

MORE CARES ACT INVESTIGATIONS SHOULD COME AS NO SURPRISE

As might have been expected, the urgent distribution of hundreds of billions of dollars by the government in coronavirus relief funds has strained the capacity to process it and left ample fodder for further government oversight and investigations. Anyone who received this funding or was involved in the process to distribute it should assess their potential exposure and be prepared when the government knocks at the door.

The strain is evidenced by developments reported over the last couple of weeks. First, on Thursday, Reuters reported that the Justice Department had already charged 57 people with stealing \$175 million from the Paycheck Protection Program and had [identified 600 individuals who may have defrauded the program](#). Acting Assistant Attorney General Brian Rabbitt said the department would focus on criminal rings exploiting the program and the financial system.

In addition, the staff of the House Select Subcommittee on the Coronavirus Crisis ("Select Subcommittee") [issued a preliminary analysis critical](#) of the distribution of Paycheck Protection Program ("PPP") funds by the Small Business Administration. Under the PPP, Congress provided nearly \$600 billion in forgivable loans to small businesses and nonprofits to cover payroll, rent, and utilities during the crisis.

The Wall Street Journal ("WSJ") also reported that RER Solutions, Inc. ("RER"), a small woman-owned disadvantaged business, was paid at least \$770 million to process Economic Injury and Disaster Loans ("EIDL"), [a pre-existing disaster relief program for small businesses](#). Congress increased funding for EIDL loans and grants to \$360 billion to support small businesses affected by the economic disruptions caused by COVID-19. According to the WSJ, only about \$208 billion in loans and grants have been issued.

Although PPP and the EIDL funds are distributed differently – PPP funds are distributed through banks while EIDL funds are distributed directly to the applicant by the Small Business Administration – they share one important common characteristic. The programs involve large amounts of money distributed in a short amount of time. The Select Subcommittee staff's preliminary analysis and the Wall Street Journal article reveal funding decisions that raise concerns about compliance with program requirements and may reflect failures by the SBA and contractors to follow proper procedures in an effort to get the money out quickly. Further investigation is sure to follow.

The Select Subcommittee's analysis points to further investigations because it was a "preliminary" report and merely a staff analysis. A more formal investigation by the Select Subcommittee will dig deeper into the staff's high level review of potential problems with PPP funding. That review identified thousands of PPP borrowers of billions of dollars who may not have been eligible for PPP loans, including:

- \$1 billion in loans that went to almost 11,000 borrowers who received duplicate loans.
- Almost \$3 billion in loans to another 11,000 borrowers whose addresses for obtaining a PPP loan did not match their addresses in the government's procurement "System for Award Management" ("SAM") database.
- \$96 million in loans to more than 600 borrowers who are ineligible to receive PPP funds because they are debarred or suspended from contracting with the government.

According to the [WSJ](#), the SBA has been under fire almost from the beginning over delays in funding under the EIDL program. In July, the SBA Inspector General also reported serious concerns about potential fraud in the program. The report included the following findings:

- Nine financial institutions reported \$187.3 million in suspicious transactions.
- A London-based money transfer business reported that 59 of 60 accounts that received funds and were audited appeared to be fraudulent.
- The [SBA approved](#) more than \$250 million in EIDL loans and grants to potentially ineligible businesses and made duplicate loans to almost 300 businesses.

RER's involvement adds new wrinkles to these concerns. According to the [WSJ](#), the SBA raised RER's contract ceiling from \$10 million to \$600 million, an increase that should have raised a red flag about RER's capacity to perform. In addition, RER's subcontract to Rocket Loans raises questions about whether RER is performing 50 percent of the work, a requirement under the SBA's section 8(a) program for economically disadvantaged businesses under which RER's original contract was awarded. Finally, even if RER has the capacity to manage the additional workload and even if the arrangement with Rocket Loans satisfies the section 8(a) requirements, did RER and Rocket Loans have sufficient controls in place to prevent fraud. The Select Subcommittee and the SBA IG will continue to examine these issues.

Finally, [JP Morgan sent a memo](#) to employees about customer wrongdoing related to the PPP, unemployment benefits, and other COVID-19 relief programs. The memo urged employees to be alert for fraud. JP Morgan appears to be ahead of the curve in recognizing and identifying through its own internal reviews the potential for fraud. Senator Marco Rubio, Chairman of the Senate Small Business Committee, has sent a [letter to JP Morgan](#) seeking more information about the potential fraud and the bank's actions to mitigate it.

The now documented issues with the PPP, EIDL, and other programs should serve as a warning to anyone involved with these programs. It is time to look at your own processes and performance, to ask whether requirements were overlooked, proper procedures were in place, and signs of fraudulent activity were taken seriously. Banks should look more closely at their customers who received PPP, EIDL funds, or other funding, especially any new clients, and make sure they can document fulfilling their due diligence and basic KYC obligations. Government contractors should review program requirements and make sure they followed them completely and can document their efforts to do so. Ultimate recipients of funding should also review program requirements and make sure they can document that they

meet all eligibility standards. Taking these steps will show law enforcement and Congressional investigators that efforts to reduce the risk of fraud were undertaken.

While there is some sympathy for those who made good faith efforts to fulfill program requirements under difficult circumstances, these serious public concerns about waste, fraud, and abuse cannot be ignored by those involved in the programs. Doing so is likely to be dealt with severely.



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Keith Ausbrook is a key member of Guidepost Solution's high-profile monitoring and compliance practice. He has led teams reviewing compliance programs in financial institutions around the world. Mr. Ausbrook was also a member of the monitor team reviewing the safety programs at General Motors under a deferred prosecution agreement with the U.S. Department of Justice. Mr. Ausbrook is a distinguished lawyer with an accomplished record of managing complex crises. He has held numerous senior executive and legislative branch positions where he oversaw homeland and national security policy development and implementation, including serving as the chief lawyer on the House Committee investigating Hurricane Katrina and as Executive Secretary of the Homeland Security Council at the White House.