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Business Applicants for COVID-19 Funding Must Exercise Caution

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, Economic Security Act (the “CARES Act” or “Act”), designed to help stem the deepening economic crisis triggered by COVID-19. Under the Act, qualifying mid- and small-sized businesses can apply for and participate in loan or other investment programs.

Businesses taking advantage of these programs must ensure the truthfulness of the representations they make in their applications. Indeed, the U.S. Department of Justice (“DOJ”) recently announced that it will make investigating COVID-19 frauds an enforcement priority. And Congress has indicated the same appetite to ferret out fraud, through the CARES Act, which creates the Special Inspector General for Pandemic Recovery (“SIGPR”) and the Pandemic Response Accountability Committee (“Committee”). Congress established both to protect the funds allocated by the CARES Act, as well as other COVID-19 funding measures.

With the heightened level of scrutiny in this arena, businesses who provide false information in connection with a CARES Act or other COVID-19 funding application risk criminal and civil liability, including the stiff penalties and damages authorized by the False Claims Act.^[i] Any business considering making such an application should consult experienced counsel on potential areas of concern and risk.

I. The SIGPR

The CARES Act appropriates \$25 million for the newly established Office of the SIGPR. The SIGPR’s primary duty is to audit and investigate the Secretary of the U.S. Department of the Treasury’s provision of loans and other investments. The SIGPR must also submit quarterly reports to Congress that describe its work and findings. Furthermore, to combat fraud and other criminal activity, the SIGPR has a duty to report “expeditiously to the Attorney General whenever [there are] reasonable grounds to believe there has been a violation of Federal criminal law.”^[ii]

To carry out these duties and responsibilities, the SIGPR has powers derived from Section 6 of the Inspector General Act. For instance, the SIGPR can issue subpoenas for the production of evidence and administer oaths. Moreover, under certain circumstances, the Attorney General can deputize the SIGPR with the powers to make arrests and seek and execute warrants.^[iii] Taken together, these duties mean the SIGPR could investigate and report the misconduct of a loan applicant to DOJ, Congress, or both.

II. The Committee

The Committee, located within the Council of the Inspectors General on Integrity and Efficiency (the “Council”), has a wider range of functions and powers than the SIGPR. The Committee also has available \$80 million in funding. The chief purpose of the Committee is to “promote transparency and conduct and support oversight of covered funds and the Coronavirus response to . . . prevent and detect fraud, waste, abuse, and mismanagement[.]” Critically, although established by the CARES Act, the Committee’s reach extends further to include funding made available to businesses and other non-federal entities by any COVID-19 funding acts signed into law.^[iv]

Among the Committee’s broad array of powers are several key investigative and law enforcement functions. The Committee is charged with “conduct[ing] and coordinat[ing] oversight of covered funds and the Coronavirus response and support[ing] Inspectors General.” The Committee must report to the Attorney General if it has reasonable grounds to believe there has been a violation of federal law. And the Committee must ensure the satisfaction of competition requirements for contracts and grants using covered funds, meaning that businesses applying for loan programs must pay careful attention to any bidding or competition requirements contained in those

programs. Like the SIGPR, the Committee also has investigative powers under Section 6 of the Inspector General Act.^{iv}

As of this writing, the identity of the Inspector General who will lead the Committee is uncertain, after President Trump, on April 7, 2020, removed Glenn Fine from his post as Inspector General for the U.S. Department of Defense, disqualifying him from serving as the Committee's first Chairperson.^{vii} Mr. Fine had initially been nominated by a group of Inspectors General. In his place, the President appointed the current EPA Inspector General.

III. Closing Thoughts

As much as \$2 trillion has been appropriated under the CARES Act. Given the size of this massive recovery effort, Congress's creation of oversight mechanisms is unsurprising. In 2008, Congress did something similar when it established the Special Inspector General for the Troubled Asset Relief Program ("SIGTARP"). And that Office has continued to aggressively investigate fraudulent activities, recovering nearly \$900 million in fiscal year 2019 alone.^{vii} Between the SIGPR, the Committee, and the DOJ, the government will continue to prioritize the investigation, detection, and prosecution of frauds related to COVID-19 funding.

For more information on the contents of this alert, please contact the authors. For more information on COVID-19 legislation, including other topics under the CARES Act, please visit Saul Ewing Arnstein & Lehr LLP's COVID-19 Resource Page.^{viii}

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- i. See 31 U.S.C. § 3729(a) (authorizing civil penalties of \$5,000-\$10,000 per false claim, plus treble damages and costs).
 - ii. See Pub. L. No. 116-136 §§ 4018(a), (c)(1), (c)(3), (f)(1), (g)(1); 5 U.S.C. § 4(d).
 - iii. See Pub. L. No. 116-136 § 4018(d); 5 U.S.C. §§ 6(a)(4), (5), 6(f).
 - iv. Pub. L. No. 116-136 §§ 15010(a)(4), (a)(6), (b).
 - v. See id. § 15010(d)(1)(A)-(B), (e)(3)(A)(i).
 - vi. Kyle Cheney and Connor O'Brien, Trump removes independent watchdog for coronavirus funds, upending oversight panel, Politico (Apr. 7, 2020), <https://www.politico.com/news/2020/04/07/trump-removes-independent-watchdog-for-coronavirus-funds-upending-oversight-panel-171943>.
 - vii. www.sigtarp.gov/Pages/aboutus.aspx (last visited on Apr. 6, 2020).
 - viii. <https://www.saul.com/coronavirus-covid-19-resource-page>.

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