

SEC REPORTEDLY INVESTIGATING PUBLIC DISCLOSURES BY PPP LOAN RECIPIENTS

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We understand that several issuers and regulated entities that publicly disclosed their receipt of funds from the SBA's Paycheck Protection Program (PPP), established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, have received requests for information from the SEC's Division of Enforcement. In general, the requested information appears to concern the recipients' eligibility and need for PPP funds, the financial impact on recipients of the pandemic and government response, and recipients' assessment of their viability and access to funding.

This SEC outreach is rumored to be part of a sweep styled In the Matter of Certain Paycheck Protection Program Loan Recipients. The SEC is reportedly investigating whether certain recipients' excessively positive or insufficiently negative statements in recent 10-Qs may have been inconsistent with certifications made in PPP applications regarding the necessity of funding. These information requests are voluntary at this time, and it appears that not all PPP loan recipients are receiving document requests. There may be a correlation between large funding amounts and SEC scrutiny, both in terms of attracting interest and avoiding the impact of the SBA's announced safe harbor for loans less than \$2 million (though the safe harbor does not explicitly affect the SEC). Recent news reports indicate that the Department of Justice Fraud Section also is investigating possible misconduct by PPP loan applicants. Initial DOJ actions have focused on potential overstatement of payroll costs and/or employee headcount, as well as misuse of PPP proceeds. While existing allegations appear focused on extreme behavior, as further investigations surface, we expect to less egregious PPP borrowers may be caught in a dragnet.

In light of this scrutiny, public entities that received PPP funds should compare statements in their recent SEC filings concerning financial performance and liquidity with statements in their PPP applications regarding eligibility and need for the funds. Members of our Investigations, Financial Regulatory, and White Collar team are available to consult with any entities that have questions or have been contacted by a law enforcement agency.

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