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Paycheck Protection Program (PPP) Audits and Investigations

Chamberlain Hrdlickas Paycheck Protection Program (PPP) Audits and Investigations Practice can provide the expertise to advise and assist PPP loan borrowers as they navigate the PPP civil audit and review process and PPP criminal investigations and enforcement process.

Our attorneys have been at the forefront of the PPP since it was created. We have also been there as the PPP has evolved by assisting clients with all aspects of the PPP application and review process, writing articles and providing expert interviews for industry-leading publications, creating and presenting educational seminars for a national audience, and engaging in the ongoing legislative process.

We can proactively assist clients to determine risk, ensure compliance, and provide review/audit defense and other support for potential investigations. If you have questions or concerns regarding the statements or certifications made in your PPP loan application, or if civil or criminal enforcement actions have already been initiated, our nationally renowned attorneys can provide an immediate, thorough, and effective defense for you and your business.

Areas of Experience

Civil Audits and Reviews

The SBA will review/audit all PPP loans in excess of \$2 million following the lenders submission of the loan forgiveness application. PPP loans that are \$2 million or less may nevertheless be subject to review/audit, subject to the SBAs discretion.

For borrowers seeking loan forgiveness, both the lender and the SBA will likely review/audit the loan forgiveness application and substantiating documentation. The independent reviews/audits will not only cover the loan forgiveness application, but will also examine the PPP loan application to determine initial eligibility for the PPP loan. Therefore, all statements and certifications made on the PPP loan application and loan forgiveness application may be examined.

Borrowers have an elevated risk for civil audit and review if they obtained a PPP loan in excess of \$2 million and/or are a public company. Borrowers may also have an elevated risk for civil audit and review if they provide false or incorrect information on the PPP loan application, the loan forgiveness application, or in connection with supporting documentation.

Borrowers may have a lower risk for civil audit and review if the PPP loan application or loan forgiveness application was submitted in good faith but nevertheless contained

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minor errors or omissions, or if they relied on the advice of counsel/advisor. In general, borrowers may be offered the opportunity to provide additional documentation if a determination is made against granting full loan forgiveness.

Because the PPP has developed and changed over time through legislation and other guidance, mistakes can and will occur. To demonstrate good faith, borrowers should document their decision-making throughout the PPP process, including before and after PPP loan funds are received and as the loan forgiveness application and review process proceeds. To the extent the loan forgiveness process does not go as expected, borrowers may appeal the decision.

Criminal Investigations and Enforcement

The Department of Justice has sought early indictments in more than 30 cases involving alleged fraud in PPP loan applications; some of the charges include conspiracy to make false statements to influence the SBA and conspiracy to commit bank fraud. Criminal investigation and enforcement actions have involved fraudulent PPP loan applications and the inappropriate use of PPP loan proceeds thus far, but will likely include loan forgiveness applications as well going forward.

Borrowers may have an elevated risk for criminal investigation and enforcement by the SBA, Internal Revenue Service, and Department of Justice if PPP loan funds were obtained based on false statements and misrepresentations. This could occur if borrowers provide false information on the PPP loan application or loan forgiveness application directly, such as if there is no business or borrowers were not authorized to submit an application on behalf of the business. False statements and misrepresentations can also be made on the supporting documentation if it is inaccurate, misleading, and false, such as by inflating payroll costs or documenting expenses that were never made.

Borrowers may also have an elevated risk for criminal investigation and enforcement if PPP loan funds were used for non-authorized purposes, including not just personal expenses such as luxury items (jewelry, cars, and homes) but also business expenses such as large bonuses, compensation exceeding the maximum allowed (potentially up to \$46,154 for each employee and up to \$20,833 for each owner-employee), and significant investments.

Borrowers may have a lower risk for criminal investigation and enforcement if the PPP loan application or forgiveness application was submitted in good faith but nevertheless contained minor errors or omissions, or if you relied on the advice of counsel/advisor. Because the PPP has developed and changed over time through legislation and other guidance, mistakes can and will occur. To demonstrate good faith, borrowers should document their decision-making process throughout the PPP process, including before and after PPP loan funds are received, and as the loan forgiveness application and review process proceeds.