

CLIENT ALERT

COVID-19 Enforcement Actions Surrounding Stimulus Funds

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The Justice Department filed the first of likely many criminal charges related to the coronavirus stimulus Paycheck Protection Program (PPP), the \$660 billion taxpayer fund to provide largely forgivable loans to small businesses suffering under the strain of the pandemic.

Federal authorities arrested David Staveley and David Butziger after they were charged with submitting fraudulent applications for PPP loans. This investigation involved a team of government investigators including the Inspector Generals of the Small Business Administration (SBA) and Federal Deposit Insurance Corporation as well as FBI and IRS criminal investigators.

The Justice Department and the FBI have made a clear statement that they intend to take a front seat on PPP oversight and will aggressively pursue fraud associated with the program. Special Agent in Charge of the FBI's Boston Office Joseph Bonovolonta stated that Staveley and Butziger's arrests should "serve as a warning to others that the FBI and our law enforcement partners will aggressively go after bad actors like them who are utilizing the COVID-19 pandemic as an opportunity to commit fraud."

The government's investigation of Staveley and Butziger began three weeks ago following a tip from local police alleging that Staveley was posing as his brother in real estate transactions. Upon searching Staveley's email, federal authorities uncovered correspondence with Butziger detailing the scheme to file fraudulent applications, including falsifying supporting documents, to collect PPP funds.

According to prosecutors, Staveley sought over \$438,000 in relief funds on the false claim that he had dozens of workers at three restaurants. In reality, two of the restaurants—one of which he owned in his brother's name—were not operational, and the third was not owned by Staveley at all. Butziger, for his part, falsely sought over \$100,000 to compensate fictitious employees at his wireless company. The FBI coordinated a sting operation in which Butziger told an undercover FBI agent posing as a bank compliance officer that his company had seven employees. Rhode Island State Department of Revenue records reflect no employee wages paid in 2020. Staveley and Butziger's scheme was uncovered before either received PPP funds.

Staveley and Butziger have been charged in federal court in Rhode Island for conspiracy to make false statements and conspiracy to commit bank fraud. Staveley was also charged with aggravated identity theft, while Butziger was charged with bank fraud.

Additional charges in the coming weeks and months are likely. Assistant Attorney General for the Criminal Division, Brian Benczkowski, predicted that "whenever there's a trillion dollars out on the street that quickly, the fraudsters are going to come out of the woodwork." In an interview on April 30, Benczkowski described the Criminal Division's policing efforts, including reviewing applications at some of the largest PPP loan processors. Prosecutors' review of this data revealed evidence of applicants overstating their employee ranks and payroll expenses, among other anomalies. These red flags were uncovered in both approved and rejected applications.

Key takeaways for businesses and corporate leaders include:

- The government is prosecuting stimulus fraud aggressively. If you made a mistake or misstatement, make every effort to fix it. The penalties for receiving government funds based on false statements are severe.
- Consideration of the May 5, 2020 Treasury/SBA decision (to be followed by an interim final rule) to extend the “safe harbor” to repay PPP loan amounts in full until May 14, 2020.
- It is still a crime to make false statements in an application for a loan, even if you never get the money.
- The government will use proactive (*i.e.*, undercover measures) investigative techniques including consensually-monitored telephone calls to obtain evidence.
- If you do get money, make sure you have a compliant plan for spending it, consistent with the law’s requirements, and maintain supporting documents.

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