

PPP & Other Financial Challenges During the COVID-19 Pandemic



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Overview of Topics

- IRS Tax Relief
- Unemployment Issues
- Paid Sick Leave & FMLA
- Paycheck Protection Program (PPP)
- False Claims Act & Other Enforcement Statutes

IRS Tax Relief

- Deadlines for filing of 2019 federal returns are extended to July 15, 2020.
- Quarterly Estimated Tax Payments for Q1 (April 15th) and Q2 (June 15th) are extended to July 15, 2020. Both quarterly payments are due that day in a single payment.
- If you are unable to file your return by July 15th, an automatic extension will be granted to October 15, 2020, to file an individual return. However, you must file a request for that extension.
- If you do not pay your taxes by July 15th, you will be subject to interest and penalties running from that date even with the automatic extension.

IRS Tax Relief Cont.

- Grace Period to Make Contribution to Qualified Retirement Plans
 - Employers that contribute to a Qualified Retirement Plan for some or all of his/his employees, are Affected Taxpayers for whom the due date for filing Federal income tax returns and making Federal income tax payments that would be due April 15, 2020, is now July 15, 2020.
 - That extension also applies to the end of the grace period to make contributions to Qualified Retirement Plans. So, for example, if an employer is a corporation with an April 15, 2020 due date for filing its Form 1120, then the grace period for the employer to make contributions to its workplace-based retirement plans that are treated as made on account of 2019 ends on July 15, 2020.

Connecticut DRS Filing Deadlines

Type of Tax Return	Form	2020 Deadline
Individual Income Tax Return & Payment	Form CT-1040, CT-1040-NR/PY	07/15/2020
Individual Income Tax Estimates	Form CT-1040 ES (for 1 st and 2 nd quarter payments)	07/15/2020
Trust & Estate Tax Return & Payment	Form CT-1041 (for returns due between April 1, 2020, and July 15, 2020)	07/15/2020
Trust & Estate Tax Return Estimates	Form CT-1041 ES (for any estimated payments due between April 1, 2020, and July 15, 2020)	07/15/2020
Pass-through Entity Return & Payment	Form CT-1065/1120SI (for returns due between March 15, 2020, and July 15, 2020)	07/15/2020
Pass-through Entity Tax Estimated Payments	Form CT-1065/1120SI ES (for any estimated payments due between March 15, 2020, and July 15, 2020)	07/15/2020
Corporation Tax Return & Payment	Form CT-1120, CT-1120CU (for returns due between March 15, 2020, and July 15, 2020)	07/15/2020

Connecticut DRS Filing Deadlines Cont.

Corporation Tax Estimated Payments	Form CT-1120 ES (for any estimated payments due between March 15, 2020, and July 15, 2020)	07/15/2020
Estate Tax Return & Payment	Form CT-706/709 (for returns due between April 1, 2020, and July 15, 2020)	07/15/2020
Gift Tax Return & Payment	Form CT-706/709 (for returns due between April 1, 2020, and July 15, 2020)	07/15/2020
Unrelated Business Income Tax Return & Payment	Form CT-990T (for returns due between March 15, 2020, and July 15, 2020)	07/15/2020
Unrelated Business Income Tax Estimated Payments	Form CT-990T ES (for returns due between March 15, 2020, and July 15, 2020)	07/15/2020

DRS Sales and Use Extension

- Deadline is right around the corner!
- For monthly Sales Tax and Room Occupancy Tax filers: returns and payments due March 31, 2020, and April 30, 2020, were extended to May 31, 2020.
- For quarterly Sales Tax and Room Occupancy Tax filers: returns and payments due April 30, 2020, were also extended to May, 31, 2020.

DRS Sales and Use Extension Cont.

- Who qualifies for this extension?
 - Taxpayers that have \$150,000 or less in annual Sales Tax liability (January 1 – December 31, 2019) qualify for an automatic extension of time to file and pay.
 - Similarly, taxpayers that have \$150,000 or less in annual Room Occupancy Tax also qualify for this relief.
 - A taxpayer that collects both Sales Tax and Room Occupancy Tax must evaluate each tax separately to determine eligibility for relief.

Unemployment Issues

- If you are self-employed, do you qualify for unemployment benefits?
 - The answer is generally no.
 - However, the newly enacted federal legislation applies to many self-employed and business owners.
- The Connecticut Department of Labor advises that, basically, anyone who thinks they may qualify should apply and a decision will be made on a case-by-case basis.

Unemployment Issues Cont.

- Employee Refusal to Work:
 - Many employers have and will need to address employee refusals to work – we have already received numerous calls.
 - Those employees may very well receive unemployment benefits.
 - Employers may protest a Notice of Potential Liability by sending notice that the employee refused work to the Merit Rating Unit at the Connecticut Department of Labor.
 - Submitting the notice with an explanation and all identifying information for the employee will trigger a hearing on the claim.
 - Possible that hearing officer could determine that health risk caused workplace to be unsuitable employment.

Unemployment Issues Cont.

- If an employee is symptomatic, employers may require that the employee remain home.
- Employers should provide an Unemployment Separation Package to the employee.
- If the employee files, determinations will be made on a case-by-case basis.
- If you have to close your doors due to employee exposure, your employees will be eligible for unemployment benefits and you are likely to be liable for normal unemployment benefit charges.

Unemployment Issues Cont.

- SharedWork Program:
 - The Connecticut Department of Labor offers a **SharedWork** program, a smart alternative to a layoff.
 - The program allows employers to reduce the hours of full-time employees by as much as 60 percent, while their workers collect partial unemployment benefits to replace a portion of their lost wages.
 - All employers with two or more full-time or permanent part-time employees can participate in the program.
 - To qualify, the business' reduction of work cannot be less than 10 percent or more than 60 percent.
 - Program does not generally apply to seasonal positions.

Unemployment Issues Cont.

- Appeals:
 - In general, untimely appeals of unemployment decisions will not be considered unless the employer can show “good cause” for the delay in filing the appeal.
 - The Connecticut Department of Labor guidance specifically states that COVID-19 related causes “may” constitute good cause.
 - DOL recognizing the potential for good cause in these circumstances likely means most explanations that can be tied to COVID-19 will be determined to be good cause.

Paid Sick Leave Law

- For employers with 50 or more employees, PSL will cover certain absences caused by COVID-19. PSL provides up to 40 hours of leave for service workers for:
 - The medical diagnosis, care or treatment of a service worker’s mental illness or physical illness, injury or health condition.
 - Preventative medical care for a service worker.
 - A service worker’s child’s or spouse’s illness, injury or health condition.
 - The medical diagnosis, care or treatment of a service worker’s child’s or spouse’s mental or physical illness, injury or health condition.
 - Preventative medical care for a child or spouse of a service worker.

Family and Medical Leave

- This could get very confusing for employers. If FMLA issues arise related to COVID-19, absolutely seek legal advice.
- In most cases, an employer who is not covered by the CT FMLA (over 75 employees in CT), federal FMLA (50 or more employees in a 75-mile radius) or CT's Paid Sick Leave law (50 employees in CT) may terminate an employee for any reason as long as such termination is not based on an employee's protected status.
- COVID-19 may qualify as a serious health condition to trigger FMLA, but not necessarily.

Family and Medical Leave Cont.

- On March 18, 2020, the President signed into law the Families First Coronavirus Response Act which includes the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act.
 - These two Acts became effective on April 1, 2020, and will expire on December 31, 2020. This is a federal law and CT DOL will not have jurisdiction.
 - The US Department of Labor has issued guidance, Q&As and posters for employers that must be posted by April 1, 2020.
 - You can find all of these documents on the USDOL website here:
<https://www.dol.gov/agencies/whd/pandemic>

Family and Medical Leave Cont.

- In addition, the IRS has also provided guidance on the documentation required by employees requesting paid time off under FFCRA and how the tax credits for employers will work.
 - You can find the IRS Q&As here:
<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

Emergency FMLA Act

- Applies to employers with less than 500 employees.
- Employers under 50 may seek an exemption.
- The Emergency Family and Medical Leave Expansion Act requires you to pay an employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

Emergency Paid Sick Leave Act

- The Emergency Paid Sick Leave Act requires that paid sick leave be paid only up to 80 hours over a two-week period.
- For example, an employee who is scheduled to work 50 hours a week may take 50 hours of paid sick leave in the first week and 30 hours of paid sick leave in the second week. In any event, the total number of hours paid under the Emergency Paid Sick Leave Act is capped at 80.

Economic Injury Disaster Relief Loans

- Preexisting SBA Loan Program, which earlier in the pandemic provided \$10,000 advance that did not require repayment.
- Stopped accepting and reviewing applications on April 15, now previously submitted applications are being reviewed in the order they were submitted.
- No new applications except for small businesses that are agricultural businesses. These businesses may also apply for the \$10,000 advance, and include businesses engaged in:
 - The production of food and fiber;
 - Ranching;
 - Raising livestock;
 - Aquaculture; and
 - Farming and agricultural related businesses.

SBA Debt Relief

- For Current Borrowers:
 - Applies to SBA 7(a) loans, 504 loans, and Microloans that are in regular servicing status or deferment.
 - SBA will pay six months of principal interest and associated fees.
 - For loans not in deferment, they will be applied to the next six monthly payments.
 - For loans in deferment, they will be applied to the next six loans after the period of deferment ends.
 - Lenders have been instructed not to collect payments from borrowers.
 - If you made a payment after March 27, 2020, your lender must give you the option returning the payment, or applying the SBA's payment to the loan balance.

SBA Debt Relief Cont.

- For New Borrowers:
 - Applies to SBA 7 (a) loans, 504 loans, and Microloans made after March 27, 2020, and fully disbursed prior to September 27, 2020.
 - The SBA will pay the first six months of principal, interest, and associated fees.
 - Does not apply to EIDL or PPP loans.

Business Interruption Insurance

- Traditional Business Interruption Insurance
 - Damage to the insured’s property causes business loss.
- Contingent to Business Interruption Insurance
 - Damage to the property of a critical supplier or customer causes business loss.
- Civil Authority Insurance
 - Business loss due to action of a civil authority prohibiting access to insured’s premises.
- Ingress/Egress Coverage
 - Similar to civil authority insurance, but does not require an act of civil authority.
- These policies are usually require “direct physical loss” – that is part of the reason why so many current claims are being denied.

Business Interruption Insurance Cont.

- Direct Physical Loss
 - A definition for direct physical loss is generally not provided in policies.
 - When a definition is missing, courts will look to “what coverage the ... Insured expected to receive and what the insurer was to provide as disclosed by the provisions of the policy.” (Emphasis added, internal quotation marks omitted.) *Johnson v. Connecticut Ins. Guaranty Assn.*, 302 Conn. 639, 643 (2011).
 - If the policy terms are clear and unambiguous they are accorded their natural and ordinary meaning. *Id.*
 - If they are ambiguous, then they are usually resolved in favor of the insured because the carrier drafted the policy. *Id.*
 - In CT, loss of value due to COVID is unlikely to be deemed “physical”
 - *Capstone Bldg. Corp. v. American Motorists Ins. Co.*, 308 Conn. 760, 784 (2013), held loss of property value due to defective work was not a “physical injury.”

PPP Basics

- \$349BB (increased to \$659BB) loan program grafted onto SBA Section 7(a) Program
- Lenders: participating SBA lenders, with additional lenders added
- Borrowers: for profit businesses meeting traditional SBA size criteria, for profit businesses and nonprofits with 500 or fewer employees (taking into account affiliation rules), and certain independent contractors and self-employed individuals
 - For NAICS Code 72, 500 limit applied on per location basis and affiliation rules waived
 - No need to prove unable to get credit elsewhere

PPP Basics Cont.

- Loan Amount: [2.5 x average monthly Payroll Costs] plus [refinanced EIDL]
 - CARES Act contemplated average for 12 months preceding loan
 - SBA guidance uses default of average for calendar year 2019
 - Different rules for seasonal employers

PPP Basics Cont.

- Basic Terms:
 - 1.00% annual interest
 - 2 years
 - Principal and interest forbearance for 6 months
 - No borrower fees
 - No collateral or personal guarantees
 - 100% SBA guaranteed

PPP Basics Cont.

- Other Benefits:
 - Loan may be forgiven in whole or part
 - No forgiveness of debt income for amount forgiven
 - By their nature, the expenses giving rise to forgiveness would seem to also be deductible, but IRS has ruled against the double tax benefit

PPP Basics Cont.

- Other Costs:
 - It's a loan, potentially to be forgiven in whole or part
 - Accounting impact?
 - Effect on existing loan covenants?
 - Normal bank fraud type rules apply
 - It's a Federal Government benefit
 - Government out of pocket for processing fees immediately
 - Government guaranty – forgiveness and defaults
 - False Claims Act and other fraud and white collar crime laws in play

PPP Basics Cont.

The “Necessary Certification”:

“Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

“Payroll Costs”

- Average monthly amount during applicable period of:
 - Salary, wage, commission, or similar compensation
 - Includes payments to owner of an entity taxed as a partnership and taxed as self-employment income per SBA guidance
 - Capped at \$100,000 annual rate (so \$8,333/month) for each employee

“Payroll Costs” Cont.

- Average monthly amount during applicable period of:
 - Cash tip or equivalent
 - Vacation, parental, family, medical or sick leave
 - Allowance for dismissal or separation
 - Required for the provisions of group health care benefits, including insurance premiums
 - Any retirement benefit
 - State or local tax assessed on the compensation of employees

The “Necessary Certification”

Loan Application Certification:

“Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

The “Necessary Certification” Cont.

- FAQ 31:
 - “Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.”
- FAQ 39:
 - “In FAQ #31, SBA reminded all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided . . . that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender’s submission of the borrower’s loan forgiveness application.”

The “Necessary Certification” Cont.

- FAQ 46:
 - “Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.”
 - “SBA has previously stated that all PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request.”

Documenting Necessity

- Loan of \$2MM or less
 - Maintain the documentation if already done
 - Not crucial to create documentation if not
- Loan greater than \$2MM
 - Maintain the documentation if already done
 - Documentation now if not previously done

Documenting Necessity Cont.

- SBA Loan Forgiveness Application document maintenance requirements:
 - ALL borrowers must MAINTAIN certain documents for 6 years
 - These documents include those supporting the borrower’s “certifications as to the necessity of the loan request and its eligibility for a PPP loan”

Documenting Necessity Cont.

- SBA Loan Forgiveness Application borrower agreement:
 - “SBA may request additional information for the purposes of evaluating the Borrower’s eligibility for the PPP loan and loan forgiveness, and ... the Borrower’s failure to provide information requested by SBA may result in a determination that the Borrower was ineligible for the PPP loan or a denial of the Borrower’s loan forgiveness application.”

Documenting Necessity Cont.

- SBA Loan Forgiveness Application document submission requirements:
 - The Application package does not require SUBMISSION of these documents
 - In light of this agreement and FAQs 39 and 46, borrowers of more than \$2MM should expect to be asked to produce these documents in order to obtain loan forgiveness

What To Document Regarding Necessity?

- Loan of \$2MM or less:
 - Arguably no need to document, will be deemed to have made necessity certification in good faith
 - If you have made the effort, SBA is requiring the documentation be maintained

What To Document Regarding Necessity? Cont.

- Loan of more than \$2MM:
 - FAQ 46 says you will be asked about necessity as part of obtaining forgiveness
 - General: why did economic uncertainty make the loan necessary to support ongoing business operations
 - Specific, in light of FAQ 31:
 - Current business activity
 - Sources of liquidity available and potentially available
 - Costs and risks of seeking and using
 - Every business is different; context is the specific business and its industry

What To Document Regarding Necessity? Cont.

- Items to consider:
 - What governmental orders apply to the business? Are employees being forced to work from home (or not at all)?
 - What impact has been felt on the business to date and is likely to be felt?
 - Have supply chains been interrupted or are they likely to be?
 - Has customer demand suffered or is it likely to?
 - Are effects to your customers likely to substantially delay payment of, or lead to default on, receivable balances?

What To Document Regarding Necessity? Cont.

- Items to consider:
 - What steps have been taken to date to minimize the damage?
 - What steps remain available to minimize the damage?
 - What is current working capital availability? How is that likely to change given observable trends in the business?
 - What other sources of cash are available? At what costs and with what risks?

What To Document Regarding Necessity? Cont.

- Items to consider:
 - What are the risks of furloughing or terminating employees or cutting their pay? Will they remain available when/if the business is prepared to recall them?
 - Have previous plans to adjust payroll costs been conceived but tabled due to expectation a PPP loan will be received and forgiven?

What Can Be Forgiven?

Determining the amount of the loan that can be forgiven starts with determining the borrower's Payroll Costs and Non-Payroll Costs "PAID" or "INCURRED" during the applicable 8 week period

What Can Be Forgiven? Cont.

- Payroll Costs:
 - Cash Payroll Costs:
 - Gross salary (or payments to owners of entities taxed as partnerships)
 - Gross wages
 - Gross tips
 - Gross commissions
 - Paid leave
 - Allowances for dismissal and separation
 - Non-Cash Payroll Costs:
 - Employer contributions for employee health insurance
 - Employer contributions for employee retirement plans
 - Payments of employer state and local taxes assessed on employee compensation

What Can Be Forgiven? Cont.

- Non-Payroll Costs:
 - Mortgage interest (not principal)
 - Rent (real property or personal property)
 - Utilities (electricity, gas, water, transportation, telephone, internet access)
 - Mortgage, lease or utility arrangement must pre-date February 15, 2020

The 8 Week Period

- CARES Act:
 - 8 weeks beginning on the “loan origination date”
- Early SBA Guidance:
 - “Loan origination date” means the date the loan is funded to the borrower

The 8 Week Period Cont.

- SBA Loan Forgiveness Application:
 - The 8 weeks beginning on the date the loan is funded to the borrower is the “Covered Period”
 - A borrower with a normal payroll cycle of bi-weekly or more frequent can elect an “Alternate Payroll Covered Period” commencing on the first day of the first payroll period commencing after the date the loan is funded to the borrower
 - Those so electing must calculate all Payroll Costs (Cash and Non-Cash), and calculate any reductions to forgiveness based on FTE or compensation reduction, using the Alternate Payroll Covered Period
 - ALL borrowers must calculate Non-Payroll Costs for the Covered Period

The 8 Week Period Cont.

- Planning Opportunity:
 - Borrowers eligible to use an Alternate Payroll Covered Period should make calculations of Payroll Costs (and FTE and compensation limitations) using both the Alternate Payroll Covered Period and the Covered Period and use whichever is more advantageous

Limits On Forgiveness

- Forgiveness can never exceed the original loan amount
 - Query: what about interest?
 - Earlier SBA guidance: interest accrued to the point of forgiveness could also be forgiven
 - Is this automatic so long as forgiveness is completed prior to the end of the 6 month payment forbearance for the loans?
 - Unknown: is there a date certain that forgiveness applications must be submitted?

Limits On Forgiveness Cont.

- Cash Payroll Costs for any employee (or owner of entity taxed as a partnership) capped at an annual \$100,000 per year rate, i.e., \$15,385 ($\$100,000 \times 8 \div 52$)

Limits On Forgiveness Cont.

- Forgivable amount reduced dollar for dollar by cash compensation (salary or wage) reduction during the 8 week period to any employee in excess of 25% compared to the average cash compensation for such employee during the period from January 1 to March 31, 2020 (the “Base Period”)
 - Only applies if the employee’s cash compensation during the Base Period was at an annual rate of less than \$100,000
 - The reduction can be undone if the employee’s cash compensation is re-increased prior to June 30, 2020; details on how this work are still lacking

Limits On Forgiveness Cont.

- Forgivable amount reduced proportionately for reductions in FTEs during the 8 week period compared to average monthly FTEs during the applicable Comparison Period
 - 8 week period is Covered Period or Alternate Payroll Covered Period, whichever is chosen to initially calculate forgivable amount
 - “Comparison Period” is, at the borrower’s election, either February 15 to June 30, 2019, or January 1 to February 29, 2020 (seasonal employers have additional options)
 - The methodology for calculating FTEs is left to the employer, although no employee can count as more than one

Limits On Forgiveness Cont.

- Forgivable amount reduced proportionately for reductions in FTEs during the 8 week period compared to average monthly FTEs during the applicable Base Period
 - A simplified method is permitted, in which each employee working 40 hours or more per week is deemed one FTE and each employee working less than 40 hours per week is deemed one-half FTE

Limits On Forgiveness Cont.

- Forgivable amount reduced proportionately for reductions in FTEs during the 8 week period compared to average monthly FTEs during the applicable Base Period
 - Excluded as a reduction in FTEs are any employees
 - To whom the borrower made a good-faith written offer to rehire which was rejected
 - Who were fired for cause, voluntarily resigned, or voluntarily requested and received a reduction in hours
 - Documentation must be maintained
 - This reduction can be reversed if FTE levels are restored by June 30, 2020; details on how this work are still lacking

Limits On Forgiveness Cont.

- At least 75% of the amount forgiven must be Payroll Costs, with Non-Payroll Costs limited to 25% or less

CARES Act Payroll Protection Program Enforcement

Enforcement

THE UNITED STATES ATTORNEY'S OFFICE
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Department of Justice

U.S. Attorney's Office

District of Connecticut

FOR IMMEDIATE RELEASE

Wednesday, May 6, 2020

Connecticut Announces Joint Federal-State COVID-19 Fraud Task Force

New Haven – United States Attorney John H. Durham, Connecticut Attorney General William Tong, Chief State's Attorney Richard Colangelo and FBI Special Agent in Charge David Sundberg today announced formation of a joint federal-state task force combatting COVID-19 related fraud in Connecticut. The task force will investigate and prosecute a wide range of misconduct related to the COVID-19 pandemic, including price gouging, healthcare and government program fraud, consumer and small business scams, lending scams, charities fraud, and cyber fraud. Violators may be subject to civil fines and penalties and/or state or federal criminal prosecution.

"The Justice Department is prioritizing the investigation and prosecution of COVID-19 fraud schemes and individuals who are exploiting this public health crisis for personal gain," said U.S. Attorney Durham. "Our office has a dedicated COVID-19 Fraud Coordinator who is working closely with our state counterparts in the offices of the Attorney General and Chief State's Attorney to review complaints and direct the prosecution of COVID-19-related crimes. Working together, we will disrupt these schemes and are prepared to prosecute those who seek to prey upon people's fears or sympathy and illegally profit from this pandemic."

Enforcement

State, federal officials form COVID-19 joint task force in Connecticut

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By **Karen Florin** (/apps/pbcs.dll/personalia?ID=k.florin) Day staff writer

State and federal officials in Connecticut have formed a task force to address COVID-19-related fraud, such as price gouging, health care and government program fraud, consumer and small-business scams, lending scams, charities fraud and cyber fraud.

U.S. Attorney John H. Durham, state Attorney General William Tong, Chief State's Attorney Richard Colangelo and FBI Special Agent in Charge David Sundberg announced the joint federal-state task force Wednesday, saying violators may be subject to civil fines and penalties and state or federal criminal prosecution.

Enforcement

- Potential criminal exposure:
 - PPP application identifies certain criminal statutes:
 - False statements to federal officials →
18 U.S.C. Section 1001
 - False statements to lending institutions →
18 U.S.C. Section 1014
 - Small Business Administration misrepresentations →
15 U.S.C. Section 645
 - Felonies with 5 to 30 year maximum sentences
 - U.S. sentencing guidelines apply

Enforcement

- Other charges commonly brought for similar conduct:
 - Criminal false claims →
18 U.S.C. Section 287
 - Bank fraud →
18 U.S.C. Section 344
 - Mail fraud →
18 U.S.C. Section 1341
 - Wire fraud →
18 U.S.C. Section 1343
 - Criminal Conspiracy →
18 U.S.C. Section 371
 - Felonies with 5 to 30 year maximum sentences
 - U.S. sentencing guidelines apply

Enforcement

- Two criminal cases already charged under PPP:
 - Two charged in Rhode Island with Stimulus Fraud
 - First in the nation to be charged with fraudulently seeking CARES Act SBA PPP loans
 - Texas man charged with \$5 million COVID-relief fraud
 - Individual copied list of names off the internet and claimed them as employees



Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, May 19, 2020

Texas Man Charged with \$5 Million COVID-Relief Fraud

Individual Copied List of Names off the Internet and Claimed Them as Employees



Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, May 5, 2020

Two Charged in Rhode Island with Stimulus Fraud

First in the Nation to be Charged with Fraudulently Seeking CARES Act SBA Paycheck Protection Loans

Enforcement

- Criminal State of Mind/Time to Bring Charges
 - Criminal false statement: Knowingly and willfully
 - Knew statement was false or demonstrated a reckless disregard for the truth with a conscious purpose to avoid learning the truth
 - Fraud: Intent to defraud
 - Knowingly and with the intention or the purpose to deceive or to cheat in order to obtain money or property
 - Statutes of limitations
 - Generally five years after the offense is committed
 - Bank fraud / Impact financial institution – 10 years

Enforcement

- Civil False Claims Act (“FCA”) → 31 U.S.C. Section 3729 et seq.
 - One of the government’s primary methods to recover damages from fraud
 - FCA violations expose offenders to treble damages and per claim penalties in excess of \$21,000
 - Last year, DOJ received over \$3 billion from cases brought under FCA
 - FCA does not require specific intent to defraud the government
 - For FCA purposes, “knowingly” can mean having actual knowledge, acting in deliberate ignorance or reckless disregard of the truth, or falsity of the information

Enforcement

- Whistleblowers under the FCA
 - FCA is unique in that it provides a right of action not only for the government but also for the private whistleblowers (“Relators”)
 - Relators can file action under seal (qui tam) in the name of the government
 - The government must then decide whether to accept and prosecute the case
 - Relator is entitled to significant portion of the recovery
 - 15% to 30% as a reward for bringing the case to the government’s attention

Enforcement

- Government Review and Investigation
 - Federal
 - CARES Act: Special Inspector General for Pandemic Recovery (“SIGPR”)
 - Conduct, supervise, and coordinate audits and investigations
 - Authorizes SIGPR to issue subpoenas, and to seek and execute search and arrest warrants, although prosecuting authority lies with DOJ and U.S. Attorney’s Office
 - Other federal agencies (e.g., FBI, IRS, DOL and HHS)
 - State
 - Connecticut Attorney General’s Office
 - Connecticut Chief States Attorney

Enforcement

- Prepare for Review and Investigation
 - Maintain accurate and complete documentation
 - Certifications, size, necessity, etc.
 - Use of loan proceeds
 - Review document and email preservation policy
 - Designate a point person
 - To maintain documents
 - To communicate with government as is required
 - To respond to subpoenas
 - Prepare employees for contact from the government
 - Remain vigilant
 - Strict oversight of stimulus funds
 - Use of funds
 - Other business conduct
 - Seek legal support

CARES Act Payroll Protection Program Enforcement

Disclaimer

- This PowerPoint presentation is for informational purposes only and should not be construed as legal advice on any subject matter. You should not act upon anything contained in the presentation without consulting legal counsel as individual situations and facts vary. To ensure compliance with certain U.S. Treasury Regulations, please be advised that any statements in the presentation relating to any Federal tax issue are not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any Federal tax penalties. Transmission or receipt of the presentation materials are not intended to create an attorney-client relationship nor will the act of sending email to the presenters create an attorney-client relationship. Certain portions may constitute attorney advertising and do not constitute legal advice.

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