



False Claims Act Implications for PPP and Disaster Relief Loans: What Small Businesses Should Be Ready For

Matt Feinberg
July 29, 2020

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We deliver results for our clients by implementing legal and business solutions that take the client's best interests into consideration. Moreover, PilieroMazza's efficient operational structure and lean approach to staffing matters translates into competitive pricing for our clients, while providing the highest standard of client service and legal acumen.

PilieroMazza is privileged to represent clients in the following areas:

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- Business & Corporate Law
- Cybersecurity & Data Privacy
- False Claims Act
- Government Contracts Law
- Mergers & Acquisitions
- Intellectual Property & Technology Rights
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Matt Feinberg is an accomplished litigator with over a decade of experience in all aspects of state and federal civil and appellate litigation, in addition to alternative dispute resolution. His advocacy for corporate clients -- from local small businesses to publicly traded companies -- gives him a unique perspective on successful litigation strategies for achieving the best possible outcome for clients.

Mr. Feinberg has significant first-chair trial and appellate experience over a wide range of practice areas, including labor and employment, wage and hour disputes, corporate defense litigation, class actions, shareholder direct and derivative litigation, securities fraud defense, government and private sector contracts, commercial transactions, restaurant and hospitality litigation, and appeals.

Overview

- Background
- Avenues for Exposure
- Risk Mitigation

Background

What Is the FCA?

- Primary vehicle for recovering public funds obtained or retained by fraud
- FAQ
 - What can trigger an FCA action?
 - Who can file an FCA claim?
 - How are penalties and damages assessed for alleged FCA violations?
 - What are the consequences of violating the FCA?
 - Who can be held liable?

CARES Act

- Sources of financial relief provided by the CARES Act
 - Paycheck Protection Program (PPP)
 - Economic Injury Disaster Loans (EIDL)
- New entities to address COVID-19 relief fund fraud
 - Office of the Special Inspector General for Pandemic Recovery (SIGPR)
 - Pandemic Response Accountability Committee (PRAC)
 - Congressional Oversight Commission (COC)

Avenues for Exposure

FCA Enforcement Involving COVID-19 Relief Fund Recipients and Their Investors

- Paycheck Protection Program (PPP)
- Economic Injury Disaster Loans (EIDL)

FCA Enforcement Involving COVID-19 Relief Fund Recipients and Their Investors

- Paycheck Protection Program (PPP)
 - Certifications:
 - Applicant was in operation on February 15, 2020, and had employees
 - “Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant”
 - Funds will be used to retain workers, maintain payroll, make mortgage or lease payments
 - Applicant will not receive another PPP loan during 2020
 - Forgiveness is available, but at least 60% of the loan must be used for payroll costs
 - Applicant will provide necessary documentation
 - Accuracy of loan application and supporting documentation

FCA Enforcement Involving COVID-19 Relief Fund Recipients and Their Investors

- Economic Injury Disaster Loans (EIDL)
 - Certifications:
 - Accuracy of information contained in application and all documentation submitted therewith

Risk Mitigation

Avoiding FCA Liability

- Avoid misuse of CARES Act funds
- Document use of government funds
- Create right to indemnification
- Sign up for D&O insurance
- Mind the insider threat
- Set up a compliance program

Questions?



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