

PPP Loan Recipients: It Is Critical to Ensure Your Publicly-Available Data Is Accurate and That You Are Prepared to Respond to Government Investigations

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In the past few weeks the Small Business Administration (SBA) and Department of the Treasury have released detailed loan-level Paycheck Protection Program (PPP) data to the public. The data is available through Treasury's website. The published information includes loan amounts, borrower names, addresses, jobs supported, industry codes and related information regarding PPP borrowers.

Not surprisingly, the published data contains errors that have been identified by media outlets and borrowers. Given the scrutiny that this information has and will continue to receive it is advisable to check your information for any potential errors and begin the process of correcting the record. The areas of particular attention should be the loan amount, employer size, and NAICS industry code assigned as these will implicate loan forgiveness. Left incorrect these errors may result in reputational damage or cause unnecessary financial risk.

The SBA's previous guidance, "Paycheck Protection (PPP) Loan Data-Key Aspects," and accompanying press release, make clear that it will automatically review all loans with a loan value over \$2 million. Thus, if you took a PPP loan below the \$2 million threshold, but your loan is identified as one exceeding \$2 million it may draw unnecessary scrutiny. Likewise, employer size and certain NAICS are treated differently for purposes of loan forgiveness so this data should be confirmed as well.

In addition to managing forgiveness and publicity in the short term, it may also be necessary to ensure accuracy in preparation for the broader scope of government investigations that are ramping up. For example, the SBA and its inspector general are in the process of reviewing PPP loan eligibility and necessity certifications.

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The US Securities and Exchange Commission (SEC) and the US House Select Subcommittee on the Coronavirus Crisis have also sent letters and document requests to PPP loan recipients in response to publicly-available documents and SEC filings seeking to verify compliance with eligibility and spending requirements under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Moreover, the Department of Justice Criminal Division, Fraud Section, in collaboration with the SBA and IRS, has begun prosecuting loan recipients.

If you have concerns about the accuracy of your PPP loan data or have received notice of a government inquiry, or simply wish to conduct an internal investigation to proactively uncover any potential issues, Bailey & Glasser, LLP is prepared to assist you in navigating you through these legal issues.

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