The Corporate Culprits Receiving COVID Bailouts

VIOLATION TRACKER

COVID STIMULUS WATCH

GOOD JOBS FIRST .ORG

SEPTEMBER 2020

The Corporate Culprits Receiving Covid Bailouts

By Philip Mattera and Mellissa Chang

GOOD JOBS FIRST .ORG

September 2020
Good Jobs First
202-232-1616
www.goodjobsfirst.org

TABLE OF CONTENTS

INTRODUCTION AND EXECUTIVE SUMMARY

More than one million businesses and non-profit organizations have been identified as recipients of grants and loans awarded through the Paycheck Protection Program and other provisions of the CARES Act passed by Congress to mitigate the economic fallout from the COVID-19 pandemic. Good Jobs First has determined that more than 43,000 of those recipients have been involved in some form of corporate misconduct over the past decade, paying a total of $13 billion in penalties to federal and state regulators. These companies have received $57 billion in grants and $91 billion in loans through the CARES Act.

Among the violations are workplace safety issues, leading in one case to the death of a worker, flouting of environmental standards and defrauding the federal government, raising the question whether greater scrutiny should be given to how recipients are using taxpayer dollars.

This data was collected from two Good Jobs First databases: Covid Stimulus Watch, which covers 20 CARES Act programs, and Violation Tracker, which combines enforcement data from more than 50 federal and 200 state and local agencies. Companies appearing in both databases were identified through an extensive matching and record-linkage process.

More than 87 percent of the CARES Act recipients with a record of misconduct are small businesses, while the other 13 percent are units and subsidiaries of larger companies. The larger companies received $55 billion in grants and $53 billion in loans, while the smaller companies received $2 billion in grants and $38 billion in loans. The large companies account for 90 percent of the penalty dollars.

The largest violation category among all 43,000 companies is government contracting at $5.6 billion, or 42 percent of the total. Employment-related penalties and consumer protection penalties each add up to about $3 billion (23 percent), while environmental and safety penalties total $1.6 billion (12 percent).

The three top offenders by penalty amount are Sutter Health ($656 million), Tenet Healthcare ($648 million) and Walgreens Boots Alliance ($585 million).

Hospitals (both for-profit and non-profit) and other providers that received funding from healthcare-related CARES Act programs account for $9 billion of the penalties, or 68 percent of the total. More than half of these penalties derive from government contracting misconduct, including Medicare and Medicaid billing fraud.

Recipients of small-business loans account for $3 billion of the penalties (23 percent), with the largest portions coming from wage theft and workplace safety and health violations.

Table 1. Summary of Aid Received and Penalties Paid in Key Recipient Categories

Category	Recipients	Grants	Loans	Penalties
Healthcare Providers	6,087	$39 billion	$46 billion	$9 billion
Small Businesses	38,362	Not applicable	$37 billion	$3 billion
Higher Education	147	$503 million	Not applicable	$900 million
Aviation	32	$18 billion	$7 billion	$600 million

Some recipients are in more than one category; their penalty amounts are included in each category

There are two other groups of CARES Act recipients with a significant history of misconduct: colleges and universities getting aid through the Higher Education Emergency Relief Fund and airlines receiving massive levels of assistance through the Payroll Support Program. They paid $900 million and $600 million in penalties, respectively.

Seventy CARES Act recipients had been involved in cases that included criminal charges. Of these, 33 of the defendants were large companies, which paid total penalties of $3 billion. The 37 smaller defendants paid $47 million.

The revelation that tens of thousands of CARES Act recipients have records of misconduct—including some cases of a criminal nature—raises the question of whether the eligibility criteria for the grant and loan programs were strict enough. Policymakers also need to consider whether these recipients should be subjected to additional scrutiny to ensure their misbehavior does not continue while on this new kind of federal dole.

While the main analysis of this report deals only with CARES Act grants and loans, there is a separate section at the end dealing with companies included in the Federal Reserve's bond-buying programs. The penalty data discussed in the report can be found in each company's Covid Stimulus Watch entries, where the amounts are hyperlinked to the corresponding pages in Violation Tracker.

DETAILED FINDINGS

As of late August 2020, Good Jobs First had collected data on 1,050,263 loans and 21,058 grants from 20 programs created or expanded by the CARES Act passed by Congress in March 2020. The loans captured in the database total $601 billion and the grants $122 billion. The largest of the programs are summarized in Table 2.

Table 2. Largest CARES Act Programs Included in Covid Stimulus Watch

Program	Value of Awards	Recipients
Paycheck Protection Program	$432,462,023,909	661,395
Medicare Accelerated and Advance Payment Program ($500,000 and up)*	$95,912,737,447	12,721
Provider Relief Fund - General Distribution ($500,00 and up)*	$64,461,965,006	13,783
Economic Injury Disaster Loan ($150,000 and up)*	$60,546,414,640	374,751
Provider Relief Fund COVID-19 High-Impact Payments	$20,972,459,576	1,136
Payroll Support Program (grants)	$19,940,973,004	578
Airport Grant Program ($500,000 and up)*	$9,021,689,952	413
Payroll Support Program (loans)	$7,336,156,402	30
Higher Education Emergency Relief Fund ($500,000 and up)*	$5,812,583,345	2,271
Secondary Market Corporate Credit Facility	$3,609,626,222	1,351

* For these programs we included only those recipients with awards above the stated level.

Violation Tracker, also produced by Good Jobs First, currently contains 437,000 entries covering regulatory enforcement cases brought by more than 50 federal agencies, including all divisions of the Justice Department, and 200 state and local agencies, including all state attorneys general and state financial regulators as well as selected state labor departments and local prosecutors. It also covers employment-related class action lawsuits.

We matched all the individual entries in Covid Stimulus Watch to those in Violation Tracker to find overlaps (see the methodology section below for details). We found more than 43,000 CARES Act recipients that had also paid a penalty of $5,000 or more for misconduct during the past decade (we excluded Violation Tracker data for the 2000-2009 period). These companies can be divided into four main groups–healthcare providers, small businesses, colleges and universities, and aviation-related companies–which are discussed in the following sections.

Defrauding Medicare and Medicaid

Healthcare providers are responsible for the largest portion of penalties paid by recipients of CARES Act grants and loans. And apart from small businesses, they have received the largest portion of that financial assistance.

The CARES Act provided grants to healthcare entities through the Provider Relief Fund, which has two components: a general distribution fund given to providers based on the amount they previously billed Medicare, and a High-Impact fund for hospitals that have treated the largest number of COVID-19 patients this year. Providers have also received expedited payments through the Medicare Accelerated and Advance Payment Program (which we categorize as loans) as well as grants from smaller healthcare-related CARES Act programs.

We found 6,000 beneficiaries of these programs that have a record of misconduct, with penalties totaling $8.6 billion. Together they received $39 billion in grants from the Provider Relief Fund, $46 billion in accelerated Medicare payments, and $168 million in grants from other COVID healthcare programs.

More than 80 percent of these recipients and 99 percent of the penalties (by dollar amount) are linked to larger hospitals and health systems. Their most common misconduct involves cases brought under the federal False Claims Act (FCA). This law, which dates back to the Civil War era, is a mechanism through which the federal government fights fraud by government contractors, including healthcare providers that are reimbursed under Medicare and Medicaid.

We found 222 healthcare providers that were linked to FCA cases over the past decade. The fines and settlements in those cases totaled $5 billion.

The nine for-profit and non-profit providers shown in Table 3 each paid more than $100 million in FCA penalties, with the largest amount turned over by the for-profit hospital operator Tenet Healthcare. In 2016, Tenet paid $513 million to resolve allegations that it violated the FCA and other laws by paying illegal kickbacks for patient referrals and thereby defrauding the Medicare and Medicaid programs. The company and its subsidiaries paid $92 million in seven other FCA cases over the past decade.

Table 3. CARES Act Recipients in the Healthcare Industry with $100 Million or More in False Claims Act Penalties

Parent Industry	Penalty Total
Tenet Healthcare	$605,260,000
Community Health Systems	$477,996,770
Walgreens Boots Alliance	$367,419,744
Millennium Health	$256,000,000
Quest Diagnostics	$248,790,000
Kindred Healthcare	$193,588,244
Amedisys	$150,000,000
Maxim Healthcare Services	$150,000,000
Life Care Centers of America	$145,000,000

While most FCA lawsuits are brought as civil matters, some of the more serious ones also include criminal allegations. That includes the Tenet Healthcare case cited above, in which two subsidiaries pled guilty to conspiracy to pay kickbacks and bribes, while Tenet itself was offered a non-prosecution agreement (NPA) to resolve its criminal liability. NPAs, a controversial practice of the Justice Department, allow corporate defendants to dispense with criminal allegations by paying a penalty and promising to change their behavior.

Criminal charges were also part of a 2018 case in which a subsidiary of Community Health Systems paid $260 million in penalties and signed an NPA to resolve allegations that it knowingly billed government health care programs for inpatient services that should have been billed as outpatient or observation services, paid illegal remuneration to physicians in return for patient referrals, and submitted inflated claims for emergency department facility fees.

We found four other CARES Act recipients linked to FCA cases that included criminal allegations: Maxim Healthcare Services, Orthofix, Zwanger-Pesiri Radiology, and WakeMed Health.

Small Business Violators

After the healthcare providers, small businesses that have received aid through the Paycheck Protection Program (PPP) or the Economic Injury Disaster Loan (EIDL) program account for the most penalties.

Among the more than one million disclosed participants in those programs, we found 38,000 that matched companies in Violation Tracker with total penalties of $3.3 billion over the past decade. Their PPP and EIDL loans totaled $37 billion (an approximation since the PPP loan amounts were disclosed in ranges; we use the midpoint of the ranges in our calculations). The Treasury and the Small Business Administration declined to reveal the identities of recipients of loans below $150,000—but there is a push by media companies and others for full disclosure.

The offense that accounted for the largest portion of these penalty dollars was wage theft (Table 4). More than 10,000 of these companies had been cited for violating overtime and minimum wage regulations, paying $436 million in fines and back pay. For example, Unwrapped Inc., a contract sewing operation in Massachusetts that received a PPP loan worth $1-2 million, had previously paid $890,000 to resolve allegations that it failed to pay proper overtime rates to 327 piece-rate and hourly workers and failed to keep accurate records.

Table 4. Most Common Offense Categories for PPP and EIDL Recipients

Primary Offense	Penalties	Cases	Average Penalty
wage and hour violation	$436,487,754	10,214	$42,734
workplace safety or health violation	$274,289,672	18,342	$14,954
False Claims Act and related	$100,325,978	80	$1,254,075
environmental violation	$98,731,466	883	$111,814
consumer protection violation	$43,987,793	134	$328,267
motor vehicle safety violation	$40,718,361	2,788	$14,605
employment discrimination	$33,055,255	218	$151,630
labor relations violation	$22,967,261	439	$52,317
tax violations	$17,467,496	37	$472,094

Workplace safety and health offenses accounted for the second highest penalty total at $274 million as well as the highest number of individual cases. One of the most serious of the small business workplace safety cases involved Adams Thermal Systems, a producer of vehicle cooling systems that received a PPP loan worth between $2 and $5 million. In 2013, it entered into a deferred prosecution agreement with the U.S. Attorney's Office and the Occupational Safety and Health Administration to pay more than $1.33 million in criminal penalties and civil fines levied in connection with the 2011 death of a worker at the company's plant in Canton, South Dakota.

False Claims Act cases accounted for the third largest penalty total at $100 million, which was spread out over only 80 cases, giving this category the highest average penalty of $1.2 million. One of these cases involved Nashville Pharmacy Services, which received a PPP loan worth up to $1 million as well as a $150,000 EIDL loan. Previously, the company agreed to pay up to $7.8 million to resolve allegations that it overbilled Medicare and Medicaid.

However, not all the False Claims Act cases involved the healthcare sector. Coast Produce Company, which received a PPP loan worth between $2 and $5 million, previously paid $4 million to resolve civil allegations that it fraudulently overcharged the federal government for fresh fruits and vegetables it supplied to military dining facilities and Navy ships in Southern California. As part of a second agreement with criminal prosecutors, it agreed to implement various measures to ensure the company complies with its legal obligations.

The next largest category covers environmental violations, which resulted in penalties totaling $98 million. One of the more significant cases involved American Refining Group in Pennsylvania, which received a PPP loan worth between $5 and $10 million. In 2019 it had to pay $4.85 million ($350,000 in penalties and $4.5 million in equipment improvements) to resolve allegations by the Environmental Protection Agency that it was violating the Clean Air Act.

Appendix A contains a breakdown by state of PPP/EIDL loan amounts and penalties.

Offenses in the Academic World

The Higher Education Emergency Relief Fund (HEERF, another provision of the CARES Act) has provided grants to colleges and universities across the country. Among these are 147 schools with total grants of $503 million that have also paid $900 million in penalties.

More than 90 percent of this penalty total is tied to for-profit colleges and universities, many of which have faced allegations that they use deceptive tactics to attract students and then push them into unsustainable levels of tuition debt.

American Intercontinental University, which received an HEERF grant of $575,000, is owned by Perdoceo Education Corporation. Under its former name, Career Education Corporation, Perdoceo agreed to pay $5 million and cancel $493 million in student loans to resolve litigation brought by 49 state attorneys general alleging fraud and deception.

The University of Phoenix, which received an HEERF grant of over $3 million, and its parent, Apollo Education Group, paid $50 million and cancelled $141 million in student debt to resolve Federal Trade Commission allegations that it used deceptive advertisements that falsely touted its relationships and potential placement opportunities with companies such as AT&T, Yahoo, Microsoft, and Twitter.

DeVry University, which received an HEERF grant of over $2 million, resolved similar FTC allegations by providing $50.6 million in debt relief and paying $49.4 million to students who had been harmed by its practices.

Some non-profit colleges and universities have paid smaller penalties. For example, South Carolina's North Greenville University, which received an HEERF grant of about $1 million, had previously paid $2.5 million to resolve a False Claims Act case involving the payment of improper incentives to student recruiters.

Violations in the Aviation Sector

The final category of group of CARES Act recipients with a record of misconduct consists of companies participating in the Payroll Support Program created for the aviation sector. While benefiting far fewer firms than programs such as the PPP or the Provider Relief Fund, the PSP is significant because it includes the largest individual CARES Act awards—those going to the major airlines.

American Airlines has received a grant of $4.1 billion and a loan of $1.7 billion. Delta Air Lines, United Airlines and Southwest Airlines also received several billions of dollars of assistance each. Other carriers such as JetBlue and Alaska Air received hundreds of millions.

American has accumulated more than $150 million in penalties over the past decade, more than half of which came from safety violations imposed by the Federal Aviation Administration. It also paid $43 million in employment-related cases as well as a $22 million False Claims Act settlement to resolve allegations it falsely reported the delivery time of U.S. mail transported internationally.

United Airlines has paid $71 million in penalties, most of which resulted from two employment discrimination lawsuits. Delta's penalties have amounted to $57 million, including a $38 million criminal price-fixing fine imposed on its subsidiary Northwest Airlines. Southwest's total is $49 million, half from aviation safety violations.

Apart from the airlines, 26 smaller carriers, air cargo companies and aviation service providers account for another $187 million in penalties. More than half of that is linked to Lufthansa, whose subsidiary Sky Chefs received a grant of $136 million and a loan of $77 million. In 2012, another Lufthansa subsidiary paid a $118 million criminal fine to resolve foreign bribery allegations.

Bonds and Misconduct

Along with grants and loans, the initiatives taken by the federal government to deal with the COVID-19 economic crisis include programs in which the Federal Reserve purchases corporate bonds to shore up the commercial credit market.

Under the Secondary Market Corporate Credit Facility, the Fed has made more than 1,300 purchases with a total value of about $3.6 billion, focusing mostly on bonds issued by Fortune 500 and Global 500 corporations.

Of the 400 different companies whose bonds have been purchased, more than three-quarters have a history of misconduct documented in Violation Tracker. Their penalty total is $108 billion—more than eight times the fines and settlements paid by all other CARES Act recipients.

The largest penalty totals are linked to BP, which paid $28 billion in fines and settlements relating to incidents such as the 2010 Deepwater Horizon disaster in the Gulf of Mexico, and Volkswagen, which paid $24 billion, most of which was linked to the automaker's emissions cheating scandal. Also high on the list are drug companies such as GlaxoSmithKline and Johnson & Johnson.

Because the bond purchases, which averaged about $3 million per company, are small in comparison to the size of these corporations, we decided not to include the associated penalties in the main analysis of this report.

CONCLUSION

A significant number of CARES Act recipients have been penalized for serious corporate misconduct, ranging from wage theft and workplace safety violations to healthcare fraud and price-fixing.

It appears that little screening was done by federal agencies before awarding grants and loans, partly because there were no strict eligibility requirements written into the CARES Act. In some programs such as the Provider Relief Fund, the money was apportioned by formula rather than choosing some recipients over others.

In the Paycheck Protection Program there was an application process, but it was handled by banks – which received commissions for their efforts – rather than the Small Business Administration. The application form required business owners to state whether they personally had been convicted or pled guilty to felonies such as fraud and bribery, while for the companies themselves the only issue seemed to be whether they had been debarred by a federal agency.

Some argue that the gravity of the economic situation during the pandemic made it more important to get money out the door quickly than to screen out potentially bad actors. Some also claim that excluding businesses with bad track records from aid programs would have jeopardized the jobs of employees who had nothing to do with the misconduct.

There is also an issue of practicality. If the tens of thousands of companies with a record of misconduct were excluded, the effectiveness of the rescue programs could be severely restricted.

While widespread exclusion may not be feasible, there are two categories of recipients whose records of misconduct should not be ignored. The first consists of those companies and non-profits which were accused of defrauding the federal government and which paid civil penalties (usually through a settlement) for False Claims Act violations. The other category consists of those involved in cases that were serious enough to be brought with criminal charges.

Given that companies involved in FCA cases are usually allowed to continue doing business with the federal government after paying their penalty, it would be difficult to debar them from future covid stimulus programs. These companies should, however, be subject to additional scrutiny to ensure they do not resume their fraudulent behavior while receiving grants and loans.

The most compelling case for excluding a group of companies from participation in future aid programs concerns those with a history of criminal misconduct. Measures are already in place to deal with corrupt business owners. Along with the provision in the PPP designed to disqualify persons with felony convictions, the New York Times recently reported that the Justice Department has already made more than 40 criminal complaints against individuals accused of misusing PPP funds.

Similar measures should be applied to businesses themselves, especially when the firms involved are larger entities. Doing so would protect taxpayer funds and serve as a deterrent against future corporate criminality.

METHODOLOGY

The grant and loan entries in Covid Stimulus Watch were matched to those in Violation Tracker (for the past decade) in two ways. First, we looked for a common parent company. The lists of parents in the two databases are not identical, but there are about 900 overlaps. We found about 5,500 CARES Act recipients associated with these 900 parents.

We then sought to match entries that are not linked to a parent in either database, or are linked in one but not the other. This meant comparing records for hundreds of thousands of smaller businesses, often with similar names.

Our database consultant Rich Puchalsky took each set of entries and streamlined the company names to remove designations such as Inc and Corp. He then ran a computer match that looked for entries with the same streamlined name and the same state. This yielded a list of about 38,700 apparent matches.

We then manually scanned those matches to look for cases in which the use of streamlined names may have yielded a false match—e.g. ABC Corp. and ABC Inc. may be two unrelated companies even if they are located in the same state. We used other identifiers such as street address and NAICS industry code (where these were available) to decide whether to reject a computer-suggested match.

About 300 tentative matches were rejected through this process. The remaining 38,400 matches, combined with the 5,500 matches established through common parents, gave us a total universe of about 43,900 CARES Act recipients that had penalty records in Violation Tracker.

When a company received more than one CARES Act award (as a good many have), we counted any matching penalty records only once in tallying the results. If an individual Covid Stimulus Watch entry was matched to more than one individual Violation Tracker entry, we included only the largest penalty amount in our calculations.

For companies with common parents, we used penalty totals for all entities associated with the parent, not only those receiving covid aid.

All penalty amounts cover the period from January 1, 2010 through the most recent update of Violation Tracker, which was completed in June 2020.

APPENDIX A: STATE BREAKDOWN OF SMALL BUSINESS LOANS AND PENALTIES

This appendix provides a breakdown by state of amounts received in Paycheck Protection Program aid and Economic Injury Disaster Loans, along with the total penalties paid by recipients of those loans during the past decade for regulatory violations and other misconduct, as documented in Violation Tracker. The loans are limited to those of $150,000 or more, and in the case of the PPP loans, the amounts used are the midpoints of the ranges in which the awards were disclosed. For those recipients linked to a Violation Tracker parent company, the penalty total covers all the parent's operations in the state in which the recipient is based. Many of the entries in Violation Tracker cannot be linked to an individual state. That explains the difference between the penalty total here and the one cited in the text.

state	PPP and EIDL loan total	loans	penalties
AK	$89,075,000	102	$6,065,841
AL	$658,661,900	683	$15,818,060
AR	$242,445,000	296	$6,442,649
AZ	$397,530,800	427	$13,835,648
CA	$4,650,198,800	4,336	$167,597,286
CO	$542,850,000	599	$16,061,005
CT	$654,368,700	714	$26,620,854
DC	$54,565,000	55	$1,645,581
DE	$82,900,000	104	$1,880,999
FL	$1,693,216,400	2,151	$53,322,846
GA	$1,025,129,100	1,191	$43,455,477
HI	$394,775,000	484	$9,664,136
IA	$451,050,000	383	$11,540,843
ID	$228,800,000	251	$6,292,196
IL	$1,983,838,700	1,826	$52,113,766
IN	$522,153,000	455	$29,215,509
KS	$430,552,700	481	$18,144,811
KY	$391,280,000	365	$15,805,652
LA	$503,943,900	547	$19,997,710
MA	$1,363,322,700	1,238	$48,671,889
MD	$451,890,000	421	$20,370,350
ME	$216,325,000	234	$4,521,691
MI	$1,077,541,700	921	$27,640,673
MN	$532,425,000	441	$15,849,236
MO	$783,338,900	807	$16,734,026
MS	$276,484,700	304	$6,529,524
MT	$86,325,000	115	$2,157,607

state	PPP and EIDL loan total	loans	penalties
NC	$708,420,300	759	$16,752,649
ND	$181,040,000	178	$3,636,472
NE	$325,275,000	363	$7,459,665
NH	$183,236,600	244	$4,377,812
NJ	$1,362,727,900	1,327	$33,828,146
NM	$132,136,000	161	$3,529,191
NV	$331,979,300	326	$7,354,442
NY	$2,331,993,305	2,468	$115,916,880
OH	$1,788,332,100	1,627	$40,563,105
OK	$357,650,000	453	$14,366,467
OR	$267,399,400	287	$5,817,368
PA	$1,846,856,500	1,761	$88,643,651
PR	$114,050,000	116	$10,885,208
RI	$148,778,900	201	$4,372,349
SC	$212,425,000	276	$6,987,196
SD	$115,750,000	138	$3,718,074
TN	$593,100,000	598	$25,703,725
TX	$2,655,140,800	2,944	$99,596,698
UT	$234,125,000	243	$6,323,649
VA	$689,092,900	782	$39,768,652
VT	$123,775,000	143	$2,979,137
WA	$930,795,860	848	$31,874,011
WI	$1,098,994,300	980	$21,816,979
WV	$188,323,400	237	$8,279,595
WY	$78,200,000	106	$1,968,071
TOTALS	$36,784,584,565	37,497	$1,264,515,057

goodjobsfirst.org

1616 P Street NW Suite 210
Washington, DC 20036
202-232-1616

GOOD
JOBS
FIRST
.ORG