

# The Long Shadow of Compliance: Avoiding Stimulus Program Pitfalls

*April 30, 2020*

**Speakers:**

**Paul E. Ryan**

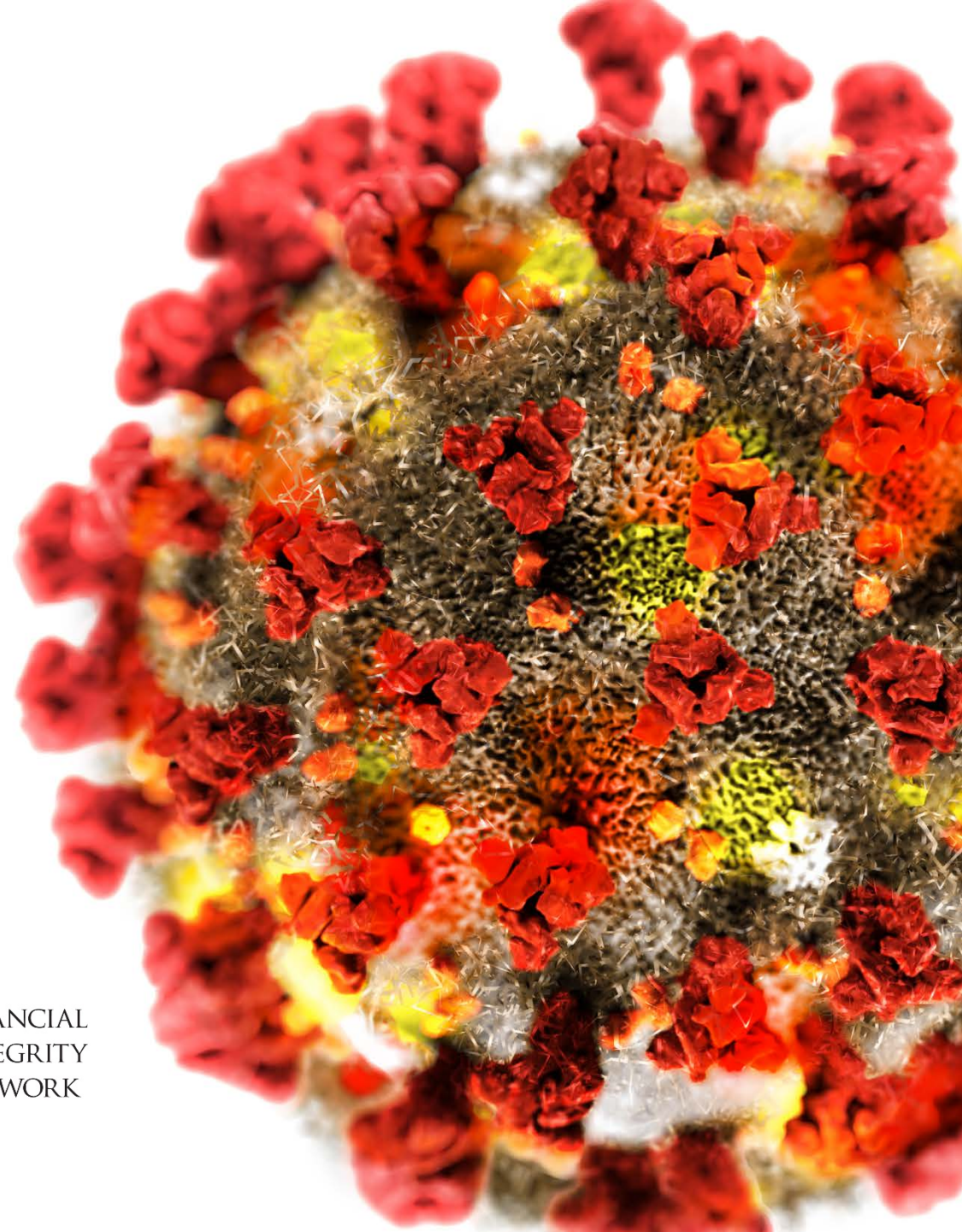
**Raymond Dookhie**

**Elizabeth Vella Moeller**

**Craig J. Saperstein**



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# Today's Presenters:



**Paul Ryan**  
Sr. Managing Director  
Investigations & Disputes  
**K2 Intelligence Financial  
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# Agenda

This webinar will cover stimulus program pitfalls, challenges, and key risk mitigation strategies including:

- Proactive steps to properly document that stimulus funds were properly obtained and used
- Helpful guidance on how to effectively monitor compliance and respond to fraud, misconduct, regulatory and investigative inquiries
- Who at the federal, state, and local level will conduct those inquiries and investigations

# The CARES Act At-a-Glance: Stimulus 3.0

## \$2.3 Trillion Stimulus Package (expected \$4 trillion in economic activity)

**\$500 billion**  
in loans for distressed  
companies



**\$242 billion**  
for public health

**\$260 billion**  
in unemployment  
insurance benefits



**\$150 billion**  
for hospitals to invest in  
equipment and infrastructure

**\$377 billion**  
in small business loans



**\$150 billion**  
to assist hard-hit state and  
local governments

**\$250 billion**  
in direct checks to  
qualifying individuals/  
families



**\$32 billion**  
in airline-related support



# The Small Business Administration's Paycheck Protection Program: Managing the Shake Shack Effect

- The federal government has approved more than \$600 billion for programs through the Small Business Administration.
- SBA released new guidance on April 23<sup>th</sup>, companies will have to prove they need the funds:
  - "Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?"
  - "[B]efore submitting a PPP application, all borrowers should review carefully the required certification that 'c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant,' "
  - "[I]t is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification."
- SBA guidance provides for a "safe harbor." *Any borrower that applied for a PPP loan prior to the issuance of this regulation and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.*

# How do you demonstrate you acted in “good faith”?

A company should be prepared to provide documentation, including:

- A description of COVID-19’s impact on the business
- A summary of the overall economic situation of the company
- The lack of alternative commercial funding vehicles, including a description of:
  - efforts undertaken to find alternative funding, and/or
  - existing lending restrictions or covenants that would make it pointless to try to seek alternative funding, and
  - The company’s cash reserves and burn rate of existing funds vs. projected revenues during the COVID-19 period.

# What are the SBA's other PPP Requirements?

- Companies must keep workers on their payrolls for an eight-week period after the loan is granted and the businesses can only use the loan for specified purposes.
  - 75% of funds should be used for payroll.
- Businesses will need to submit a request for forgiveness to the lender that services their loan.
  - The request must include documents verifying employees and pay rates, as well as what the loan money was used for.

# Case Study: Reimbursements for Health and Human Services (HHS) Funding

- Public Health and Social Services Emergency Fund provides \$175 billion for hospitals and medical providers for “health care related expenses or lost revenues that are attributable to coronavirus.”
- Every employer is now some form of “medical provider.”
- Key provisions include:
  - No payments for otherwise reimbursable costs;
  - Must “submit reports” and “maintain records” related to payments;
  - Eligible entities include “public entities, Medicare or Medicaid suppliers and providers, and for-profit and not-for-profit entities specified by HHS”; and
  - Recipients must complete “Terms and Conditions” from federal agencies.



# Lessons Learned

◆ WSJ NEWS EXCLUSIVE | BUSINESS

## Ruth's Chris to Repay Loan Amid Outcry Over Rescue Program

Treasury Department directs public companies to return aid meant for smaller businesses hurt by coronavirus pandemic

With public scrutiny of the coronavirus rescue intensifying, the Treasury Department asked publicly traded companies to repay loans they received from a federal program intended to aid small businesses.

Source: The Wall Street Journal

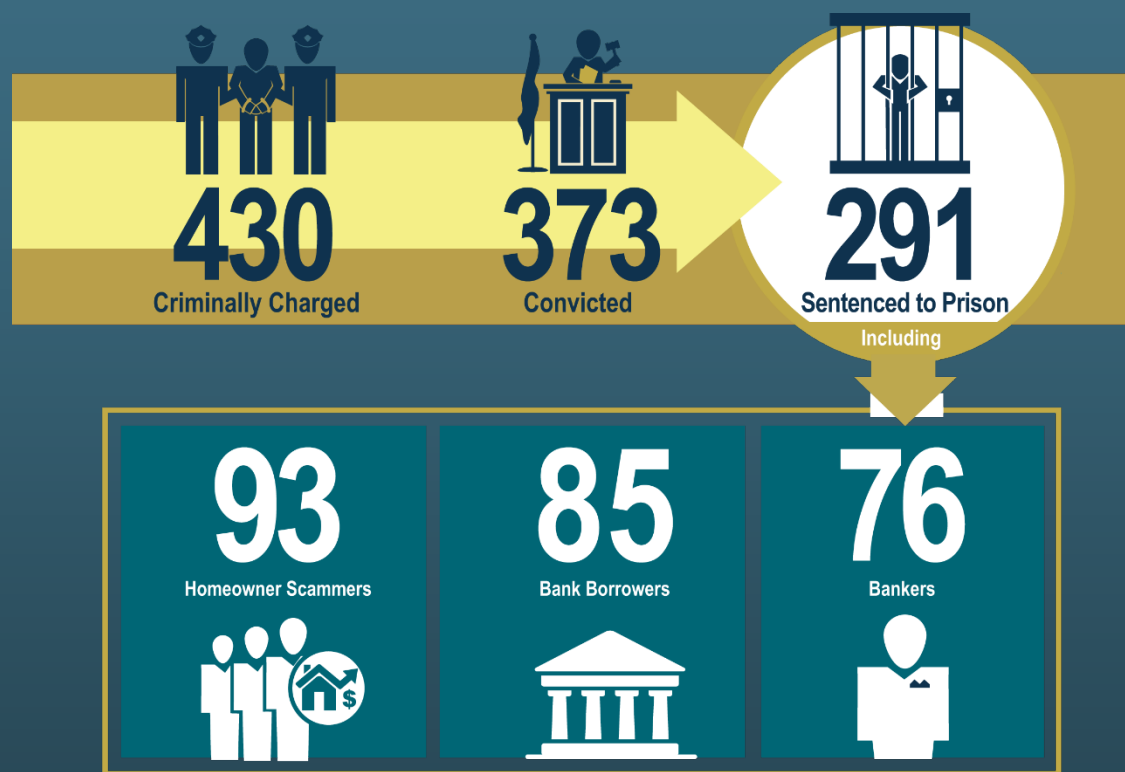
# Congressional Investigations

- Congressional Oversight Commission (“TARP 2.0”)
  - Oversight of Treasury/Federal Reserve Board’s economic relief activities
  - Will last for 5 years and will report to Congress every 30 days
  - Hearings/reports likely
- Government Accountability Office reporting/audits
  - Strong relationships with IGs/agencies
  - Bipartisan credibility in Congress
- House Select Committee on the Coronavirus Crisis (“Benghazi 2.0?”)
  - Root out waste/fraud/abuse
  - Protect against price gouging and profiteering
  - Ensure that federal response is guided by science/health experts

# Executive Branch Oversight/Investigations

- Special Inspector General for Pandemic Recovery (SIGPR)
  - Audits/investigations of Treasury Department activity related to COVID-19 response
- Pandemic Response Accountability Committee (PIGIE)
  - IGs from various agencies
  - “Promote transparency and conduct and support oversight” of the government’s coronavirus response in order to “prevent and detect fraud, waste, abuse, and mismanagement” and “mitigate major risks that cut across program and agency boundaries.”
  - Develop website to foster transparency in the use of CARES Act funds
- Agency-by-agency reporting

# SIGTARP Report on Fraud and Misconduct

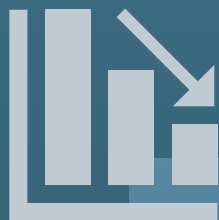


**\$11 Billion** =  
Recovered from Investigations

**31x**  
Return on Investment

Semiannual Report to Congress, April 1, 2019 – September 30, 2019, Office of the Special Inspector General for the Troubled Asset Relief Program.

# Impact of Government Investigations



## Monetary cost

- Fines, penalties, disgorgement of profits
- Debarment
- Cost of investigation (attorneys and specialists' fees)
- Loss of profit
- Loss of market capitalization



## Non-monetary cost

- Brand or reputational impact
- Business disruptions
- Inability to grow or expand business
- Loss of financing
- Loss of talent



# Sample Fraud and Misconduct Schemes

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## Internal Fraud (Employees or Management)

- False statements - deception/fraud by employees working for financial institutions - promising individuals that they qualify for benefits
- Invalid recipients – Recipients do not meet the minimum standards to qualify for benefits
- Invalid payments – payments of expenditures which are no allowable or permissible under the program requirements
- Unsupported payments
- Misclassification of expenditures
- Co-mingling of program funds

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## External Fraud (Vendors, Agents, etc...)

- Fraud by third parties (e.g., brokers or agents) working on behalf of organizations
- False information provided
- Fraud by fraudsters – pay for program entry scams
- Loss of eligibility – over time, otherwise valid recipients may no longer qualify for benefits
- Vendor fraud

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## Collusion (Internal and external parties collude in fraudulent schemes)

- Kickback schemes
- Bid rigging

# Are you a Recipient of Local, State, or Federal Stimulus Funding? How We Can Help on “Compliance First”

- How do you create a culture of Compliance First?
  - Do you have adequate resources and a fulsome compliance program addressing your company’s current legal and compliance risks, including fiscal controls, anti-corruption risks, vendor management, etc.?
  - Does your organization have policies and procedures in place for CARES Act loan obligations?
  - How are you preparing for reopening conditions imposed by the government?
- Is your compliance program subject to frequent updating and testing to regularly integrate new requirements and test its effectiveness to address new challenges?
- Do all relevant stakeholders including the Board, employees and third-party business partners understand their legal and compliance obligations?
  - Do they know to whom they should report issues that may arise?
- How should you plan to communicate and train relevant stakeholders regarding the company’s new and existing legal and compliance obligations?

# Compliance and Integrity Programs and Controls

## Oversight Functions

- Board/audit committee oversight
- Executive and line management functions
- Internal audit, compliance, and monitoring functions

## Prevention

- Fraud and misconduct risk assessment
- Code of conduct and related standards
- Financial policies and controls
- Employee and third-party due diligence
- Communication and training

## Detection

- Hotlines and whistle-blower mechanisms
- Auditing and monitoring
- Proactive forensic data analysis

## Response

- Internal and external investigation protocols
- Enforcement and accountability protocols
- Disclosure protocols
- Remedial action protocols

# Paul E. Ryan

## Senior Managing Director

Paul E. Ryan is a senior managing director and head of Construction and Real Estate services at K2 Intelligence, where he specializes in directing compliance reviews and developing programs, complex investigations, and monitorships. Clients facing a range of problems—from dealing with regulatory or contractual compliance-related issues to vendor fraud or conflicts of interests—turn to Paul to help them determine and implement a course of action. Working closely with clients, he conducts investigations, reviewing results and recommending increased controls and enhanced policies and procedures, and creates recovery plans as needed. Paul has vast experience developing and assessing compliance programs, including the determination of best practices for both public and private entities.

Paul currently leads the compliance monitoring of a major financial institution's capital construction program. In a recent investigation, he conducted a ground-breaking review of media transparency issues for the Association of National Advertisers (ANA).

Prior to joining K2 Intelligence, Paul served for 10 years at the New York State Office of the Inspector General (NYS OIG) and the New York County District Attorney's Office. He has extensive experience in the investigation and prosecution of complex fraud, corruption, and other crimes in the public and private sectors. Paul served as the Assistant Deputy Inspector General and Director of the NYS OIG's Contract and Construction Fraud Unit, supervising multidisciplinary teams in complex investigations involving all aspects of the construction process. At the New York County District Attorney's Office, Paul was an Assistant District Attorney in the Labor Racketeering Unit/Construction Industry Strike Force and the Trial Division.

Paul received his J.D. from the Benjamin N. Cardozo School of Law and his B.S. in political science from Queens College.



**Paul E. Ryan**

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# Raymond Dookhie

## Managing Director

Raymond Dookhie, a managing director in K2 Intelligence's Investigations and Disputes practice, has more than 25 years of experience in compliance, integrity risk monitoring and management, and investigations. His experience spans across industries, with specific focus on financial services, life sciences, as well as real estate and construction. Ray helps clients address enterprise risk management priorities by designing, implementing, evaluating, and monitoring compliance programs. He manages compliance and integrity monitoring assignments, anti-bribery and anti-corruption compliance projects, compliance and integrity risk management, and fraud and misconduct investigations.

Ray has a comprehensive background in global regulatory and compliance frameworks, including the U.S. Federal Sentencing Guidelines; the "Hallmarks of an Effective Compliance Program," jointly issued by the U.S. Department of Justice (DOJ) and the Securities and Exchange Commission (SEC); the U.S. Foreign Corrupt Practices Act (FCPA); and the UK Bribery Act.

Prior to joining K2 Intelligence, Ray was a senior director with KPMG's forensic services practice in New York, where he served in various client-service leadership roles. During his 20-plus years with KPMG, Ray provided compliance and integrity risk management subject-matter expertise to large and small clients across a wide spectrum of compliance maturity.

Earlier in his career, Ray was a fraud investigator with the New York County District Attorney's Office and the New York City Department of Investigation.

With a B.A. in accounting from Queens College, Ray is a Certified Public Accountant (CPA), with a certification in financial forensics. He is a member of the New York State Society of Certified Public Accountants and the American Institute of Certified Public Accountants; an associate member of the Association of Certified Fraud Examiners; and a committee member of the Litigation Services Committee for the New York State Society of Certified Public Accountants.



**Raymond Dookhie**  
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# Elizabeth Vella Moeller



**Elizabeth Vella Moeller**  
Pillsbury Winthrop  
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## Partner

Elizabeth Moeller serves as Leader of Pillsbury's award-winning, bipartisan Public Policy Group. She manages high-stakes client matters involving financial services, energy and global security policy.

Elizabeth advises Fortune 500 companies, international investors and sovereign government leaders on strategies to achieve business objectives and reduce legal and regulatory risk exposure in Washington. She counsels clients on financial services regulatory and legislative developments, promotes public- and private-sector infrastructure projects and defends clients in Congressional and federal agency investigations. Elizabeth maintains strong relationships with industry leaders and with key personnel in Congress, the executive branch and the press.

# Craig J. Saperstein

## Partner

Craig Saperstein assists clients in developing and implementing sophisticated government relations strategies at the federal and state levels that are geared to provide a demonstrable return on investment.

Craig lobbies on behalf of corporate, nonprofit, foreign sovereign, and public sector clients in Congress, the Executive Branch, and state and local governments. He represents clients on a variety of policy issues, including financial services, cybersecurity, international trade, veterans, energy, economic development, transportation, and health care matters.



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*If you have questions about how the 2019 Novel Coronavirus impacts you or your business, please contact us.*

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