

FRAUD UNDER THE CARES ACT AND THE FALSE CLAIMS ACT

The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the largest economic stimulus package in the history of the United States, was recently passed by Congress to provide financial relief to individuals and companies harmed by the COVID-19 pandemic. Anticipating potential abuse of the opportunities under the CARES Act and other federal stimulus packages, the United States Department of Justice (“DOJ”) has announced that it will “prioritize the investigation and prosecution of Coronavirus-related fraud schemes.”

1. Fraud Provisions of the CARES Act

The following provisions of the CARES Act are designed to combat fraud:

- The CARES Act appropriates \$25 million in funding for the Small Business Administration (“SBA”) Office of the Inspector General for expenses associated with monitoring the administration of the expanded SBA lending programs.
- The CARES Act extends criminal penalties under existing laws for fraud and other misconduct to the application for or use of any relief aid provided by the SBA.
- The CARES Act creates an Office of the Special Inspector General for Pandemic Recovery in the Department of the Treasury to coordinate, monitor, and investigate the management and spending of funds provided by any program created by the Act.
- The CARES Act creates a Pandemic Response Accountability Committee to oversee the use of funds made available pursuant to the Act.
- The CARES Act appropriates funding to the Inspectors General for all government agencies and departments receiving funds pursuant to the Act to fund the oversight and monitoring of the programs.

2. Federal False Claims Act

In addition to the fraud provisions of the CARES Act, the federal False Claims Act provides remedies for the government to recover government funds fraudulently obtained or used.

The False Claims Act is a federal statute that imposes liability on individuals and businesses for submitting claims to the federal government for payment when they know or should know that the claims are false or fraudulent and their false statements supporting their claims are “material.” Claims that violate the False Claims Act include claims for funds based on material, false statements as well as claims for funds that would be legitimate but are submitted by a person or entity not eligible to receive the funds under a program such as the CARES Act. Furthermore, a “material” statement is one that has a natural tendency to affect the government’s payment decision. Persons and entities violate the False Claims Act if they know of the falsity of their material statements or act with reckless disregard of the truth or falsity of their material statements.

Civil violations under the False Claims Act can result in fines of up to three times the amount the government paid for each false claim, plus up to an additional \$11,000 per false claim. Individuals, including those who control businesses engaging in such fraud, can also be prosecuted criminally for violating the False Claims Act.

Notably, the False Claims Act contains a *qui tam* provision that allows any individual who has knowledge of a false claim to bring a civil action under seal on behalf of the United States against the party submitting the false claim. The federal government can then intervene and assume primary responsibility for prosecuting, settling, or dismissing the case. If the government declines to intervene, the whistleblower can unseal the Complaint and proceed with the lawsuit. If the suit is ultimately successful, the whistleblower may be awarded a percentage of the funds recovered.

3. How to Avoid and Limit Potential Liability

Given the fraud provisions of the CARES Act, the False Claims Act, and the recent announcement by the DOJ regarding enforcement initiatives against those who defraud government stimulus programs, it is critical to understand best practices that individuals and businesses can employ to ensure compliance with the law and limit any potential liability.

Programs established under the CARES Act specify eligibility requirements as well as approved uses for funds received by the programs. Thus, a number of programs under the CARES Act require applicants to certify that they are eligible to participate in the program at the time of application. Requirements can be extensive and often implicate different statutes and regulations. Consequently, applicants must ensure that the information contained in their applications, their certifications, and any required reporting in compliance with the programs is truthful and accurate.

To ensure proper compliance, applicants should thoroughly review the eligibility requirements of the programs for which they are applying to ensure that they are eligible. As an example, applicants for a Paycheck Protection Program Loan will need to make the following certifications, among others, to the lender:

1. *Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.*
2. *The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable such as for charges of fraud.*
3. *Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender.*
4. *I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects.*
5. *I acknowledge that the lender will confirm the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those submitted to the Internal Revenue Service.*

Applicants should also coordinate with legal, accounting, and compliance advisors to ensure that funds provided by the programs are being allocated in an appropriate and compliant manner and that all certifications made by the applicant are true and accurate in all material respects.

Furthermore, individuals and businesses using funds provided by such programs should keep thorough records of funds received and funds spent and may even wish to maintain funds in separate accounts. By taking proper precautions and keeping meticulous records, individuals and businesses can be prepared, in the event of an audit, to demonstrate compliance with the provisions of the CARES Act.

For questions regarding this alert and issues related to CARES and the False Claims Acts, please contact Attorney Richard S. Order at (860) 548-2659/rorder@uks.com or Attorney Richard M. Dighello at (860) 548-2633/rdighello@uks.com.

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