

Recently Announced Plea Agreements and New DOJ Task Force Signal Aggressive Pursuit of Fraud Targeting Pandemic Relief Programs

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The United States Department of Justice (DOJ) continues its aggressive pursuit of those attempting to fraudulently obtain funds made available through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as reflected in its May 17, 2021 announcement of yet another criminal resolution of a case involving individuals accused of defrauding the Paycheck Protection Program (PPP).^[1] These cases, along with the DOJ's announcement on that same day of the creation of the COVID-19 Fraud Enforcement Task Force,^[2] signal that the DOJ will make increasing use of both criminal and civil enforcement tools to hold accountable companies and individuals seeking to defraud pandemic relief programs as predicted in our earlier articles on the subject.^[3]

On May 17, 2021, the U.S. Attorney's Office for the District of Rhode Island announced a plea agreement with David Adler Staveley, one of the first individuals criminally charged with fraudulently seeking PPP loans.^[4] Staveley pled guilty to conspiring to commit bank fraud and failing to appear in court as required. He faces a maximum sentence of 30 years' imprisonment on the bank fraud conspiracy charge and 10 years' imprisonment on the failure to appear in court charge. In connection with his plea to conspiracy to commit bank fraud, Staveley admitted that he conspired with another individual^[5] to file four fraudulent PPP loan applications, falsely claiming that they owned four businesses with large monthly payrolls when the businesses had no employees and paid no wages, and Staveley had no ownership or any role in one of the businesses. In announcing Staveley's plea to failure to appear in court as required, the DOJ explained that after being released to home detention with electronic monitoring on the PPP fraud charges, Staveley removed his court-ordered monitoring device, staged his suicide, and then fled to various states using false identities and stolen license plates.

This recent plea agreement joins several other criminal resolutions announced by the DOJ in 2021 holding accountable individuals and companies alleged to have defrauded pandemic-related stimulus programs, including the PPP.^[6] These cases further demonstrate the vigilance with which the DOJ will continue to seek to protect pandemic-related response and relief programs by vigorously pursuing criminal prosecutions where warranted by the facts and evidence uncovered. Indeed, the DOJ has announced that over the past year, it has undertaken historic steps to detect and disrupt COVID-19-related fraud, charging nearly 600 defendants with crimes involving more than \$600 million in 56 federal districts across the country.^[7] To date, the criminal cases generally have involved egregious conduct, such as submitting fake federal tax filings and bank statements in support of loan applications, making false statements regarding employees and payroll expenses, and diverting loan proceeds for personal use—including one case where the defendant used PPP loan proceeds to purchase a \$318,000

Lamborghini sports car.^[8] The most recently announced plea agreement is one of over a dozen plea agreements involving the PPP announced by the DOJ this year alone.

Criminal prosecutions are just one of several tools in the DOJ's arsenal for combatting schemes to defraud pandemic-related stimulus programs. Significantly, in the May 17, 2021 announcement of the establishment of the COVID-19 Fraud Enforcement Task Force, U.S. Attorney General Merrick B. Garland stated that "[t]he Department of Justice will use every available federal tool—including criminal, civil, and administrative actions—to combat and prevent COVID-19 related fraud."^[9] Accordingly, and as noted in our earlier articles, the DOJ can be expected to make increasing use of powerful civil enforcement tools, such as the False Claims Act (FCA), to root out fraud in connection with a wide variety of pandemic-related stimulus programs. Several aspects of the FCA make the statute a highly potent tool for combatting fraud. For example, the FCA has a lower burden of proof (preponderance of the evidence) as compared to the higher burden of proof in criminal matters (beyond a reasonable doubt). In addition, the FCA imposes liability—and the potential for treble damages and steep penalties—not only when businesses and individuals have actual knowledge that their statements are false, but also where a business or individual has deliberately ignored or shown a "reckless disregard" for the truth or falsity of statements. Further, the FCA is a tool that can be employed by the DOJ as well as private whistleblowers known as "relators" who may bring FCA cases on behalf of the government and share in the government's recovery. Indeed, during a speech earlier this year, Acting Assistant Attorney General Brian M. Boynton identified pandemic-related fraud as one of the top priorities of the DOJ's Civil Division and made clear that "the False Claims Act will play a significant role in the coming years as the government grapples with the consequences of [the] pandemic."^[10] Notably, the DOJ has already announced civil settlements resolving alleged FCA violations based on allegations of fraud against the PPP.^[11]

In short, the DOJ, including the newly established COVID-19 Fraud Enforcement Task Force, is well-equipped to address fraud committed against pandemic-related stimulus programs in the years to come, with powerful criminal and civil statutes and investigative tools, and has demonstrated that it will hold both companies and individuals accountable. As such, it is critical that both entities and individuals responsible for preparing and filing applications for pandemic-relief funds be proactive in reviewing eligibility requirements, carefully scrutinizing any representations that are made, and ensuring that all program conditions are met. In addition, where issues are discovered, prompt remedial steps should be taken in order to mitigate risks and minimize the potential financial and other penalties that may be imposed on the business or individual.

If you have additional questions or need further assistance, please reach out to **Suzanne Jaffe Bloom** (Co-Chair, White Collar, Regulatory Defense & Investigations), **Benjamin Sokoly** (Of Counsel, White Collar, Regulatory Defense & Investigations), or your Winston & Strawn relationship attorney.

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[1] See DOJ Press Release, "Guilty Plea in First-In-The-Nation Cares Act Fraud Case" (May 17, 2021), available at <https://www.justice.gov/usao-ri/pr/guilty-plea-first-nation-cares-act-fraud-case>.

[2] See DOJ Press Release, "Attorney General Announces Task Force to Combat COVID-19 Fraud" (May 17, 2021), available at <https://www.justice.gov/opa/pr/attorney-general-announces-task-force-combat-covid-19-fraud>.

[3] See, e.g., "An Early Look at DOJ's Increased Focus on COVID-19 Fraud," Law360 (Apr. 6, 2020), available at <https://www.law360.com/articles/1260530/an-early-look-at-doj-s-increased-focus-on-covid-19-fraud>; "Inside the First Paycheck Protection Program Fraud Charges," Law360 (May 15, 2020), available at <https://www.law360.com/tax-authority/articles/1273295/inside-the-first-paycheck-protection-program-fraud-charges>; "Mitigating FCA Liability Risks from Covid-19 Relief Programs," Bloomberg Law, May 2020, available at <https://www.winston.com/images/content/2/0/v2/204436/MitigatingFCAliabilityRisksECO49129.pdf>; "DOJ Announces First Settlement To Resolve Alleged FCA Violations By A PPP Borrower And Its CEO," Mondaq (Jan. 22, 2021), available at <https://www.mondaq.com/unitedstates/insolvencybankruptcy/1028784/doj-announces-first-settlement-to-resolve-alleged-fca-violations-by-a-ppp-borrower-and-its-ceo>.

[4] See "Inside the First Paycheck Protection Program Fraud Charges," Law360 (May 15, 2020), available at <https://www.law360.com/tax-authority/articles/1273295/inside-the-first-paycheck-protection-program-fraud-charges>.

¹⁵ The other individual previously pled guilty in connection with the charged crime on September 18, 2020. See DOJ Press Release, “Warwick Man Admits to Conspire to Fraudulently Obtain COVID-19 Stimulus Loans” (Sept. 18, 2020), available at <https://www.justice.gov/usao-ri/pr/warwick-man-admits-conspire-fraudulently-obtain-covid-19-stimulus-loans>.

¹⁶ The PPP is part of the CARES Act that was enacted on March 29, 2020 and designed to provide financial assistance to Americans struggling with the economic impacts of the COVID-19 pandemic. The PPP, administered by the U.S. Small Business Association (SBA), is intended to provide a rapid source of funding to small businesses in the form of forgivable loans to help pay for payroll costs, mortgage interest, rent, and utilities. According to the SBA, as of May 24, 2021, more than 11.6 million PPP loans have been approved totaling in excess of \$795 billion and involving over 5,400 lenders. See PPP Data, available at <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/ppp-data#section-header-2> (last visited May 25, 2021). In 2021 alone, more than 6.4 million PPP loans have been approved totaling more than \$273 billion. See *id.*

¹⁷ See “COVID-19 Fraud Enforcement Task Force FACT SHEET,” available at <https://www.justice.gov/opa/press-release/file/1394716/download>.

¹⁸ See DOJ Press Release, “Man Purchased Lamborghini After Receiving \$3.9 Million in PPP Loans” (Feb. 10, 2021), available at <https://www.justice.gov/opa/pr/man-purchased-lamborghini-after-receiving-39-million-ppp-loans>.

¹⁹ DOJ Press Release, “Attorney General Announces Task Force to Combat COVID-19 Fraud” (May 17, 2021), available at <https://www.justice.gov/opa/pr/attorney-general-announces-task-force-combat-covid-19-fraud>.

¹¹⁰ Speech, “Acting Assistant Attorney General Brian M. Boynton Delivers Remarks at the Federal Bar Association Qui Tam Conference” (Feb. 17, 2021), available at <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-brian-m-boynton-delivers-remarks-federal-bar>.

¹¹¹ See “DOJ Announces First Settlement To Resolve Alleged FCA Violations By A PPP Borrower And Its CEO,” *Mondaq* (Jan. 22, 2021), available at <https://www.mondaq.com/unitedstates/insolvencybankruptcy/1028784/doj-announces-first-settlement-to-resolve-alleged-fca-violations-by-a-ppp-borrower-and-its-ceo>; “Important Lessons from the Second FCA Settlement Involving Alleged False Statements by PPP Borrower and its CEO” (May 6, 2021), available at <https://www.mondaq.com/unitedstates/financial-services/1065172/important-lessons-from-the-second-fca-settlement-involving-alleged-false-statements-by-ppp-borrower-and-its-ceo>.

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