BANKRUPTCY BLOG

The Small Business Administration Issued New Guidance on the Payroll Protection Program

AUTHOR: LARRY A. PITTMAN, II

The Small Business Administration (the "SBA") on April 6, 2021, issued new guidance on the Payroll Protection Program (the "PPP") for entities in bankruptcy that wish to participate in the PPP. Moreover, any debtor in a bankruptcy case, or debtor with a part-owner (20% or greater) in bankruptcy, who is considering applying for a PPP loan cannot be "presently involved in a bankruptcy" to be eligible for a PPP loan.

So when is a debtor no longer "presently involved" in a bankruptcy?

According to the SBA, here is when "present involvement" in a bankruptcy terminates:

- When the Bankruptcy Court has entered a discharge order in the case of the debtor or owner;
- When the Bankruptcy Court has entered an order confirming the plan in the case;
- When the Bankruptcy Court has entered an order dismissing the case, regardless of chapter and regardless of whether the case is closed;

It is important to note that "present involvement" must terminate prior to the date of the PPP loan application.

At least one troublesome scenario may arise where a business's partial owner who is bankruptcy receives a Chapter 7 discharge. In many circumstances, the discharge comes before a Chapter 7 trustee has abandoned the owner's equity. Should a business seek a PPP loan after discharge but prior to the Chapter abandoning the owner's equity, the Chapter 7 trustee may find new incentive to sell the owner's equity in the business, thus leaving the owner without the very relief sought in the first instance: a fresh start for herself and/or the business.

For more information on the SBA's guidance, please call Larry A. Pittman, II at 816.210.9680 or Sharon Stolte at 816.627.5543.