

## **Paycheck Protection Program (PPP) Fraud Whistleblower Questions & Answers**

### **What is the Paycheck Protection Program (PPP)?**

The Paycheck Protection Program is a federal loan/grant program that Congress intended to help small businesses stay in business and keep workers employed during the Covid-19 pandemic. Under this program, eligible small businesses could obtain low-interest loans from private banks that were guaranteed by the federal government; these loans were meant to be issued quickly and with minimal underwriting, given the exigencies of the pandemic. Under appropriate circumstances, the government would subsequently “forgive” the loans, paying off the balances and essentially converting them into government grants.

PPP loans were issued in two “draws.” First Draw loans were primarily intended to fund payroll costs and employee benefits. Up to 40% of the loan funds were eligible for use on mortgage interest, rent, utilities, costs to protect workers from COVID-19, uninsured property damages caused by looting or vandalism in 2020, and certain other operational expenses. Second Draw loans were made to eligible borrowers who had received a First Draw loan. The Second Draw had tighter eligibility requirements than the First Draw, but could be used for a wider range of business purposes. Among other requirements, to qualify for the Second Draw, a borrower had to certify that it:

- Received a First Draw PPP loan and used the full amount for authorized uses;
- Had no more than 300 employees; and
- Had at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020.

### **What was required for PPP loan forgiveness?**

The majority of PPP loans that were issued during the pandemic were “forgiven,” meaning that the Small Business Administration (SBA) paid off the balance of the loans and essentially converted the government loans into government grants. To qualify for forgiveness, a business was required to certify that during the 8- to 24-week covered period following PPP loan disbursement:

- Employee and compensation levels were maintained;
- The loan proceeds were spent on payroll costs and other eligible expenses; and
- At least 60% of the proceeds were spent on payroll costs.

Businesses that did not follow these rules committed PPP fraud, to the detriment of taxpayers. If you suspect that any company with which you have been employed or otherwise interacted broke any of the PPP loan or forgiveness terms, your best option is to speak with a PPP whistleblower lawyer to determine how to hold them accountable for their conduct and how to help return the money to taxpayers.

## How can whistleblowers help remedy PPP fraud?

Whistleblowers are essential to bringing PPP loan fraud to light because they often have inside information about their employers or other companies that the government might not otherwise discover. Under the federal False Claims Act, a whistleblower who suspects PPP fraud can file a “qui tam” lawsuit on behalf of the government, seeking to recover funds misappropriated due to fraudulent activity.

To file such a lawsuit, the whistleblower must be represented by a lawyer. In successful qui tam cases, the government will receive treble (triple) damages from the offending company, and the whistleblower receives 15% to 35% of the government’s recovery. The False Claims Act also protects whistleblowers from retaliation by their employers.

## How can I tell if my employer or another company committed PPP fraud?

There are no specific criteria to prove that PPP loan fraud occurred, but these are common red flags:

- A business had only recently opened when it applied for the loan
- A company did not experience a downturn in business or in revenue during the pandemic but instead continued business as usual or was able to increase revenue.
- A company was not materially affected by the pandemic or by government shutdown orders, for example, because all employees were able to transition to working remotely from home
- There was a sudden spike in payroll numbers
- Unverifiable employees are on payroll sheets
- An employee showed up on more than one payroll account
- False or absent or altered bank records, W2s, or 1099s
- False or absent records regarding how loan proceeds were used
- False documents that made the business look smaller than it actually is
- Loan applications for nonexistent or closed businesses

If you have seen documents or other evidence that suggest PPP loan fraud, trust your instincts. Speak with a lawyer to determine whether you have a viable whistleblower case.

Contact DiCello Levitt for a free, confidential consultation today, because the longer you wait to report, the less likely you will be to get a reward.

## What should I do if I suspect my employer or another company committed PPP fraud?

Because of specific False Claims Act provisions, you should seek a confidential consultation with an experienced whistleblower lawyer. Under federal law, you can recover significant compensation for blowing the whistle, but only when represented by a lawyer.

When you hire a PPP fraud lawyer, he or she will investigate your claim and determine the best course of action to protect you from retaliation and help you get maximum compensation. DiCello Levitt provides whistleblowers with confidential consultations and protects their identities to the maximum extent possible. Call today for a free consultation – you must be the *first* to report PPP loan fraud to possibly earn a reward.

## How much money will I get if I blow the whistle on my employer for PPP fraud?

PPP loan fraud cases are handled under a federal statute called the False Claims Act. Under the Act, the government can recover treble (three times) damages from businesses that fraudulently obtain PPP loans or grants, or that file fraudulent documents connected with a PPP loan or grant.

The False Claims Act provides first-to-report whistleblowers with 15% to 35% of the government's recovery for PPP fraud, plus their attorney's fees and expenses. The reward percentage depends on the quality of information provided, the whistleblower's level of participation in the fraudulent activity, and whether the government chooses to intervene and prosecute the lawsuit on its own behalf.

A whistleblower's total reward will depend on how much money the employer fraudulently obtained from the government. Whistleblower rewards are often substantial because, under the False Claims Act, the government can receive three times the amount of money that was improperly provided to the business. Civil penalties amounting to thousands of dollars per violation can also be obtained.

## Can I anonymously report PPP fraud?

Whistleblowers can report PPP fraud anonymously to the Office of the Inspector General of the Small Business Administration, but if they do, they generally *won't* be eligible for financial compensation under the False Claims Act. It is also sometimes possible to file a False Claims Act lawsuit anonymously or under a pseudonym, but this may affect your ability to obtain a share of the government's recovery.

If you suspect PPP loan fraud, your best option is to speak with a whistleblower attorney to protect you from retaliation and pursue compensation through a qui tam lawsuit. Anything you tell a lawyer will be held in strict confidence until you file a lawsuit.

## Can my employer retaliate against me if I report suspected PPP fraud?

The False Claims Act offers remedies to whistleblowers whose employers retaliate against them. These remedies include:

- Back pay, including wages and benefits lost from being unlawfully terminated
- Reinstatement to their former job
- Front pay, including wages and benefits to cover the time finding a new job
- Out-of-pocket costs, including the cost of finding employment
- Damages for pain and suffering
- Punitive damages
- Attorneys' fees, and
- Court costs

When you hire a whistleblower lawyer to file your claim, the firm can help protect you from retaliation and help you get remedies for any retaliation that does occur. DiCello Levitt will do everything in its power to protect you from retaliation and get you the reward you deserve for protecting taxpayer dollars.

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