DOJ Announces First-In-The-Nation False Claims Act Settlement with PPP Lender

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The government has been actively investigating and prosecuting Paycheck Protection Program ("PPP" or the "Program") fraud ever since the Small Business Administration ("SBA") rolled out the Program in the Spring of 2020 to provide SBA-backed loans to help eligible businesses maintain their workforces during the COVID-19 pandemic. At first the government's efforts focused on cases of obvious fraud, resulting in criminal charges. The criminal prosecutions continue to this day, with a Florida man recently convicted of unlawfully using PPP loans for a 4.02 carat engagement ring, a Louisiana woman charged with fraudulently preparing over 100 PPP applications, and eight conspirators charged with obtaining over $7mm in PPP loans for alleged defunct companies. But as highlighted on Dorsey & Whitney's False Claims Act Case Tracker for PPP Fraud, the communications between borrowers, lenders, and the government to secure government loans necessarily created civil liability, too, under the False Claims Act ("FCA"). Civil cases alleging PPP fraud under the FCA, in fact, are now just as ubiquitous as the criminal cases that grabbed headlines early on in the pandemic. Until recently, however, the FCA cases only targeted *borrowers* allegedly engaged in PPP fraud. But not anymore.

Last week, the DOJ announced the "first-ever" FCA settlement with a PPP lender. Under the settlement, Prosperity Bank, a regional bank with branches throughout Texas and Oklahoma, agreed to pay $18,673.50 to "resolve allegations it improperly processed a PPP loan on behalf of an ineligible customer."

Key to the DOJ's allegations was the bank's employees' *knowledge* of a PPP loan applicant's ineligibility for PPP loans. In May 2020, the bank approved and processed a $213,400 PPP loan application for Woodlands Pain Institute PLLC ("Woodlands Pain"). At the time of the application, Dr. Emad Bishai, the sole owner of Woodlands Pain, was facing criminal charges related to his prescribing of opioid medications. On the PPP loan application, Dr. Bishai responded "no" to the question asking whether he was subject to an "indictment, criminal information, arraignment or other means by which formal criminal charges are brought." Despite the employees' knowledge that Dr. Bishai was facing

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criminal charges and was ineligible to apply for the PPP loan, the bank processed the application and received a processing fee of $10,670.

The settlement amount of $18,673.50 reflects Prosperity Bank's cooperation with the government's investigation, by providing the government with relevant facts and implementing additional compliance measures. This type of settlement aligns with the DOJ's recently announced efforts and reforms to hold corporations more accountable for criminal activity.

The government shows no sign of slowing down its efforts to pursue its prosecution of PPP fraud, with Congress passing federal legislation extending the statute of limitations on COVID small business fraud cases, the Department of Justice ("DOJ") recently establishing three new DOJ strike force teams designed to combat and prevent COVID-19 related fraud, and many more measures tailored toward delivering on President Biden's announced goal of tackling PPP fraud. DOJ's latest settlement with a PPP lender demonstrates that the scope of the government's enforcement activity is expanding. For financial institutions with concerns about its PPP loan approval and forgiveness procedures, and particularly when the government is investigating a borrower of the lender, it is important to be proactive in identifying any potential compliance shortcomings and to work with counsel experienced with the Program to assess any potential risks. As AG Monaco noted in her speech last week, corporations that show a willingness to cooperate with prosecutors can secure more favorable outcomes than those that intentionally mislead or withhold information.