

PPP Lenders Beware: The DOJ Secured A First-Of-Its-Kind FCA Settlement

Articles, News September 16, 2022

In response to “a series of sensational congressional investigations into the sale of provisions and munitions to the War Department” where “the United States had been billed for nonexistent or worthless goods, charged exorbitant prices for goods delivered, and generally robbed in purchasing the necessities of war,” Congress enacted the False Claims Act (“FCA”). *United States v. McNinch*, 356 U.S. 595, 599 (1958). Indeed, the FCA was enacted in an effort to prevent the “plundering of the public treasury.” *McNinch*, 356 U.S. at 599.

Under the FCA, the government is empowered to seek civil remedies. This week, the Department of Justice (“DOJ”) announced a first-of-its-kind FCA civil remedy: a settlement from a Paycheck Protection Program (“PPP”) lender.

According to the press release from the DOJ, Prosperity Bank agreed to pay \$18,673.50 “to resolve allegations that it improperly processed a [PPP] loan on behalf of an ineligible customer.” Prosperity Bank, which was eligible to receive a fee ranging from 1% to 5% depending on the size of the PPP loan it processed, approved a loan for a customer knowing that the customer’s application was false. The customer had answered “no” in response to a question on the PPP loan application asking whether the applicant or an individual with more than 20% equity was facing criminal charges. At the time, the customer, who was the sole owner of the entity applying for the loan, was facing criminal charges. And employees of Prosperity Bank knew it. Yet, Prosperity Bank approved the PPP application and processed a PPP loan. That allowed the bank to be paid a 5% fee that it was not otherwise entitled to, in violation of the FCA. Through the settlement, Prosperity Bank had to pay back that fee plus an additional amount in damages.

The DOJ touts the settlement as a first-of-its-kind under the FCA, at least as it relates to the PPP. But it also highlights the DOJ’s priority and means available in pursuing individuals and companies that may have fraudulently obtained PPP loans.

For more information contact **Wes Mishoe** at 717-221-7961.