

Likely Spike in Whistleblower Complaints Means PPP Loan Recipients Must Remain Vigilant

By **Rachel Maimin** and **Kathleen A. McGee**

On June 16, 2020, Lowenstein Sandler presented **The Specter of Whistleblower Actions & the CARES Act: An Overview**, in which Lowenstein's **Kathleen A. McGee** and **Rachel Maimin**, along with Greg Krakower, a leading authority on whistleblowing, addressed the strong likelihood of whistleblower actions as a source for federal civil and criminal investigations into fraud within the CARES Act's Paycheck Protection Program (PPP). Since then, the Department of Justice (DOJ) has announced a handful of indictments alleging, among other acts, the use of PPP loan monies for luxury car purchases, child support payments, and other clearly improper uses. While the allegations within these first DOJ complaints may be "low-hanging fruit" for prosecutors, more nuanced prosecutions for allegedly fraudulent behavior are not far behind.

Historically, such prosecutions are fueled by whistleblowers, who often come from within companies or their competition and are incentivized to report alleged misdeeds through a financial rewards system built into the False Claims Act (FCA), which is a federal law that provides for payments to whistleblowers of up to 30% of any damages related to a successful claim resolution.¹ With the possibility of fraudulent activity top of mind, on July 30, 2020, Sen. Charles Grassley, R-Iowa, announced his intention to introduce legislation that further enhances whistleblower protections under the FCA.² The whistleblower may file his or her own legal complaint about allegedly fraudulent

actions under seal and serve it on the DOJ with written disclosure of substantially all material evidence the whistleblower possesses.³ With 60 days (plus extensions) for DOJ to decide to intervene or not in a whistleblower complaint, a business might not receive notice that it is the subject of a complaint until months after the filing.⁴ Moreover, the DOJ can investigate the whistleblower complaint with subpoenas for documents, interrogatories, and depositions and can intervene at any time for "good cause."⁵

With the probability of whistleblower complaints on the horizon, PPP loan recipients should maintain vigilance regarding their loan expenditures. PPP loan recipients should be conscious that they cannot ignore a potential concern in their loan process or expenditures, and that a proactive remediation of perceived issues will be less damaging than a whistleblower complaint or federal investigation into alleged fraud. At the first indication of a potential concern, PPP loan recipients should consult with counsel to discuss appropriate measures.

¹ See 18 U.S.C. § 3729 *et seq.*

² See Grassley Celebrating Whistleblower Appreciation Day, News Release, July 30, 2020, <https://www.grassley.senate.gov/news/news-releases/grassley-celebrating-whistleblower-appreciation-day>

³ See 18 U.S.C. § 3729 *et seq.*

⁴ *Id.*

⁵ *Id.*

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

RACHEL MAIMIN

Partner

T: 212.419.5876

rmaimin@lowenstein.com

KATHLEEN A. MCGEE

Counsel

T: 646.414.6831

kmcgee@lowenstein.com

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C.

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