



WBK Download: PPP Fraud Investigations and Enforcement Update

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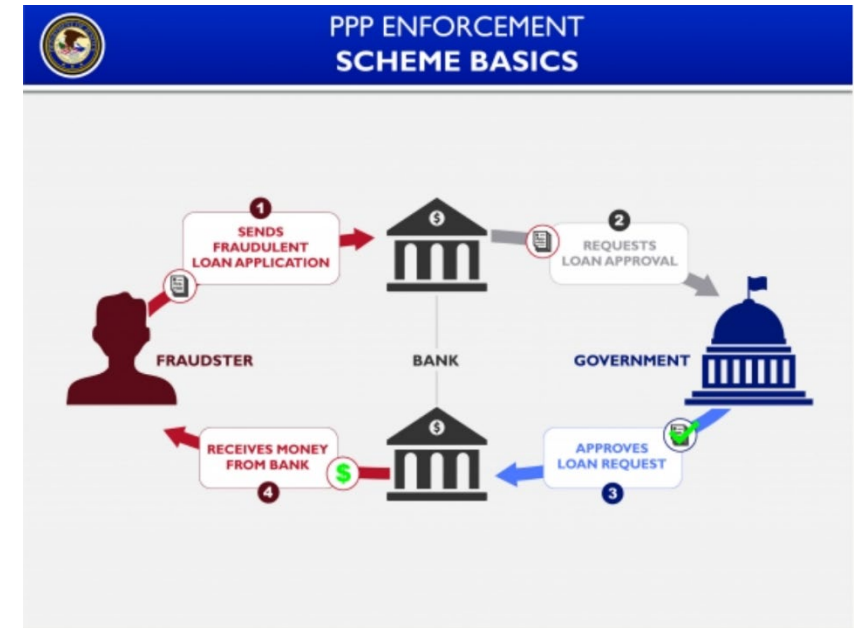
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Government-Wide Priority

- Congress issued a report on PPP fraud in December 2022
 - “at least tens of billions of dollars in PPP funds were likely disbursed to ineligible or fraudulent applicants”
- Prosecuting COVID-19 relief fraud, including PPP loan program fraud, is a “whole-of-government” enforcement effort.
- “The Department of Justice will use every available federal tool-including criminal, civil, and administrative actions-to combat and prevent COVID-19 related fraud.” - Attorney General Merrick Garland (May 17, 2021).
- Expect to see continued aggressive criminal and civil enforcement throughout 2023.

PPP Fraud

- Typical charges include bank fraud, mail fraud, wire fraud, money laundering, identity theft, and conspiracy.
- Fraudulent applications – misrepresentations concerning the existence of the company, the number of employees, payroll size, or other PPP eligibility criteria.
- Misuse of disbursed funds - numerous cases have involved the use of PPP loan proceeds for personal gain, including to purchase real estate, yachts, and exotic cars such as Ferraris, Bentleys and Lamborghinis.



Source: <https://www.justice.gov/criminal-fraud/cares-act-fraud> (visited Jan. 7, 2022).

Civil PPP Enforcement – False Claims Act

- The statute of limitations for CARES Act and PPP-related fraud has been extended to ten years
- Pandemic related fraud, including PPP loan fraud, is currently one of the primary False Claims Act enforcement priorities of DOJ's Civil Division.
- “These schemes will likely include false representations regarding eligibility, misuse of program funds, and false certifications pertaining to loan forgiveness.” Acting AAG Boynton, FBA Conference (Feb. 2021).
- Most enforcement actions to date have been for fairly-obvious examples of fraud – purchasing exotic cars, creating fake companies to obtain benefits, etc.
- However, recent enforcement actions show the government may be past much of the low-hanging fruit
 - Agricultural company including itinerant, 1099 employees in headcount
 - First settlement with an issuing bank as opposed to a company receiving a loan

Concluding Thoughts

- The recent congressional report has shone a bright and unflattering light on companies involved in issuing PPP loans.
- We expect to see a ramp-up in investigations into issuing lenders and companies that assisted them with diligence in the PPP program.
- Recent expansion of statute of limitations under PPP fraud programs to ten years indicates the Government foresees a long runway with these investigations.
- As with any other government process, responding thoughtfully and cautiously is important, as these tools available to the government are strong.

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