

First Individuals Charged Criminally For Their Alleged Scheme to Defraud the Paycheck Protection Program

MAY 6, 2020

On May 5, 2020, the U.S. Department of Justice (“DOJ”) announced the filing of criminal charges against two individuals who allegedly filed fraudulent loan applications seeking more than \$500,000 under the Paycheck Protection Program (“PPP”) established by the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The defendants are the first individuals in the country to be charged criminally in connection with a scheme to defraud the PPP. These charges send a strong message about the rigor with which the government will proceed in order to root out abuse of the CARES Act relief programs and to bring those responsible to justice. The case also serves to demonstrate some of the circumstances under which the government will pursue criminal charges based on alleged fraud in connection with the PPP and as a reminder of the importance of implementing strong compliance measures.

The two defendants, David A. Staveley (a/k/a “Kurt David Sanborn”) and David Butziger, allegedly engaged in fraudulent schemes to obtain PPP loans guaranteed by the Small Business Association (“SBA”).¹ They are both charged with conspiracy to commit bank fraud and conspiracy to make false statements to influence the SBA. In addition, Butziger is charged with bank fraud and Staveley is charged with aggravated identity theft, stemming from his alleged use of his brother’s identity in connection with, among other things, applying for the PPP loans.

According to the allegations, the defendants claimed to have dozens of employees earning wages at four different businesses. They sought more than \$500,000 in bank loans under the PPP (\$438,500 by Staveley and \$105,381 by Butziger) to pay their supposed employees due to the economic downturn caused by COVID-19. However, according to the DOJ’s press release, three of the businesses allegedly were not operating prior to the COVID-19 pandemic and had no salaried employees, and the fourth business was not even owned by the loan applicant. The affidavit submitted by a Special Agent of the Federal Bureau of Investigation in support of the criminal complaints reveals that a complaining witness initially brought suspicions of COVID-19 relief fraud by Staveley to the local police. The investigation that ensued included a search warrant relating to three email accounts tied to Staveley to obtain the defendants’ emails, the use of an undercover agent posing as a bank compliance officer, and law enforcement interviews of certain people whom defendants claimed to employ. Through these aggressive investigative tactics, the government obtained email correspondence between the defendants about their plan to create fraudulent loan applications and supporting documents; corroborating witness information regarding the absence of salaried employees; and verbal statements made by the defendants directly to undercover agents, including one

defendant's statement to the undercover agent that he was seeking PPP bank loans to pay employees of a business that the government determined had no employees.

The allegations in this case suggest that the government found relatively egregious facts believed to be consistent with an intent to defraud rising to the level of criminal culpability. Such facts would stand in stark contrast to situations in which PPP applicants try in good faith to comply with program requirements, but make a false statement without any intent to defraud, such as where an eligibility requirement may be vague or ambiguous and/or the subject of evolving guidance. Nonetheless, this case is an important reminder of earlier guidance we have provided. Specifically, all those seeking to secure funding under the CARES Act should carefully analyze all eligibility requirements and document the bases for the determinations that such requirements have been met before applying for funding. Further, controls must be implemented to ensure that funds are utilized as required under the relevant program.

Of course, the government's charges are merely accusations and we have not yet learned about any defense that may be asserted. But, the swift and aggressive investigation and filing of criminal complaints in these cases serve as a forceful message of deterrence against those who may seek to defraud CARES Act relief programs.

We note that government orders on the local, state, and federal levels are changing every day, and the information contained herein is accurate only as of the date set forth above.

All entities should consult legal counsel for compliance issues and questions related to rapidly evolving COVID-19 legislation and policy.

View all of our COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

This client alert was drafted by Suzanne Jaffe Bloom, Co-Chair of Winston & Strawn's White Collar, Regulatory Defense, and Investigations Practice group, and Benjamin Sokoly and Lisa C. Chan, an Of Counsel and a senior associate, respectively, in the group. For further information or questions, please contact Suzanne Jaffe Bloom, Benjamin Sokoly, Lisa C. Chan, or your Winston relationship attorney.

¹ See U.S. Dep't of Justice, *Two Charged in Rhode Island with Stimulus Fraud*, dated May 5, 2020, available at <https://www.justice.gov/opa/pr/two-charged-rhode-island-stimulus-fraud>.

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