



NEWS FRAUD BY THE NUMBERS

The Greatest Fraud Ever?

September 20, 2023 By Roger Wenthe of Roger Wenthe, PLLC

Fraud has been with us for as long as people have used their imagination to fool their fellows with falsity. Huge amounts of money have been lost to fraud. In the modern era, since governments spend more than almost anyone else, governments are also among the biggest victims of fraud. For example, under its principal anti-fraud tool, the False Claims Act, the federal government alone has recovered **over \$72 billion from fraudsters** between 1986 and September 2022.

Last year we reported in this blog about a new large fraud that was an outgrowth of the Covid-19 pandemic: Paycheck Protection Program (PPP) fraud. In 2020 and 2021, the Small Business Administration (SBA) loaned nearly **\$800 billion** to businesses and individuals under that program, with the objective of saving millions of jobs that would otherwise have been lost. Estimates of the portion of those loans granted due to fraud have grown over time.

But two often-overlooked types of benefits Congress also approved as pandemic relief are now getting a lot of attention as well. The first of these is the Economic Injury Disaster (EIDL) loan program, intended to help small businesses and others weather the economic downturn caused by the pandemic, which loaned out **an additional \$400 billion**, also during 2020 and 2021. And we now know that the rate of fraud in that program was much higher than for the PPP.

In a recent white paper, the SBA's Office of Inspector General (OIG) reported that, out of the **total of \$1.2 trillion** in PPP and EIDL loans, it had identified **fully \$200 billion as potentially fraudulent.[1]** This estimate was based on a rigorous review of past investigations, advanced data analytics, and on examining 11 fraud indicators which it described as "almost like a fingerprint left behind at a crime scene." While the OIG found the potential fraud rate for PPP loans was fairly common for federal programs at 8%, the rate for **EIDL loans was an amazing 33%!**

The second often-overlooked program is the unemployment insurance (UI) benefit paid out to individuals during the pandemic. A **very recent report** from the Government Accounting Office (GAO) says that of the \$900 billion paid out in pandemic unemployment benefits, **between \$100 billion (11%) and \$135 billion (15%)** was also obtained by fraud. These frauds involved primarily applications using stolen identities and misrepresentations about the applicant's eligibility for the benefit.

That makes the total estimated fraud for the three pandemic relief programs – PPP, EIDL, and UI – a total of at least \$300 billion.

How much is **\$300 billion**? You could think of it a number of ways:

– It's **over 4 times as much** as the federal government has recovered in total for **every** kind of civil fraud over the last **36 years**.

– It's nearly enough to pay the entire annual budget of **Mexico**.

– It could pay for every gallon of **gasoline** consumed by the 333 million people in the United States, every day, for the next **27 months**.

Will the government ever be able to chase down and recover that \$300 billion? It has made a few steps in the right direction. Federal prosecutors have already obtained convictions against some of the fraudsters, which include court-ordered restitution totaling \$500 million (which is still only **\$1 for every \$60** of fraud committed).[2]

Congress has also lengthened the statute of limitations for whistleblowers to bring suits under the False Claims Act for PPP and EIDL fraud, to **10 years** instead of the usual 6 years.[3] A bill to adopt the same 10-year limitations period for pandemic UI fraud is also **pending in Congress**. That means new suits could be filed until 2030 for first-round loans disbursed, and benefits received, in 2020, and until 2031 for second-round loans disbursed, and benefits received, in 2021. Whistleblowers have already filed many suits seeking to hold borrowers accountable for obtaining these loans through fraud. There is now ample time for additional suits to bring more of these frauds to light in the days ahead.

It's clear that EIDL, PPP, and UI fraud combined was one of the largest total frauds ever perpetrated. Only time will tell if society can turn the government's losses into what could be the greatest fraud *recovery* ever.

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[1] SBA, Office of Inspector General, *Covid-19 Pandemic EIDL and PPP Loan Fraud Landscape*, White Paper Report 23-09 (June 27, 2023).

[2] SBA, *id.*

[3] P.L. 117-165, 136 Stat. 1363, and P.L. 117-166, 136 Stat. 1365.

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