



SBA and DOJ Intensify PPP Enforcement: Key Risks for Borrowers and Lenders

While the Covid-19 pandemic may be in the not-so-distant past, investigations into lenders and borrowers who took out loans pursuant to Covid-19 relief programs persist. With ongoing scrutiny from the Small Business Administration (SBA), U.S. Department of Justice (DOJ), and the SBA Office of the Inspector General (OIG), staying informed is critical. In January 2026, President Trump announced DOJ's new National Fraud Division focused on investigating and pursuing fraud charges and civil claims. With the SBA, DOJ, and OIG making their way through the backlog of PPP loans, both borrowers and lenders should ensure ongoing compliance and be prepared to handle an investigative request from any of these entities.

Most of us remember the confusion and uncertainty during the Covid-19 pandemic. Concerns about shut-downs, making payroll, and navigating the "new normal" of stay-at-home orders – all while keeping businesses running – meant that new legislation needed to be implemented immediately, and companies had to act fast. While guidance at the time was confusing, with over \$200 billion identified in potentially fraudulent loans disbursed by the SBA through its Covid-19 relief programs, investigators are now taking their time in retroactively reviewing eligibility and ensuring full compliance moving forward.

AUSA Investigations

National DOJ components, 93 U.S. Attorneys nationwide, and internal SBA auditing teams are all looking deeper into borrowers' eligibility for Covid relief funds, as well as lenders' due diligence in issuing and monitoring PPP loans.

And these requests are not limited to borrowers and lenders – even third parties have received letters requesting information, such as associations that provided PPP insight to their members when applying for funds.

Investigations into borrower eligibility can be based on numerous factors:

- Was the type of business eligible? (e.g. nonprofits, certain country clubs, etc.)
- Did the business meet the definition of “small”?
- Was the type of business eligible at the time it applied? (e.g. eligibility standards during first v. second draw loans)
- Did the business submit the required information?
- Did the business abide by the SBA’s affiliation rules? (e.g. did applicants disclose any business affiliates?)
- Were the PPP funds used properly?
- Did the applicant submit accurate information? (e.g. did they submit the proper requested documents?)
- Did the applicant still qualify at the time of any forgiveness application?
- Was the amount of the PPP loan provided substantiated by truthful information? (e.g. was payroll inflated, etc.?)

The SBA appears to be continually auditing PPP borrowers, requesting that they retroactively confirm information such as that identified above, not only to ensure that businesses were eligible for relief out the outset, but also to audit whether they qualified for the loan amount issued and subsequently forgiven.

Not only should borrowers be aware, but lenders also face ongoing scrutiny of these loans. While investigative agencies have been examining potential PPP borrower fraud since the inception of the program in early 2020, the DOJ recently has also begun investigating whether the financial institutions that operated as PPP lenders also abided by the applicable laws. Banks or other financial institutions that issued PPP loans were required to comply with certain obligations both at the time of application and must continue to do so throughout the life of the loan. Lenders who provide any SBA small business loans, which includes PPP loans, have an ongoing duty to report any information that indicates fraud or illegal activity may have occurred in connection with an SBA loan.

Potential fraud and knowledge of the same is not just limited to knowledge gained since issuing a loan; it includes what the lender knew from the day it submitted a PPP application on behalf of a borrower. In one federal case, a bank agreed to a settlement payment after being investigated for PPP fraud – a borrower had applied for a PPP loan falsely stating he had no criminal history, and the bank submitted the application even though it knew this statement was false. This should raise concerns for lenders whose employees may have overlooked what seemed to be small issues at the time of application but could now implicate hundreds of thousands or even millions of dollars in liability.

Further complicating issues for PPP lenders are the differing standards for first draw and second draw loans. The guidance for first draw PPP loans was that lenders were “held harmless” as long as the lenders acted in good faith; they had no duty to verify PPP application information from the borrower. For second draw PPP loans, the guidance was that lenders were to perform a “good faith review” of the borrower’s calculations and supporting documents.

Qui Tam Actions

In addition to federal prosecutor and regulator scrutiny, PPP recipients also could be the subject of litigation without even knowing it. There have been a number of *Qui Tam* actions filed by private citizens who have taken it upon themselves to investigate potential PPP fraud in hopes of receiving a “finder’s fee” payout.

Qui Tam actions are vehicles for private persons to bring claims under the False Claims Act on behalf of the government, asserting that third parties committed fraud. *Qui Tam* actions are initially sealed – meaning the defendants are not served or otherwise given notice that the litigation has been filed, and the case documents are not publicly available on the federal court’s ECF-Pacer document system until the government makes a decision regarding “intervention.” After receiving notice that a *Qui Tam* lawsuit has been filed, the government evaluates the lawsuit, deciding whether or not it wishes to “intervene” and take over the litigation.

Qui Tam actions have been a primary driver of Civil Investigative Demand (CID) letters and requests for voluntary production issued by the government to companies and other entities who received PPP loans. Without having to conduct

much or any investigation, a U.S. Attorney's Office often sends out investigatory demands to named defendants in these sealed actions to gather information to evaluate whether to intervene in the lawsuit. Only later, at the time the government makes its intervention decision, is the case unsealed and the defendants are made aware they have been sued.

Should the government choose not to intervene in the *Qui Tam* action, the private plaintiff can abandon or maintain its case, but without the benefit of the government footing their legal bills.

False Claims Act

Most *Qui Tam* actions are brought pursuant to the False Claims Act (31 U.S.C. § 3729, *et seq.*). In short, the FCA subjects to liability any person who knowingly presents a false or fraudulent claim for payment or otherwise knowingly submits a false record to a false claim. As related to PPP or other government-issued Covid relief funds, this means that FCA investigations generally focus on whether a business requested a PPP loan knowing it was not eligible; or an applicant provided falsified documents to make it appear eligible, to get a higher loan amount, or otherwise abuse the PPP program.

While most investigations are commenced to determine FCA liability, even a lender or borrower who is cleared of a potential FCA charge (after the government investigates and determines they applied in good faith) may not be out of the woods. There is still a question of eligibility; even if a borrower honestly believed they qualified for Covid relief, small oversights at the time of application could show otherwise. And this is something the SBA is following up on, regardless of whether there is any indication the borrower acted in bad faith. If it turns out funds were given to an ineligible borrower, that business could still face a multitude of consequences. For example, the government may require a borrower to pay the entire loan back, pay back amounts above the borrower's eligibility threshold, or discuss entering a settlement to resolve the matter, including potential liability for treble damages plus interest.

I received a CID / letter from the SBA / subpoena from an AUSA / other document request related to my PPP loan, EIDL loan, or other SBA Covid relief funds. What do I

do?!

The good news is that receipt alone of a CID or other investigative request does not automatically mean that a *Qui Tam* action has been filed against a business, or that a loan repayment demand is imminent.

Our team has worked with numerous DOJ components and U.S. Attorneys' offices to identify the scope of inquiry and discuss limiting the amount of information and documents required to be produced, and we advocate for clients who were simply trying to stay afloat during unprecedented times. We also help work with borrowers who have concerns about their eligibility or the amount of loan received, and can assist in negotiations with the SBA.

Even if your business has not received a formal inquiry our team is available to advise – whether you are a lender who is questioning your ongoing duties, a borrower who wants to be prepared should an inquiry arise, or have any other questions about ongoing PPP enforcement, we are here to help.

As the government's pandemic-related enforcement work persists, preparation and clarity remain essential for both borrowers and lenders. Whether addressing a targeted document request, responding to a CID, or evaluating internal compliance processes, early engagement and informed decision-making can meaningfully reduce potential liability. Our attorneys can assist in developing an effective strategy tailored to the issues raised.

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