

Business borrowers beware: Potential civil and criminal exposure for PPP loans



Jennifer Dowdell Armstrong | Monday, October 5, 2020

As of September 2020, the Justice Department has criminally charged 57 people throughout the United States with Paycheck Protection Program (PPP) fraud. As part of the CARES Act passed on March 27, 2020, the government made hundreds of billions of dollars in forgivable loans available through the PPP. These PPP loans were made available for businesses to fund employee payroll with the goal of avoiding catastrophic job losses during a time of national crisis.

The [Washington Post](#) reports that those charged criminally with PPP fraud include:

- Individuals who allegedly received money on behalf of fake companies
- Legitimate business owners accused of spending the funds on items for themselves rather than paying employees
- People who allegedly knew they weren't eligible but applied anyway
- Businesses that allegedly double-dipped in a program meant to provide one loan per business

Acting Assistant Attorney General Brian Rabbitt [says](#) that “the PPP represented critical help at a critical time” but that “experience has taught us that any time the federal government makes a large amount of money available to the public at an expedited basis, the opportunities for fraud are clear.”

As a result, Rabbitt reported that the DOJ Criminal Division almost immediately set up a team dedicated to PPP fraud. That team brought forth cases within months of the PPP being announced, while loans were

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still being made.

In addition to potential criminal charges, increased scrutiny of PPP loans will likely lead to future government civil enforcement action and private litigation under the False Claims Act (FCA). The FCA creates liability for any person who submits false claims for government funds, which includes certificates of compliance. The FCA allows both the federal government and individuals (whistleblowers) the right to fight fraud committed against the government. Whistleblowers can file an FCA complaint on the government's behalf (known as a *qui tam* action), and the complaint remains under seal pending a prolonged government investigation process, which typically includes intense and expensive discovery and presentations to the Justice Department. Whistleblowers receive a share of any financial judgment or settlement recovered by the government. Significantly, many whistleblowers are current and former employees, and an increase in whistleblower action is likely, given the unprecedented layoffs and furloughs arising from COVID-19.

Bearing the significant criminal and civil exposure businesses face in unwittingly running afoul of the PPP, key actions companies should be taking to avoid potential liability as a result of receiving PPP funds include:

- Ensure that you understand government regulations detailing what you are required to do and when.
- Monitor announcements by the government to ensure you remain informed of modifications or guidance for your industry, which may change as the crisis continues to unfold.
- Continue to invest in robust corporate compliance programs and augment these programs to address regulatory requirements imposed by the CARES Act, including implementing effective procedures and controls around any required certifications.
- Document compliance with CARES Act funding program requirements, including certifications made to receive the funds, as well as records and documentation substantiating the reimbursement of costs paid by the CARES Act funds.
- Pay close attention to any allegations or issues raised as part of employee exit interviews and ensure that you have effective reporting systems in place to both discover potential compliance issues and take them seriously.

If you have any questions about your business's use or documentation of CARES Act funds, don't hesitate to contact the McDonald Hopkins attorney listed below.



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Team member bio