

## Bankruptcy Court Backs SBA Rule against Maine Hospitals trying to Reach PPP Money

The Bankruptcy Court (Fagone, J.) rejected a challenge from two Maine hospitals in the midst of bankruptcy who want access to the Paycheck Protection Program (“PPP”). [In re Penobscot Valley Hospital](#), No. 19-10034, 2021 WL 150412 (Bankr. D. Me. Jan. 12, 2021).

It is well known that the SBA administers the PPP under the CARES Act. The SBA included in the PPP application a question as to whether the applicant is “presently involved in any bankruptcy.” If so, the application is denied. The SBA explained its view that providing PPP loans to debtors in bankruptcy would present too high a risk of unauthorized use of funds or non-repayment of unforgiven loans.

In this case, Penobscot Valley Hospital and Calais Regional Hospital – both debtors in bankruptcy – argued the SBA’s bankruptcy exclusion is not a “permissible construction” of the CARES ACT and is also “arbitrary and capricious.” In rejecting the hospitals arguments, the Court found that the bankruptcy exclusion was the product of “reasoned decision making.” The Court explained that the SBA properly looked at the factors laid out in the CARES Act which included an emphasis on speedy action and streamlining the underwriting process through borrower certifications and this bright-line rule excluding debtors in bankruptcy. The Court also noted it was fair for the SBA to rely on a general view that lending to debtors in bankruptcy presented an unacceptably high risk for wrongful use of the loan or a failure to pay it back.

While courts in other jurisdictions struck down the bankruptcy exclusion, the Maine bankruptcy court opined that doing so would have wrongly substituted a judicial determination in place of the SBA. As Congress debates and presumably finalizes a new round of pandemic relief, Maine banks and lenders should keep an eye on whether lawmakers weigh in on the SBA’s bankruptcy exclusion rule.

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