

# The Banking Law Journal

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# Iceberg Ahead! Top Massachusetts Federal Prosecutor Sounds the Alarm to Lenders and Others on the “Tip of the Iceberg” of Paycheck Protection Program Fraud Prosecutions

*By Edmund P. Daley, Eoin P. Beirne and Nick A. LaPalme\**

*In this article, the authors explain how lenders and others continue to face possible fraud prosecutions stemming from the Paycheck Protection Program and other COVID-19 relief programs.*

The U.S. Department of Justice (DOJ) and the U.S. Attorney’s Office for the District of Massachusetts are zeroing in on investigations and prosecutions involving fraud on government programs. U.S. Attorney Leah B. Foley has made clear that fraud prosecutions involving government programs are increasing, not slowing down, and the announcement of recent benefits-fraud cases are just “the tip of the iceberg.” Nationally, the White House has also announced a new DOJ division focused on fraud.

For companies—particularly their boards and C-Suite executives—lenders, and individuals who pocketed COVID-19 relief money or other federal benefits, risk remains high, investigative tools are increasingly sophisticated, and early legal engagement is critical.

## **THE NEW ENFORCEMENT ARCHITECTURE: FROM WASHINGTON TO BOSTON AND NATIONWIDE**

The federal enforcement structure has significantly expanded, with the DOJ’s Criminal Fraud Section undergoing a major reorganization to protect taxpayer funds and prioritize prosecuting government program fraud. Increased government resources, advanced data analytics, and bipartisan support underscore this focus. Nationally, a new DOJ Fraud Enforcement Division is being established. The District of Massachusetts has emerged as a particularly active jurisdiction, with U.S. Attorney Foley appointing a fraud coordinator to enhance investigations, coordination, and enforcement strategies across federal and state enforcement agencies. Her public comments demonstrate that the emphasis on government program fraud is here to stay and related.

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## **PPP AND COVID-RELIEF ENFORCEMENT IN MASSACHUSETTS**

Enforcement activity in Massachusetts demonstrates heightened scrutiny on fraud involving the Paycheck Protection Program (PPP) and other COVID-19 relief programs. The U.S. Attorney's Office has pursued civil False Claims Act (FCA) cases against companies for PPP eligibility issues, such as exceeding size standards or misapplying affiliation rules for second-draw loans.

Companies also face scrutiny for falsifying payroll, inflating loan amounts, certifying economic necessity despite ineligibility, misusing loan proceeds, and submitting other false documentation for forgiveness.

Criminal prosecutions target schemes involving stolen-mail checks, false unemployment claims, fraudulent PPP applications for fictitious businesses, and fraud against rental assistance programs. These cases often combine traditional fraud theories (bank, wire, mail, false statements) with program-specific allegations.

### **WHO IS LIKELY IN THE CROSSHAIRS NEXT?**

The next wave of enforcement, with the aid of sophisticated data analytics and detection tools, will extend beyond identity-theft rings to a wider swath of companies and individuals involved in relief programs. Companies that relied on narrow headcount calculations, especially where second-draw eligibility required tighter thresholds, should expect questions.

Gatekeepers and lenders should also anticipate scrutiny. DOJ priorities include threats to the U.S. financial system by gatekeepers. In the PPP context, this means examining whether lenders maintained appropriate underwriting standards, compliance controls, and fraud-detection measures. Lacking controls or ignoring red flags can lead to civil or criminal exposure.

Companies with foreign ties will also draw attention. Given the America First position of the current administration, DOJ's Fraud Section is squarely focused on foreign actors and cross-border misconduct, including schemes exploiting U.S. programs and using money-laundering to conceal proceeds. PPP borrowers with foreign affiliates, overseas operations, or cross-border financial flows are more likely to receive questions about their eligibility and fund use.

A consistent theme across these categories is that investigations are not limited to "traditional" bad actors; corporate borrowers, nonprofits, executives, accountants, and lenders are all within scope. Dockets in Massachusetts already reflect this reality through a blend of civil actions and criminal prosecutions.

## **HOW THE GOVERNMENT IS INVESTIGATING: DATA, AI, AND TASK FORCES**

The government's investigative playbook relies heavily on advanced analytics, cloud-based data fusion, and multi-agency coordination. DOJ's data teams generate proactive referrals, detect anomalies across billing and benefits data, and accelerate case development through AI-enabled tools, which are now being harnessed for benefits and procurement fraud.

Massachusetts-based investigations feature robust cross-agency collaboration, including coordination with inspectors general, postal and financial investigators, and state auditors. Multi-agency task forces pull together federal, state, and local resources to map identity theft, track funds, and tie benefits misuse to business operations.

Many individuals and entities may be under review long before contact from law enforcement. White-collar investigations can take years, and extended statutes of limitations provide prosecutors a long runway to build cases quietly. The absence of a knock on the door is not a reliable indicator that risk has passed.

## **POSITIONING FOR BEST OUTCOMES: EARLY COUNSEL INVOLVEMENT, INTERNAL REVIEWS, AND STRATEGIC DISCLOSURES**

Early engagement with experienced counsel is the most important step for anyone with potential exposure. Counsel can assess eligibility, revisit analyses, and evaluate risk. Where issues are identified, counsel can structure privileged internal reviews, guide remedial efforts, and evaluate whether voluntary self-disclosure or other proactive outreach is warranted.

Current DOJ policy rewards timely disclosure, cooperation, and remediation in both civil and criminal contexts. Federal prosecutors in Massachusetts have credited such proactive efforts in recent civil FCA resolutions, and DOJ touts streamlined corporate outcomes where companies demonstrate robust cooperation and corrective action. Whistleblower activity presents magnified risks, particularly in FCA matters, with new and expanding whistleblower incentive programs that increase the likelihood that concerns go directly to the government. This emphasizes the need for prompt internal response and careful consideration of proactive dialogue with prosecutors.

Involving counsel early in the process is key because pre-indictment resolutions are easier to achieve. Prosecutors are more receptive to tailored remediation and negotiated resolutions before the existence of formal charges. Once an indictment is returned, options narrow, and leverage declines. For lenders and other gatekeepers, counsel can benchmark controls against DOJ

priorities and demonstrate a risk-based compliance posture. This advocacy pays dividends in terms of obtaining beneficial corporate resolutions.

## **CONCLUSION**

The District of Massachusetts is signaling a sustained fraud crackdown, anchored by new leadership, analytics-enabled investigations, and a blend of civil and criminal enforcement strategies. U.S. Attorney Foley’s “tip of the iceberg” remarks and the plan to install a fraud coordinator, along with national DOJ developments, reinforce this long-term priority. Despite some uncertainties, the immediate risk is high. Companies that misapplied PPP eligibility, gatekeepers with deficient controls, and entities with foreign ties should assume investigators (or their data analytics tools) are connecting the dots. A timely consultation with counsel is crucial to assess exposure, remediate issues, and position for the best outcome.