

New Jersey Business & Industry Association Presents

What All Business Owners Who Received Pandemic Relief Funds Need To Know About the Government's Crackdown on PPP Loan Fraud

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Thank you to Our Partner!



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New Jersey Business & Industry Association Webinar

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Paycheck Protection Program – What Is It?

- A Small Business Administration (SBA)-backed loan that helps businesses keep their workforce employed during the COVID-19 crisis
- The PPP provides small businesses with funds to pay up to 8 weeks of payroll costs including benefits
- Funds can also be used to pay interest on mortgages, rent, and utilities

What Are the Eligibility Requirements for Funding?

- There were several waves of PPP loan funding
- Additional PPP eligibility requirements varied by entity type
- Generally eligible: Small businesses with 500 or fewer employees—including nonprofits, veteran’s organizations, tribal concerns, self-employed individuals, sole proprietorships, and independent contractors
- Businesses with more than 500 employees are eligible in certain industries

What Are Permissible Uses of the Funds

- Certifications made in connection with obtaining or seeking forgiveness of the loans may include the following representations:
 - Proceeds will only be used for business-related purposes;
 - The borrowers' economic uncertainty makes the loan necessary;
 - The funds will be used to retain and pay workers or make tenancy (mortgage, lease, or utility) payments;
 - The loan actually paid for eligible costs and included payroll costs equal of at least 60% of the amount sought to be forgiven; and;
 - The forgiveness reflects any reductions in work force.

“Loan Necessity” – What Is It Anyway?

- Forms that must be filled out by both for profit and nonprofit borrowers
- The forms were used to collect additional information that would be used by SBA loan reviewers to evaluate the good-faith certification of borrowers who received PPP loans totaling \$2 million or greater
- The borrower must demonstrate and certify that economic uncertainty made the loan request necessary
- Discontinued in July 2021

Why Is the Government Investigating PPP Loans?

- Nearly \$84 billion in COVID-19 pandemic-related loans might be fraudulent
- What happened:
 - During the initial implementation, businesses and banks attempted to adapt to the new, imprecise guidelines, all the while trying to determine a borrower's eligibility for the applicable program – difficult to forecast eligibility
 - The result was a rush to ensure borrowers secured loan funds without considering the risk of fraud
 - The Treasury website itself even stated, “We encourage you to apply as quickly as you can because there is a funding cap”

Triggers for Prosecutions

- Applications for Loans vs. Applications for Loan Forgiveness
 - Certifications made in connection with obtaining or seeking forgiveness of the loans is what will provide the most exposure to the borrowers
 - It remains unclear whether the informal guidance issued by the SBA were, or are, even permissible to rely upon as law and compliance guideposts (as a defense theory)
 - Therefore, many businesses that acted in good faith may still be subject to government investigations

Fraud Prosecutions

- How is Fraud Defined?
- Federal Agencies Involved:
 - SBA's OIG
 - DOJ
 - USAO
- These federal agencies may act through investigative agencies such as:
 - FBI
 - Secret Service
 - IRS
 - US Postal Service

Fraud Prosecutions

- What is the Role of the DOJ?
 - Process
 - COVID-19 Fraud Enforcement Task Force
 - Administrative and Criminal Penalties
- Federal investigations may result in the issuance of grand jury subpoenas for records or testimony to borrowers and lenders alike

What Can Go Wrong?

- Eligibility
 - Federal government may investigate whether the borrower properly spent the PPP funds borrowed, as well as whether the borrower was even eligible for the PPP loan in the first place
- Maximum Eligible Amounts

What Can Go Wrong?

- Impermissible Uses of the Funds
 - Vacations, luxury cars, jewelry, or personal expenses
 - Impermissible business expenses
- False statements on applications
- Exaggeration of payroll costs or poor market/ performance conditions to render the borrower eligible for a loan it would not otherwise have been eligible for

Prosecutions to Date

- Recent Cases
- Personal Experiences

Practical Advice

- Be proactive – self-audit for compliance
- What to do when the DOJ comes knocking
 - Contact an attorney and implement a plan
 - If you receive a subpoena or request for information, you can reduce your risk by immediately contacting counsel and actively implementing a plan on how to respond

Thank You

Questions?

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