

Insights

US: RECENT CRIMINAL CHARGES FOR FRAUD RELATED TO PPP

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The U.S. federal government is serious about its warning of stepped up scrutiny of borrowers seeking loans from the SBA's Paycheck Protection Program ("PPP"), established as part of the Coronavirus Aid, Relief, and Economic Security Act ("the CARES Act"). Within a span of nine days, the U.S. Department of Justice ("DOJ") announced federal charges in four separate cases against defendants accused of committing fraud related to PPP loans. On May 4, 2020, the government filed charges in the District of Rhode Island against two businessmen in separate cases for allegedly filing fraudulent loan applications seeking more than a half-million dollars in forgivable PPP funds. According to the DOJ, the two men conspired to apply for funds, claiming to have dozens of employees at different businesses when, in fact, there were no employees at any of the businesses, and the businesses were not functioning prior to the start of the COVID-19 pandemic.

On May 12, DOJ filed criminal charges in the Eastern District of Texas against an Engineer who allegedly applied for PPP loans in excess of \$10 million from two separate banks for businesses that did not have any employees. The next day, on May 13, the DOJ announced bank fraud charges filed in the Northern District of Georgia against a reality TV personality in connection with a PPP loan that he obtained for his trucking company to pay employees or make other payments specifically allowed under the PPP Rule, but instead used more than \$1.5 million of the loan proceeds to purchase expensive jewelry, other personal items, and to pay child support.

The allegations in the foregoing cases, if proven to be true, are examples of egregious conduct that rises to the level of criminal fraud. These cases can be contrasted with the more innocent situations in which applicants are trying to comply with the arguably vague and ambiguous requirements of the CARES Act. Nevertheless, recently reported activity by the federal government and its regulators may understandably cause businesses to be concerned that the government is interested in more than just the clear instances of alleged fraud exemplified by these four criminal cases. In recent days, the SEC has reached out to regulated entities that have received PPP funds, seeking information related to the entities' eligibility and need for the funds. Moreover, the DOJ is reported to have sent subpoenas to big banks as part of what may appear to be a broad and wide-ranging investigation into potential abuse of the PPP.

These aggressive approaches by the federal government serve as a reminder to businesses and to financial institutions of the importance of robust and comprehensive compliance procedures that adhere to the PPP program requirements. When seeking forgivable loan funds under the CARES Act, it is important that borrowers document well the basis for their good faith belief in their eligibility for the funds and document well their use of the funds to show compliance with the program. Although strong compliance procedures will not necessarily insulate an entity from government scrutiny, such procedures go a long way toward proving that the entity is acting within the law in connection with its participation in the PPP. Those businesses and financial institutions that receive formal or informal requests from the DOJ or the SEC may want to consider consulting with legal counsel regarding any questions they have about how to respond to such requests.

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