CLIENT ALERTS & INSIGHTS

Paycheck Protection Program ("PPP") Loan Fraud: A Survey & Analysis of Recent Civil & Criminal Enforcement Outcomes

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The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or around March 2020 designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects caused by the COVID-19 pandemic. Among other things, the CARES Act authorized up to $349 billion in forgivable loans to small businesses and sole proprietors for job retention and certain other expenses through the Paycheck Protection Program ("PPP"). In or around April 2020, Congress authorized over $320 billion in additional funding for PPP loans.

Efforts to defraud the program were substantial. According to the Inspector General's 2022 report, at least 70,000 PPP loans were potentially fraudulent.[1] The Small Business Administration recently estimated the loss amount from PPP loan fraud may be as high as $64 billion.[2]

Both state and federal law enforcement agencies began zealously prosecuting COVID-relief fraud very shortly after funds were initially disbursed mid-pandemic. For example, on August 5, 2022, the PPP and Bank Fraud Enforcement Harmonization Act of 2022 and the COVID-19 EIDL Fraud Statute of Limitations Act of 2022 were passed by Congress with bipartisan support and signed into law by President Biden. The latter extended the statute of limitations to ten years for financial institution fraud, with the specific purpose of allowing fraud investigators across the country additional time so that more individuals and entities who committed this fraud can be identified and prosecuted.

Federal law enforcement agencies continue to actively pursue civil and criminal cases relating to PPP loan fraud. In this article, we discuss those efforts to date, and how such investigations will be handled moving forward, particularly in light of past settlements and decisions, as well as the onset of the second Trump Administration.

I. Civil Enforcement

On January 15, 2025, the Department of Justice published a report detailing its False Claims Act enforcement and recovery efforts for fiscal year 2024.[3] As noted at the outset, Fiscal Year 2024 saw the highest number of *qui tam* actions filed in history. The government and whistleblowers were party to 558 settlements and judgments, the second highest total after last year's record of 566 recoveries, and whistleblowers filed 979 qui tam lawsuits altogether. The government's total recovery from these efforts exceeded $2.9 billion.

The statistical increase appears attributable, at least in part, to increased enforcement and prosecution of improper PPP loans. The DOJ acknowledged as much, dedicating a section of its Report to fraud directed at pandemic-related programs. The DOJ Report noted that over 250 FCA claims and judgments were brought and obtained for such false claims, resulting in over $250 million in recovery.

The DOJ Report highlighted three recent, noteworthy settlements over claims that businesses improperly obtained PPP loans. The first is Kabbage Inc., a company alleged to have systematically inflated PPP loans, causing the Small Business Administration ("SBA") to issue funds in excess to what borrowers were eligible to receive, and to have failed to implement proper fraud controls. The United States successfully obtained a judgment against Kabbage Inc. and can obtain up to $120 million from the now defunct entity.

Next, West Coast Dental Administrative Services LLC (formerly West Coast Dental Services Inc.) was alleged to have received at least seven improper second-draw PPP loans. West Coast falsely certified that it qualified for these loans. West Coast ultimately paid $6.3 million to resolve the allegations.

The third highlighted prosecution was for Hemisphere GNSS (USA) Inc., which was purchased by a PRC-based company in 2023. The government alleged that Hemisphere falsely certified that no entity created in or organized under the laws of the People's Republic of China owned or held 20% or more of an economic interest in the company, and that it did not have a board member who was a resident of the People's Republic of China. According to the government, both of those certifications were false at the time Hemisphere submitted its loan applications. The company ultimately paid $2.6 million to resolve the allegations.

Notwithstanding the statistical increase in civil fraud enforcement in 2024, it is worth mentioning that the first Trump Administration saw a clear downtick in fraud-related civil and criminal enforcement actions, and there is good reason to expect the same for the second term.[4]

Regardless, the Trump Administration has made clear that government fraud, waste, and abuse more generally remains a significant priority. On March 20, 2025, President Trump signed an Executive Order titled "Stopping Waste, Fraud, and Abuse by Eliminating Information Silos." While the primary purpose was to eliminate information silos between departments and allow for all necessary information sharing to avoid bureaucratic duplication, it specifically noted the underlying goal of enhancing "the Government's ability to detect overpayments and fraud." Because PPP fraud has a strong nexus to hot-button political issues, the pandemic, and the ongoing discourse over government spending and waste, it is likely to, at a minimum, remain a civil enforcement priority during President Trump's second term.

II. Criminal Enforcement

Now, in April of 2025, enough time has passed such that many criminal PPP loan fraud investigations have resulted in charges being filed, a significant number of which have since reached resolution or disposition.

As an initial matter, PPP loan cases are generally easier to investigate and prosecute compared to other fraud cases. Loan data is readily available to the general public. Not only is it easy for the government to review data and identify outliers for investigation, but public whistleblowers can also easily analyze this information. Likewise, experienced investigators can readily ascertain whether a given entity was in fact open and operating with the claimed payroll and other expenses, and whether the loan proceeds were spent in accordance with program rules. Altogether, the circumstances of PPP cases produce a situation where viable defenses and factual disputes are limited, making it more difficult to present a meritorious defense.

In order to identify trends, shifts, and other commonalities, we have conducted significant research into many of these cases in order to build a representative data set. We focused on federal criminal cases-generally the forum where the most serious cases are brought, and the most accessible set of public records-for which we identified 50 prosecutions that have reached resolution. We have formatted this data into a table containing the basic, critical information from these cases, and sorted them based on outcome. This table is provided at the conclusion of this article.

From this data, we have been able to identify notable trends and commonalities amongst PPP loan fraud prosecutions from this data set. Notably, very few of these matters proceed to trial. PPP loan cases are not unique in this sense: approximately nine out of every ten federal prosecutions are resolved through a plea agreement, and close to 97% overall result in convictions.[5] Beyond the frequency of plea agreements, we have also identified common recurring factors that drive higher sentence and the unique impact of certain enhancements.

Three factors often lead to an increased sentence: (1) the loss amount value, (2) defendants playing a leadership role within a given scheme, and (3) defendants engaging in advertising and recruitment efforts. Defendants in these sorts of cases often receive custodial sentences. Likewise, PPP loan fraud is often charged alongside other charges brought, including money laundering (18 U.S.C. §§ 1956, 1957), conspiracy to defraud the United States (18 U.S.C. § 371), tax charges (26 U.S.C. § 7201 *et seq.*), and aggravated identity theft (18 U.S.C. § 1028A).

Beyond loss amount disputes under U.S.S.G. § 2B1.1(b)(1), the most commonly applied enhancement to the United States Sentencing Guidelines in PPP loan fraud cases is the "sophisticated means" enhancement. This enhancement applies if "the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means."[6]

The challenge with this enhancement is evaluating what constitutes "sophisticated means." Application Note 9(B) to § 2B1.1 provides:

For purposes of subsection (b)(10)(C), "***sophisticated means***" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating

soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.

This application note has been interpreted to trigger the enhancement for any scheme more complex than "garden variety" fraud schemes.[7] For PPP loan fraud cases, the most basic iterations of such scheme always involve something more than the garden variety, *i.e.* the use of entities, falsifying records, passing money through different accounts. Therefore, PPP loan cases seemingly always encompass the core "sophisticated" activities targeted by the application note.

Still, it remains open to interpretation whether PPP loan frauds should be compared to other frauds generally, or more precisely only to other PPP loan fraud cases. At least two federal circuits review this enhancement by comparing the given scheme to other schemes of its kind: "[o]ffense conduct is sophisticated if it displays 'a greater level of planning or concealment' than a typical fraud of that kind."[8]

In *Wayland*, the Seventh Circuit considered whether the defendant, in relation to his sentencing for health care fraud, was involved in a crime with "a greater level of planning or concealment than the typical health care fraud case."[9] In *Hance*, which the *Wayland* court relied on, the Eighth Circuit stated that for the enhancement to apply "the government must show that [defendant's] mail fraud, when viewed as a whole, was notably more intricate than that of the garden-variety mail fraud scheme."[10]

Assuming *arguendo*, that PPP loan fraud is intrinsically more complex than other typical frauds, counsel may find success challenging this enhancement by focusing the point of comparison exclusively within the context of PPP loan frauds alone. On the other hand, charges are sometimes filed under the mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, and in other instances, under the bank fraud statute, 18 U.S.C. § 1344. This may inevitably springboard a counterargument as to the appropriate point of comparison.

Beyond sophisticated means, the government routinely seeks enhancements for leadership roles in a given scheme.[11] Although this is a fact-specific enhancement, PPP loan cases often have clearly defined roles, e.g. organizers, brokers, applicants, etc. Therefore, it is relatively easy for the government to apply this enhancement compared to other cases.

Likewise, although we have not personally seen application of these enhancements, a § 2B1.1(b)(12) enhancement may apply where "the offense involved conduct described in 18 U.S.C. § 1040." This statutory provision criminalizes fraud in connection with major disaster or emergency benefits. COVID-19 was declared a national emergency, and the PPP funds were designated as emergency relief funds. Further, if "sophisticated means" were not employed by the defendant in the commission of the offense, § 2B1.1(b)(17) could still be triggered through a separate subsection that increases the offense level where "the defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of the offense." The government may seek to apply either of these enhancements moving forward, particularly if it cannot establish a leadership role or sophisticated activities.

III. Conclusion

Both state and federal law enforcement agencies have been zealously prosecuting COVID-relief fraud since not long after funds were initially disbursed mid-pandemic. While the Trump Administration has historically been less focused on prosecuting white collar crimes than other administrations-and has likewise signaled a focus on combating drug trafficking organizations and human trafficking at present-the PPP loan program remains a key topic for political discourse surrounding government spending and waste. We therefore expect it to continue to remain an enforcement priority for the DOJ and other government enforcement agencies moving forward.

As policies and enforcement priorities for fraud and white-collar crime generally continue to evolve under the new administration, Benesch is here to assist your organization in navigating both the regulations and enforcement policies. If you have questions regarding the PPP loan program, government investigations related thereto, or enforcement actions more generally, the White Collar Practice Group at Benesch is here to help.

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[1] U.S. Small Business Administration, Office of the Inspector General, *SBA's Handling of Potentially Fraudulent Paycheck Protection Program Loans* (May 26, 2022), *available at*: https://www.sba.gov/sites/default/files/2022-05/SBA%20OIG%20Report%2022-13.pdf (last accessed April 8, 2025)

[2] FBI Springfield, *How the FBI is Combating COVID-19 Related Fraud* (Jan. 12, 2024), *available at* https://www.fbi.gov/contact-us/field-offices/springfield/news/how-the-fbi-is-combatting-covid-19-related-fr (last accessed April 8, 2025).

[3] Department of Justice, *False Claims Act Settlements and Judgments Exceed $2.9B in Fiscal Year 2024* (Jan 15, 2025), *available at* https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-ye (last accessed April 8, 2025).

[4] *See* Marisa T. Darden et. al, *President Trump "Pauses" FCPA Enforcement: What This Means for Legal & Compliance Departments* (Feb. 12, 2025), publicly available at: https://www.beneschlaw.com/publication/president-trump-pauses-fcpa-enforcement-what-this-means-for- . (last accessed April 8, 2025).

[5] See Pew Research Center, *Fewer than 1% of federal criminal defendants were acquitted in 2022* (June 14, 2023), publicly available at: https://www.pewresearch.org/short-reads/2023/06/14/fewer-than-1-of-defendants-in-federal-criminal-case (last accessed April 8, 2025).

[6] U.S.S.G. § 2B1.1(b)(10)(C).

[7] *United States v. Norwood*, 774 F.3d 476, 480 (8th Cir. 2014); *see also United States v. Valdez*, 726 F.3d 684, 695 (5th Cir. 2013).

[8] *United States v. Wayland*, 549 F.3d 526, 528 (7th Cir. 2008) (quoting *United States v. Robinson*, 538 F.3d 605, 607-08 (7th Cir. 2008)).

[9] *Wayland*, 549 F.3d at 528-29.

[10] *United States v. Hance*, 501 F.3d 900, 909 (8th Cir. 2007).

[11] *See* U.S.S.G. § 3B1.1

Payroll Protection Program Loan Fraud Table