

The FCA as a Sword to Combat Pandemic-Related Fraud: No End in Sight

In 2022, federal prosecutors employed the False Claims Act (FCA) to recover nearly \$7 million from fraud related to pandemic-relief programs. We expect that number to increase in 2023. The Department of Justice (DOJ) has repeatedly stated its intent to utilize the FCA to combat pandemic fraud, legislative action has been taken to facilitate those efforts, and settlements across a range of industries are already beginning to accelerate.

This wave of FCA enforcement has been anticipated since the creation of the Paycheck Protection Program (PPP) in 2020. Facing unprecedented economic issues from the COVID-19 pandemic, the federal government prioritized the speedy issuance of relief funds over fraud prevention. Since then, more than \$800 billion in PPP funds have been authorized, and over 5,000 lenders have issued more than 11 million loans. Unsurprisingly, the U.S. Small Business Association (SBA) has already identified billions of dollars of fraudulent loans.

In May 2021, Attorney General Merrick Garland announced the establishment of the COVID-19 Fraud Enforcement Task Force, specifically designated to litigate the onslaught of PPP fraud claims. In August 2022, President Biden signed into law legislation extending the FCA statute of limitations from five years to ten, thereby removing a significant barrier to prosecuting more complex, higher-value PPP fraud schemes. In September 2022, the DOJ announced the establishment of COVID-19 Fraud Strike Force Teams in Los Angeles, Sacramento, Miami, and Baltimore. Outside those jurisdictions, field offices nationwide are actively prosecuting FCA-PPP cases, with the Northern District of Mississippi and the District of Maryland being particularly active.

Federal prosecutors have demonstrated their willingness to bring FCA-PPP actions at a range of recovery levels. The DOJ announced its first settlement with a PPP lender on September 13, 2022. A regional bank improperly processed a PPP loan for a recipient it knew was ineligible. The loan applicant, a doctor, faced criminal charges related to opiate prescriptions at the time he submitted his PPP application. The regional bank knew of the pending charges against the doctor and that those charges would render him ineligible for the loan, yet processed his application and received its fee from the SBA. The DOJ and the regional bank ultimately settled the FCA claim for \$18,000, demonstrating its willingness to pursue even modest recoveries.

On the other end of the spectrum, in October 2022, a Milwaukee public relations firm agreed to pay \$2.25 Million to settle a claim stemming from its participation in the SBA's second-draw PPP. Second-draw loans were not available to any organizations required to register with the Attorney General under the Foreign Agents Registration Act (FARA). The firm did not disclose its work on behalf of the Dominican Republic Ministry of Tourism until after it received a \$2 Million second-draw loan. A *qui tam* whistleblower complaint prompted the government's investigation, and the whistleblower will receive a share of the settlement.

Most recently, the DOJ announced in January 2023 that four California agricultural companies had agreed to settle allegations that they violated the FCA by improperly inflating employee headcounts on PPP loan applications and impermissibly including non-employee contract workers employed by other companies. The companies agreed to pay \$600,000 under the FCA; the owner of the companies had previously repaid the excess PPP loans issued.

We expect the DOJ to accelerate FCA prosecutions and settlements in 2023. We also expect the landscape of enforcement to shift, as additional investigatory resources will encourage prosecutors to pursue higher-value cases against more sophisticated defendants, including banks and financial consultants who may have assisted numerous clients with loan applications.



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- White Collar Defense & Investigations

We will continue to monitor this area of enforcement and provide updates in subsequent newsletters.
