

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE: )  
 )  
Amendment of Interim Bankruptcy ) Administrative Order No. 2020-6  
Rule 1020 Pursuant to CARES Act )  
 )

AMENDMENT OF INTERIM BANKRUPTCY RULE 1020 PURSUANT TO CARES ACT

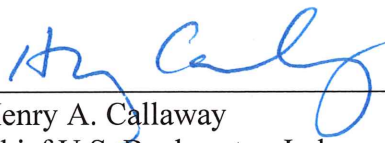
On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law. Section 1113 of that legislation made several temporary changes to the Bankruptcy Code to provide financial assistance during the coronavirus crisis. These changes necessitate a corresponding amendment to Interim Bankruptcy Rule 1020, which was implemented in this district by Administrative Order No. 2020-1.

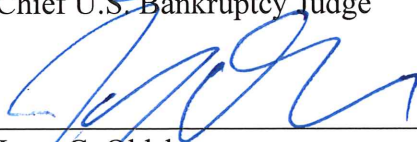
The CARES Act modifies the definition of “debtor” for determining eligibility to proceed under subchapter V of chapter 11. Previously, § 1182(1) defined “debtor” under subchapter V as “a small business debtor.” A “small business debtor” is defined in § 101(51D) and requires that the prospective debtor have “aggregate noncontingent liquidated secured and unsecured debts ... in an amount not more than \$2,725,265” (a figure subject to adjustment every three years under § 104). Under the CARES Act, § 1182(1) was amended to include a separate definition of “debtor” for subchapter V purposes that is identical to the definition of “small business debtor” in all respects except that the debt limitation is \$7,500,000. The CARES Act also amended § 103(i) to provide that subchapter V of chapter 11 applies to a “debtor (as defined in section 1182(1))” who elects such treatment, rather than a “small business debtor” who so elects. The definition of “debtor” in § 1182(1) will revert to its prior version one year after the March 27, 2020 effective date of the CARES Act.

Bankruptcy Rule 1020 provides procedural rules for “small business chapter 11 reorganization cases.” In response to the enactment of the Small Business Reorganization Act of 2019, which took effect in February, and upon the recommendation of the Advisory Committee on Bankruptcy Rules, this court pursuant to Administrative Order 2020-1 adopted an interim Bankruptcy Rule 1020 that reflected the new option for a small business debtor of proceeding under subchapter V of chapter 11. Now, in response to the CARES Act, that interim rule must be modified for one year to include references to “a debtor as defined in § 1182(1) of the Code.” Although a small business debtor (debts not more than \$2,725,625) will always satisfy the definition of debtor in § 1182(1) (debts not more than \$7,500,000), a debtor’s status as a small business debtor must still be designated because special provisions of the Code apply to such debtors who do not elect to proceed under subchapter V of chapter 11.

Thus, pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 9029 of the Federal Rules of Bankruptcy Procedure, the attached amended Interim Bankruptcy Rule 1020 is adopted effective March 27, 2020.<sup>1</sup>

Dated: 4/20/2020

  
Henry A. Callaway  
Chief U.S. Bankruptcy Judge

  
Jerry C. Oldshue  
U.S. Bankruptcy Judge

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<sup>1</sup> For the sake of clarity, the attachment is a “redline” version highlighting the most recent amendments.

## Attachment

1     **Rule 1020. Chapter 11 Reorganization Case for Small**

2     **Business Debtors or Debtors Under Subchapter V**

3             (a)             ~~SMALL—BUSINESS—~~DEBTOR

4     DESIGNATION. In a voluntary chapter 11 case, the debtor

5     shall state in the petition whether the debtor is a small

6     business debtor or a debtor as defined in § 1182(1) of the

7     Code and, if the latter ~~se~~, whether the debtor elects to have

8     subchapter V of chapter 11 apply. In an involuntary chapter

9     11 case, the debtor shall file within 14 days after entry of the

10    order for relief a statement as to whether the debtor is a small

11    business debtor or a debtor as defined in § 1182(1) of the

12    Code and, if the latter ~~se~~, whether the debtor elects to have

13    subchapter V of chapter 11 apply. The status of the case as

14    a small business case or a case under subchapter V of chapter

15    11 shall be in accordance with the debtor's statement under

16    this subdivision, unless and until the court enters an order

17    finding that the debtor's statement is incorrect.

18             (b) OBJECTING TO DESIGNATION. The United

19    States trustee or a party in interest may file an objection to

20    the debtor's statement under subdivision (a) no later than 30

21    days after the conclusion of the meeting of creditors held

22 under § 341(a) of the Code, or within 30 days after any  
23 amendment to the statement, whichever is later.

24 (c) PROCEDURE FOR OBJECTION OR  
25 DETERMINATION. Any objection or request for a  
26 determination under this rule shall be governed by Rule 9014  
27 and served on: the debtor; the debtor's attorney; the United  
28 States trustee; the trustee; the creditors included on the list  
29 filed under Rule 1007(d) or, if a committee has been  
30 appointed under § 1102(a)(3), the committee or its  
31 authorized agent; and any other entity as the court directs.

#### **Committee Note**

The interim rule is amended in response to the enactment of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), Pub. L. No. 116-136, 134 Stat. 281. That law provides a new definition of "debtor" for determining eligibility to proceed under subchapter V of chapter 11. Subdivision (a) of the rule is amended to reflect that change. This amendment to the Code will terminate one year after the date of enactment of the CARES Act.