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CLIENT ALERT

Avoiding Loan Forgiveness Is No Shield from False Claims Act Liability in Latest Paycheck Protection Program Fraud Settlement

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On April 21, 2021, the Department of Justice (DOJ) inked its second civil settlement resolving allegations of fraud involving loans issued pursuant to the Paycheck Protection Program (PPP). Sandeep S. Walia, M.D., a Professional Medical Corporation (Walia PMC), and its owner, Dr. Walia, agreed to pay $70,000 in damages and penalties to resolve alleged violations of the False Claims Act (FCA) tied to allegations that Dr. Walia falsely certified in a second PPP loan application that his medical practice had not previously received a PPP loan after it had already received one from a different lender. Walia PMC also agreed to repay the second PPP loan for $430,000. This latest settlement is a continued reflection of the heightened scrutiny of the PPP, and suggests that the FCA may quickly become a favored enforcement tool by the government in its continued pursuit of PPP-related fraud.

Notably, the fact that Walia PMC did not seek forgiveness for the second PPP loan did not shield it from FCA liability. The DOJ's FCA theory rested on the allegation that Dr. Walia caused a false statement to be made to the SBA when the second lender applied to the SBA to request a loan guaranty for its PPP loan to Walia PMC. In doing so, Walia caused the second lender to falsely represent to the SBA that Walia PMC had not received another PPP loan based on Walia PMC's certification. This misrepresentation caused the SBA to guarantee the loan and pay the bank in New Jersey a fee of $12,900 for processing the $430,000 PPP loan. The DOJ highlighted that the false statement caused a false claim to be made to the SBA for "processing fees." The DOJ also emphasized that Walia PMC's false statement resulted in a reduction of PPP loan funding available for other eligible recipients, commenting: "The second PPP loan should have been disbursed to another small business suffering financially during the COVID-19 pandemic."

As previously discussed in our analysis of the DOJ's first civil settlement earlier this year, and as reflected in Assistant Attorney General Brian M. Boynton's February 2021 remarks, this settlement reinforces that pandemic-related fraud is at the top of the Civil Division's enforcement priorities for 2021. In fact, this settlement demonstrates that DOJ will not hesitate to utilize the FCA even for relatively smaller loans, a sign that those receiving larger loans approaching the $10 million cap should anticipate potential scrutiny. It also shows that the DOJ will not wait for companies to pursue forgiveness before pursuing FCA enforcement actions.

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