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## **DOJ’s PPP Enforcement Is Evolving—Is Your Company Prepared Yet?**

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*The DOJ’s newest enforcement initiative signals that PPP exposure isn’t winding down — it’s becoming more sophisticated, more data-driven, and harder to see coming, write Seyfarth Shaw’s Jennifer Serafyn, Teddie Arnold, and Christopher Robertson.*

The Department of Justice’s recent Fraud Oversight Through Careful Use of Statistics, or FOCUS, initiative has been widely characterized as a whistleblower engagement effort. That characterization is understandable, but incomplete. Read in context, and alongside recent enforcement activity, FOCUS signals something more consequential: a shift in how False Claims Act, or FCA, cases—particularly those involving pandemic relief programs—are being identified, developed, and pursued. The emergence of this new enforcement model has concrete implications for how companies and their counsel should approach PPP risk.

On April 30, the DOJ’s Civil Division [launched](#) the FOCUS initiative, formally inviting “data miner” relators—non-insider whistleblowers who build FCA cases using publicly available data—to engage with the Civil Fraud Section before filing suit. The launch reflects that the DOJ is now taking an active role in shaping the quality and direction of data-driven qui tam litigation.

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What emerges is a two-track enforcement model. On one track, the DOJ is refining and curating data miner qui tam cases. On the other, it is increasingly developing cases independently through interagency coordination and analytics. That dual pressure is reshaping FCA risk in practical and immediate ways for companies that received Paycheck Protection Program, or PPP, funds—and for lenders that processed those loans and intermediaries that facilitated communications and prepared loan documentation.

## **FOCUS and Qui Tams**

FOCUS reflects the DOJ's explicit acknowledgment that the qui tam landscape has changed. The Civil Division [noted](#) that it “has experienced a rapid increase in the number of qui tam complaints filed in recent years”—780 in 2026 so far, 1,297 in 2025, and 980 in 2024—with pandemic-related programs forming a meaningful portion of that activity.

A growing number of FCA complaints are driven not by company insiders with firsthand knowledge of wrongdoing, but by outside entities that mine and analyze government datasets to identify potential signals of fraud. The DOJ has embraced that shift, but with an important qualification: Not all data-driven cases are equally useful.

FOCUS is designed to improve the DOJ's ability to prioritize working with the most successful data miners by inviting relators to present their methodologies and analysis to the Civil Fraud Section. This process signals prioritization of engagement where relators can demonstrate analytical rigor, familiarity with program requirements, and legally sufficient theories.

The initiative doesn't alter the FCA's mechanics. Participation is voluntary as data miners are not required to participate in FOCUS before filing suit, and the statutory qui tam framework remains unchanged. But the practical effects are significant, as the initiative is likely to influence which cases receive DOJ attention and, critically, which cases are positioned for intervention.

Government intervention is often the most important inflection point in FCA litigation because it affects discovery posture, litigation costs, and settlement dynamics. A data miner case that has effectively been pre-vetted through engagement with the DOJ is more likely to reflect the kinds of allegations the government is prepared to support and, therefore, more likely to survive early motion practice and attract serious settlement attention from defendants.

In that respect, FOCUS may represent a shift in the DOJ's role from a passive recipient of qui tam filings to a more active gatekeeper of data-driven cases.

## PPP and Data Mining

The PPP provides an ideal environment for this model of enforcement. From the outset, the PPP created a uniquely data-rich environment. The Small Business Administration, or SBA, publicly [released detailed information](#) about loan recipients, including borrower identities, loan sizes, and other key data points. That transparency, while intended to promote accountability, has also enabled third parties to analyze the data at scale.

The SBA's program combined three features that are particularly conducive to data-driven FCA litigation: borrower self-certification, forgiveness determinations based primarily on use of proceeds, and the SBA's public release of loan-level data.

That data includes borrower identities (for larger loans), loan amounts, industry classifications, and lender information. It can be cross-referenced with a wide range of external sources, including SEC filings, corporate registry databases, licensing records, and other publicly available information.

This dataset allows for a systematic, scalable analysis. Data miners do not need access to internal company information to identify potential affiliation relationships, discrepancies in employee counts, or inconsistencies across public disclosures. From there, they can construct eligibility-based FCA theories grounded in certification requirements rather than overt misuse of funds.

FOCUS didn't create this exposure—that exposure existed since the government released the underlying data. FOCUS signals that the DOJ is now actively prioritizing engagement with the subset of relators best positioned to translate that data into viable FCA claims.

## Government-Initiated Enforcement

The DOJ is simultaneously developing PPP cases through a separate and increasingly important channel: government-initiated investigations.

These cases are often developed through interagency collaboration, including [referrals](#) from inspectors general and investigative efforts coordinated through the COVID-19 Fraud Enforcement Task Force. Unlike whistleblower-driven matters, they can draw on both publicly available information and nonpublic agency data not accessible to private relators.

Recent enforcement activity illustrates how this second track operates. Last month, the DOJ [announced a settlement](#) with Regions Bank resolving allegations that the bank approved forgiveness of a customer's

PPP loan that wasn't eligible for forgiveness under the program's rules. The case was developed without a relator and reflected coordination among multiple agencies, including the SBA and the Federal Deposit Insurance Corporation's Office of Inspector General.

That resolution is notable on several fronts. Lenders, not just borrowers, remain a focus of PPP enforcement. The forgiveness stage—long viewed as a relatively routine process—is itself a source of FCA risk. PPP enforcement extends beyond SBA-driven investigations, as the FDIC Office of Inspector General involvement demonstrates, reflecting the broader role inspectors general from bank-regulatory agencies play in this space.

Government-initiated cases differ structurally from qui tam matters. They do not involve relator shares, which can affect case selection and the dynamics of resolutions. They also benefit from broader access to agency data and coordination across agencies. For companies, however, the practical effect is the same: exposure that arises independently of any whistleblower.

## **From Fraud to Eligibility**

Across both tracks, PPP enforcement is evolving in both substance and structure. Early FCA cases focused on [clear instances of fraud](#), such as applications for nonexistent businesses, fabricated payrolls, or misuse of proceeds. While such cases continue, recent enforcement trends reflect a shift toward more complex FCA theories involving eligibility and certification issues.

A growing number of PPP-related FCA cases focus on eligibility determinations, particularly the application of SBA affiliation rules, employee headcount calculations, and borrower certifications regarding program requirements.

These issues are often fact-specific and were complicated by rapidly evolving guidance during the early months of the pandemic. As a result, they present a different kind of risk. Companies that acted in good faith and used loan proceeds appropriately may nonetheless face scrutiny based on how those eligibility determinations are assessed in hindsight.

Data-driven enforcement is particularly well suited to these theories. Eligibility criteria can often be evaluated, at least preliminarily, through external data analysis. That makes them a natural target for both data-miner complaints and government analytics.

That said, a data anomaly isn't the same thing as an FCA violation. Even where public records appear to suggest affiliation issues, employee-count discrepancies, or other eligibility concerns, the government or a

relator still must prove falsity, materiality, and scienter. That may be especially significant in the PPP context, where borrowers often made eligibility determinations under compressed timelines and against a backdrop of evolving agency guidance. In that respect, the same features that make PPP cases attractive for data mining may also create meaningful litigation defenses in individual cases.

## **Forgiveness Isn't Final**

One of the more persistent misconceptions about PPP exposure is the assumption that loan forgiveness resolves FCA risk. In practice, it often doesn't.

The SBA's forgiveness review focused primarily on how loan proceeds were used. It didn't always involve a comprehensive reassessment of the borrower's initial eligibility. As a result, a borrower may have obtained full forgiveness while still facing potential exposure based on its original certifications.

The Regions Bank matter illustrates a related point on the lender side. The alleged misconduct didn't involve loan origination, but rather the approval of forgiveness for an allegedly ineligible loan. That focus places the lender's forgiveness review process, as well as the documentation supporting it, squarely within the DOJ's enforcement lens.

For both borrowers and lenders, the implication is clear: Forgiveness isn't the finish line. It is one step in a process that may be revisited years later under the FCA.

## **PPP Enforcement**

The timing of these developments reinforces that conclusion. In 2022, Congress [extended](#) the statute of limitations for PPP-related fraud to 10 years. That extension ensures that loans originated in 2020 and 2021—and forgiveness determinations made thereafter—remain subject to enforcement into the next decade.

FOCUS should be understood against that backdrop and doesn't signal a wind-down of pandemic-related enforcement. To the contrary, FOCUS reflects an investment in making that enforcement more effective over time.

## **Practical Implications**

The emergence of a two-track enforcement model has practical implications for how companies and their counsel should approach PPP risk.

**Reassessing eligibility.** For borrowers, the central issue is often eligibility for PPP loans, not use of proceeds. Companies should consider revisiting the analyses that supported their certifications, particularly with respect to affiliation rules, employee counts, and necessity.

**Preserving and organizing documentation.** Given the passage of time, contemporaneous records explaining those determinations may be the most effective defense. Internal memoranda, communications with accountants and counsel, and board-level materials should be preserved and readily accessible.

**Conducting focused internal reviews.** Where potential eligibility issues exist, companies should consider narrowly tailored internal reviews designed to test the assumptions underlying their original PPP certifications. In many cases, the key questions won't be whether funds were used appropriately, but whether the contemporaneous basis for eligibility was adequately documented and consistently reflected across internal and external records. Conducting that review early—and with an eye toward privilege where appropriate—can materially improve a company's ability to respond to a subpoena, Civil Investigative Demand (FCA's equivalent of a subpoena), or other investigative inquiry.

**Evaluating lender exposure.** For lenders, the focus extends to forgiveness determinations. Lenders should assess whether their review processes adequately addressed eligibility issues and whether documentation supports those decisions.

**Preparing for data-driven scrutiny.** Both borrowers and lenders should assume that their PPP participation can be analyzed using external data. Consistency across public disclosures and filings is increasingly important, as discrepancies may form the basis of FCA allegations.

**Planning for investigations.** Companies should be prepared for inquiries from either track: whistleblower-driven or government-initiated. Early engagement and a structured response strategy can affect both the trajectory and the outcome of an investigation.

**Exposure beyond damages.** For some companies, the principal risk may extend beyond repayment, penalties, or settlement value. An FCA inquiry tied to PPP eligibility can create follow-on consequences, including additional agency scrutiny, lender concerns, disclosure issues, and broader reputational harm. Early assessment matters because even where the ultimate merits are defensible, the existence of an investigation can carry practical consequences that outlast the underlying loan.

## Looking Ahead

The FOCUS initiative provides a window into how FCA enforcement is evolving. The combination of curated data miner cases and coordinated, government-initiated investigations reflects a broader shift toward data-driven enforcement.

PPP enforcement is, in many ways, the testing ground for that model. But the underlying approach isn't limited to pandemic relief programs. Other areas of government spending that generate large, accessible datasets are likely to face similar scrutiny.

The practical implication is that FCA enforcement in the coming decade will increasingly be driven not just by company insiders, but by data. For companies that participate in federal programs, that shift represents a change in the enforcement landscape that will continue to shape risk well beyond the life of the PPP.

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