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21 UNITED STATES DISTRICT COURT  
22 EASTERN DISTRICT OF WASHINGTON  
23

24 UNITED STATES SMALL  
25 BUSINESS ADMINISTRATION  
26 and JOVITA CARRANZA, in her  
27 capacity as Administrator for the  
28 United States Small Business  
Administration,

Appellants/Cross-Appellees,

v.

ASTRIA HEALTH, et al.,

Appellees/Cross-Appellants.

Case No. 1:20-cv-03089-RMP

NOTICE OF SUPPLEMENTAL  
AUTHORITY



1 The United States, on behalf of the Small Business Administration (“SBA”) and  
2 Jovita Carranza in her capacity as Administrator for the SBA, respectfully submits this  
3 Notice of Supplemental Authority, to notify this Court of the Eleventh Circuit’s recent  
4 opinion in *USF Federal Credit Union v. Gateway Radiology Consultants, P.A. (In re*  
5 *Gateway Radiology Consultants, P.A.)*, --- F.3d ---, No. 20-13462, 2020 WL 7579338  
6 (11th Cir. Dec. 22, 2020). The Eleventh Circuit is the first federal appellate court to  
7 decide the merits of the SBA’s rule excluding debtors in bankruptcy from Paycheck  
8 Protection Program (PPP) loan guarantees.  
9

11 There, the debtor, Gateway, had filed an adversarial proceeding against the  
12 SBA, seeking declaratory and injunctive relief based, in part, on the same arbitrary-or-  
13 capricious claim at issue in this appeal. *In re Gateway Radiology Consultants*, 2020  
14 WL 7579338, at \*5. The bankruptcy court in *Gateway* had concluded that the SBA’s  
15 bankruptcy exclusion was unlawful under the APA and enjoined the SBA. *Id.* On  
16 appeal, the Eleventh Circuit vacated the bankruptcy court’s preliminary injunction,  
17 holding that the SBA’s bankruptcy exclusion was reasonable and fully compliant with  
18 APA requirements. *Id.* at \*8–16. In doing so, the Eleventh Circuit made several legal  
19 conclusions that directly contradict the Bankruptcy Court’s order on appeal here.  
20  
21

23 First, the Eleventh Circuit held that the SBA’s bankruptcy exclusion was not  
24 arbitrary or capricious. *Id.* at \*15–16. Acknowledging the “far more limited  
25 administrative record than we might otherwise have had” because “Congress did away  
26 with the notice and comment period by ordering the SBA to issue regulations in . . .  
27  
28

1 barely more than two weeks,” the court relied upon the “SBA’s contemporaneous  
2 explanation” for the bankruptcy exclusion set forth in its interim final rules. *Id.* at \*15.  
3 Based upon the interim final rules, the court concluded “that [the SBA] fashioned its  
4 consideration of bankruptcy status into a streamlined and bright-line rule that would  
5 speed up decisions about whether PPP loans should be made [to debtors in  
6 bankruptcy]” and was “not implausible, irrational, or the product of arbitrary and  
7 capricious decision making.” *Id.* at \*16. In so holding, the Eleventh Circuit refused to  
8 “substitute [its] view for the SBA’s judgment” and disagreed with the bankruptcy  
9 court’s conclusion that the SBA acted arbitrarily or capriciously by failing to consider  
10 the Chapter 11 bankruptcy process. *Id.* As the Eleventh Circuit explained,  
11 “[b]ankruptcy debtors are financially distressed and have competing creditors, which  
12 it is not implausible to believe will increase the risk of unauthorized use of funds and  
13 non-repayment”. *Id.*

14 Second, the Eleventh Circuit held that the APA claims were non-core  
15 proceedings for which “bankruptcy courts generally cannot enter a final order.” *Id.* at  
16 \*6–8.

17 Third, the Eleventh Circuit recognized that injunction against the SBA “may be  
18 barred by sovereign immunity” pursuant to 15 U.S.C. § 634(b)(1), but did not reach  
19 the issue because it held for the SBA on the merits. *Id.* at \*8 n.7.

20 And fourth, despite not having an 11 U.S.C. § 525(a) claim before it, the  
21 Eleventh Circuit addressed Gateway’s assertion that the “PPP functions more like a  
22 U.S. NOTICE OF SUPPLEMENTAL AUTHORITY- 3

1 grant than a loan because PPP loans are designed to be forgiven.” *Id.* at \*13. The court  
2 rejected that argument, concluding that “[l]imiting loan forgiveness, putting the PPP  
3 into [the SBA’s Section] 7(a) [loan program], and maintaining § 7(a)’s sound value  
4 requirement, all show some concern about loan repayment.” *Id.*

5  
6 January 1, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 1, 2021, I electronically filed the NOTICE OF SUPPLEMENTAL AUTHORITY with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Kevin P. VanLandingham  
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