

CARES Act Fraud Enforcement Is Unlikely To Slow Down

By **Christopher Ferguson, Daniel Davidson and Samuel Tadmiri** (June 27, 2025)

This March marked the five-year anniversary of the passage of the Coronavirus Aid, Relief and Economic Security Act. The CARES Act contained a suite of relief programs that were part of a broader, unprecedented wave of government stimulus in 2020 and 2021, with an ultimate price tag of over \$4 trillion.[1]

Due largely to the haste with which the legislation was drafted and stimulus money was injected into the economy, CARES Act programs also experienced unprecedented levels of fraud.[2] The government responded in kind, devoting massive resources to civil and criminal fraud investigations.

Five years later, the U.S. Department of Justice says prosecuting crimes of waste, fraud and abuse against the government will be a top priority.[3]

And the statute of limitations for prosecutions has been increased to 10 years by Congress. So CARES Act fraud investigations will likely be active for the next five years and beyond.

This article assesses CARES Act fraud enforcement over the past five years, and discusses what to expect during the next five.

The CARES Act: Background and Enforcement

The CARES Act contained several relief programs with different characteristics and eligibility criteria.[4] The largest, most well-known and, not coincidentally, the most targeted by fraud were the Payroll Protection Program and the Economic Injury Disaster Loan program.

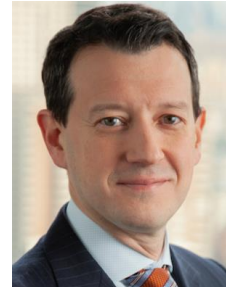
The Payroll Protection Program required applicants certify that the funds would be used primarily to keep workers on payroll, with a few other qualifying business uses.

PPP loans were especially attractive because they were forgivable for recipients that certified that they used the funds for permitted purposes. In total, the government forgave over 10.6 million PPP loans totaling \$762.9 billion.[5]

Unlike PPP loans, loans under the Economic Injury Disaster Loan program are not tied to a company's payroll, but rather to a severe decline in the company's overall capital to fund operations. As such, EIDL loans were only permitted to be used for working capital and normal expenses. EIDL loans are not forgivable.

"All of Government" Approach Has Yielded Dividends

According to an April 2024 report by the COVID-19 Fraud Enforcement Task Force, a group



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established by then-Attorney General Merrick Garland to marshal DOJ resources and collaborate with other agencies on anti-fraud efforts:

- Over 3,500 defendants had been criminally charged with pandemic-related fraud;
- Over 400 civil settlements and judgments had been obtained; and
- Over \$1.4 billion in CARES Act funds had been seized or forfeited. [6]

According to a U.S. Government Accountability Office report issued last month, through the end of 2024, the government had obtained over 2,500 convictions in pandemic fraud prosecutions, as compared to 11 acquittals and 94 cases where charges were dismissed — a 96% conviction rate.[7]

Over 80% of those convicted received sentences of imprisonment, with approximately half of those sentences in the range of one to five years.[8]

Nearly all defendants sentenced for pandemic-related fraud schemes as of the end of 2024 were ordered to pay restitution.[9] Over 20% of these restitution orders were for sums of over \$1 million.

Five Takeaways From the First Five Years of CARES Act Fraud Enforcement

1. CARES Act enforcement is not going away anytime soon.

Combating waste, fraud and abuse in government programs tops the DOJ Criminal Division's current list of enforcement priorities.[10] By extending the statute of limitations for prosecuting PPP and EIDL fraud from five to 10 years, Congress has given the DOJ the time to do that.[11]

The IRS Criminal Investigation division alone initiated nearly 400 new CARES Act fraud investigations in the year prior to March 26, according to a statement from IRS-CI Chief Guy Ficco.[12]

The additional time is needed. While the COVID-19 Fraud Enforcement Task Force's 2024 report notes that over \$1.4 billion in fraudulently obtained CARES Act funds had been recovered, a 2023 report from the Small Business Administration's Office of Inspector General estimated that over \$200 billion in CARES Act loans were potentially fraudulent — leaving enforcement authorities with a significant number of targets for future investigations.[13]

2. The recent trend of using the False Claims Act to combat pandemic fraud will continue.

The last few years have seen an increasing use of the False Claims Act to pursue COVID fraud. Early pandemic cases were almost exclusively brought as criminal prosecutions, with the government pursuing low-hanging fruit — for example, defendants who engaged in egregious behavior like using fake businesses to apply for loans and spending loan proceeds on personal luxury items.

The FCA has since proven effective for addressing the larger inventory of cases. Bringing pandemic fraud cases under the FCA has several advantages for the government.

Since the FCA is a civil statute, the government can prove a violation with only a

preponderance of the evidence, not beyond a reasonable doubt.[14] FCA cases are generally easier to settle than criminal prosecutions, which require either a guilty plea or some form of deferred or nonprosecution agreement — the latter of which are disfavored outcomes under DOJ policy.[15]

The FCA also allows the government to recover treble damages for violations, in addition to penalties.[16] The FCA is an efficient tool for pursuing entities, which may be difficult to criminally prosecute due to challenges proving mens rea on the organizational level.

FCA recoveries related to pandemic fraud equaled \$250 million for fiscal year 2024, a 500% increase from FY 2023.[17] One case alone, the Kabbage Inc. bankruptcy, resulted in a \$120 million settlement.[18]

At the Federal Bar Association's Qui Tam Conference this February, DOJ leadership confirmed that pursuing pandemic fraud through the FCA would continue to be a priority, with an emphasis on high-dollar cases.

The DOJ is also defending the constitutionality of the FCA's qui tam provisions before the U.S. Court of Appeals for the Eleventh Circuit in *Zafirov ex rel. U.S. v. Florida Medical Associates LLC*. [19]

In November 2024, a ruling from the U.S. District Court for the Middle District of Florida in this case held that these qui tam provisions violated the U.S. Constitution's appointments clause. The DOJ's decision to appeal signals the FCA's continued importance in addressing pandemic fraud.

3. The complexity of SBA regulations does not create a legal defense — but may have jury appeal.

Courts have rejected arguments that indictments for PPP and EIDL fraud are impermissibly vague because they rely upon interpretations of the relevant SBA regulations.

In *U.S. v. Sarfo*, for example, the U.S. District Court for the District of Nevada observed in May 2024 that the indictment alleged defendants transferred EIDL loan proceeds to personal accounts with the intent to enrich themselves, after having certified that the loans would be used "solely as working capital to alleviate economic injury" and not primarily "for personal, family or household purposes." [20]

Thus, the court found, the indictment did not rely on any SBA regulations, but simply alleged that defendants falsely certified EIDL funds would be used for one purpose, when they intended to use them for another purpose.

While SBA regulations may offer no hook for a motion to dismiss, they may still prove highly relevant to defendants' intent — or lack thereof.

In one of the few acquittals obtained by pandemic fraud defendants, *U.S. v. Edwards*, a case decided by the U.S. District Court for the Northern District of Mississippi in April 2024, the government's closing argument had focused on evidence that the defendants applied for PPP and EIDL funds while knowing that they would not use the proceeds for those programs' intended purposes. [21]

The defense, meanwhile, emphasized both the complex nature of the program requirements — highlighting rules around affiliated entities and the definition of "substantial adverse

change" — while also arguing that the loan documents could reasonably be interpreted as permitting the uses of proceeds the government alleged were impermissible.

4. The fungibility of CARES Act loan proceeds presents potential defenses.

In PPP and EIDL fraud cases that have proceeded to trial, the government often presents a tracing analysis of defendants' accounts to demonstrate that loan proceeds were used for impermissible purposes.

As explained by the U.S. District Court for the Eastern District of Michigan in its decision last year in *U.S. v. Thrush*, a critical question for defendants is whether recipients of these loans "were required to spend the specific loan proceeds only on" expenses permitted under the programs or, instead, whether the "loan proceeds were fungible" and could be deposited into and moved about various accounts so long as the loan recipients did in fact use their own funds to pay for permissible expenses.[22]

The court concluded that those funds were fungible, and "could be comingled with a borrower's other funds to pay PPP-approved expenses" without committing fraud.[23]

If more courts adopt similar reasoning, it may complicate the government's efforts to bring criminal cases when the only basis for the charge is the defendant's alleged misuse of the funds, provided the defendant ultimately used other funds for the purposes prescribed by the relevant program.

5. Pandemic loans can be a basis for FCA claims based on other conduct.

The past five years have seen the government use the FCA creatively to recover for misrepresentations on pandemic loan applications due to conduct unrelated to the loan itself. For instance, in April 2022, the DOJ reached a \$24.5 million FCA settlement with a healthcare management company, Physician Partners of America.

PPOA had certified in loan documents that it was "not engaged in any activity that is illegal under federal, state or local law" and that it was "eligible to receive a loan" under the PPP rules.

After a *qui tam* suit was filed against PPOA for fraudulent billing practices, the government intervened and added an FCA claim, based on the theory that those certifications on PPOA's PPP application were false due to the existence of the separate and unrelated billing scheme.[24]

The PPOA case sends a clear message that PPP and EIDL applicants may face civil exposure based on their loan applications where the only fraudulent statement involves conduct unrelated to the loan itself. Given the millions of pandemic loan recipients, it would not be surprising to see future cases predicated on alleged misrepresentations in loan documents.

Conclusion

The government has accumulated an impressive scorecard over the past five years combating pandemic fraud. According to the numbers, however, the government still has a long way to go if it hopes to recover anything close to the unprecedented sums purportedly dispersed due to fraud.

In light of the DOJ's current priorities and a longer statute of limitations, pandemic fraud enforcement is likely here to stay for another five years.

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[1] See U.S. Government Accountability Office ("GAO"), COVID-19 Relief: Funding and Spending as of Jan. 31, 2023 (Feb. 2023), available at <https://www.gao.gov/assets/820/817807.pdf>.

[2] See GAO, COVID-19 Relief: Consequences of Fraud and Lessons for Prevention (April 9, 2025), available at <https://www.gao.gov/products/gao-25-107746>.

[3] See Memorandum of Assistant Attorney General Matthew R. Galeotti, Focus, Fairness, and Efficiency in the Fight Against White Collar Crime (May 12, 2025), available at <https://www.justice.gov/criminal/media/1400046/dl?inline>.

[4] See Pub. L. 116–136, available at <https://www.govinfo.gov/app/details/PLAW-116publ136/summary>.

[5] Pandemic Response Accountability Committee, Pandemic Oversight, Paycheck Protection Program (last modified Oct. 24, 2024), available at <https://www.pandemicoversight.gov/data-interactive-tools/interactive-dashboards/paycheck-protection-program>.

[6] COVID-19 Fraud Enforcement Task Force 2024 Report (April 2024), available at <https://www.justice.gov/coronavirus/media/1347161/dl?inline>. The CFETF has not released its report for 2025.

[7] GAO, COVID-19 Relief: Consequences of Fraud and Lessons for Prevention, *supra* n.2.

[8] See *id.*

[9] GAO, COVID-19 Relief: Consequences of Fraud and Lessons for Prevention (April 9, 2025), at pg. 9, available at <https://www.gao.gov/assets/gao-25-107746.pdf>.

[10] See Memorandum *supra* n.3 (listing "Waste, fraud and abuse, including health care fraud and federal program and procurement fraud" first among the Justice Department's list of enforcement priorities).

[11] See PPP Bank and Fraud Enforcement Harmonization Act of 2022 and COVID-19 EIDL Fraud Statute of Limitations Act of 2022.

[12] See IRS, Five years post-CARES Act: IRS-CI has launched 2,039 COVID fraud investigations totaling \$10b in attempted fraud, *supra* n.9.

[13] See COVID-19 Fraud Enforcement Task Force 2024 Report, *supra* n. 7; SBA, COVID-19 Pandemic EIDL and PPP Loan Fraud Landscape (June 27, 2023), available at <https://www.sba.gov/document/report-23-09-covid-19-pandemic-eidl-ppp-loan-fraud-landscape>.

[14] Although the FCA has provisions for bringing criminal charges, the authors are not aware of any criminal case being brought under the FCA for pandemic fraud.

[15] See Justice Manual § 9-27.600, available at <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.650>.

[16] 31 U.S.C. § 3729(a)(1).

[17] Compare DOJ Press Release, False Claims Act Settlements and Judgments Exceed \$2.9B in Fiscal Year 2024 (Jan. 15, 2025), available at <https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024> ("During fiscal year 2024, the Department obtained more than 250 False Claims Act settlements and judgments, which collectively exceeded more than \$250 million, resolving allegations of pandemic-related fraud") with DOJ Press Release, False Claims Act Settlements and Judgments Exceed \$2.68 Billion in Fiscal Year 2023 (Feb. 22, 2024), available at <https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-268-billion-fiscal-year-2023> ("Over the last year, the department has resolved approximately 270 False Claims Act matters, recovering over \$48.3 million in connection with improper PPP loans").

[18] DOJ Press Release, "Kabbage Inc. Agrees to Resolve Allegations That the Company Defrauded the Payroll Protection Program," May 13, 2024, available at <https://www.justice.gov/archives/opa/pr/kabbage-inc-agrees-resolve-allegations-company-defrauded-paycheck-protection-program>. It should be noted that the \$120 million settlement took the form of an unsecured claim in the Kabbage Inc. bankruptcy.

[19] See Brief for Appellant, U.S. ex rel. Zafirov v. Florida Medical Assoc. LLC et al., Nos. 24-13581, -13583 (Jan. 6, 2025), Dkt. 39, available at <https://assets.law360news.com/2280000/2280712/https-ecf-ca11-uscourts-gov-n-beam-servlet-transportroom-servlet-showdoc-011013674891.pdf>.

[20] U.S. v. Sarfo, No. 2:23-cr-00132-AGP-EJY, 2024 WL 3707931, at *2 (D. Nev. May 20, 2024), report and recommendation adopted, 2024 WL 3706720 (D. Nev. Aug. 6, 2024) (cleaned up).

[21] Brian Jones, J5 trial: Edwards, Richardson acquitted on all charges (April 6, 2024), The Dispatch, available at <https://cdispatch.com/news/j5-trial-edwards-richardson-acquitted-on-all-charges/>.

[22] U.S. v. Thrush, 738 F. Supp. 3d 902, 904 (E.D. Mich. 2024).

[23] *Id.* at 905.

[24] DOJ Press Release, "Physician Partners of America to Pay \$24.5 Million to Settle Allegations of Unnecessary Testing, Improper Remuneration to Physicians and a False Statement in Connection with COVID-19 Relief Funds," April 12, 2022, available at <https://www.justice.gov/archives/opa/pr/physician-partners-america-pay-245-million-settle-allegations-unnecessary-testing-improper>.