AMERICAN BANKRUPTCY INSTITUTE
www.abi.org

March 19, 2024

Honorable Thomas Massie Chairman Subcommittee on the Administrative State, Regulatory Reform and Antitrust 2453 Rayburn House Office Building Washington, DC 20515	Honorable Richard J. Durbin Chairman Committee on the Judiciary United States Senate 711 Hart Senate Office Building Washington, DC 20510
Honorable Luis Correa Ranking Member Subcommittee on the Administrative State, Regulatory Reform and Antitrust 2301 Rayburn House Office Building Washington, DC 20515	Honorable Lindsey Graham Ranking Member Committee on the Judiciary United States Senate 211 Russell Senate Office Building Washington, DC 20510

Re: Supplement to the Preliminary Report of the American Bankruptcy Institute Subchapter V Task Force Maintaining the $7,500,000 Debt Cap for Subchapter V Eligibility

Dear Reps. Massie and Correa and Sens. Durbin and Graham:

The American Bankruptcy Institute (ABI) is the nation's largest association of bankruptcy professionals, comprised of over 10,000 members in multi-disciplinary roles, including accountants/financial advisors, attorneys, judges, lenders, auctioneers, bankers, professors, turnaround specialists and others. Founded in 1982, ABI offers its members education and resources, but also plays a leading role in providing congressional leaders and the public with nonpartisan reporting and analysis of bankruptcy regulations, laws, and trends. ABI members and/or senior staff are often called on to testify before Congress, analyze proposed bills, and conduct periodic briefings for congressional committees and legislative staff.

On December 15, 2023, ABI sent you the *Preliminary Report of the American Bankruptcy Institute Subchapter V Task Force Maintaining the $7,500,000 Debt Cap for Subchapter V Eligibility (Preliminary Report).* In that correspondence and Preliminary Report, we outlined the history and purpose of the ABI Subchapter V Task Force (Task Force). As indicated, the Subchapter V Task Force includes a diverse group of bankruptcy judges, practitioners, and academics whose purpose is to review the implementation and administration of the Small Business Reorganization Act of 2019 (Subchapter V). I re-attach the Preliminary Report for your convenience.

Since issuing its Preliminary Report, the Task Force was asked to consider whether, based on its recent in-depth study of Subchapter V cases, a change to address affiliate and insider debt for debtor eligibility is advisable. Specifically, the suggested change would delete the phrase "excluding debts owed to 1 or more affiliates or insiders" from the definition of "debtor" in section 1182(1)(A) and (B)(i) of the Bankruptcy Code. The relevant portions of that section would, in turn, establish a debt cap for eligibility in an amount not more "than $7,500,000 ~~(excluding debts owed to 1 or more affiliates or insiders)~~ …"

AMERICAN BANKRUPTCY INSTITUTE
www.abi.org

The Task Force does not find any merit to making the suggested change to the eligibility standards for Subchapter V debtors. Although several factors support the Task Force's position, the Task Force will highlight only a few of the most relevant considerations here. These include:

- Requiring smaller businesses to include affiliate or insider debt in the Subchapter V eligibility standard would discourage smaller business owners, shareholders, or related entities from extending loans or credit to the debtor business, which is a form of funding frequently relied upon by smaller businesses. The Task Force believes that such a change would skew incentives to invest, and be vested, in the success of the debtor's business operations and could negatively impact the ability of smaller businesses to obtain the funding necessary to sustain their business operations either outside of bankruptcy or through a Subchapter V reorganization.

- The Task Force did not receive or uncover any evidence that affiliate or insider debt was allowing larger or more complex businesses to file for Subchapter V bankruptcy or otherwise abuse the system. Rather, the Task Force's investigation shows that Subchapter V does an effective job of reorganizing smaller businesses intended to benefit from the subchapter and dismissing those cases not well-suited for the subchapter.

- The Task Force's study demonstrates that Subchapter V is working as intended by Congress, helping smaller businesses reorganize their businesses *and* make payments to their creditors. Indeed, at its inception and based on information provided to the Task Force, the exclusion of affiliate and insider debt was originally included by Congress to make Subchapter V available to as many smaller businesses as possible. The effectiveness of the subchapter over the past four years supports Congress' original approach to the Subchapter V eligibility standards, and the Task Force has no evidence suggesting that a change is necessary.

Based on the foregoing, the Task Force strongly recommends no change to the eligibility standards under Subchapter V at this time. The Task Force will be issuing its full Final Report on April 19, 2024, which will address this and other important matters concerning Subchapter V. In addition, members of the Task Force remain available to discuss this and other Subchapter V matters with policymakers, judges, and other interested parties to help all constituents better understand and implement the subchapter.

We note that the views expressed in this statement are those of the American Bankruptcy Institute and its Subchapter V Task Force, on whose behalf this statement is issued, and do not necessarily reflect the personal views, if any, of any individual ABI member.

If you or anyone from your staff would like to discuss the findings of the Task Force's Preliminary Report or need additional information, please contact me directly by email at skapila@kapilamukamal.com at your convenience. Thank you for your attention.

Sincerely,

Soneet Kapila
President, American Bankruptcy Institute