

A Ramp Up in CARES Act Enforcement is Underway, Given Signs that Relief Programs are Riddled with Massive Fraud

By PETER BROWN

For those struggling during the COVID-19 pandemic, the billions of dollars that both the federal and state governments provided to individuals and businesses has offered meaningful relief. The bad news is that in the rush to quickly get funding into the hands of those who needed it, even the most basic fraud prevention and detection controls took a back seat to expediency. As a result, governments are now faced with a massive fraud problem on a scale that likely has never been seen before.

Here in California, the state auditor has estimated that over \$10 billion in COVID-related unemployment claims may have been fraudulent. In one egregious case, over 1,700 unemployment claims were made from a single address. Other issues include over \$810 million in unemployment benefits that were paid to prison inmates.

On the national level, the Small Business Administration (SBA) is grappling with potentially tens of thousands of Paycheck Protection Program (PPP) loans that were made to “ineligible” businesses. So far, the full extent of the PPP-related fraud has not been quantified but to date, at least \$10 billion in loans appear to be questionable. This finding comes on the heels of a second round of fresh PPP loan funding.

So what is the government doing about the billions of dollars that may have been lost due to fraud? Well, it looks like a robust investigation is underway to catch and punish the wrongdoers.

In January, the U.S. Department of Justice (DOJ) announced its first-ever civil settlement of alleged False Claims Act (FCA) violations with a PPP loan borrower. In this matter, the California-based company SlideBelts admitted to making false statements on its PPP loan applications and agreed to pay a combined \$100,000 in damages and penalties in addition to returning any PPP loan proceeds received. The government claimed SlideBelts violated both the False Claims

Act (FCA) and the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). The DOJ has signaled that other civil fraud cases involving the PPP loan program are on the way and it will use both the FCA and FIRREA as strong weapons in the fight.

So far, the DOJ has charged over 100 defendants in more than 70 criminal cases related to PPP loan fraud. Other cases are sure to be filed in the coming weeks related to PPP loans and other CARES Act stimulus programs.

So what does this increase in enforcement mean for business owners and their companies? What can owners do now to ensure they

can prove that the relief they received was used for its intended purposes? Here are a few tips:

1. Keep records and notes about all the steps taken along the way to comply with the rules and regulations associated with any CARES Act funding received. This includes all communications with the government and lenders and, most importantly, how the determination was made on eligibility to receive the funds. Keep track of how the money was spent. Six months from now, if the government comes knocking, businesses will want to have a clear record of the actions taken and copies of all of the documents supporting their positions. Scan and keep everything together in a central data repository.

2. Evaluate the current compliance structure. A business may need to institute new policies, procedures and controls to adhere to the program rules.

3. Continue to monitor what the government is saying. Many have complained that the government continues to move the goal posts with respect to CARES Act programs. Appoint someone in the organization to keep track of the evolving guidance.

4. If a company is contacted by the government in connection with an enforcement action, do not go it alone. Seek the advice of legal counsel and accountants. They can help support a business's case and navigate through the process.

Overall, any companies worried about their records should reach out to their legal, accounting and business advisors for assistance. Many businesses are going through this same process and there are numerous resources available to assist.

With over 30 years of experience quantifying damages in commercial litigation and conducting internal investigations, Peter Brown, who is a partner and the Forensic Services Practice leader at GHJ, has served as an expert witness in a variety of matters and as a third-party neutral regarding accounting matters and purchase disputes.



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