

## Settlement with DOJ Relating to PPP Loan Signals Increasing Risk for Lenders

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In September, the Department of Justice ("DOJ") announced the "first ever" False Claims Act ("FCA") settlement with a Paycheck Protection Program ("PPP") lender. Under the settlement, a lender agreed to pay \$18,673.50 to resolve allegations that it improperly processed a PPP loan on behalf of an individual that it knew was ineligible to receive the loan. Significantly, the case shows that the government is expanding its efforts to combat PPP fraud beyond previous claims filed against only PPP borrowers.

The Coronavirus Aid, Relief and Economic Security (CARES) Act authorized the issuance of PPP loans in order to provide relief to small businesses experiencing economic hardship during the pandemic. Those loans would be forgiven if certain conditions were met. The lenders who originated PPP loans were entitled to receive a fixed fee ranging from 1% to 5% from the Small Business Administration, depending on the size of the loan.

In May 2020, Prosperity Bank approved and processed a \$213,400 PPP loan for Woodlands Pain Institute PLLC. The PPP application included a question asking whether the applicant (or any individual owning more than 20% equity in the applicant) was subject to an indictment, criminal information, arraignment or other means by which formal criminal charges are brought in any jurisdiction. The sole owner of the applicant answered "No" to this question even though he was facing criminal charges arising from his practice of prescribing opioids. At the time the application was completed, the lender's employees allegedly knew this individual was facing criminal charges and was, therefore, ineligible to apply for the PPP loan. However, the bank processed the application and received a processing fee of \$10,670 while the applicant received the loan proceeds.

After the issues relating to the loan were discovered, the borrower entered into a \$523,331 settlement with the DOJ in November 2021 to resolve his liability arising from fraudulent medical billing and his submission of the PPP loan application. The borrower also repaid the loan in full in 2022. Nonetheless, the DOJ also sought recovery from the lender, which resulted in the "first-ever" FCA settlement with a PPP lender. The expansion of the DOJ's claims to include PPP lenders combined with Congress extending the statute of limitations on COVID-19 small business fraud cases and the DOJ establishing "Strike Force" teams to combat and prevent COVID-19 related fraud suggests that lenders' risks relating to these enforcement actions could be on the rise.

If your financial institution has concerns about its PPP loans or the government is investigating one of your borrowers, contact KRCL's financial services practice group to discuss your options.

### Related Attorneys

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