Private Equity, PPP Loans, and the False Claims Act: When Affiliated Companies Must Be Counted Together

When Congress created the Paycheck Protection Program (PPP) in March 2020, it authorized hundreds of billions of dollars in forgivable loans to help small businesses survive the economic disruption caused by COVID-19. But whether a business qualified for a PPP loan did not necessarily depend on its size alone. Under the Small Business Administration's (SBA) affiliation rules, companies under common ownership or control generally were required to aggregate their employees or annual revenues when determining eligibility.

That requirement has become the basis for a growing number of False Claims Act (FCA) cases involving businesses owned by private equity funds, family offices, and other investment groups. Although individual portfolio companies may appear small enough to qualify for PPP loans, their combined size may exceed the applicable SBA limits.

Recent settlements and court decisions demonstrate both the potential FCA liability arising from a failure to disclose affiliated businesses and the challenges whistleblowers face in pursuing these claims.

The SBA's affiliation rules: A company may be larger than it appears

The PPP generally allowed businesses with 500 or fewer employees to obtain loans, although certain industries were subject to higher employee-based size standards. Businesses could also qualify under applicable SBA revenue-based size standards or an alternative financial size standard.

But the SBA's affiliation rules, principally set forth in 13 C.F.R. § 121.301(f), generally required applicants to consider the size of companies under common ownership or control.

For example, if a private equity fund controlled five portfolio companies with 200 employees each, an individual company could not necessarily qualify for a PPP loan simply because it employed fewer than 500 people. Depending on the applicable affiliation rules and exceptions, the relevant employee count could be 1,000.

Importantly, aggregation also applies to annual revenues, not just employees. Under 13 C.F.R. § 121.104(d), the receipts of a business generally must be combined with those of its affiliates when applying an annual-receipts size standard.

This created a potentially significant issue for private equity portfolios containing businesses in different industries. A manufacturing company may have an employee-based size standard, while an affiliated oilfield services company may have a revenue-based standard. The manufacturing company's revenues generally still count when determining whether the oilfield services company satisfies its receipts threshold. Conversely, the oilfield services company's employees generally count when determining whether the manufacturer satisfies its employee threshold.

Not every investment relationship creates affiliation. The rules examine ownership, management, contractual control, and other relationships. Certain statutory and regulatory exceptions, including those involving investments by licensed Small Business Investment Companies (SBICs), may also apply. The particular eligibility pathways and rules in effect when a loan was sought are therefore critical.

$13 million settlement involving Rema Tip Top affiliates

In June 2025, the Department of Justice announced a $13 million FCA settlement involving three companies affiliated with Rema Tip Top of America.

The companies – C&J Welding & Construction, Industrial Services Group, and NexGen Industrial Services – obtained five PPP loans. Their businesses included industrial maintenance, corrosion control, and oil-and-gas-related construction services.

The government alleged that the companies failed to account properly for their affiliation with Rema and other related entities when determining PPP eligibility. According to DOJ, they exceeded applicable employee- or revenue-based size limits after the relevant affiliated businesses were considered.

The settlement is particularly noteworthy because it demonstrates that DOJ is enforcing revenue-based eligibility requirements in addition to the more familiar 500-employee limitation.

Family office affiliates pay $10.8 million

Another significant settlement arose in Wisconsin in April 2025. DOJ announced that six affiliated companies controlled by a family office agreed to pay approximately $10.8 million to resolve allegations involving false PPP eligibility certifications.

The government's allegations concerned four operating businesses: The Club at Strawberry Creek, The Garlands of Barrington, Nuestro Queso, and Tire Profiles. Collectively, those businesses received six PPP loans with principal amounts exceeding $5 million.

Although the companies operated in different industries, DOJ alleged that they were commonly controlled and collectively employed more than 500 individuals. The government maintained that the businesses improperly sought loans without aggregating their employees as required by the SBA's affiliation rules.

The settlement illustrates that the issue is not limited to traditional private equity funds. Family offices and other investment structures may create the same affiliation concerns.

Federal court permits FCA claims based on aggregated revenues

A March 23, 2026 decision provides particularly useful judicial guidance. In *United States ex rel. Dunn v. LTC Accounting Services, LLC*, No. 6:22-cv-00138 (E.D. Okla.), whistleblowers alleged that commonly controlled nursing facilities obtained separate PPP loans despite exceeding the applicable SBA size standard when their revenues were aggregated.

The relators alleged that the affiliated facilities had approximately $60 million in combined receipts, substantially exceeding the relevant $30 million annual-receipts threshold. The defendants argued that the businesses could qualify through alternative PPP eligibility pathways.

The court rejected the suggestion that those pathways permitted applicants to disregard otherwise applicable affiliation rules. The court held that the alleged common ownership and control, combined with the failure to aggregate receipts, sufficiently supported the pertinent FCA claims at the pleading stage.

The ruling is important because it recognizes that separating a commonly controlled enterprise into nominally distinct borrowers does not necessarily allow each entity to qualify independently. The decision did not determine that the defendants had committed fraud; it allowed the challenged claims to proceed.

Private equity funds themselves can face FCA exposure

A separate June 2025 settlement involved Argosy Investment Partners, demonstrating that FCA exposure may extend beyond the portfolio company receiving a PPP loan. In *United States ex rel. Holtzman v. Argosy Capital Company, LLC*, No. 24-8318 (D.N.J.), DOJ alleged that portfolio company AIP-ECS Holdings improperly received a second-draw PPP loan because other companies within the corporate group had already obtained loans that, together with the AIP-ECS loan, exceeded the applicable $4 million corporate-group limit.

Although the case involved the separate corporate-group cap for second-draw loans rather than first-draw affiliation-based size eligibility, it illustrates an important principle:

private equity sponsors may face FCA allegations arising from PPP applications submitted by businesses in their portfolios.

What these cases mean for PPP whistleblowers

Taken together, these developments demonstrate that PPP fraud investigations increasingly extend beyond individual borrowers to the ownership structures connecting them.

An investigation may require examining whether multiple borrowers were controlled by the same investment sponsor, whether their combined revenues or employee counts exceeded applicable SBA standards, whether foreign affiliates should have been included, and what information the borrowers disclosed when applying for their loans.

The distinction between employee-based and revenue-based size standards is particularly important. Even where a borrower employs relatively few people, its eligibility may depend on the combined annual receipts of a much larger affiliated group.

The False Claims Act's role in recovering improperly obtained PPP funds

The False Claims Act, 31 U.S.C. §§ 3729–3733, allows the federal government to recover damages and penalties for knowingly false claims involving federal funds. Its *qui tam* provisions also permit eligible private whistleblowers to bring actions on the government's behalf.

Whistleblowers may receive between 15% and 30% of the government's recovery, depending on the circumstances and whether the government intervenes.

The recent PPP settlements demonstrate that affiliation-based eligibility issues remain an important area of FCA enforcement years after the loans were originated. For insiders with knowledge of private equity ownership structures, portfolio-company financial information, PPP applications, or communications concerning eligibility certifications, that information may be especially significant in identifying potential violations that cannot be established from public records alone.

Pollock Cohen LLP represents whistleblowers in False Claims Act litigation, including matters involving alleged misuse of federal funds. Individuals with information concerning potentially improper PPP loans may contact the firm to discuss their rights under the False Claims Act.

This article is provided for informational purposes only and does not constitute legal advice. The settlements discussed above resolved disputed allegations without determinations of liability.