

Paycheck Protection Program Update: SBA Forgiveness Applications Expected Soon, DOJ Investigations into Fraud, and SBA Procedural Notices

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SBA to Begin Processing PPP Forgiveness Applications

Since the portal opened in August, nearly 96,000 PPP loan forgiveness applications have been submitted to the Small Business Administration (SBA). Although the SBA has yet to act on nearly all of those applications, the US Treasury Department (Treasury) has indicated that will soon change. We previously discussed the rules for forgiveness here (May 13), here (June 4), and here (August 3).

Recently, a spokesperson for the Treasury stated that SBA would soon begin processing PPP forgiveness applications, and that Treasury anticipates that forgiveness decisions and payments will flow in the coming days.

This development follows of multiple complaints made by borrowers and lenders alike regarding the onerous process of applying for forgiveness and the SBA's failure to approve or respond to any of the forgiveness applications it has received.

To date, the SBA has only received forgiveness applications for approximately 2 percent of the nearly 5.2 million PPP loans approved.

If you or your business have an outstanding PPP loan and would like more information on the PPP forgiveness process or have concerns about your forgiveness application, please contact Bailey Glasser directly here.

Department of Justice Cracks Down on PPP Fraud

The goal of the PPP loans was to quickly put money into the hands of small business owners who faced shuttering their businesses unless they received a much-needed injection of cash. However, the ease of applying for and obtaining PPP loans led some to significantly abuse the program. Federal prosecutors have taken notice and are ramping up investigations against those individuals who they say fraudulently exploited the PPP to their advantage.

The Government Accountability Office (GAO) warned early on that the PPP could be particularly vulnerable to fraud because the SBA allowed banks to rely on borrowers' self-certifications to determine eligibility. As a result of that early warning, the House Select Subcommittee on the Coronavirus Crisis launched an investigation with respect to the disbursement of PPP funds in June 2020 and requested PPP data from the SBA and Treasury.

In early September 2020, the House Select Subcommittee released its preliminary analysis of that data and reported that it had potentially found more than \$1 billion wasted due to fraud and/or abuse of the program's loans. Additionally, early warnings expressed by the GAO have been confirmed by investigations conducted by the Department of Justice (DOJ).

As of October 1, 2020, DOJ had charged 57 people with trying to obtain more than \$175 million of aid meant for small businesses from the PPP. Most of the fraudulent schemes uncovered by DOJ involve individuals or small groups allegedly lying about having legitimate small businesses or allegedly submitting falsified documents to obtain PPP funds, and then using that money instead to make personal home renovations, take extravagant vacations, or in some instances purchase exotic automobiles and luxury boats.

Officials for DOJ say that the 57 people charged are just the beginning, and that they are eyeing many other potential defrauders. DOJ has stated that it believes they have identified at least 500 additional individuals who have fraudulently bilked the PPP of funds design to assist small businesses due to the COVID-19 pandemic.

As of the date hereof, the investigation by DOJ into fraudulent use of the PPP is continuing with the help of banking regulators, the FBI, the Internal Revenue Service, SBA, Treasury Department, and other agencies, and that in the words of Assistant Attorney General Brian Rabbit, DOJ is "not done here, yet."

SBA Audits of PPP Loans Likely to Increase

The SBA and Treasury Department initially indicated that audits for loans under \$2 million would be limited to spot-checks and that the SBA would instead assume that borrowers' certifications of necessity for those loans were made in good faith. However, the SBA and Treasury Department clarified that position in an Interim Final Rule published on June 1, 2020, stating that loans of any size may be subject to discretionary review resulting in a full audit.

The SBA's and Treasury Department's audit position was further put under the spotlight when the House Select Subcommittee on the Coronavirus Crisis expressed its concern with the audit scheme proposed by the SBA and Treasury and determined that it was "plainly insufficient."

Given the growing number of cases of fraud related to the PPP and Attorney General William Barr's early directive to all US Attorneys' Offices to prioritize investigating and prosecuting PPP loan fraud, we expect the number of audits by the SBA of loans smaller than \$2 million to increase.

If you or your business have any concerns regarding your PPP loan application or would like more information regarding the SBA audit process, please contact Bailey Glasser directly here.

SBA Procedural Notice for Selling Businesses with PPP Loans The SBA has recently announced new guidance regarding the implications and required approvals for businesses who received PPP loans and undergo a change in ownership. We previously discussed the guidance here (October 9). The Notice defines change in ownership to be:

- Transfer of at least 20% of the common stock or other ownership interest of a PPP borrower
- Transfer of at least 50% of the PPP borrower's assets or
- Merger of the PPP borrower with or into another entity

While the SBA Notice reinforces the PPP borrower's responsibility to comply with all rules and regulations regarding the program, the Notice states that there are no limitations on change of ownership if the loan has been repaid in full or if the business has completed the loan forgiveness process and the loan has been satisfied. If the loan has not been satisfied, SBA pre-approval is generally not required if the change of ownership is due to a sale or transfer of stock of less than 50%, or asset sale totaling 50% or more of the assets. In all other cases, the business needs to seek approval from the SBA before a change in ownership occurs. If you or your business have any concerns regarding your PPP loan application or would like more information regarding the SBA procedural notice for change of ownership, please contact Bailey Glasser directly here.

PAYCHECK PROTECTION PROGRAM UPDATE: SBA FORGIVENESS APPLICATIONS EXPECTED SOON, DOJ INVESTIGATIONS INTO FRAUD, AND SBA PROCEDURAL NOTICES

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