

Certain Debtors Are Now Eligible to Apply for PPP Loans

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The Small Business Administration (SBA) recently provided new guidance regarding the eligibility of certain debtors to apply for Paycheck Protection Program (PPP) loans, clarifying that, despite the general rule that debtors “presently involved” in a bankruptcy case are ineligible, debtors with confirmed plans of reorganization are eligible.

Ineligibility of Bankruptcy Debtors to Receive PPP Loans

The PPP provides financial support lending for small and large businesses pursuant to measures originally included in the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#), which expands on previously existing SBA 7(a) loan programs. The SBA has required applicants for PPP loans, as with other SBA loans, to certify on the borrower application that the applicant, or any owner of the applicant, is not “presently involved in any bankruptcy.” Many believed this requirement would be negated by provisions of the [Consolidated Appropriations Act of 2021 \(CAA\)](#) enacted on December 27, 2020, which authorized a second round of PPP loans, and amended section 364 of the Bankruptcy Code to allow, upon notice and a hearing, certain debtors to obtain PPP loans if they are otherwise eligible. This provision of the CAA contradicted the SBA’s implementation of the PPP because the SBA has uniformly denied debtor requests for PPP loans, spurring numerous legal challenges. However, the CAA’s amendments to the Bankruptcy Code deeming debtors eligible to apply for PPP loans were contingent on the SBA issuing a written determination approving such eligibility, which the SBA has declined to do.

The SBA’s Recent Guidance

With the most recent PPP loan application deadline fast approaching, on April 6, 2021, the SBA published an updated [frequently asked questions](#) document concerning the implementation of the PPP. Among the guidance provided in the updated FAQ, the SBA clarified that an entity that is not “presently involved in any bankruptcy” is eligible to apply for a PPP loan. Question 67 in the FAQ asked “[i]f an applicant or owner filed for bankruptcy protection in the past, when is an applicant or owner no longer considered to be ‘presently involved in any bankruptcy’ for PPP loan eligibility purposes?” The SBA guidance provides that a party previously in bankruptcy is not “presently involved in any bankruptcy” when:

- Under Chapter 7, the bankruptcy court has entered a discharge order;
- Under Chapters 11, 12, and 13, the bankruptcy court has entered an order confirming the plan; or
- Under any chapter, when the bankruptcy court has entered an order dismissing the case.

The listed orders must be entered before the date of the PPP loan application.

Takeaways

Given the SBA’s guidance, an entity that has (i) received a discharge order under Chapter 7; (ii) had a plan confirmed in its bankruptcy case under Chapters 11, 12, or 13; or (iii) had its bankruptcy case dismissed may be eligible to apply for a PPP loan, if it is otherwise eligible. This provides some clarity and good news for debtors who remain in bankruptcy under Chapters 11, 12, or 13 but have had their plans confirmed. However, this clarification may come too late for potentially affected debtors, at least for now, with the SBA having closed applications for new loans after exhausting the most recent round of funding.

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