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The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, The Capitol
Washington, D.C. 20510

The Honorable Charles E. Schumer
Democratic Leader
United States Senate
S-221, The Capitol
Washington, D.C. 20510

Dear Speaker Pelosi and Leaders McConnell, Schumer, and McCarthy:

The American Bankruptcy Institute (ABI) is the nation's largest association of bankruptcy professionals, made up of over 10,000 members in multi-disciplinary roles, including accountants, attorneys, judges, lenders, auctioneers, bankers, professors, turnaround specialists, and others. Founded in 1982, ABI offers its members education and resources, but also plays a leading role in providing congressional leaders and the general public with nonpartisan reporting and analysis of bankruptcy regulations, laws and trends. ABI members and/or senior staff are often called on to testify before Congress, analyze proposed bills, and conduct periodic briefings for congressional committees and legislative staff.

In its Final Report, published in 2014, ABI's Commission to Study the Reform of Chapter 11 unanimously proposed revisions to the United States Bankruptcy Code that would make it more efficient for most business debtors to successfully reorganize under Chapter 11 of the Bankruptcy Code. Members of the ABI Commission to Study the Reform of Chapter 11 testified before Congress in support of these amendments. In August 2019, Congress passed the Small Business Reorganization Act, which became effective February 19, 2020. Then, in March 2020, as part of the CARES Act, Congress amended the SBRA to increase the debt limit for one year, making even more businesses eligible to utilize the provisions of the SBRA.

The Paycheck Protection Program (PPP), which was also implemented as part of the CARES Act, serves as a lifeline to many small businesses that have suffered economic distress as a result of the COVID-19 pandemic and resulting shutdown. As you may be aware, however, the Small Business Administration (SBA) issued a ruling on April 24, 2020, that effectively made otherwise-eligible debtors in bankruptcy ineligible for a PPP loan. We do not intend to comment on the legality of that ruling, which is currently being litigated in courts across the country, but

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instead, we write to request that Congress (i) consider the negative policy implications of the SBA's ruling, and (ii) clarify in future legislation that otherwise-deserving small businesses, family farmers and individuals are eligible to receive PPP funds notwithstanding their pending bankruptcy cases.

For your information, the Bankruptcy Code permits debtors in bankruptcy to secure post-petition financing in certain circumstances. This financing is often necessary for business to continue operations in bankruptcy during the course of a Chapter 11 case. For small businesses, this financing can be critical to a successful emergence from Chapter 11. For lenders making post-petition loans, the Bankruptcy Code offers significant protections. Bankruptcy judges oversee the entire post-petition financing process to make sure the provisions of the Bankruptcy Code are complied with and that post-petition financing terms are fair and equitable for all parties in interest. These protections would apply to a PPP loan, if the bankruptcy judge authorized the borrowing.

It is unclear why the SBA determined that persons or entities "presently involved in any bankruptcy" are ineligible for PPP assistance. In our view, this provision unnecessarily discriminates against debtors in bankruptcy. Section 525 of the Bankruptcy Code provides express prohibitions against discriminatory treatment of debtors by governmental units. A governmental unit may not discriminate against a person solely because the person was a debtor, was insolvent before or during the case, or has not paid a debt that was discharged in the case.

Like others in our industry, including the American College of Bankruptcy, ABI is not advocating that Congress mandate PPP assistance to any particular borrower, or category of borrowers, in a case pending under the Bankruptcy Code. However, it is imperative that bankruptcy debtors remain eligible for PPP funding if they otherwise satisfy the borrowing requirements. PPP funding may facilitate a successful reorganization under the Bankruptcy Code, and it certainly facilitates the PPP's goals, which include the preservation of paying jobs.

While declining to comment specifically on proposed legislation pending in either the Senate or the House, ABI respectfully requests that Congress make it clear in any future amendments or legislation addressing PPP funding that debtors who have filed bankruptcy cases remain eligible for PPP loans notwithstanding their respective bankruptcy filings.

We take no position on other aspects of the bills we have mentioned, or on any other legislation in which PPP loans may be addressed by Congress. We note that the views expressed in this statement are those of ABI, on whose behalf this statement is issued, and do not necessarily reflect the personal views, if any, of any member of ABI.

Thank you for your time and consideration, and please let us know if you have any further questions about this important issue.

Sincerely,



Amy Alcoke Quackenboss
Executive Director
American Bankruptcy Institute

cc: Senator Lindsey Graham
Senator Diane Feinstein
Representative Jerrold Nadler
Representative Jim Jordan