from the PE sponsor. From prior research, data from Pitchbook (covering a large portion of the PE industry) and Debtwire (more broadly covering the leveraged loan market) shows that the most highly leveraged PE-backed borrowers will have non-contingent liabilities well above $10 million.

A second concern is cases with judgement claims, including mass tort claims, well in excess of other liabilities. The most egregious example is the FSS Chapter 11 case (Alex Jones), where a SubV case was attempted but ultimately dismissed, but unsecured creditors - families of Sandy Hook victims – did not receive the representation they would have under a traditional Chapter 11. Such cases also raise the concern of larger borrowers strategically moving debt between entities prior to filing in order to shed certain liabilities using SubV but retaining equity ownership.

Although these cases have been infrequent thus far, they clearly are not consistent with the intended use of SubV and highlight the importance of an important guardrail, the discretion of the bankruptcy judge. With clarification of language within SubV, cases where insider debt or litigation claims are the "predominant" liability can be ineligible for SubV based on the court's judgement of the intended use of SubV.

Conclusions and other safeguards important to SubV.

The most obvious impact of SubV to date has been the increase in confirmations of reorganization plans for small businesses that otherwise would have liquidated in or out of court. While it is impossible for many small firms to continue operating without the continued presence of the business owners, assessing the impact on creditors as well as the feasibility of reorganization plans is more difficult. Our examination of outcomes, focusing on firms close to the $7.5 million liability threshold during our sample period, suggests positive effects of SubV relative to traditional Chapter 11 cases beyond increasing the number of reorganizations. In fact, over the last 10 years, at least 11 countries including the U.S. have adopted simplified insolvency

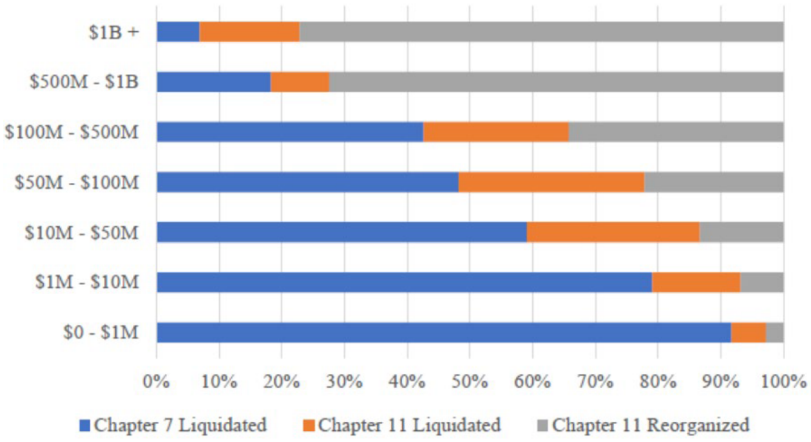
procedures for the reorganization of small businesses, showing the global need for this type of procedure.

In addition to sufficient discretion for eligibility for SubV, the SubV trustee plays an important role in working with debtors to develop a plan and understanding its feasibility. This highlights the need to ensure that SubV trustees are adequately compensated, particularly in cases where a reorganization is not achieved.

Finally, a caveat to our recovery rate analysis is that recoveries will be lower if debtors default on payments post-emergence. At present, there is no public information on post-emergence compliance with required payments, even when collected by the U.S. Trustee's Office. This information is critical to the ongoing assessment needed by judges and researchers to inform future decisions regarding SubV.

Figure 1

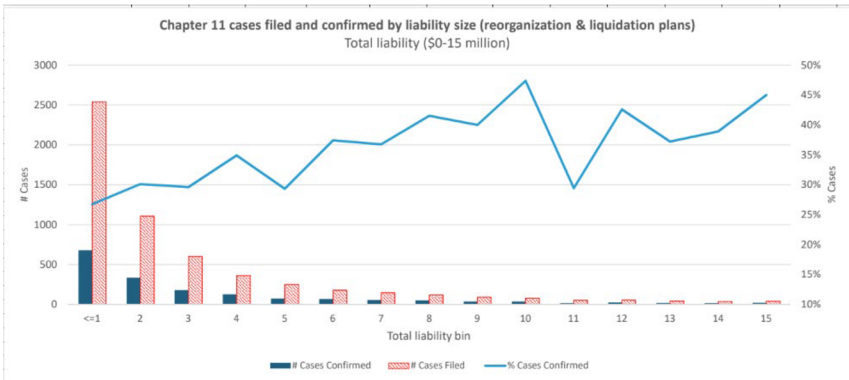
U.S. Chapter 11 Case Outcomes by Total Liabilities (through 2022)



Author's compilation from New Generation Research.

Figure 2

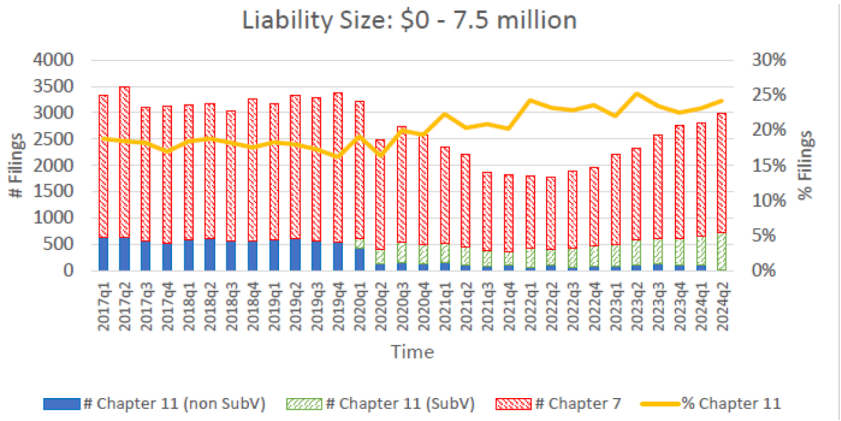
Confirmation rates for Chapter 11 cases (data from FJC)



Total liability bin	# Cases Confirmed Reorg Plan	# Cases Filed	% Cases Confirmed Reorg Plan		
5	59	253	23%	27%	ave
6	54	180	30%		
7	43	145	30%		
8	39	121	32%	32%	ave
9	29	93	31%		
10	31	78	40%		
11	11	53	21%		

Figure 3

Time trend of Chapter 11 and 7 bankruptcy filings



Reproduced from "Can Small Businesses Survive Chapter 11", Figure 1C. The figure plots the time trend of Chapters 11 and 7 filings from 2017 to 2024. The dark blue and striped green (striped red) histogram bars represent the number of Chapter 11 (7) filings. The orange line represents the percentage of Chapter 11 filings over total (Chapter 11+ Chapter 7) bankruptcy filings. The figure shown here is based on filings with liabilities between $7.5 million and $15 million. All filings exclude non-lead cases, cases transferred to another court, and non-business cases.

Appendix, Cover page and link to:

Can Small Businesses Survive Chapter 11?*

Edith Hotchkiss, Boston College

Benjamin Iverson, Brigham Young University

Xiang Zheng, University of Connecticut

Abstract

A majority of small U.S. businesses attempting to reorganize in bankruptcy fail to successfully do so. Subchapter V of Chapter 11 was introduced in 2020 for firms with less than $7.5 million in liabilities to streamline the process by reducing bankruptcy costs and negotiation frictions, and enabling entrepreneurs to retain their ownership. Employing regression-discontinuity and difference-in-differences designs, we show that many small businesses reorganize under the new procedures that otherwise would have been liquidated. Further, expected creditor recoveries and post-bankruptcy survival rates are at least as high in Subchapter V as in similar traditional small business reorganizations. Our results show that the increased ability to preserve small businesses is not associated with a bias toward continuing unviable firms, and that creditors are not harmed by a shift in bargaining power toward small business owners.

Link to SSRN: https://ssrn.com/abstract=4726391

Link to the paper: https://www.dropbox.com/scl/fi/j9jig6mp0flwazhpxuqcy/SubV-Draft-July-9-2025.pdf?rlkey=62vmj42n54w590iha3y86dkw3&dl=0

*We thank Chunka Tai for excellent research assistance. For helpful comments and discussions, we thank Irem Demirci, Ofer Eldar, Michelle Harner, Kristoph Kleiner, Jean-Marie Meier, Ha Diep-Nguyen, Antoinette Schoar, two anonymous reviewers, and conference and seminar participants from NBER Summer Institute 2024 Entrepreneurship, the European Finance Association Annual Meeting 2024, the Northern Finance Association Annual Meeting 2024, the American Finance Association Annual Meeting 2025, the Corporate Restructuring & Insolvency Seminar, the Isenberg School of Management Finance Conference 2025, the Virtual Corporate Finance Seminar, Boston College, University of Connecticut, University of Kansas, University of Lugano, University of Melbourne, University of New South Wales, University of Sydney, and University of Technology Sydney. We alone are responsible for any errors or omissions.

Mr. FITZGERALD. Thank you, Doctor. Ms. Murray, you're now recognized for five minutes.

STATEMENT OF MEGAN W. MURRAY

Ms. MURRAY. Thank you, Chair, Chair Fitzgerald, the Subcommittee Ranking Member Nadler, and the Committee Members, for having me here today to talk about the important issues of Subchapter V in our Bankruptcy Code.

I have been a member of American Bankruptcy Institute, a nonpartisan organization, since 2009, and I currently serve on its board of directors. During my legal career, like Judge Harner, I have significant experience on both the creditor and debtor side of bankruptcy cases. I have filed corporate reorganizations for both large and small corporate debtors, and I also have experience representing large and small creditors and fiduciaries whose job is to maximize value for the benefit of the estate.

Last year, I was selected by the ABI President to Co-Chair a task force to study the effectiveness of Subchapter V with Judge Harner. My views today are not necessarily that of ABI or its board, but they've certainly been informed by the work we did on the task force. My views are also informed by my own practices.

Chapter 11 is a powerful tool that preserves jobs and is strategically used to reorganize businesses while simultaneously maximizing value to creditors and owners. Our country is built on entrepreneurialism, and small businesses, as previously noted today, are their lifeblood. As we discussed in our task force report, however, not all dreams are viable, and 50 percent of small businesses statistically fail within the first five years.

Subchapter V was enacted to address challenges in the bankruptcy process and to help small businesses survive economic turmoil. Subchapter V, as discussed today, appears to be working well, especially in Florida, which is the leading filer of Subchapter V since its enactment. Confirmation rates of Subchapter V cases nationally are slightly over 50 percent, according to the United States Trustee Program as compared to Chapter 11 cases, which historically have had much lower success.

To be eligible to file a Subchapter V case, a business debtor must at least have liquidated noncontingent secured and unsecured debts of roughly $3.4 million. The $3 million, $3.1 million cap has just increased slightly over the last 60 days. As we know, this debt limit reverted from $7.5 million approximately a year ago.

The Subchapter V cases that I have been involved with are distinct from my traditional Chapter 11 cases. A good bellwether for a small business is the size of the loans that the SBA provides to small business owners. For example, the SBA 7(a) loans made by participating lenders provide smaller businesses with access to capital, loans to start their companies. The maximum size of these loans is $5 million.

SBA 504 loans have a maximum of $5.5 million and are made to acquire assets, capital assets, and machinery equipment. Both the 504 and the 7(a) programs provide attractive, probably more attractive borrowing terms than your traditional capital. Most businesses—small businesses also at least have one other form of debt,

including idle loans, bank loans, maybe debt consolidation loans, and most likely friends and family.

The combination of SBA loans of up to $3.4 million, together with the secondary source of capital, demonstrates why the current $3.4 million limit is just too low for small businesses. The addition of trade debt on top of that due to inflation really pushes small businesses over the limit. Yes, there are a few high-profile cases that have raised concerns about abuse. However, the checks and balances in our system, from judges to trustees to creditors, minimize abuse or unintended consequences. I'm also aware that unsecured creditors have concerns with increasing the SubV limits, and it is undisputed that Subchapter V shifts the dynamic for unsecured creditors due to the requirements at confirmation.

In my experience, however, bankruptcy courts recognize this balance of power and take it seriously. The debtors seeking protection under Subchapter V must follow strict guidelines and deadlines. One judge has appropriately noted that the SBRA provides qualifying debtors with the opportunity to use this new powerful tool to reorganize and save its business, but it must do so quickly.

In addition to shortened deadlines, creditors have other protections, including the best interest of creditors test, feasibility requirements, and others. In Florida, where I practice, SubV trustees also utilize their professional skills to ensure debtors' operations match their plan projections. Aspirational plans without support are not likely to be confirmed.

I'm here today prepared to discuss the leverage that creditors have in Subchapter V cases, which I think is sufficient to support an increase in the debt limits. Subchapter V was enacted to give small businesses a fresh start. It appears to be working. Increasing the debt limits back to $7.5 million would give more Main Street businesses a reasonable opportunity to reorganize in difficult circumstances.

Thank you for your time, and I welcome your questions.

[The prepared statement of Ms. Murray follows:]

Testimony of Megan W. Murray
Underwood Murray P.A.

Hearing, "Bankruptcy Law: Overview and Legislative Reforms"
Subcommittee on Antitrust, Commercial and Administrative Law
of the Committee on the Judiciary

U.S. House of Representatives

Washington, D.C., July 15, 2025

Dear Chairman Jordan, Ranking Member Raskin, Subcommittee Chair Fitzgerald, and Subcommittee Ranking Member Nadler,

Thank you for inviting me to present my views in connection with Subchapter V of Chapter 11 of the United States Code.

I have been a member of the American Bankruptcy Institute, a non-partisan organization, since 2009, and I currently serve on ABI's Board of Directors.

During my legal career, I have significant experience on both the creditor and debtor side of bankruptcy cases. I have filed corporate reorganizations for both large and small corporate debtors, and I also have experience representing large and small creditors, and fiduciaries whose job it is to maximize value for the benefit of an estate.

Last year, I was selected by the ABI President, to co-chair a task force to study the effectiveness of Subchapter V with Hon. Judge Harner (MD). My views today are not necessarily that of the ABI or its Board, but they certainly have been informed by the work we did on the task force. My views also have been informed by my own practice and experience in bankruptcy over the past two decades.

Chapter 11 is a powerful tool that preserves jobs and is strategically used to reorganize businesses while simultaneously maximizing value to creditors and owners. Our country is built on entrepreneurialism, and small businesses are our nation's lifeblood. As we discussed in our Task Force Report, however, not all dreams are viable, and 50% of small businesses fail within the first five years.

Subchapter V was enacted to help address challenges in the bankruptcy process to help small businesses survive economic turmoil. Subchapter V appears to be working well, especially in Florida which leads the country in Subchapter V filings. Confirmation rates of Subchapter V cases nationally are slightly over 50%, according to the U.S. Trustee program, as compared to Chapter 11 cases which historically have had much lower confirmation success.[1]

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[1] According to the ABI Commission to Study Chapter 11 Reform, noting a 27% chapter 11 confirmation rate from 2008 – 2015.

To be eligible to file a Subchapter V case, a business debtor must at least have liquidated, noncontingent, secured and unsecured debts of no more than roughly $3.4 million.[2] This debt limit reverted from $7.5 million on June 21, 2024.[3]

The Subchapter V cases that I have been involved with are distinct from my traditional complex Chapter 11 cases. A good bellwether of a 'small business' is the size of the loans the Small Business Administration provides to small business owners. For example, SBA 7A loans, made by participating lenders, provide smaller-sized businesses with access to capital to start or expand their companies. The maximum size of these loans is $5,000,000.

SBA 504 loans, with a maximum of $5.5 million, are made directly to small businesses to acquire capital assets such as machinery, equipment, and buildings. Both the 504 and 7(a) programs provide attractive borrowing terms.

Most small businesses also have *at least* one other form of debt, including EIDL loans,[4] bank loans, debt consolidation loans, cash advances, and friends and family loans. The combination of an SBA loan up to $5.5 million, together with a secondary source of capital, demonstrates why the current $3.4 million limit is too low for most small businesses. The addition of trade debt due to inflation easily pushes small business over the limit.

There are high-profile cases that have raised concerns of abuse. However, the checks and balances in the system, from judges to trustees to creditors, minimize abuse or unintended consequences.

I am also aware that unsecured creditors have concerns with increasing the Subchapter V debt limits, as is undisputed that Subchapter V shifts the dynamic for unsecured creditors at confirmation, because a plan can be confirmed under 1191 notwithstanding the regular chapter 11 requirements of either unanimous votes in favor of the plan (11 U.S.C. $1129(a)(8)), or the existence of one class of impaired accepting creditors (11 U.S.C. § 1129(b)(2)(B)). [5]

In my experience, bankruptcy courts recognize this balance of power and take it seriously. Debtors seeking protection under Subchapter V must follow strict guardrails and deadlines.[6] One

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[2] On April 1, 2025, the Subchapter V debt limit increased to $3,424,000.

[3] Weeks after Subchapter V became effective in February 2020, the COVID pandemic hit the United States, and the Subchapter V debt limits were increased to $7.5 million under the CARES Act. Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136 (March 27, 2020).

[4] The SBA's COVID-19 Economic Injury Disaster Loan (EIDL) and EIDL Advance programs provided funding to help small businesses recover from the economic impacts of the COVID-19 pandemic.

[5] Equally impactful to a creditor is the lack of the adequate priority rule in Subchapter V, the Bankruptcy Code's euphemistic waterfall, which allows small business owners to maintain their equity in their business without first satisfying all creditors above equity in full.

[6] Subchapter V debtors must move through a case quickly and articulate a viable path at a judicial status conference, file historical reports that fully disclose business operations and problems, and, most importantly, they *must* file a plan within 90 days of the petition date. 11 U.S.C § 1189(b).

Judge has appropriately noted that the "SBRA provides qualifying debtors with 'the opportunity to use new, powerful tools to reorganize and save its business; but it must do so quickly.'"[7]

In addition to shortened deadlines, creditors have other protections including the best interest of creditors test under 11 U.S.C. § 1129(a)(7) and the feasibility requirements under § 1129(a)(11). In Florida, where I practice, Subchapter V trustees utilize their professional skills to ensure debtors' operations match their plan projections. Aspirational plans without support are not likely to be confirmed.

Subchapter V was enacted to give small businesses a fresh start and appears to be working. Increasing the debt limits to would give more main street businesses a reasonable opportunity to reorganize in difficult circumstances.

Thank you for your time.

Megan W. Murray

[7] *In re Seven Stars on the Hudson Corp.*, 618 B.R. 333, 340 (Bankr. S.D. Fla. 2020). According to Westlaw, this case has been cited as authority 125 times, largely for the point that while Subchapter V is a powerful too, it comes with the very important creditor protection: speed through a reorganization. *Id.* at 340.

Mr. FITZGERALD. Thank you, Ms. Murray.

We'll now proceed under the five-minute rule with questions. I'm going to recognize myself for the first set of questions.

Professor Baird, as you mentioned in your opening statement, the Federal Priority Act allows receivers in State insurance insolvency cases to be held personally liable if the receiver disperses funds without repaying the Federal Government first. The bankruptcy cases are specifically exempt from the Federal Priority Act, but the Bankruptcy Code has the procedural protections to ensure the government is repaid.

I guess what we're seeing is the same is not true of insurance insolvency cases, which are largely handled under State law. If we're considering legislation to limit liability for State insurance receivers, what types of procedural safeguards should be in place so that the government does not get skipped over or becoming the first in line when attempting to collect on its claims?

Mr. BAIRD. Well, the thing to remember here is that the absence of the kinds of rules we have in bankruptcy for State insurance insolvencies is not a deliberate Congressional decision but rather is an artifact for the way the law has evolved over time. The Federal Priority Act was established first in 1797. In bankruptcy, we've realized that we need to have procedures. Having procedures for State insurance insolvency would make sense.

What you need to make sure of is the government is notified of the State insurance receivership and knows about the procedure. It's also reasonable that, once the government is notified, that it has a certain clock that starts to tick because, unless you have clear procedures, you're not going to be in a world in which receivers will feel confident that they can dispense assets and not expose themselves to personal liability.

Again, to answer your question directly, the easiest thing to do is simply ensure that there is proper notification to the government and that the technical rules are satisfied. This shouldn't be a terribly difficult problem.

Mr. FITZGERALD. Thank you.

Judge Harner, I'm going to skip around a little bit, but you discussed a new hardship test in your opening statement, and I wanted to focus a little bit on the student loans. It's been noted that relatively few student loans are discharged in bankruptcy. During your time on the bench, has there been any times when debtors satisfied the undue hardship test, such as that you've ordered discharged under the student loans?

Ms. HARNER. It's a great question, Chair. I will say I do not see many student loan cases, and that's—it could be in part—I don't have any empirical data to back me up here, but I will say, procedurally, it's difficult for a debtor. They have to commence an adversary proceeding. They have to file a complaint, and then they have to meet what we call the Brunner standard, at least in my circuit, the Fourth Circuit, which incorporates the undue hardship standard you just referenced.

I have had one opportunity where I had a 67-year-old woman who had incurred over $500,000 of student loan debt in the hopes of becoming a business executive. She was trying to repay. She was never going to be able to repay that entire amount doing the anal-

ysis based on the facts that she, representing herself as a pro se debtor, put into evidence. I was able to grant a partial discharge of some of her student loan debt, which was not appealed by the student loan lender. I could not find, under the Brunner standard, even in that situation with an older individual, who had only limited time left to work to try to repay her debt, the ability to grant a full discharge.

Mr. FITZGERALD. Thank you. Judge Black, there have been some claims that medium-size, well-capitalized businesses or small subsidiaries of larger businesses have been using Subchapter V to circumvent the creditor protections associated with general Chapter 11 cases. Have you seen any type of behavior in your courtroom that would suggest that this is actually happening?

Mr. BAIRD. No, I really haven't in my court. I've had some cases that may look right out of the gate like a single asset real estate case that probably shouldn't be there. I have not seen any type of manipulation of insider debt or anything of that nature in the Western District of Virginia that would present itself in the cases that I see.

The cases that have been presented to me have all been well suited for Subchapter V. Again, as Judge Harner and some of the other witnesses have pointed out, if there are cases that come before us, we have the ability to prevent shenanigans, for the lack of a better description. We've got the ability to appoint a creditors committee. The different avenues are available for the Subchapter V trustee to have a different allocation of powers to investigate the debtor's business. In the cases where I am, in Southwest Virginia, I'm not seeing that.

Mr. FITZGERALD. Thank you. I yield back and recognize the Ranking Member Nadler for his five minutes.

Mr. NADLER. Thank you, Mr. Chair.

As I noted in my opening statement, student loans are the only kind of unsecured debt that consumers cannot discharge in our current bankruptcy system. Although we generally imagine a young person when we consider tackling the issue of student loan debt, this issue affects people of all ages. Increasingly, it's our senior citizens with loans going back many decades who are shouldering this nondischargeable debt.

Thanks to changes in the bankruptcy laws passed in 2005, to which I led the opposition, we now have a system in which debtors who are presumed to be too insolvent to pay medical or credit card debt must remain on the hook for their student loans. The legal hurdle to prove, quote, "undue hardship in order to discharge student loan debt means that disabled veterans, senior citizens, and low-income individuals, among others, are on the hook for decades for debt that they will never realistically be able to repay." To make matters worse, right now student loan debtors are subject to wage garnishment and garnishment of their Social Security benefits for these debts that they can never discharge.

Professor Jacoby, is there any logical reason why only student debt should not be dischargeable in bankruptcy?

Ms. JACOBY. The traditional argument for special treatment of student loans in bankruptcy is related to protection of the public fisc to preserve money for educational opportunities to others.

There also were unsubstantiated concerns early in the history of developing the 1978 Bankruptcy Code about individuals who might not deserve bankruptcy relief running from graduation right to the bankruptcy court, which, of course, for a variety of reasons, is not even possible under the current system that we have.

The first—that latter instance I discount completely. There are plenty of checks and balances for that. The first one, it does raise broader matters of education policy, but in that case, the rest of the law needs to be written very, very differently to retailor it to that objective.

Mr. NADLER. Thank you.

Professor Jacoby, what is the impact of saddling millions of Americans with nondischargeable student loan debt, and do you believe that Congress should act to ensure that debtors can discharge their student loans?

Ms. JACOBY. I believe that this part of the Bankruptcy Code is well overdue for reform. This section of the Bankruptcy Code, 523(a)(8), is indeed broken, and that none of you, none of the Members of this esteemed Subcommittee would write it this way if you were to do it today. I hope you do act.

Mr. NADLER. Should we make a distinction between private and public loans?

Ms. JACOBY. Yes.

Mr. NADLER. Why?

Ms. JACOBY. To your original point about where student loans fall in the general range of unsecured debts, there is no reason to distinguish a loan for food or medical care made by a private for-profit lender from a loan that someone might use while they are a student in their education. Those are loans that are part of our marketplace and can manage the risk very differently.

Mr. NADLER. Thank you. Finally, Professor Jacoby, the undue hardship standard was added to all address presumed or feared abuse of our bankruptcy standard. Is this a realistic fear?

Ms. JACOBY. It is not a realistic fear. Undue hardship used to be used in a narrower way because there were other paths, including older student loans to discharge without even overcoming that hurdle. That's two reasons why undue hardship does not work today in our system.

Mr. NADLER. Why is it different from what it used to be?

Ms. JACOBY. It used to be that, if a loan had been under repayment for five years and then seven years, that it could be discharged in bankruptcy independent of any questions of undue hardship. Only a more recent loan would somebody have to file a lawsuit and prevail on the argument that it was an undue hardship, which might explain the impossibly high standards that courts adopted then that they still use today.

Mr. NADLER. That was changed when?

Ms. JACOBY. Well, it's been done incrementally in pieces. I believe the seven-years would have disappeared in 1998, but I would need to check to make sure because it's changed so many times.

Mr. NADLER. OK. Thank you. I yield back.

Mr. FITZGERALD. The gentleman yields back. The gentleman from Virginia is now recognized for five minutes.

Mr. CLINE. Well, thank you, Mr. Chair. I want to thank you for holding this hearing to provide an overview of U.S. bankruptcy law and explore avenues for potential reform.

I also want to welcome Judge Black from Western Virginia. It includes the Sixth District. Judge Black has been a consistent leader in our part of Virginia, and I appreciate having his expertise here today.

I'll start with you, Judge. What benefits have you seen from the Small Business Reorganization Act, which was signed into law in 2019? I was proud to be the lead patron of that. What benefits have you seen for both debtors and creditors since the enactment of Subchapter V, and do you think those benefits would extend—what do you think the impact would be if the $7.5 million cap were made permanent?

Mr. BLACK. First, with the increase of the debt limit, it would make more small businesses eligible, not only in Southwest Virginia but across the country, because, as I mentioned earlier, what may be a small business in Southwest Virginia may not equate to what may be a small business in Los Angeles or elsewhere where they have higher debt loads.

The other thing is what I have seen in small business cases before me—and I've probably had 30–35 of those so far—is the speed with which they're able to get the confirmation and the less fighting and less wheel spinning. I've seen some cases, if they were in a traditional Chapter 11, they would be on their third or fourth amended disclosure statement; and we would be six or eight months into the case, and it's just not progressing. The presence of the Subchapter V trustee is helping keep the debtors and the creditors on the ball.

A lot of these cases are two-party disputes, and if you can bring those parties together and try to eliminate some of the fighting that often goes on in Chapter 11 cases—it keeps the case moving forward. Again, you have got to file a plan within 90 days after the petition date, absent from some unusual circumstances.

When these cases are filed, the debtor's counsel has to think about the plan before they file the case. It tends to move a lot faster; we have a higher confirmation rate. For all those reasons, it's been a great benefit.

It's much less expensive. Chapter 11 with a traditional case—it's hard to put Bob's Backhoe into the same reorganization scheme as Circuit City or General Motors. The absolute priority rule, the absence of that, and the ability to get a case to confirmation quickly is a real benefit to small businesses. Nobody wants to be in bankruptcy if it could be avoided.

Mr. CLINE. Thank you. I hope the Committee can move forward on that issue.

I want to shift gears a little bit. Our bankruptcy laws were not written with the biotech and consumer DNA era in mind, which is why I'm proud to join with the gentlelady from California, Congresswoman Lofgren, and others in my Senate colleagues in introducing the Don't Sell My DNA Act, which would explicitly amend the Bankruptcy Code to add genetic information to the definition of personally identifiable information, require written affirmative consent from individuals before their genetic data can be sold or

transferred, and mandate the secured deletion of unsold genetic data.

The bill responds directly to recent bankruptcy filings by 23andMe and recognizes the genetic data, unlike a phone number or email address, is uniquely identifying and permanent, even without a name attached.

Professor Jacoby, if I could ask, how does the bankruptcy system currently treat mass privacy-related claims, particularly those involving genetic data, in terms of classification, priority and valuation, and are breach victims essentially treated as unsecured tort creditors?

Ms. JACOBY. Let me address your last question first. Yes, breach victims, those who experience the major cybersecurity breach of 23andMe, are treated as general creditors. In the 23andMe bankruptcy, the central feature of which was selling the company to a third party, although a related third party as it turns out, the breach claimants will have to turn to any proceeds left in the pot after higher priority creditors get paid.

In terms of the broader question that you asked, I will welcome further specific questions, but I would say generally there is a real issue—it needs to be made more clear that applicable nonbankruptcy law must apply here in the bankruptcy context, but also should apply outside of the bankruptcy context. Those should be the same protection in both places.

Mr. CLINE. Given how difficult reputational and identity-related damages are to quantify, should Congress or the courts reconsider how to account for these harms in bankruptcy proceedings, especially in light of the long-term consequences for consumers?

Ms. JACOBY. Yes. I think there is broader thinking to be done outside of bankruptcy in terms of some broader Federal level protection.

Mr. CLINE. Thank you. I yield back.

Mr. FITZGERALD. The gentleman yields back.

The Ranking Member Raskin is now recognized for five minutes.

Mr. RASKIN. Thank you, Mr. Chair. I've got a question for all the witnesses. Do you think that the Subchapter V debt limit should be restored to $7.5 million from the current $3 million? Answer with yes or no, if you can. Ms. Murray?

Ms. MURRAY. Yes.

Mr. RASKIN. Dr. Hotchkiss?

Ms. HOTCHKISS. Yes.

Mr. RASKIN. Professor Jacoby?

Ms. JACOBY. Yes.

Mr. RASKIN. Judge Harner?

Ms. HARNER. Yes.

Mr. RASKIN. Judge Black?

Mr. BLACK. Yes.

Mr. RASKIN. Professor Baird?

Mr. BAIRD. Yes.

Mr. RASKIN. Wonderful. If I wonder if you can answer with the same admirable concision about whether you think student loan debt should be dischargeable. Ms. Murray.

Ms. MURRAY. I'm actually going to decline to answer that one just because it's not part of my practice.

Mr. RASKIN. Dr. Hotchkiss?

Ms. HOTCHKISS. As an economist, I'll also not answer that.

Mr. RASKIN. OK. Professor Jacoby?

Ms. JACOBY. This section of the Bankruptcy Code should be at least reformed, if not repealed.

Mr. RASKIN. Judge Harner.

Ms. HARNER. I will echo Professor Jacoby's comment, this section needs to be revisited, and we need to rethink how we treat student loans in bankruptcy.

Mr. RASKIN. Got you. Judge Black.

Mr. BLACK. I agree that the code section needs work. It's so expensive to come in and litigate a student loan case that we're just not seeing these cases being filed because they know they're probably not going to win. They're so hard to win, and they're so hard to litigate, and it really shouldn't be that way.

Mr. RASKIN. It just seems like an insurmountable climb for—

Mr. BLACK. It is a very difficult climb.

Mr. RASKIN. Yes. Profession Baird.

Mr. BAIRD. Yes, I agree. There's a balance between debtors and creditors. In the case of student debt, we're at one end of the extreme. The idea that essentially no student debt can be discharged, I think it can't be the right solution to the problem.

Mr. RASKIN. Got you. Judge Harner, let me come to you because you are a Marylander, I have got a couple of questions for you. Sticking with the student loan debt for a second, it seems to me the whole basis for bankruptcy law is that we're willing to indulge the potential moral hazard of people acting in financially profligate ways because we want to incentivize businesses to invest, innovate, experiment, and grow. Why shouldn't that logic apply to people going to college?

In other words, maybe there's some slight moral hazard that somebody will use their college student loans for reckless or profligate purposes, but overwhelmingly most people are going to use them in a responsible way, and we want to incentivize people to go to college and to invest in their own education. Does that logic correctly undermine the categorical exclusion of educational debt from the bankruptcy process?

Ms. HARNER. So, Ranking Member Raskin, that's a great question, and I'll answer it by telling you that my years of studying the Bankruptcy Code showed the consistent theme, that the code is meant to balance the rights of debtors and creditors. What the code wants at the end of the day is for the debtor, whether it's a business or an individual, to be able to return to the community as a productive contributing member. That benefits everyone. That fresh start is so important, not only to the business but also to the individual.

As Congress is thinking about policy, and it is Congress' choice on the policy, those guiding principles underlying the code, balancing the rights of debtors and creditors, and providing an opportunity for the individual to become a productive constructive member I think would be a helpful guide. It suggests similar treatment in thinking about Subchapter V or Chapter 13.

Mr. RASKIN. We got rid of debtors' prison a long time ago, which I think everybody pretty much believes in, or most everybody. I

don't want to speak for everyone. A staggering life-long insurmountable debt is a kind of financial prison as well. Obviously, it doesn't have the harshness of actually being behind bars, but it can be extremely confining and constraining for a person's life potential, right?

Ms. HARNER. Again, Ranking Member Raskin, that's an insightful comment. The data, if you look at it closely, suggests that many people will die with student loan debt. They just cannot pay it back in their lifetime.

I want to underscore something that Professor Jacoby said, "the Bankruptcy Code includes checks and balances." At least I'll speak for myself, I do not want to see anyone abuse the bankruptcy system, whether it's a debtor or a creditor.

Mr. RASKIN. Right.

Ms. HARNER. I want to preserve that system to help the people that deserve that fresh start and to make sure we can get as much money to creditors as we can through it.

Mr. RASKIN. Great. Very quickly, we're about to lose half of the judgeships on the bankruptcy court in Maryland. What will that mean for us if we lose three or four temporary bankruptcy judges?

Ms. HARNER. As you noted, in Maryland, we have three temporary seats. The preservation of the temporary seats simply comes down to maintaining flexibility and stability in the system. If those seats are needed, they can be filled to make sure we're providing the services needed in our community. If they're not needed, they won't be filled. They're there just in case. Stability and providing that kind of reassurance to the community I think is important.

Mr. RASKIN. Thank you. I yield back, Mr. Chair.

Mr. FITZGERALD. The Ranking Member yields back. We have conflicting hearings going on, as you can probably tell. We're going to go to the gentleman from California at this point, Mr. Correa.

Mr. CORREA. Thank you, Mr. Chair, Ranking Member, for this hearing, and I want to thank the witnesses for being here today.

I concur that Subchapter V, subchapter—13 raising the limits, is important, but I also want to focus on student debt. The 43 million Americans owe $1.6 trillion in debt. Veterans, other Americans, older Americans, many are delinquent, default, meaning, many are going to fall out of the workforce. They're going to work for cash. They're just not going to be as productive as they could be would they have a fresh start.

Currently, under the undue hardship standard of the Brunner Test, followed by most courts, it is almost impossible to discharge this debt. That's why I'm introducing legislation, The Student Loan Bankruptcy Improvement Act, that modifies the law to require only hardship, meaning, eliminating the undue hardship. I believe this strikes a balance creating a more equitable and reasonable test keeping the safeguards like the Means Test, Elevated Test, for the bankruptcy process, and doesn't really endanger the availability of student loans.

I want to note that several Members of this Committee, Mr. Johnson, Mr. Sewell, Ms. Ross, and Ms. Lofgren, have joined to coauthor my legislation. This legislation is also supported by the Consumer Federation of America, Association of College Admissions

Counseling, National Association of Student Loan Lawyers, Century Foundation, and the National Law Center.

My first question will be for Judge Harner, Professor Baird, Professor Jacoby, would you agree that, by striking "undue" from the test, strikes a fair balance in protecting the integrity of the bankruptcy and helping student loan borrowers move ahead? Judge Harner.

Ms. HARNER. Thank you, Representative Correa, for that question. I can't provide any advisory opinions, but what I can say is, right now, the Brunner Test, which you have up so nicely behind you, and the standard we're required to follow in the courts, this undue hardship, all the case law focuses on that term. The definition is of the term, "undue hardship." If legislation removes the word "undue" from that term, courts will have to rethink the standard. There will have to be a new definition. It will reform student loan treatment and bankruptcy.

I can't predict exactly how, but what I can say is I think courts would see it as a signal to rethink how student loan debts are treated, and it may provide the path that you were speaking of before.

Mr. CORREA. Professor Baird.

Mr. BAIRD. It's an excellent approach. It's a surgical way to correct the problem of Brunner. Brunner was a mistake, but Brunner now binds all bankruptcy judges. Judge Harner and Judge Black don't have any choice. They're bound by circuit precedence. It was a mistake to have the Brunner Test, which emerged, as Professor Jacoby said, under different circumstances. This particular surgical approach, which essentially enables judges to press the reset button and reconsider how to strike the balance, is an excellent idea.

Mr. CORREA. Professor Jacoby.

Ms. JACOBY. The reset reference is exactly what I was thinking as well. Circuit Courts have said in their opinions that they have no reason to back away from the very harsh interpretation of undue hardship because Congress has kept that part the same, even as it's changed the other pieces. This would send the message to Circuit Courts and invite other courts to use a more appropriate standard.

Mr. CORREA. To everybody here, quick question in my 40 seconds left, eliminating "undue," would that essentially tilt the system in favor of the debtors?

Professor Baird.

Mr. BAIRD. No. The balance is so out of whack that this is just—

Mr. CORREA. Judge Black.

Mr. BLACK. I don't think it would. It would provide the courts a little more flexibility in how to address these issues, and it's a flexibility that we don't really have right now given the—

Mr. CORREA. Judge Harner.

Ms. HARNER. I agree with Judge Black, it would give flexibility.

Mr. CORREA. Professor Jacoby.

Ms. JACOBY. Yes. We have to remember this isn't just debtor versus creditor. It's what debts get paid when other ones do not.

Mr. CORREA. Dr. Hotchkiss, any thoughts?

Ms. HOTCHKISS. Again, as an economist, it seems—you've reached an all-or-nothing solution, and in the moment, it's nothing. I can't speak to the specific tweaks in the law—

Mr. CORREA. Ms. Murray.

Ms. MURRAY. Thank you, Representative. It's not part of my practice. I'm going to decline to answer this one.

Mr. CORREA. Thank you very much, again, to the witnesses. I'm out of time. I appreciate your thoughtful comments.

Mr. FITZGERALD. The gentleman yields back.

I will now recognize the gentleman from California, Mr. Issa, for five minutes.

Mr. ISSA. I think we're going to pick up where we left off. Judge Harner, or actually, Professor Jacoby, historically, when the private sector was doing college loans, the laws were in place to give them an assurance that they would not easily find themselves with no money as a result of bankruptcy, and that allowed for a given level of return on investment but, most importantly, a return of capital over time. We took it away from them; we put it in the government's hands. Since that time the government has taken massive $100 billion-plus losses.

As we're looking at a change that liberalizes, under the Biden Administration, liberalizes dramatically the ability not to pay it, how do we reconcile the fact that there was a mandate from Congress that it break even? Do we increase the interest rate, or do we continue subsidizing people who get a college education and then don't want to pay for it?

Ms. JACOBY. I'd first observe that the existence of protection in bankruptcy is not what causes someone to pay or not pay. We're finding that many people are unable to pay either way.

Mr. ISSA. Let me challenge that. The balance of undue and the ability to discharge, there's no question at all, in any bankruptcy, the judge, any judge has the ability to set up a schedule if you have the ability to pay, or a deferral until you do. I'm going to challenge that and say, even if you can't discharge it now, you don't have to pay it now if you're unable to. Ultimately, the question is, should you eventually pay it?

We have had Members of Congress making $174,000, by the way, who have never paid back their college loans. Is that fair?

Ms. JACOBY. With respect, Congressman—

Mr. ISSA. Skip the respect. I'm a Congressman. I can take it.

Ms. JACOBY. Great. Still, with respect, I need to tweak the premise because judges almost never see the underlying details of these cases. There's a complicated procedure. In addition to all the disclosures a financially distressed family makes in bankruptcy, they have to do a separate process for it ever to get before a judge. A judge does not have the opportunity under the law of this land to do what you're saying.

Mr. ISSA. Congress has a balancing act. Do we turn this back over to the private sector and allow them to dramatically increase the cost of student loans so that it pays for itself based on the events on the ground, or do we continue simply writing multibillion dollars per year, hundred billion dollars and more, per year taxpayer money to pay for people's education? Are we effectively turn-

ing the loan program into a Pell Grant? The answer, of course, is, if we don't make a change, we are.

Is there anybody that disputes the fact that Congress does not want this to be a subsidized program, but it has become a subsidized program?

Back to the bankruptcy, if Congress' intent was that you not be able to bankrupt out from underneath it, is the current balance in this undue harm, is it, in fact, out of whack based on the fundamental, Professor Baird, you look like you want to answer, the fundamental question, which was Congress said, "This isn't something you bankrupt out from underneath because it's too important," and we're not talking about people who had strokes the day they graduated from college. We're talking about people who haven't got a job or who have decided to do something that doesn't pay enough. They use the bankruptcy court to discharge and then, at a later time, make the money from their education off it. Professor.

Mr. BAIRD. It's important to distinguish between the student loan problem, which is enormous, and the bankruptcy problem, and the particular types of people who enter into bankruptcy.

Unfortunately, many of the debtors we're talking about in bankruptcy, the money is uncollectible in the sense that interest actually builds up faster than they're able to pay it off given these numbers. It's a difficult problem—

Mr. ISSA. Let me close with one quick question. The IRS does not allow discharge in bankruptcy effectively, right? Therefore, why is it that, if we consider this similar, we can't have an abatement and other process, as we do in the IRS, but ultimately have the principal remain until discharged or agreed in some program? Anyone have an answer on that? Professor?

Ms. JACOBY. I would like to answer that. There was a time when an individual who completed a payment plan through Chapter 13, at the end of that, would have some relief at the end. Congress eliminated that, and I don't think they gave that as much deliberation as you might have today.

There is room for looking historically at the different levers and different pieces one can adjust in the system to move more in that direction. What we have now doesn't do any of those things that you're talking about.

Mr. ISSA. To be continued. Thank you, Chair.

Mr. FITZGERALD. The gentleman's time has expired. He yields back.

The Ranking Member Raskin is recognized for a unanimous consent request.

Mr. RASKIN. Thank you, Mr. Chair. The first is a May 2025 article titled, "Older Americans at Risk as Government Restarts Social Security Garnishment on Student Loan Debt." It's from *PBS*. Then, a chapter from the report from the American Bankruptcy Institute's Commission on Consumer Bankruptcy entitled "Effectuating the Fresh Start About Student Loan Over-indebtedness."

Mr. FITZGERALD. Same request from Mr. Correa.

Mr. CORREA. Thank you, Mr. Chair. Unanimous consent to introduce the following: A letter from National Consumer Law Center, dated July 11th of this year, in support of the Student Loan Bankruptcy Improvement Act; a letter from the National Association of

Consumer Bankruptcy Attorneys, July 11th, in support of the Student Loan Bankruptcy Improvement Act—Dunbar Marina—"One in Three Student Loan Borrowers Risk Default as Delinquency Rates Soar."

Another one, "U.S. Department of Education to Begin Federal Student Loan Collections, Other Actions to Help Borrowers Get Back Into Repayment."

Finally, "Credit Scores Decline for Millions as U.S. Student Loan Collections Restart," Associated Press of this year.

Mr. FITZGERALD. Without objection.

The gentlewoman from Vermont is now recognized for five minutes.

Ms. BALINT. Thank you, Mr. Chair. Thank you to all the witnesses for taking the time to come here today.

I'm really glad that we're here in a bipartisan hearing on an important and often overlooked subject under our Subcommittee's jurisdiction.

Before I get to the questions for the witnesses on bankruptcy, there is one thing that I feel like I must mention because it is harming consumers right now, and that's the Trump Administration's assault on the Consumer Financial Protection Bureau.

We're here to talk about legal protections for Americans who are in financial crisis. Bankruptcy can help people rebuild from crisis, and the CFPB helps prevent the crisis in the first place. It's one of the few government entities whose entire mission is to protect Americans from companies that rip them off, like banks, payday lenders, securities firms, and for-profit colleges. We cannot have a serious discussion about debt and bankruptcy if no one is enforcing consumer protections against the scams that drain American's bank accounts.

For nearly six months now, CFPB staff had been locked out by the Trump Administration. They literally cannot do their jobs. The 1,500 people are barred from doing their job of protecting and standing up for American consumers, except for the people who are working to drop enforcements and to cut financial protections. Trump is dismantling the agency before our very eyes, and Republicans are letting him do it.

I will move on to questions for the witnesses, but it's maddening. We can't forget that many personal bankruptcies can be prevented. OK. We can talk about the law, but they can be prevented. We can have a role in preventing it, but only if government is there to protect Americans from financial exploitation.

That said, turning to the witnesses, I am deeply concerned that the recently passed Republican tax bill has taken a sledgehammer to many of the programs that help Americans before bankruptcy becomes their only option.

Judge Harner, thank you for coming here today. Would it be fair to say that economic hardship increases the rates of bankruptcies?

Ms. HARNER. Representative Balint, thank you for that question. I am just reflecting on the data I've seen because I'm trying to make sure my answers correspond to studies and data that I'm familiar with. What the charts would show you is, any time there's economic hardship, we see a spike in filings.

Ms. BALINT. It makes sense, right? You put the squeeze on Americans, and they face more financial constraints, and perhaps leading to personal and familial crises.

In your experience, Judge Harner, did courts see an increase in individual and business bankruptcies resulting from the COVID pandemic?

Ms. HARNER. We did not.

Ms. BALINT. You did not?

Ms. HARNER. We did not.

Ms. BALINT. Why do you think that is?

Ms. HARNER. I will say I think we expected to see one, but there are a number of factors that took place during that time that helped both businesses and individuals deal with the economic shock of COVID. Things like the moratorium on foreclosures, the moratorium on evictions, and other relief that was provided is the reason we actually saw a decline in bankruptcy filings.

Ms. BALINT. I really appreciate that. I was in the State legislature when this happened, and certainly a lot of the infusion of money and protections at the Federal level, and things that we put in place at the State level helped. I really appreciate that.

Would you say that the bankruptcy court system is equipped to handle more bankruptcy cases right now?

Ms. HARNER. Yes. Yes.

Ms. BALINT. Is there a caveat?

Ms. HARNER. Well, I was just reflecting on my comment to Ranking Member Raskin and the resources of the courts, and things like ensuring that the temporary judgeships are extended speak to that. So, yes, we are equipped, we will do our jobs for the American people, but having support is always appreciated.

Ms. BALINT. I appreciate that. We have no doubt that you will do your jobs and that you are dedicated committed people.

In the time remaining, what is the most important policy recommendation regarding Subchapter V, from your perspective?

Ms. HARNER. From my perspective?

Ms. BALINT. Yes.

Ms. HARNER. It's just to continue to recognize the subchapter is quicker, more effective, and is helping both companies and creditors, and that we should reflect on the right pool of companies that could utilize that subchapter. The data shows that companies between the current debt cap of $3 million and 7.5 actually were using it even more effectively than the current pool of companies.

Ms. BALINT. I really appreciate it. I see that I'm out of time. I yield back.

Mr. FITZGERALD. The gentlewoman yields back. I now recognize the gentleman from North Carolina for five minutes.

Mr. HARRIS. Thank you, Mr. Chair. Thanks to all of you on the panel for sharing with us your thoughts. I've been in and out to other hearings this morning, but I enjoyed reading all your written testimonies.

I did have just a couple of questions that I wanted to kind of toss out. I'll go to Judge Paul Black for this first one.

When a debtor files for Chapter 7 bankruptcy, he's assigned a trustee to oversee the case, and these trustees, as we know, are attorneys, accountants, or other professionals who ensure that the

debtor pays what they can. Currently, if I understand correctly, these trustees are only paid $60 per case.

Judge Black, can you speak to the impact that these fees have on the recruitment of future Chapter 7 trustees?

Mr. BLACK. Yes, Congressman. Asset cases are what the Chapter 7 trustees hope to get at some point to be able to administer assets and pay some portion of what they collect to the creditors that have filed claims in the case. The reality is that a large majority, if not a significant majority of the cases are what we call no-asset cases. The trustees are going to get $60 for the work that they do, and they've got work to do like evaluating Means Test and reviewing tax returns, and they have got a lot of other paperwork that they have to do in conducting the 341 meeting of creditors, and it's quite a bit of work, but if all they're getting is $60, we're worried about recruiting some younger attorneys to come into this practice area.

It's been fixed at $60 since 1994. In 1994, they got a $15 raise from $45–$60 for a no-asset case. In the meantime, inflation, the cost of doing business, just to keep the lights on, it has become an expensive process. We want to get younger folks that are young people to consider joining these panels. We have an ageing Chapter 7 trustee bar across the country, and we need to get some young folks to come into this practice area. It's going to be hard for them to do that if they can't keep the lights on while they are waiting for an asset case.

Mr. HARRIS. Would you encourage or recommend to us today that Congress increase the per-case payments to Chapter 7 trustees, and what value do you think that could provide to that system?

Mr. BLACK. Yes, I would encourage you to do that. Judge Alan Stout from Louisville, Kentucky, came before this Committee in 2018 and was encouraging Congress to do the same thing at that time, and it just hasn't changed. In the meantime, the bar is getting older. We're getting fewer folks willing to get on these panels. We think that it would be a real benefit to the system to encourage people to join the panels in that regard.

Mr. HARRIS. OK. Well, thank you. Also, Judge Black, as of now, there are 29 temporary bankruptcy judgeships across the United States, and two of those 29 temporary judgeships are located in my home State of North Carolina. As we all know, these temporary judgeships are set to expire beginning in January 2026.

Can you speak, Judge Black, to the effects of allowing these temporary judgeships to expire, and should Congress extend these judgeships, or perhaps just make them permanent?

Mr. BLACK. Well, there are the Judicial Conference of the United States, I believe, has some recommendations on what should be permanent and what should not be permanent, and I would probably defer to them on the permanent aspect of it.

On the temporary judgeships, it's a whole lot better to have them and not need them than to need them and not have them.

Mr. HARRIS. Right.

Mr. BLACK. I would very much like to see the judgeships extended for that very reason.

I wanted to go over to the Congresswoman from Vermont's comment about when things are needed. People file bankruptcy when they're pushed.

Mr. HARRIS. Right.

Mr. BLACK. During the pandemic, following up on what Judge Harner said, there's a moratorium on foreclosures; there's a moratorium on evictions in a lot of places.

The other thing that I saw in my court was medical debt. The hospitals really weren't garnishing wages. Nothing puts people into bankruptcy faster than a wage garnishment.

When we have those types of things backing off, the filings come down. If you see things like that come back to the surface, the filings could go up. We are in a rising filing environment right now. Yes, I would like to see those bankruptcy judgeships extended. Obviously, Congress would have to decide whether to make them permanent or not, and there are other factors that go into this, that I'm not qualified to speak to. Thank you.

Mr. HARRIS. Well, thank you for your input.

Mr. Chair, I yield back.

Mr. FITZGERALD. The gentleman yields back. The gentleman from Illinois is now recognized for five minutes.

Mr. GARCIA. Thank you, Chair Fitzgerald, and thanks to all the witnesses here today.

Bankruptcy, as you all are aware, is a very complex area of law, and Congress should address these issues in a nuanced way that protects the rights of creditors but doesn't improperly favor them at the expense of working families, small businesses or municipalities, and that's why I strongly support bipartisan efforts to extend the debt limits of Subchapter V and Chapter 13 cases, which would provide much needed relief to small businesses and working families in financial distress.

It's also why I believe that excluding student loans from the Bankruptcy Code has unfairly benefited private student lenders and made life harder for millions of Americans, especially vulnerable borrowers like seniors, disabled veterans, and low-income individuals, and it's why I'm deeply concerned about the ongoing bankruptcy proceedings involving the Puerto Rico Electric Power Authority, known as PREPA.

Throughout my time in Congress, I've advocated for the Puerto Rican people as they face a vicious cycle of corruption, mismanagement, prioritization, and exploitation, and, of course, a series of natural disasters. The cycle comes as Puerto Rico remains excluded from the Bankruptcy Code. The PREPA bankruptcy process enters now it's ninth year, and the Puerto Rican people pay some of the highest electricity rates while receiving the lowest quality of service in the country.

Despite the dire economic and energy situation, PREPA's creditors are trying to strip PREPA and the Puerto Rican people of resources that they don't have. Rather than accept fiscal reality and resolve the case, the creditors went to court and won a ruling giving them a claim over all PREPA's past, present, and future net revenues. Now they want immediate payment, even though the value of their secured interest in these revenues is disputed and

even though most of the money in PREPA's bank account is Federal grant money and creditors cannot touch.

What these creditors are really asking for is PREPA to jack up electricity prices and force the people of Puerto Rico to pay these private companies, all while the island's electricity rates are over 50 percent higher than the national average. It continues to suffer crippling blackouts, and the median income is less than half of that in Mississippi, the poorest State in the U.S.

This situation, of course, has set up a false choice between the maximum protection of private property rights and the decimation of public good rather than a reorganization and a fresh start.

Professor Jacoby, thank you for being here today. Let me ask you, first, what were the implications of excluding Puerto Rico from the Bankruptcy Code; and, second, how could public bankruptcy law better manage cases involving public utilities and Federal grant dollars?

Ms. JACOBY. About 10 years ago, Congress had a choice to make when it was realized, and everyone realized that Puerto Rico's instrumentalities needed some sort of access to debt relief but were excluded. The most straightforward way to do that would have been to expand eligibility for Chapter 9, municipal bankruptcy, to instrumentalities in Puerto Rico. That would not have included Puerto Rico's—some of Puerto Rico's debt, but it would include instrumentalities, such as PREPA.

That law is fairly expansive relative to its history, yet it has a somewhat clear track record. It would not have involved an oversight board. The PROMESA is a much more extensive set of rules. This case is really the first time it's been tested using all the different components of Puerto Rico's debt.

Mr. GARCIA. Thank you for that.

This should not be a Democratic issue or a Republican issue. We should all stand with Puerto Rican people and urge a fair and speedy resolution to the PREPA bankruptcy that does not require them to pay even higher electricity rates than they pay already.

Thank you, and I yield back, Mr. Chair.

Mr. FITZGERALD. The gentleman yields back. The Ranking Member Nadler is recognized for a UC request.

Mr. NADLER. Thank you. I ask unanimous consent to enter into the record a statement from the Community Services Society of New York which calls for an end to the double standard in bankruptcy law that makes student loans, both Federal and private, functionally nondischargeable.

Mr. FITZGERALD. Without objection.

I would also ask for unanimous consent that the following statements be entered into the record: A statement from the Commercial Law League of America, a statement from the Defense Credit Union Council, a statement from Public Citizen, and a letter from the National Association of Insurance Commissioners, dated July 15, 2025. Also, a letter from the National Association of Chapter 13 Trustees, dated July 14, 2025.

We'll now recognize the gentlewoman from California for five minutes.

Ms. LOFGREN. Thank you, Mr. Chair. Thanks for this hearing.

I was reminded that I first worked on bankruptcy legislation in this Committee room in 1974 when I was a staffer, and that effort was arduous and very bipartisan. Bankruptcy law is one of those areas that does benefit from bipartisan efforts, and I'm encouraged that we are looking at some bipartisan efforts to make some tweaks to this bill.

Based on all your testimony and your comments, it seems to me that there is consensus on the cap on Chapter 13, and I'm hopeful that we can address that in a bipartisan way. It will help our constituents across the United States, and the Members of the Committee have made that clear.

I want to address another issue. Under current law, a company can file for Chapter 11 in virtually any district where it has an affiliate, even if that affiliate is really nothing more than a newly created shell.

If you take a look at the *Purdue Pharma* case, the company behind the opioid crisis, it was able to steer its bankruptcy case into a friendlier court in White Plains, New York, simply by changing the mailing address of a subsidiary without moving any real operations to game the system.

I would like to ask unanimous consent to put into the record a *Reuters* article that discusses a company in San Diego that opened a post office box in Texas hours before it filed for bankruptcy to have its case heard in Texas. It had no employees. It had no operations, no real presence, but it met the requirements of the Act. The Department of Justice was late in objecting. That was a problem.

Mr. FITZGERALD. Without objection.

Ms. LOFGREN. This legal theater exploits a loophole and erodes trust in the bankruptcy system, and sidelines the people most affected, people who—employees, retirees, small business creditors, and local communities are disadvantaged.

Let me just ask a simple yes or no from each of the witnesses. Do you believe that this kind of forum shopping, where a company creates or moves a shell affiliate just to file for bankruptcy in a handpicked court, undermines the credibility of the bankruptcy system? Do you think that's a yes or no?

Ms. MURRAY. Yes.

Ms. HOTCHKISS. Yes.

Ms. JACOBY. Yes.

Ms. HARNER. I'm respectfully going to abstain because it's more of a policy matter that I will trust to Congress.

Ms. LOFGREN. OK.

Mr. BLACK. I'm going to concur with Judge Jacoby. Judge Harner, Sorry.

Mr. BAIRD. This is a very difficult policy question where you should exercise your judgment.

Ms. LOFGREN. Well, I'm going to be reintroducing the Bankruptcy Venue Reform Act to close this loophole and to restore fairness by requiring companies to file where they actually do business. I am hoping that we can have a bipartisan effort to close this loophole. Whether the small businesses are in Minnesota or California being disadvantaged, it's our constituents that are getting the short end

of the stick, and I'm hoping that we can pursue this in a bipartisan way.

I just want to comment on the genetic data issue. Mr. Cline mentioned the bill he and I are working on together. I do think that's very important. When the code was written, the idea that you would have DNA information in a company was not anything that anybody was thinking about and that we might need to protect. There should be broad consensus that this will make sense.

Once again, having worked on bankruptcy legislation, first as a staffer and then as a Member of this Committee, I remember when Chair Hyde pursued—I didn't agree with everything. That was a little more partisan effort than the 1974 effort, but we can make progress on this.

In the Constitution, it assigns us this role. Article I, Section 8.4, gives to Congress the responsibility for Uniform Bankruptcy Acts, and I'm looking forward to discharging that obligation.

With that, Mr. Chair, I yield back.

Mr. FITZGERALD. The gentlewoman yields back. We'll now recognize the gentleman from Georgia for five minutes.

Mr. JOHNSON. Thank you, Mr. Chair. Thank you to all the witnesses for being here today.

Chapter 7 trustees are paid out of the debtor's filing fee; is that correct, Professor Jacoby? Or anyone on the panel.

Ms. JACOBY. I look to—

Mr. JOHNSON. It is a fact. Please take judicial notice of that fact.

Ms. JACOBY. I'll take professorial notice. I'm sorry. I had a moment there.

Mr. JOHNSON. That's OK. They get paid out of the debtor's filing fee. Chapter 7 trustees have not received a raise since 1994, but yet, in 1994, the filing fee was $130, and today, 2025, the filing fee for Chapter 17 debtor is $338. Where did the money go? How did the Chapter 7 trustees get cut out? Anybody have any idea? Well, it's a big oversight. It's something that we need to cure.

I'm here basically to—I'm concerned mostly about this issue of student loan debt. Americans, Marvin Gaye wrote this song "Trouble Man," and he said, "There's three things that's for sure: Taxes, death, and trouble." For our young people growing up today, if he were around today, he would add a fourth thing that you're going to incur, and that is student loan debt. It is nondischargeable, and we have Americans holding about $1.8 trillion in student loan debt. That is half, almost half of the debt that was added to the Federal debt by Republicans when they passed this big ugly bill. The $4 trillion in debt, but we've got Americans—that $4 trillion is for the entire Nation. That $1.7 trillion is just for a select number of individuals who can't get out from under their crushing debt. The fact that the student loan debt is nondischargeable in bankruptcy leaves people more vulnerable to other kinds of debt like medical expenses, and it makes it more difficult for them to buy a home, a car, or even start a family.

Professor Jacoby, it's true that, prior to 1976, all student loans were dischargeable through bankruptcy just like any other type of debt, correct?

Ms. JACOBY. Correct.

Mr. JOHNSON. Thereafter, the law has changed so as to allow student loan debt to be dischargeable if the debtor bears the expense of commencing an adversary proceeding with a Chapter 7 or 13 case—within a 7 or 13, and bear the burden of proving undue hardship, correct?

Ms. JACOBY. Correct. Originally there were other paths to getting relief in addition to bringing that lawsuit.

Mr. JOHNSON. Judge Harner, I believe you answered the question earlier about the number of times you have actually granted a hardship discharge in a 7 or 13 case. Judge Black, same situation with you?

Mr. BLACK. Yes, sir.

Mr. JOHNSON. The 67-year-old woman who did get a partial discharge of her debt, was she thrust into Chapter 7 or 13 protection because her social security check was being garnished?

Ms. HARNER. Representative, that's a great question, and I honestly don't recall that particular fact.

Mr. JOHNSON. Well, it was probably due to some collection activity that forced her into bankruptcy. That's a shame, that a 67-year-old woman, maybe went to Trump University, I don't know, $500,000 in debt, student loan debt, that's a lot of money.

Listen, the big ugly bill has only made the problem worse. It reduces the number of repayment plan options, and it also eliminates grant plus loans, which helps people finance high education degrees, and caps Federal loans for graduate degrees. This will push more people into the private loan market with its predatory interest rates. The big ugly bill eliminates the deferment provisions for borrowers facing economic hardship. Thanks to the big ugly bill, if you fall behind on your bills because you lose your job, you can no longer defer your student loan payments. We've got to change the law so that student loans are dischargeable in bankruptcy just like every other consumer debt.

With that, I yield back.

Mr. FITZGERALD. The gentleman yields back.

That concludes today's hearing. We thank our witnesses for appearing before the Subcommittee today.

Without objection, all the Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

Without objection, this hearing is adjourned.

[Whereupon, at 11:57 a.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust can be found at: *https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=118492*.

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