



April 20, 2020

FTC FILES COMPLAINT AGAINST COMPANY REGARDING PAYCHECK PROTECTION PROGRAM LOANS

On Friday, the Federal Trade Commission ("FTC") filed a complaint alleging that a company doing business as SBA Loan Program or SBA Loan Program.com engaged in deceptive acts or practices when it claimed (i) to be authorized to make or approve loans through the Paycheck Protection Program ("PPP") created by the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") and (ii) to be affiliated with, associated with or endorsed, sponsored or approved by the Small Business Administration ("SBA"). *FTC v. Pointe Investments, LLC*, No. 20-cv-00177 (D.R.I. Apr. 17, 2020).

The FTC claimed that the company solicited applications for PPP loans from small businesses via telephone and email and represented that the company (i) was the SBA or (ii) was working with the business's bank. The company urged small businesses to apply immediately for PPP loans because limited funds were available through the PPP.

The FTC also took issue with the company's website. On pop-ups and webpages, the company claimed to be a direct lender in the PPP and promoted the "CARES Act Paycheck Protection Program." The company advertised other stimulus relief funding on its website. In small print on the bottom of a webpage in faint grey typeface against a white backdrop, the company included a disclaimer that (i) it is not the U.S. government, (ii) if the small business wants to apply for disaster relief loans it should visit the SBA's website and (iii) the PPP is not provided by the SBA. The disclaimer did not warn small businesses that the company is not authorized to make SBA loans. The FTC claimed that small businesses could miss the website disclaimer.

According to the FTC, the company has collected hundreds or thousands of PPP loan applications from small businesses. Because the company is not an authorized SBA lender, small businesses that submitted an application to the company lost out on an opportunity to access the \$350 billion available through the PPP. The relief funds were available on a first-come, first-serve basis and have already been exhausted. The FTC has requested that the court grant an injunction and other relief necessary to redress small businesses' harm, including, but not limited to, the disgorgement of ill-gotten

monies.

Prior to the FTC's enforcement action, the SBA had sent the company a cease and desist order noting that the company is not an authorized lender.

This complaint is a reminder that regulators are monitoring companies offering small businesses and consumers financial or other relief during the coronavirus pandemic. While this complaint may involve an extreme example, companies offering or arranging PPP loans find themselves in an uneasy situation in terms of soliciting additional PPP loan applications as they wait and see if Congress will authorize additional funds to the PPP. During this waiting period, any representations made to small businesses regarding Congressional funding and the availability of future funds in the PPP should be scrutinized by a financial services provider's legal team. □

✧ *Mike Tomkies and Susan Seaman*

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Emily C. Cellier
ecellier@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

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Michael C. Tomkies
mtomkies@dtlaw.com

Susan M. Seaman
sseaman@dtlaw.com

Lindsay P. Valentine
lvalentine@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@deher-la.com