

PPP Loan Eligibility for Bankruptcy Debtors

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One of the shortcomings of the PPP Loan provisions of the CARES Act is that there is no clear guidance as to whether bankruptcy debtors are, or are not eligible, to obtain a PPP Loan. In many cases, including the [Andes](#) and [Blue Ice](#) cases noted in other G&K links, the Small Business Administration has taken the position that Chapter 11 debtors are not eligible for a PPP Loan.

The case law on this issue is mixed. Still, one thing is certain – even for those Chapter 11 debtors that ultimately obtained a PPP loan, that financial lifeline only came after expensive litigation. Chapter 11 debtors are as hard hit as any other business by the COVID crisis and arguably need the sort of relief a PPP loan can provide, more than most. Considering that a PPP loan is forgiven if the proceeds are utilized properly, it can easily make the difference between a successful restructuring and a failed Chapter 11.

The Consolidated Appropriations Act of 2021 (the “CAA”) addresses the PPP eligibility shortcoming but stops short of a comprehensive remedy. Regarding PPP Loans in bankruptcy, the CAA amends the Bankruptcy Code to expressly provide that a bankruptcy court can authorize a debtor to obtain a PPP loan. The amendments also require the bankruptcy court to hold an expedited hearing on a debtor’s request to obtain a PPP loan, with that hearing no more than seven days after a Chapter 11 debtor files the motion seeking authorization to obtain the loan.

The CAA comes up short in the scope of its relief. It makes Chapter 12, 13, and SubChapter V small business debtors eligible to obtain PPP loans. Chapter 11 debtors with more than \$7,500,000 in total debt are still ineligible. Moreover, the effective date of the CAA’s PPP loan provisions is murky. It takes effect on the date that the SBA Administrator submits to the Director of the Executive Office for United States Trustees a written determination that, under the Small Business Act, otherwise eligible borrowers are still eligible if they are a Chapter 12, 13, or SubChapter V small business Chapter 11 debtor. Murky, to say the least. It seems that the specified bankruptcy debtors may only be eligible for SBA PPP loans if and when the SBA decides to say they’re eligible.