

Jack County Hospital District d/b/a Faith Community Health System (the “Debtor”, “Plaintiff” or “Hospital”), files this Complaint and Verified Emergency Application For Temporary Restraining Order And Preliminary Injunction, Permanent Injunction, Declaratory Relief and Writ of Mandamus against Defendants the U.S. Small Business Administration and Jovita Carranza in her capacity as Administrator for the United States Small Business Administration (collectively, “SBA” or “Defendants”).

I
JURISDICTION, VENUE, CONSTITUTIONAL AUTHORITY

1. This Court has jurisdiction over this complaint pursuant to 28 U.S.C. § 1334(b) as it arises under the Bankruptcy Code and arises in a case under the Bankruptcy Code.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1409.

3. This is a core matter pursuant to 11 U.S.C. § 157(b)(2)(A), (D), and (O). In the event that any part of this action is determined to not be a core matter, the Plaintiff consents to the Court’s entry of a final judgment pursuant to 11 U.S.C. § 157(c). The Court therefore has Constitutional authority to enter a final judgment on all issues raised in this Complaint.

4. The statutory basis for the relief sought is 11 U.S.C. §§ 362 and 901, 28 U.S.C. § 2412, and Rule 7065 of the Federal Rules of Bankruptcy Procedure.

II
PARTIES

5. The Plaintiff is the Debtor in this Chapter 9 municipal debt adjustment case (the “Case”).

6. The Defendants are the U.S. Small Business Administration and Jovita Carranza in her capacity as administrator for the U.S. Small Business Administration, and can be served with process pursuant to FRBP 7004(b)(4) and (5) by U.S. First Class Mail as follows:

Jovita Carranza
U.S. Small Business Administration
409 3rd Street SW
Washington, DC 20416

Small Business Administration
4300 Amon Carter Blvd. Suite 114
Fort Worth, Texas 76155

Attn: Civil Process Clerk
Office of the U.S. Attorney, Northern District of Texas
3rd Floor, 1100 Commerce Street
Dallas, TX 75242-1699

Office of the Attorney General
Attn: Civil Process
Main Justice Building, Room 5111
10th & Constitution Avenue, N.W.
Washington, DC 20530

III **OVERVIEW**

7. This is an action against the SBA seeking (a) declaratory judgment that the SBA's implementation of the Paycheck Protection Program ("PPP") is unlawful and that the Debtor is entitled to be considered for relief on the same terms as any qualified borrower; (b) a writ of mandamus under 28 U.S.C. § 1361 to compel the SBA to remove its disqualification of bankruptcy debtors from PPP application forms and its interim final rule administering the PPP; (c) a declaratory judgment that the SBA has violated the automatic stay provisions of 11 U.S.C. § 362(a)(3) by exercising control over property of the Hospital; and (d) an order enjoining the SBA from using the Hospital's status as a debtor in bankruptcy to prevent the Hospital from obtaining a PPP loan.

8. The PPP is a federal loan program that was authorized by Congress for small businesses in the wake of the global pandemic caused by COVID-19. The SBA has made the approval of any PPP loan expressly contingent on the borrower not being "presently involved in any bankruptcy," even though this condition is nowhere to be found in the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") that enacts the PPP, or in the Small Business Act.

9. The Hospital seeks a Temporary Restraining Order and Preliminary Injunction on an emergency basis so that it may participate in the PPP program enacted by Congress to help business concerns, such as the Hospital, maintain their workforce during the COVID-19 crisis.

10. The Hospital is a “front line” health care provider in the fight against the pandemic. It provides the only hospital services within about a 50-mile range for a largely rural and underserved population in Jack County, Texas. Even under normal circumstances, the Hospital’s financial survival is critical to the health and welfare of the citizens that it serves. Now, in the midst of a national health emergency, it is crucial for the Hospital to maintain its workforce so that it can adequately meet the critical and emerging health care needs of the victims of COVID-19.

11. The PPP was enacted as part of the CARES Act to provide an immediate financial lifeline to businesses affected by the recent economic turmoil. By statute, the PPP has few eligibility requirements. None of those requirements depend on the creditworthiness of the recipient. Indeed, the terms of the PPP make clear that the PPP is not part of the typical SBA loan programs, but is more in the nature of a grant or disaster relief aid for small businesses such as the Hospital. Nevertheless, the SBA has attempted to exclude debtors in bankruptcy from participation in the program, an exclusion which contradicts the express mandate and purpose of the Act.

12. This exclusion has been determined to have exceeded the SBA’s authority in at least two recent bankruptcy court decisions.¹ In *Hidalgo County Emergency Service Foundation*, Judge David R. Jones issued a TRO preventing the SBA and lenders from excluding the debtor from the PPP based on its status as a debtor, finding that the debtor had shown a substantial

¹ *Hidalgo County Emergency Service Foundation v Jovita Carranza, as Administrator for the U.S. Small Business Administration (In re Hidalgo County Emergency Service Foundation)*, Case No. 19-20497; Adv. No. 20-02006 (Bankr. S.D.Tex., D. Jones) (April 25, 2020); *Roman Catholic Church of the Archdiocese of Santa Fe v. U.S. Small Business Administration; (In re Roman Catholic Church of the Archdiocese of Santa Fe)*, Case No. 18-13027, Adv. No. 20-1026 (Bankr. D.N.M.) (May 1, 2020).

likelihood that it will prove the SBA had exceeded its statutory authority. In *In re Roman Catholic Church of the Archdiocese of Santa Fe*, the bankruptcy court there concluded:

With only the flimsiest of justifications Defendant took one of many underwriting criteria from its “normal” loan programs (bankruptcy status of the borrower), changed it to an eligibility condition, and then applied it to an emergency grant program where it clearly had no place. Defendant’s inexplicable and highhanded decision to rewrite the PPP’s eligibility requirements in this way was arbitrary and capricious, beyond its statutory authority, and in violation of 11 U.S.C. § 525(a).

13. The Hospital qualifies by statute to participate in the PPP program. That right constitutes property of the debtor, which is protected in bankruptcy by the automatic stay. The SBA’s attempt to exclude the Hospital from participation in the PPP exceeds its authority and constitutes improper control over property of the Hospital in violation of the automatic stay provisions of section 362(a)(3).

14. Plaintiff therefore seeks an order requiring the SBA to remove references to an applicant’s status as a debtor in bankruptcy from all PPP loan applications, PPP rules and procedures, and PPP loan agreements.

15. Plaintiff also seeks an order requiring the SBA to instruct all lending institutions administering PPP loans that there is no exclusion from the PPP loan program on account of an applicant’s involvement in bankruptcy.

IV **FACTS**

16. On February 29, 2020 (the “Petition Date”), the Hospital filed a voluntary petition for relief under chapter 9 of Title 11 of the United States Code commencing the above-captioned municipal debt adjustment case. An official committee of unsecured creditors has not been appointed in this Case.

A. The Hospital and its Mission

17. The Hospital is a hospital district organized, existing, operating and financed as provided in Article IX, Section 9 of the Texas Constitution and Chapter 1079 of the Texas Special

District Code, as amended. The hospital district does business as both Faith Community Health System and Faith Community Hospital.

18. The Hospital's main facility is located in Jacksboro, Texas, which is the county seat and largest town in Jack County. The Hospital currently employs approximately 250 persons and is one of the larger employers in the county. The population of Jack County is approximately 9,000; the population of Jacksboro is approximately 4,500.

19. According to the U.S. Census Bureau, median household income in Jack County for 2018 was \$51,700. Persons living in poverty is fixed at 17.7% of the population. The percentage of the population over age 65 is 17.1%.

20. As a consequence, much of Jack County's population is not affluent and many depend upon Medicare and Medicaid to fund their health care. As a hospital district, the Hospital provides both indigent and charitable care to those unable to pay for medical care.

21. The Hospital is a general acute care hospital. Its chief facility is in Jacksboro where it operates out of a modern 17 bed facility which opened in 2015. The Hospital provides a wide range of medical services, including inpatient services, minor surgery, laboratory work, obstetrics, radiology and emergency care. The Hospital also operates, as a part of its main facility, the Swan Family Wellness Center providing a fitness center, a heated pool and wellness education classes. The Hospital also operates three (3) rural health clinics in Jacksboro, Bowie and Alvord, Texas.

22. The Hospital fills a very critical healthcare niche for the area northwest of Fort Worth. The hospital located in nearby Montague County, and which served Bowie, Texas, recently suspended its operations. Likewise, another hospital serving a nearby community in Wise County located in Bridgeport, Texas, has also shut down. With the suspension of operations at the Bowie and Bridgeport hospitals, the main sources for hospital care for Jack County residents, other than the Hospital, are located in Wichita Falls and Weatherford, communities respectively located 50 and 45 miles (or an hour drive) from Jacksboro.

23. It would be a hardship for the older, less affluent residents of Jack County to be required to travel an hour to Wichita Falls or the Metroplex for medical treatment. The Hospital provides a full range of essential options of treatment for elderly, indigent and charity patients. As such, the Hospital is an essential and irreplaceable part of the rural health care net for the region.

24. For example, but for the Hospital, there would be no obstetrics care in the region. The nearby hospitals in Bowie and Bridgeport, as detailed above, have ceased to operate. The hospital in Graham, Texas, approximately 30 miles to the west of Jacksboro, has recently discontinued obstetrics. Consequently, the Hospital is the only remaining obstetrical care facility serving the region.

B. Debtor's Immediate Cash Crisis and Need to Participate in the Paycheck Protection Program

25. On March 11, 2020, the World Health Organization officially declared that COVID-19, the disease caused by SARS-CoV-2, had become a global pandemic. The Court is well aware of the chaos and hardships created worldwide by the COVID-19 pandemic.

26. The Hospital originally filed this case as a result of an arbitration award rendered in favor of Blue Cross Blue Shield. Amidst the COVID-19 pandemic, the Hospital now faces a much more immediate threat to its existence – one that could jeopardize the lives of citizens who may find themselves suffering with COVID-19 and in dire need of medical treatment at the Hospital.

27. The Hospital's financial situation was already precarious on the Petition Date. It is now under increased operational strain as a result of COVID-19 fallout. In March, the State of Texas ordered all health care providers, including the Hospital to cancel all non-essential medical procedures, which significantly curtailed the Hospital's income. Other non-essential activities were affected by shelter in place orders. This resulted in the closure of the Hospital's wellness center and café and the loss of associated revenue. Likewise, the opening of a new Allergy

Clinic, along with its \$30,000 projected monthly income, has now been postponed. At the same time, the Hospital is facing increased expenses due to the pandemic. For instance, under the paid leave requirements of the Families First Coronavirus Response Act, the Hospital's payroll expenses increased by over \$20,000 in April. In addition, the Hospital has had to pay additional costs associated with its supply chain to maintain critical inventory and supplies, and Lab costs have increased on a per-test basis due to lower overall utilization.

C. The CARES Act and the Paycheck Protection Program

28. In response to the economic turmoil caused by the global pandemic, on March 27, 2020, the federal government enacted the Coronavirus Aid, Relief and Economic Security Act (CARES Act).² This legislation includes the Paycheck Protection Program (the "PPP").³

29. Under the PPP, small businesses with less than 500 employees (such as the Hospital) may apply for a one-time loan through a participating federally insured lending institution (a "PPP Loan"). Up to \$659 billion in potentially forgivable loans is made available through the PPP. The PPP allows a qualified business, such as the Hospital, to receive a loan equal to 2.5 times its average monthly payroll, up to \$10 million. PPP loans may be fully forgiven if the money is used to cover payroll costs, and most mortgage interest, rent, and utility costs over an approximate 8-week period. Small businesses began applying for the first tranche of available funds on April 3, 2020, which were quickly exhausted, and for the second tranche of funds on April 27, 2020. Because the total funding amount under the PPP is capped, PPP Loans are issued on a first come, first served basis. Small businesses have therefore been encouraged to apply as quickly as possible. Delay in submitting an application could result in exhaustion of available funds before an application is approved.

² H.R. 748, P.L. 115-136.

³ CARES Act, section 1102.

30. To receive a PPP loan, a qualified business must apply with a federally insured participating lender, using an application form created by the SBA. A sample form is attached hereto as **Exhibit A** (the “Application Form”).

31. The Application Form provides in relevant part in Question #1:

Is the Applicant or any owner of the Applicant ... presently involved in any bankruptcy?

32. The Application Form additionally provides, “If questions (1) or (2) below are answered ‘Yes,’ the loan will not be approved.”

33. There is no statutory provision in either the CARES Act or the Small Business Act that prohibits extending a PPP loan to a debtor under the Bankruptcy Code.

34. Prior to April 28, 2020, the SBA's own interim final rule said nothing about a bankruptcy exclusion on PPP loans.

35. The CARES Act provides for the implementation of the PPP by amending section 7(a) of the Small Business Act (15 U.S.C. 636(a)).⁴ Those amendments make important distinctions between regular section 7(a) SBA loans and funds to be made available through the PPP. First, the CARES Act *expands* the universe of eligible participants for PPP loans. Indeed, the CARES Act includes a provision entitled “Increased Eligibility for Certain Small Businesses and Organizations.”⁵ The CARES Act provides, “During the covered period, in addition to small business concerns, any business concern, nonprofit organization, veterans organization, or tribal business concern ... shall be eligible to receive a covered loan” if the business has 500 or fewer employees.⁶ This provision includes mandatory “*shall be eligible*” language. The CARES Act additionally includes sole proprietors, independent contractors and certain self-employed

⁴ CARES Act, Section 1102(a).

⁵ CARES Act, Section 1102(a), adding paragraph (36)(D) to section 7(a) of the Small Business Act (SB Act).

⁶ CARES Act, Section 1102(a), adding paragraph (36)(D)(i) to section 7(a) of the SB Act.

individuals as eligible participants.⁷ The usual requirement that a participant be unable to obtain credit elsewhere is waived for PPP participation.⁸ The express language of the CARES Act makes clear that the program is intended to be more expansive than “normal” section 7(a) SBA loans and that the indicated business concerns *shall be eligible* to participate.

36. Second, the CARES Act makes clear that *creditworthiness* is immaterial to eligibility for a PPP loan. There is nothing in the CARES Act that restricts eligibility based on insolvency or bankruptcy. Indeed, financial distress is presumed and is the basis for the emergency relief made available through the CARES Act. This is reinforced by the waiver of key underwriting terms normally applicable to section 7(a) loans. For example, the standard requirement for collateral and guarantees are both waived for PPP loans.⁹ The overarching goal of the PPP program is to encourage business concerns, such as the Hospital, to use PPP proceeds to meet payroll and other critical obligations over the next few months so that the loan can be forgiven rather than paid back. These terms make clear that a PPP loan is more in the nature of a grant or relief program than a standard SBA loan that might consider creditworthiness as part of the application process.

37. The SBA has similarly recognized that creditworthiness is not a factor for PPP loans. In a supplement to the SBA’s Interim Final Rule concerning PPP loans, the SBA states:

The Administrator recognizes that, unlike other SBA loan programs, the financial terms for PPP Loans are uniform for all borrowers, and the standard underwriting process does not apply ***because no creditworthiness assessment is required for PPP Loans.***¹⁰

⁷ CARES Act, Section 1102(a), adding paragraph (36)(D)(ii) to section 7(a) of the SB Act.

⁸ CARES Act, Section 1102(a), adding paragraph (36)(I) to section 7(a) of the SB Act.

⁹ CARES Act, Section 1102(a), adding paragraph (36)(J) to section 7(a) of the SB Act.

¹⁰ Docket No. SBA 2020-0020; 85 FR 21747 (April 20, 2020) [Emphasis added].

38. Despite the clear language of the CARES Act indicating that businesses such as the Hospital *shall be eligible* to apply for a PPP Loan, and the SBA's own admission that creditworthiness is irrelevant to eligibility, the SBA has nonetheless added the requirement that the applicant not be a debtor in bankruptcy. Initially, this requirement was implemented through the PPP application form promulgated by the SBA for obtaining a PPP loan. Participants that checked the bankruptcy box were informed that they were ineligible for a PPP Loan. Then, after defending several bankruptcy actions across the country by debtors seeking to participate, the SBA issued another supplement to its Interim Final Rule to attempt to formally exclude debtors from PPP participation. On April 28, 2020, the SBA added the following to its Interim Final Rule:

ELIGIBILITY OF BUSINESSES PRESENTLY INVOLVED IN BANKRUPTCY PROCEEDINGS

Will I be approved for a PPP loan if my business is in bankruptcy?

No. If the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed, the applicant is ineligible to receive a PPP loan. If the applicant or the owner of the applicant becomes the debtor in a bankruptcy proceeding after submitting a PPP application but before the loan is disbursed, it is the applicant's obligation to notify the lender and request cancellation of the application. Failure by the applicant to do so will be regarded as a use of PPP funds for unauthorized purposes.

The Administrator, in consultation with the Secretary, determined that providing PPP loans to debtors in bankruptcy would present an unacceptably high risk of an unauthorized use of funds or non-repayment of unforgiven loans. In addition, the Bankruptcy Code does not require any person to make a loan or a financial accommodation to a debtor in bankruptcy. The Borrower Application Form for PPP loans (SBA Form 2483), which reflects this restriction in the form of a borrower certification, is a loan program requirement. Lenders may rely on an applicant's representation concerning the applicant's or an owner of the applicant's involvement in a bankruptcy proceeding.¹¹

39. The new rule promulgated by the SBA simply begs credulity. The rule itself violates the mandate of the CARES Act and contradicts the SBA's own admission that

¹¹ Docket No. SBA 2020-0021; 85 FR 23450, p. 23451 (April 28, 2020).

creditworthiness is not a factor for PPP loans. More likely, the SBA is attempting to justify, after the fact, its use of the bankruptcy disqualifier in the PPP application forms after facing numerous complaints by bankruptcy debtors across the country. However, the new rule does not fix the underlying problem that the SBA has no authority to restrict participation in the PPP to non-debtor applicants.

40. Moreover, the pendency of a bankruptcy case potentially provides the SBA and lenders with a higher degree of oversight and accountability than non-debtor participants. This simple fact undermines the credibility of the SBA's stated purpose for excluding bankruptcy debtors. As Judge David R. Jones observed in *In re Hidalgo County Emergency Service Foundation*,

I see no authority anywhere for including those words in that form. It serves no purpose. I do find that by including the words "or presently involved in any bankruptcy," they are intended to be discriminatory. They are intended to be discriminatory toward debtors for reasons offered that somehow we lose control of the money, again I find to be completely frivolous. I cannot imagine anything less controlling than to simply give out money with no underwriting, with no oversight, and then complain that if I have a Federal judge who makes sure that the debtor complies with the law, ensures that the debtors file monthly operating reports, ensure that copies of bank statements are filed on the docket every month, that they somehow lost control. I simply don't buy it. I find the arguments to lack any good faith. . . .

[T]his can't be what Congress intended. This can't be the way that we are supposed to treat our fellow man in this time. It's inconceivable to me that this distinction could be drawn. The people that need the most help and who have sought protection under our laws are the people who are the targets of discrimination in a government support program; can't possibly be.¹²

41. In any event, the Court here may fashion any restrictions and oversights it deems appropriate for the Hospital's use of PPP loan proceeds.

42. It is imperative that the Hospital act quickly to apply for a PPP Loan. The Hospital needs the PPP loan to shore up its finances and allow it to continue to support the community as

¹² *In re Hidalgo County Emergency Services*; Transcript at pp. 31-32; Hearing on Plaintiff's Emergency Motion for Temporary Restraining Order and Preliminary Injunction (April 24, 2020).

a front-line medical services provider during this crisis. Without this source of liquidity, the Hospital's survival as a going concern is in question. If provided with a PPP Loan, the Hospital expects that funds will be deployed for payroll and the other purposes outlined in the CARES Act such that the loan will be eligible to be forgiven. The Hospital believes it may be eligible to receive up to \$2.4 million.

43. The current version of the SBA application requires the Hospital to disclose the pendency of this bankruptcy case, and the Hospital anticipates that its lender will not approve the application as a result. At the very least, the Hospital fears that its status as a debtor in a pending bankruptcy proceeding could slow the processing of its application. Any processing delay could jeopardize the Hospital's ability to receive a PPP Loan – even if fully eligible. The Hospital expects that small businesses across the nation will continue to flood SBA lenders with PPP Loan applications in the coming days. Therefore, any delay in processing of the Hospital's application poses the risk of funding under the PPP being exhausted before the Hospital obtains a PPP Loan.

44. The relief requested herein is consistent with public policy and the overarching purpose of the CARES Act. The Hospital is on the front-line of the coronavirus battle. Its financial survival is necessary, not just to preserve jobs, but to save lives and preserve the welfare of citizens in the Jack County community. The consequences of the SBA continuing to block the Hospital's access to funds could be catastrophic. Any threat to the Hospital's ability to continue operating and paying its employees is unacceptable.

45. At no point in this nation's recent history has it faced a healthcare crisis the likes of the COVID-19 pandemic. At this moment, our nation's hospitals and the health care professionals working at them are more invaluable than ever, and the lives of many thousands of Americans depend on these hospitals and health care workers continuing to function. In the coming days and weeks, it is impossible to predict how many individuals in the areas served by the Hospital will contract the novel coronavirus and have to look to the Hospital for treatment that

may be the difference between life and death. There is, however, one absolute certainty – the communities served by the Hospital cannot afford to lose the Hospital or any of the Hospital’s employees at this time. The Hospital needs access to federally-provided relief funds through the PPP loan program to meet critical workforce expenses and maintain operations and asks this Court to grant the relief requested herein to prevent the SBA from interfering with that effort.

V
COUNT ONE
DECLARATORY JUDGMENT – EXCEEDS STATUTORY AUTHORITY

46. Plaintiff repeats and realleges paragraphs 1-45 of this Complaint as if fully set forth herein.

47. The SBA can sue and be sued in a court of competent jurisdiction, including for declaratory relief and damages.¹³ Courts have expressly found that the SBA Administrator can be enjoined when he or she acts beyond the scope of his [or her] authority.¹⁴

48. Courts must hold unlawful and set aside agency action that is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

49. The SBA may only exercise authority conferred by statute.

50. The SBA exceeded its authority to administer the PPP loan program by requiring the Hospital, a business eligible by statute to participate under the PPP, to not be “presently involved in any bankruptcy,” even though no such prohibition exists in the CARES Act, section 7(a) of the Small Business Act, or until April 28, 2020, in the SBA’s own rule administering the PPP.

51. The SBA is implementing the PPP in a manner that unlawfully excludes debtors in bankruptcy, including the Hospital.

¹³ *Mar v. Kleppe*, 520 F.2d 867, 869 (10th Cir. 1975).

¹⁴ *Ulstein Mar., Ltd. v. United States*, 833 F.2d 1052, 1057 (1st Cir. 1987) (“The no injunction language protects the agency from interference with its internal workings . . . but . . . should not be interpreted as a bar to judicial review of agency actions that exceed agency authority where the remedies would not interfere with internal agency operations.”).

52. The SBA's implementation of the PPP is therefore in excess of its statutory authority under the CARES Act.

53. The SBA's violation of the CARES Act causes ongoing and irreparable harm to the Hospital.

54. The Hospital is entitled to a declaratory judgment that the SBA's implementation of the PPP in a manner that causes debtors in bankruptcy, including the Hospital, to be ineligible is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right in violation of the CARES Act.

55. The Hospital is entitled to a Temporary Restraining Order and preliminary and permanent injunctive relief (a) enjoining the SBA from precluding the Hospital from participating in the PPP program based on its status as a debtor in bankruptcy, and (b) compelling the SBA to instruct all lending institutions administering PPP loans that there is no exclusion from the PPP loan program on account of an applicant's involvement in bankruptcy.

56. The Hospital is likely to succeed on the merits of its claims against the SBA.

57. The Hospital will suffer immediate and irreparable harm as a result of the unlawful debtor disqualification criteria because the PPP offers applicants guaranteed loans that are not otherwise obtainable in the private marketplace and because the funds available for loans through the PPP program are expected to be rapidly depleted by other applicants.

58. The balance of equities and the public interests weigh heavily in favor of the issuance of injunctive relief.

59. The Hospital has no adequate remedy at law.

VI
COUNT TWO
DECLARATORY JUDGMENT – ARBITRARY AND CAPRICIOUS

60. Plaintiff repeats and realleges paragraphs 1-59 of this Complaint as if fully set forth herein.

61. Courts must hold unlawful and set aside agency action that is arbitrary, capricious, or an abuse of discretion.

62. The CARES Act provides that eligible business concerns “shall be” permitted to participate in the PPP program. There is no provision in the CARES Act conditioning eligibility for a PPP loan on an applicant not being involved in a bankruptcy case.

63. The SBA’s stated rationale for prohibiting bankruptcy debtors, that it “would present an unacceptably high risk of an unauthorized use of funds or non-repayment of unforgiven loans,” is not plausible. As the SBA has itself admitted, “no creditworthiness assessment is required for PPP Loans.”¹⁵ Moreover, the pendency of a bankruptcy case provides the opportunity for greater oversight over the use of funds than that available for loans made to non-debtor participants.

64. The SBA’s implementation of the PPP in a manner that excludes debtors, including the Hospital, from participation is therefore arbitrary, capricious and an abuse of discretion in violation of the CARES Act.

65. The SBA’s violation of the CARES Act causes ongoing and irreparable harm to the Hospital.

66. The Hospital is entitled to a declaratory judgment that the SBA’s implementation of the PPP in a manner that causes debtors in bankruptcy, including the Hospital, to be ineligible is arbitrary, capricious, and an abuse of discretion.

67. The Hospital is entitled to a Temporary Restraining Order and preliminary and permanent injunctive relief (a) enjoining the SBA from precluding the Hospital from participating in the PPP program based on its status as a debtor in bankruptcy, and (b) compelling the SBA to instruct all lending institutions administering PPP loans that there is no exclusion from the PPP loan program on account of an applicant’s involvement in bankruptcy.

68. The Hospital is likely to succeed on the merits of its claims against the SBA.

¹⁵ Docket No. SBA 2020-0020; 85 FR 21747 (April 20, 2020).

69. The Hospital will suffer immediate and irreparable harm as a result of the unlawful debtor disqualification criteria because the PPP offers applicants guaranteed loans that are not otherwise obtainable in the private marketplace and because the funds available for loans through the PPP program are expected to be rapidly depleted by other applicants.

70. The balance of equities and the public interests weigh heavily in favor of the issuance of injunctive relief.

71. The Hospital has no adequate remedy at law.

VII
COUNT THREE
VIOLATION OF AUTOMATIC STAY

72. Plaintiff repeats and realleges paragraphs 1-71 of this Complaint as if fully set forth herein.

73. The Hospital seeks injunctive relief and a declaration and order that the SBA's exclusion of the Hospital from the PPP loan program based on its status as a bankruptcy debtor violates section 362(a)(3) of the Bankruptcy Code.

74. The automatic stay of section 362(a) of the Bankruptcy Code becomes effective upon the commencement of a debtor's bankruptcy case.¹⁶ Once a bankruptcy petition has been filed, section 362(a)(3) prohibits any party from taking "any act to obtain possession of property of the estate or of property from the estate ***or to exercise control over property of the estate.***"¹⁷ The emphasized portion of section 362(a)(3) was added in 1984 and was intended to broaden the scope of the automatic stay.¹⁸ Thus, in addition to affirmative acts to "obtain possession" of

¹⁶ *In re Freemyer Indus. Pressure, Inc.*, 281 B.R. 262, 266 (Bankr. N.D. Tex. 2002) (Lynn, J.). (citing, 3 COLLIER ON BANKRUPTCY ¶ 362.02 (15th ed. rev. 2002) ("The stay is effective automatically upon the filing of a bankruptcy petition....").

¹⁷ 11 U.S.C. § 362(a)(3) (emphasis added).

¹⁸ *In re Zaber*, 223 B.R. 102, 104 (Bankr. N.D. Tex. 1998) (McGuire, J.).

property of the estate, the 1984 Amendments expanded the proscription of section 362(a)(3) to encompass acts which “exercise control” over property of the estate.¹⁹

75. Section 362 of the Bankruptcy Code is specifically made applicable to the Hospital’s Chapter 9 bankruptcy case by section 901(a), although the term “property of the estate” as used in section 362 means “property of the debtor.”²⁰

76. The Hospital has a recognizable property interest based on its statutory right to participate in the PPP loan program pursuant to the express terms of the CARES Act. As observed by the Court in *In re Roman Catholic Church*, the “PPP is not a loan program. It is a grant or support program.”²¹ Two other Bankruptcy Courts have reached this same conclusion in the last week. Bankruptcy Judge Michael A. Fagone in Maine granted TRO relief to two (2) separate hospital debtors, stating that “[t]he CARES Act is a grant of aid necessitated by a public health crisis.”²² Likewise, Judge Colleen A. Brown in Vermont granted TRO relief to another hospital debtor, finding that “[t]he CARES Act constitutes a grant of economic aid in response to the pandemic.”²³ In her Opinion supporting the TRO, Judge Brown further observes:

The CARES Act is not a statute enacted to increase the availability of commercial loans. Rather the CARES Act is a grant of financial aid necessitated by a public health crisis.²⁴

¹⁹ *Id.*

²⁰ See 11 U.S.C. §§ 901(a) and 902(1).

²¹ *Roman Catholic Church of the Archdiocese of Santa Fe v. U.S. Small Business Administration; (In re Roman Catholic Church of the Archdiocese of Sante Fe)*, Case No. 18-13027, Adv. No. 20-1026 (Bankr. D.N.M.) Opinion, Adv. Docket No. 15, at p. 14 (May 1, 2020). Internal footnote omitted.

²² *Penobscot Valley Hospital v. Jovita Carranza, Administrator for the SBA (In re Penobscot Valley Hospital)*; Adv. Proceeding No. 20-1005; Bankr. Case No. 19-10034 (Bankr. D. Me. May 1, 2020, Judge M. Fagone); Temporary Restraining Order, p. 7; Adv. Docket No. 18; and *Calais Regional Hospital v. Jovita Carranza, Administrator for the SBA (In re Calais Regional Hospital)*; Adv. Proceeding No. 20-1006; Bankr. Case No. 19-10486 (Bankr. D. Me. May 1, 2020, Judge M. Fagone); Temporary Restraining Order, p. 7; Adv. Docket No. 21-2.

²³ *Springfield Hospital, Inc. v. Jovita Carranza, Administrator for the SBA (In re Springfield Hospital, Inc.)*; Adv. Proceeding No. 20-1003; Bankr. Case No. 19-10283 (Bankr. D. Vt. May 4, 2020, Judge C. Brown); Temporary Restraining Order, p. 3; Adv. Docket No. 19.

²⁴ *Id.*, Memorandum Decision; Adv. Docket No. 20, at p. 6.

77. This right to participate in the PPP, mandated by statute, is in the nature of a property interest.²⁵ Here, the Hospital's legal interest in the right to apply for funds made available under the PPP program arose at the time the CARES Act was enacted into law. That legal interest constitutes property of the Hospital which is protected by the automatic stay pursuant to section 362(a)(3). This precludes the SBA from disqualifying the Debtor from applying for PPP relief based on its status as a Chapter 9 debtor,

78. The SBA's actions, through the use of SBA-mandated application forms that are contrary to law and the April 28 supplemental rule, directly interfere with the Hospital's ability to take advantage of its right to participate in the PPP program. The SBA's actions constitute the unlawful control over property of the Hospital in violation of section 362(a)(3) and should be prohibited.

79. The SBA's violation of the automatic stay as it pertains to the Hospital's right to participate in the PPP loan program causes ongoing and irreparable harm to the Hospital.

80. The Hospital is entitled to a declaratory judgment that the SBA's implementation of the PPP in a manner that causes the Hospital to be unable to participate based on its status as a bankruptcy debtor constitutes an unlawful act to exercise control over property of the Hospital in violation of 11 U.S.C. § 362(a)(3).

81. The Hospital is entitled to a Temporary Restraining Order and preliminary and permanent injunctive relief (a) enjoining the SBA from precluding the Hospital from participating in the PPP program based on its status as a debtor in bankruptcy, and (b) compelling the SBA to instruct all lending institutions administering PPP loans that there is no exclusion from the PPP loan program on account of an applicant's involvement in bankruptcy.

82. The Hospital is likely to succeed on the merits of its claims against the SBA.

²⁵ See, e.g., *Burgess v. Sikes (In re Burgess)*, 438 F.3d 493, 507 (5th Cir. 2006) (debtor's legal interest in crop-disaster relief payment arose at time federal legislation authorizing payment was enacted).

83. The Hospital will suffer immediate and irreparable harm as a result of the unlawful debtor disqualification criteria because the PPP offers applicants guaranteed loans that are not otherwise obtainable in the private marketplace and because the funds available for loans through the PPP program are expected to be rapidly depleted by other applicants.

84. The balance of equities and the public interests weigh heavily in favor of the issuance of injunctive relief.

85. The Hospital has no adequate remedy at law.

VIII
COUNT FOUR
MANDAMUS UNDER 28 U.S.C. § 1361

86. Plaintiff repeats and realleges paragraphs 1-85 of this Complaint as if fully set forth herein.

87. The SBA has the non-discretionary duty to comply with the CARES Act and the provisions of the PPP to apply criteria to the PPP that are substantively and/or procedurally valid and to avoid imposing criteria to the PPP that are substantively and/or procedurally *ultra vires*.

88. The SBA has acted beyond its statutory authority in implementing the PPP by excluding bankruptcy debtors from eligibility.

89. The Hospital is entitled to a writ of mandamus under 28 U.S.C. § 1361 compelling the SBA (a) to remove from all PPP applications its disqualifications of bankruptcy debtors as viable applicants and (b) to instruct all lending institutions administering PPP loans that there is no exclusion from the PPP loan program on account of an applicant's involvement in bankruptcy.

IX
NO BOND IS REQUIRED

90. Due to the nature of this request, no bond is required for the enforcement of an injunction, and under these circumstances, no bond should be required for the temporary emergency relief sought by way of Bankruptcy Rule 7065.²⁶

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for entry of a Temporary Restraining Order (a) enjoining the SBA from precluding the Hospital from participating in the PPP program based on its status as a debtor in bankruptcy, and (b) compelling the SBA to instruct all lending institutions administering PPP loans that there is no exclusion from the PPP loan program on account of an applicant's involvement in bankruptcy; and for judgment as follows:

A. For a declaratory judgement that Defendants' implementation of the PPP in a manner that causes debtors in bankruptcy, including the Hospital, to be ineligible is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,, in violation of the CARES Act, and preliminary and permanent injunctive relief enjoining Defendants from denying Plaintiff a loan under the PPP based on Plaintiff's status as a bankruptcy debtor;

B. For declaratory judgment that Defendants' implementation of the PPP in a manner that causes debtors in bankruptcy, including the Hospital, to be ineligible is arbitrary, capricious, and an abuse of discretion in violation of the CARES Act, and preliminary and permanent injunctive relief enjoining Defendants from denying Plaintiff a loan under the PPP based on Plaintiff's status as a bankruptcy debtor;

C. For a declaratory judgment that Defendants' implementation of the PPP in a manner that causes debtors in bankruptcy, including the Hospital, to be ineligible is an unlawful exercise of control over property of the Hospital in violation of section 362(a)(3) of the Bankruptcy Code; and preliminary

²⁶ See, e.g. *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618 (5th Cir 1985); 7, Moore's Federal Practice ¶65.04[1] at 65-38.

and permanent injunctive relief enjoining Defendants from interfering with the Hospital's right to participate in the PPP program based on the Hospital's status as a bankruptcy debtor;

D. For entry of a writ of mandamus under 28 U.S.C. § 1361 compelling the SBA (a) to remove from all PPP applications its disqualifications of bankruptcy debtors as viable applicants and (b) to instruct all lending institutions administering PPP loans that there is no exclusion from the PPP loan program on account of an applicant's involvement in bankruptcy; and

E. Granting all other relief as may be just and proper.

Dated: May 7, 2020.

Respectfully submitted,

/s/ J. Robert Forshey

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-and-

/s/ David Spiller

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ATTORNEYS FOR THE DEBTOR

VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that the facts stated in paragraphs 10, 16-18, 20-24, 26-27, and 42-43 of the foregoing Complaint are true and correct,

Executed on May 7, 2020.



Frank L. Beaman
Chief Executive Officer

L:\BFORSHEY\Jack County Hospital District #6046 (Ch 9)\# TRO Adversary\Complaint 5.7.20.docx

Exhibit A



**Paycheck Protection Program
Borrower Application Form**

OMB Control No.: 3245-0407
Expiration Date: 09/30/2020

Check One: <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Independent contractor <input type="checkbox"/> Eligible self-employed individual <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(19) veterans organization <input type="checkbox"/> Tribal business (sec. 31(b)(2)(C) of Small Business Act) <input type="checkbox"/> Other	DBA or Tradename if Applicable _____
Business Legal Name _____	
Business Address _____	
Business TIN (EIN, SSN) _____	Business Phone () - _____
Primary Contact _____	Email Address _____

Average Monthly Payroll:	\$	x 2.5 + EIDL, Net of Advance (if Applicable) Equals Loan Request:	\$	Number of Employees:	
Purpose of the loan (select more than one): <input type="checkbox"/> Payroll <input type="checkbox"/> Lease / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain): _____					

Applicant Ownership

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

If questions (1) or (2) below are answered "Yes," the loan will not be approved.

Question	Yes	No
1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

If questions (5) or (6) are answered "Yes," the loan will not be approved.

Question	Yes	No
5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole? Initial here to confirm your response to question 5 → _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)? Initial here to confirm your response to question 6 → _____	<input type="checkbox"/>	<input type="checkbox"/>
7. Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the Applicant a franchise that is listed in the SBA's Franchise Directory?	<input type="checkbox"/>	<input type="checkbox"/>



**Paycheck Protection Program
Borrower Application Form**

By Signing Below, You Make the Following Representations, Authorizations, and Certifications

CERTIFICATIONS AND AUTHORIZATIONS

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

CERTIFICATIONS

The authorized representative of the Applicant must certify in good faith to all of the below by **initialing** next to each one:

_____ The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.

_____ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

_____ The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

_____ The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

_____ I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.

_____ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.

_____ I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

_____ I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Signature of Authorized Representative of Applicant

Date

Print Name

Title



**Paycheck Protection Program
Borrower Application Form**

Purpose of this form:

This form is to be completed by the authorized representative of the Applicant and *submitted to your SBA Participating Lender*. Submission of the requested information is required to make a determination regarding eligibility for financial assistance. Failure to submit the information would affect that determination.

Instructions for completing this form:

With respect to “purpose of the loan,” payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.

For purposes of calculating “Average Monthly Payroll,” most Applicants will use the average monthly payroll for 2019, excluding costs over \$100,000 on an annualized basis for each employee. For seasonal businesses, the Applicant may elect to instead use average monthly payroll for the time period between February 15, 2019 and June 30, 2019, excluding costs over \$100,000 on an annualized basis for each employee. For new businesses, average monthly payroll may be calculated using the time period from January 1, 2020 to February 29, 2020, excluding costs over \$100,000 on an annualized basis for each employee.

If Applicant is refinancing an Economic Injury Disaster Loan (EIDL): Add the outstanding amount of an EIDL made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan, to Loan Request as indicated on the form.

All parties listed below are considered owners of the Applicant as defined in 13 CFR § 120.10, as well as “principals”:

- For a sole proprietorship, the sole proprietor;
- For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm;
- For a corporation, all owners of 20% or more of the corporation;
- For limited liability companies, all members owning 20% or more of the company; and
- Any Trustor (if the Applicant is owned by a trust).

Paperwork Reduction Act – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 8 minutes. Comments about this time or the information requested should be sent to : Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416., and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503.

Privacy Act (5 U.S.C. 552a) – Under the provisions of the Privacy Act, you are not required to provide your social security number. Failure to provide your social security number may not affect any right, benefit or privilege to which you are entitled. (But see Debt Collection Notice regarding taxpayer identification number below.) Disclosures of name and other personal identifiers are required to provide SBA with sufficient information to make a character determination. When evaluating character, SBA considers the person’s integrity, candor, and disposition toward criminal actions. Additionally, SBA is specifically authorized to verify your criminal history, or lack thereof, pursuant to section 7(a)(1)(B), 15 USC Section 636(a)(1)(B) of the Small Business Act (the Act).

Disclosure of Information – Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act. The Privacy Act authorizes SBA to make certain “routine uses” of information protected by that Act. One such routine use is the disclosure of information maintained in SBA’s system of records when this information indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature. Specifically, SBA may refer the information to the appropriate agency, whether Federal, State, local or foreign, charged with responsibility for, or otherwise involved in investigation, prosecution, enforcement or prevention of such violations. Another routine use is disclosure to other Federal agencies conducting background checks but only to the extent the information is relevant to the requesting agencies’ function. See, 74 F.R. 14890 (2009), and as amended from time to time for additional background and other routine uses. In addition, the CARES Act, requires SBA to register every loan made under the Paycheck Protection Act using the Taxpayer Identification Number (TIN) assigned to the borrower.

Debt Collection Act of 1982, Deficit Reduction Act of 1984 (31 U.S.C. 3701 et seq. and other titles) – SBA must obtain your taxpayer identification number when you apply for a loan. If you receive a loan, and do not make payments as they come due, SBA may: (1) report the status of your loan(s) to credit bureaus, (2) hire a collection agency to collect your loan, (3) offset your income tax refund or other amounts due to you from the Federal Government, (4) suspend or debar you or your company from doing business with the Federal Government, (5) refer your loan to the Department of Justice, or (6) foreclose on collateral or take other action permitted in the loan instruments.

Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) – The Right to Financial Privacy Act of 1978, grants SBA access rights to financial records held by financial institutions that are or have been doing business with you or your business including any financial



Paycheck Protection Program Borrower Application Form

institutions participating in a loan or loan guaranty. SBA is only required provide a certificate of its compliance with the Act to a financial institution in connection with its first request for access to your financial records. SBA's access rights continue for the term of any approved loan guaranty agreement. SBA is also authorized to transfer to another Government authority any financial records concerning an approved loan or loan guarantee, as necessary to process, service or foreclose on a loan guaranty or collect on a defaulted loan guaranty.

Freedom of Information Act (5 U.S.C. 552) – Subject to certain exceptions, SBA must supply information reflected in agency files and records to a person requesting it. Information about approved loans that will be automatically released includes, among other things, statistics on our loan programs (individual borrowers are not identified in the statistics) and other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity. Proprietary data on a borrower would not routinely be made available to third parties. All requests under this Act are to be addressed to the nearest SBA office and be identified as a Freedom of Information request.

Occupational Safety and Health Act (15 U.S.C. 651 et seq.) – The Occupational Safety and Health Administration (OSHA) can require businesses to modify facilities and procedures to protect employees. Businesses that do not comply may be fined, forced to cease operations, or prevented from starting operations. Signing this form is certification that the applicant, to the best of its knowledge, is in compliance with the applicable OSHA requirements, and will remain in compliance during the life of the loan.

Civil Rights (13 C.F.R. 112, 113, 117) – All businesses receiving SBA financial assistance must agree not to discriminate in any business practice, including employment practices and services to the public on the basis of categories cited in 13 C.F.R., Parts 112, 113, and 117 of SBA Regulations. All borrowers must display the "Equal Employment Opportunity Poster" prescribed by SBA.

Equal Credit Opportunity Act (15 U.S.C. 1691) – Creditors are prohibited from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

Debarment and Suspension Executive Order 12549; (2 CFR Part 180 and Part 2700) – By submitting this loan application, you certify that neither the Applicant or any owner of the Applicant have within the past three years been: (a) debarred, suspended, declared ineligible or voluntarily excluded from participation in a transaction by any Federal Agency; (b) formally proposed for debarment, with a final determination still pending; (c) indicted, convicted, or had a civil judgment rendered against you for any of the offenses listed in the regulations or (d) delinquent on any amounts owed to the U.S. Government or its instrumentalities as of the date of execution of this certification.