



Isabella Casillas Guzman
Administrator, U.S. Small Business Administration
409 3rd St, S.W.
Washington, DC 20416

March 29, 2021

Dear Administrator Guzman,

I write to you on behalf of the National Association of Consumer Bankruptcy Attorneys (“NACBA”), which is a national organization dedicated protecting the rights of consumer debtors in bankruptcy.

As you know, the Consolidated Appropriations Act of 2021 (“CAA”) provided in Section 320 that consumer debtors that had filed Chapter 13, family farmers that have sought protection under Chapter 12 and small businesses reorganizing under Subchapter V were eligible to receive loans under the Payroll Protection Program (“PPP”). This was the clear expression of Congressional intent to ensure that this vital relief was not denied to those involved in bankruptcy and was a rejection of the refusal by the Small Business Administration policy under the previous administration to provide this assistance, directly abrogating the judicial decisions upholding this discriminatory policy.¹ The harm that this causes to financially distressed small business owners, the exact people the PPP is intended to help, was recently documented in the ProPublica article, *How a Federal Agency Excluded Thousands of Viable Businesses From Pandemic Relief*.²

The CAA did, however, provide that this would not be effective until the Administrator the Small Business Administration submitted “a written determination that, subject to satisfying any other eligibility requirements, any debtor ... would be eligible for a [PPP] loan” to the Director of the Executive Office for United States Trustees (“EOUST”). Despite having over a year to submit a determination to the EOUST, your predecessors failed to do so. Now with the extension of the CARES Act provisions it is even more important that your office submit a written determination to the EOUST regarding the eligibility of debtors.

The reason for the delay in making PPP loans available to debtors in bankruptcy was a recognition of the additional complications that bankruptcy presents and the need to craft procedures for allowing access, not a license for the SBA to unilaterally disregard these financially distressed debtors. NACBA is confident that in consultation with the EOUST the necessary procedures could be implemented. Further, NACBA stands ready to assist the SBA in any way needed.

¹ See, for example, *In re Hidalgo Cty. Emergency Serv. Found.*, 962 F.3d 838 (5th Cir. 2020) and *In re Gateway Radiology Consultants, P.A.*, 983 F.3d 1239 (11th Cir. 2020).

² <https://www.propublica.org/article/how-a-federal-agency-excluded-thousands-of-viable-businesses-from-pandemic-relief>

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As applications for PPP loans must be submitted by May 31, 2021, it is critically important that you act immediately to submit a written determination to the EOUST regarding the eligibility of debtors. Failing to do so will substantially undermine the intent of Congress to help small business owners facing enormous financial problems due to the pandemic. We look forward to your prompt response.

Sincerely,

John C. Colwell
Board President

cc:

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