

Lenders Subject to Government Scrutiny of Pandemic Fraud

October 20, 2022 Bill Morrison, Neil Issar

PRACTICES Healthcare and Life Sciences, False Claims Act and Qui Tam Defense

The federal government enacted several new laws to provide funding to assist businesses impacted by the COVID-19 pandemic. While trillions of dollars of federal funds were distributed through various programs, including the Paycheck Protection Program (PPP), there was significant misuse and fraud. As a result, the government implemented several fraud enforcement mechanisms and, [as we have written about before](#), has brought enforcement actions against hundreds of loan applicants for making fraudulent statements or false certifications to procure loans.

More recently, the Small Business Administration (SBA) and Department of Justice (DOJ) have turned their investigative attention to the lending side of PPP loans. For example, in March 2022, [the government announced](#) the first prosecution of a lender, arresting an individual on multiple fraud charges and aggravated identity theft in connection with loan and lender applications submitted through the PPP.

The lender allegedly used false representations and documents to fraudulently obtain the approval of the SBA for his company to be a non-bank lender and then used that approval to obtain approximately \$932 million in capital to issue PPP loans and earn over approximately \$71 million in lender fees. The lender allegedly spent the proceeds from his scheme on the purchase of a villa in the Dominican Republic for more than \$10 million, a \$3.5 mansion in Franklin Lakes, NJ, a chartered jet service, and several luxury vehicles.

Similarly, in September, [the government announced](#) the first settlement of a case of a False Claims Act (FCA) violation by a PPP lender. Specifically, a regional bank with branches throughout Texas and Oklahoma admitted that it approved and processed a \$213,400 PPP loan despite knowing the loan recipient was facing criminal charges related to prescribing opioids. The criminal charges would normally render one ineligible for a PPP loan, but the bank processed the application anyway in order to receive a processing fee of \$10,670 from the SBA. The loan recipient entered into a \$523,331 settlement, while the lender agreed to pay \$18,674.

DOJ is also investigating various financial technology companies, including Atlanta-based Kabbage, Inc. d/b/a KServicing, for potential FCA violations associated with their PPP loan approval processes.

These announcements appear to indicate the SBA and DOJ will investigate and hold accountable not just loan recipients but also financial institutions that processed loans under COVID-19 relief programs like the PPP, with false representations and loan eligibility being key areas of attention.

If you have questions about PPP loan liability or FCA compliance, please contact one of the attorneys below or a member of our Government Enforcement and Litigation Practice Group below. You can also review our [COVID-19 Resources page](#) for more information.

In addition, [Bill Morrison](#) and [Neil Issar](#) will be presenting at the [TexasBarCLE's 20th Annual Advanced Business Law Conference](#) on the federal government's focus on and mechanisms of fraud enforcement, examples of enforcement actions brought by the government against businesses that received COVID-19-related funds, and best practices for businesses that received such funds.