



LAW ALERT

July 10, 2020

By: Alexander G. Bateman Jr., Esq.
David F. Durso, Esq.

RMF
RUSKIN MOSCOU FALTISCHEK P.C.
Smart Counsel. Straight Talk.

Federal Bureau of Investigation Announces Paycheck Protection Program Enforcement

The Federal Bureau of Investigation (“FBI”) has begun enforcement actions and investigations into fraudulent Paycheck Protection Program (“PPP”) loans. In a statement before the Senate Judiciary Committee, Assistant Director, Criminal Investigative Division Calvin A. Shivers stated that the FBI formed a PPP Fraud Working Group in coordination with the Justice Department’s Fraud Section and the Small Business Administration Office of Inspector General. The FBI has initiated almost 100 investigations since the inception of the PPP and has identified over \$42 million in potential fraud. As we discussed in our previous alert, we expect to see a drastic increase in the number of investigations and prosecutions over the next few months, as more cases of fraud come to light.

In one of the more prominent recent prosecutions related to PPP fraud, reality star Maurice Fayne has been charged with bank fraud related to a PPP loan. Fayne signed and submitted a PPP loan application indicating that his business had 107 employees and an average monthly payroll of nearly \$1.5 million. As required on all PPP loan applications, Fayne certified that the business would use loan proceeds to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments. The business ultimately received a PPP loan of over \$2 million. Shortly thereafter, Fayne used almost \$1.5 million of the PPP loan for personal purchases, including jewelry, a Rolex watch, and used some of the money to pay child support, none of which were authorized uses of PPP funds.

In another prosecution, this one by the U.S. Attorney’s Office for the Southern District of New York, a Chinese national has been arrested for a \$20 million scheme to fraudulently obtain loans authorized by the CARES Act. The defendant filed loan applications for a PPP loan and for the Economic Injury Disaster Loan Program. As part of these applications, the defendant represented that his companies had hundreds of employees and millions of dollars in payroll. In truth, the defendant was the only employee of his companies. In total, the defendant received more than \$1.4 million dollars in loans. He has been charged with major fraud against the United States, bank fraud, wire fraud, making false statements to a bank, making false statements, and making false statements to the SBA.

These two cases illustrate the current status of PPP investigations and prosecutions. Both cases are “low-hanging fruit” for the government. The defendants fraudulently submitted PPP applications and received loans they were not entitled to have received. Fraudulent schemes that are more sophisticated will naturally take more time to uncover. The government will surely receive assistance in uncovering these schemes from whistleblowers. As we previously discussed [here](#), PPP loans are ripe for whistleblower actions under the False Claims Act.

Attorney Advertising



Banks should also be on notice that PPP investigations and prosecutions have begun. Reuters reported that the Department of Justice sent grand jury subpoenas to banks as part of its investigation into fraudulent PPP loans. While grand jury subpoenas do not indicate that the banks are the targets of an investigation, banks must take these subpoenas seriously. The grand jury subpoenas likely require the banks to produce documents related to PPP loan applications, which will take substantial resources to produce. Another concern is whether, when the government reviews these applications, they will see something the bank did not do, but should have, thus exposing the bank to liability.

As discussed above, the investigations and prosecutions that we have seen thus far have been the “low-hanging fruit.” That said, we expect to see an increase in the number of investigations and prosecutions related to PPP loans and other CARES Act programs. If you are contacted by the government or if you receive a grand jury subpoena in connection with an investigation into PPP loans or other CARES Act programs, it is imperative that you retain competent counsel to advocate for you and guide you through the process.

If you have any questions, please contact

Alexander G. Bateman Jr., Esq.

516-663-6589

abateman@rmfpc.com

-or-

David F. Durso, Esq.

(516) 663-6667

ddurso@rmfpc.com