

Follow the Money

Federal COVID-19 Funding and the Inevitable Wave of Government Enforcement

BY JENNIFER LAKE



This article explores potential civil liability for borrowers, grantees, and lenders of federal COVID-19 business assistance funding.

The federal government has distributed an unprecedented amount of business assistance funding to a wide variety of recipients in response to the COVID-19 pandemic. The funds have been distributed in the form of grants and loan programs that have been cobbled together in a short period of time relative to the amount of time it typically takes the federal government to implement new regulatory schemes. New guidance and regulations are issued almost weekly for some of these programs, and there has been considerable confusion regarding the applicable requirements for some of the largest grant and loan programs.

During previous crises that have resulted in rapid distributions of large amounts of federal funds, government audits, investigations,

and enforcement actions followed. There are already myriad signs that this crisis will be no different. Moreover, given the widespread nature of the economic harm caused by the pandemic, federal funds are flowing to a large number of recipients that are likely to have little or no experience with federal grant and loan programs. Borrowers, grantees, and lenders of COVID-19-related federal funding should be aware of their potential civil liability¹ and take proactive steps to minimize potential exposure.

Federal COVID-19 Business Assistance Programs

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was passed into law on March 27, 2020.² Among other things, it authorized a variety of business assistance

and relief programs. Each program has its own regulations and certification requirements that restrict the use of the funding and require participants to make statements and provide information concerning their eligibility for the funds. The largest and most popular business assistance programs are briefly described below.

Paycheck Protection Program

One of the CARES Act's central relief measures was the Paycheck Protection Program (PPP),³ a temporary loan product administered through the US Small Business Administration's (SBA) 7(a) Loan Program.⁴ Within the first 14 days of the program, approximately \$342 billion was distributed to more than 1.6 million recipients.⁵ At the time the program expired on August 8, 2020, approximately 5.2 million PPP loans had

been approved for a total of approximately \$525 billion.⁶

PPP loans are fully guaranteed by the SBA, and the entirety of the loan is eligible for forgiveness if certain conditions are met.⁷ Private lenders are responsible for processing and approving both initial loan applications and forgiveness applications.⁸ The applications have multiple certifications that a borrower must make concerning eligibility for the loan and use of the funds.⁹ For example, a borrower must certify on the loan application that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant,” and 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.”¹⁰ Although lenders may rely on the documentation submitted by a borrower, they must meet certain limited underwriting obligations and make certifications to the SBA concerning their compliance with those obligations.¹¹

Additional Business Loan Programs

COVID-19-related business assistance for small and medium-sized businesses is also available through the SBA’s Economic Injury Disaster Loan Program¹² and the Federal Reserve’s Main Street Lending Program, among others.¹³ Similar to the PPP, borrowers must make a variety of certifications concerning eligibility and use of the funds for both categories of loans.¹⁴ Because the Federal Reserve guarantees the loans issued through the Main Street Lending Program, lenders participating in that program must also submit certifications concerning a borrower’s eligibility for the loan and the due diligence conducted in underwriting the loan.¹⁵

Provider Relief Fund

In addition to loan programs, the CARES Act also authorized the US Department of Health and Human Services (HHS) Provider Relief Fund (Provider Relief Fund). The Provider Relief Fund distributes several types of grants to hospitals and healthcare providers, and hundreds of billions of dollars have already been distributed through the fund.¹⁶ The most widely distributed grant was a \$50 billion “General Distribution,” which was

automatically transferred to healthcare providers shortly after passage of the CARES Act. Two formulas were used to calculate a provider’s share of the distribution based on 2019 Medicare fee-for-service payments and/or most recent tax year annual gross receipts.¹⁷ Although the funds were automatically transferred to recipients’ bank accounts, HHS subsequently released terms and conditions requiring recipients to sign an agreement within a certain period of time to legally retain the funds.¹⁸ A provider’s failure to sign the terms and conditions or return the funds is deemed an acceptance of the terms and conditions.¹⁹

The terms and conditions are 11 pages of restrictions and requirements regarding use of the funds. Among other things, providers must certify that after January 31, 2020 they provided “diagnoses, testing, or care for individuals with possible or actual cases of COVID-19,” and that the funding “will only be used to prevent, prepare for, and respond to coronavirus, and that the Payment shall reimburse the Recipient only for healthcare related expenses or lost revenues that are attributable to coronavirus.”²⁰ The funding cannot be used to reimburse the provider for expenses or losses that have been reimbursed by other sources or that other sources are obligated to reimburse.²¹ HHS has already announced that it will require recipients to submit future reports regarding use of the funding.²²

Government Contracts

In addition to grant and loan programs, federal agencies have obligated approximately \$17 billion in COVID-19-related contracts.²³ Government contracts are similarly subject to a variety of federal regulations and contract-specific requirements, and often require contractors to make certifications in connection with both the initial request for proposal and with respect to subsequent requests for payment as the contract is performed.

History of Post-Crisis Enforcement Actions

Historically, the federal government has targeted disaster funds and programs for audits, investigations, and civil enforcement actions to deter fraud and recoup misused taxpayer funds.



Protect Their Innovations

YOUR CLIENTS HAVE WORKED HARD TO GET WHERE THEY ARE.

Now let us work hard for you by maximizing the value and security of their intellectual property assets. At Santangelo Law Offices, intellectual property is all we do.

LET US HELP YOU HELP YOUR CLIENTS. **TALK TO US TODAY.**



Local Firm Value with Large Firm Capability

Fort Collins, CO | 970.224.3100
Denver, CO | 720.249.4700
San Diego, CA | 619.270.2100
idea-asset.com

PATENT • COPYRIGHT • TRADEMARK
• INTELLECTUAL PROPERTY
LITIGATION • INTELLECTUAL
PROPERTY TRANSACTIONS

For example, in the aftermath of Hurricane Katrina the US Attorney General formed the Hurricane Katrina Fraud Task Force.²⁴ The task force sought to coordinate and ensure timely prosecution of fraud related to disaster relief funds, among other things.²⁵ The task force successfully pursued civil claims under the framework of the False Claims Act, 31 USC §§ 3729 et seq. (FCA), among other statutes. Notably, it obtained a \$4 million settlement with a company that accepted over \$5 million for post-disaster work it did not complete on a contract with the US Department of Homeland Security.²⁶

Another notable enforcement effort occurred in the wake of the Great Recession when the federal government coordinated a number of initiatives and task forces to investigate and prosecute fraud. President Obama established the Financial Fraud Enforcement Task Force to investigate and prosecute financial crimes related to the crisis and recovery efforts, including FCA violations.²⁷ The US Department of Housing and Urban Development (HUD) and the US Department of Justice (DOJ) worked together to investigate multiple large mortgage lenders to determine whether the lenders' conduct in underwriting and approving federally insured mortgage loans contributed to the financial downfall of the government fund that paid claims on the loans.²⁸ The coordinated effort, sometimes referred to as the "Big Lender Initiative," resulted in settlements with 20 mortgage lenders totaling more than \$4.75 billion.²⁹ Congress also created the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), which had the authority to audit, investigate, and conduct oversight over the distribution of Troubled Asset Relief Program (TARP) funds.³⁰ In addition to numerous successful criminal prosecutions related to the funds, SIGTARP obtained large civil settlements from participants in federal programs.³¹

Oversight of Federal COVID-19 Funds

The federal government has already indicated that it will closely monitor and investigate potential misuse of COVID-19 relief funds. The CARES Act provides for the creation of a Special Inspector General for Pandemic Recovery

“
 Given the creation
 of formal oversight
 bodies and the
 preliminary
 announcements
 concerning
 enforcement
 made by various
 government
 entities, attorneys
 and clients can
 expect robust
 investigations
 and prosecutions
 concerning the
 use of COVID-19
 relief funds.
 ”

(SIGPR), a Pandemic Response Accountability Committee (PRAC), and a Congressional Oversight Commission.³² The SIGPR “is directed to ‘conduct, supervise, and coordinate audits and investigations’ of the financial assistance programs for businesses included in Title IV of the CARES Act”³³ The PRAC currently comprises 20 inspectors general from various federal agencies, and its mission is to ensure “that funds intended to support individuals, workers, healthcare professionals, businesses, and others affected by the pandemic are used efficiently, effectively, and in accordance with the law.”³⁴ The Congressional Oversight Commission

has five members and is tasked with overseeing actions undertaken by the Department of the Treasury and the Federal Reserve.³⁵ Finally, the Government Accountability Office (GAO) has been tasked with oversight of COVID-19-related funds as well.³⁶

Separate and apart from the CARES Act oversight mechanisms, the DOJ and the federal agencies responsible for administering the business relief programs have made clear that investigations and prosecutions are forthcoming. On March 16, 2020, Attorney General William Barr issued a memorandum to all US attorneys encouraging them to work with the DOJ Civil Division’s Consumer Protection Branch, among other divisions, to “detect, investigate, and prosecute” fraudulent conduct related to the pandemic.³⁷ With respect to the Provider Relief Fund, HHS has announced that it will have “significant anti-fraud monitoring of the funds distributed, and the Office of Inspector General will provide oversight as required in the CARES Act to ensure that Federal dollars are used appropriately.”³⁸

With respect to PPP loans, the SBA has cautioned that “all borrowers should review carefully the required certification that ‘current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.’ Borrowers must make this certification in good faith”³⁹ The SBA preliminarily announced that it would be reviewing all loans in excess of \$2 million, creating a so-called “safe harbor” for loans under \$2 million.⁴⁰ Specifically, the SBA announced that for loans under \$2 million, recipients “will be deemed to have made the required certification concerning the necessity of the loan request in good faith.”⁴¹ However, these announcements were made in the form of answers to Frequently Asked Questions (FAQs), which do not constitute binding guidance. Indeed, after those FAQs were issued, the SBA published an interim final rule in the Federal Register that contradictorily stated that it “may review any PPP loan, as the Administrator deems appropriate,” and that “[f]or a PPP loan of any size, SBA may undertake a review at any time in SBA’s discretion.”⁴² SBA has further informed the GAO that it will review a select number of loans under \$2 million, possibly through statistical

sampling or in response to specific reports of noncompliance.⁴³ The GAO has recommended as an “essential” measure that the SBA address potential fraud in loans of \$2 million or less.⁴⁴

Given the creation of formal oversight bodies and the preliminary announcements concerning enforcement made by various government entities, attorneys and clients can expect robust investigations and prosecutions concerning the use of COVID-19 relief funds.

Enforcement Mechanisms

The federal government has several civil enforcement mechanisms at its disposal to investigate and prosecute the misuse of federal funds.

False Claims Act

The FCA is perhaps the most frequently used enforcement tool. It was enacted in 1863 and “was originally aimed principally at stopping the massive frauds perpetrated by large contractors during the Civil War.”⁴⁵ The FCA provides for both civil and criminal liability for any person who, among other things, “knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval,” or “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim”⁴⁶

The term “claim” is broadly defined by 31 USC § 3729 to include:

any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

- is presented to an officer, employee, or agent of the United States; or
- is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government—
 - ▷ provides or has provided any portion of the money or property requested or demanded; or
 - ▷ will reimburse such contractor, grantee, or other recipient for any portion of the money or property

which is requested or demanded⁴⁷

The term “material” is defined as “having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.”⁴⁸ Finally, the FCA defines “knowingly” to include actual knowledge as well as deliberate ignorance and reckless disregard of the truth or falsity of the information submitted to the government; no specific intent to defraud the government is necessary.⁴⁹

The FCA imposes liability for treble damages plus civil penalties ranging from \$11,665 to \$23,331 for each false claim.⁵⁰ DOJ has a history of targeting both individuals and corporate entities through FCA prosecutions.⁵¹ Moreover, its use of the FCA has been prolific. In each of the past 10 years, DOJ has obtained civil settlements and judgments under the FCA, with respect to healthcare fraud alone, in excess of \$2 billion per year.⁵²

In addition to FCA suits initiated by the federal government, the FCA provides for a private right of action. Under the law’s qui tam provisions, any person may file an FCA suit in the name of the government.⁵³ The complaint is initially filed under seal while the government decides whether to intervene in the case and take over the litigation.⁵⁴ If the government prevails in a qui tam action, the whistleblower typically receives 15 to 30% of the government’s recovery.⁵⁵ A significant portion of FCA suits are qui tam actions.⁵⁶ For example, of the \$3 billion in total FCA settlements and judgments reported by the federal government in 2019, approximately \$2.1 billion resulted from 633 qui tam suits.⁵⁷

Financial Institutions Reform, Recovery and Enforcement Act

A similar civil enforcement mechanism is the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USC § 1833a (FIRREA). FIRREA allows the government to seek civil monetary penalties against entities or people who violate one of several enumerated criminal statutes that affect financial institutions, such as bank fraud or making a false statement to a federally insured institution to obtain credit.⁵⁸ Although FIRREA involves violations of what

are otherwise criminal statutes, the burden of proof is a preponderance of the evidence.⁵⁹ The penalties are significant at up to \$1 million per violation and up to \$5 million for continuing violations.⁶⁰ Alternatively, if a person derives pecuniary gain from the violation or causes pecuniary loss to someone other than the violator, the penalty may be up to the amount of the gain or the loss.⁶¹ The government often pursues FCA and FIRREA claims in tandem.

Program Fraud Civil Remedies Act

A lesser known enforcement mechanism is the Program Fraud Civil Remedies Act of 1986, 31 USC §§ 3801 et seq. (PFCRA). Affectionately known within the federal government as the “baby False Claims Act,” its provisions are similar to the FCA but with liability for double damages instead of treble damages.⁶² The major differences between the FCA and the PFCRA are that penalties may be imposed under the PFCRA for false statements even in the absence of a claim, and the amount of each claim must be less than \$150,000.⁶³ However, multiple claims may be aggregated in a single PFCRA action provided that each individual claim is less than \$150,000.⁶⁴ PFCRA cases are litigated by federal agencies, rather than DOJ, before “presiding officers,” who are often administrative law judges (ALJs).⁶⁵ Each agency is required to promulgate its own rules and regulations implementing the PFCRA’s provisions.⁶⁶

The SBA’s Office of the Inspector General (OIG) has a history of using both the FCA and administrative enforcement actions to recoup funds from grantees, loan recipients, and lenders. For example, it has previously undertaken reviews of SBA’s 7(a) loan program to determine whether lenders participating in the program originated and closed 7(a) loans in accordance with SBA’s requirements.⁶⁷ In addition, SBA OIG has a history of pursuing civil settlements from borrowers who fraudulently claim special status (e.g., small business or veteran-owned business) to establish their eligibility for various SBA contracts and loans.⁶⁸

Suspension and Debarment

The final major enforcement mechanisms available to the government are suspension and

debarment. Suspension and debarment enable the federal government to exclude individuals and corporate entities from doing business with the government. Once a person or entity is suspended or debarred, that person or entity may not participate in covered transactions with *any* federal agency, or act as a principal of an entity participating in a covered transaction.⁶⁹ Covered transactions include grants, loans, loan guarantees, subsidies, insurances, and other types of payments made by the federal government for a specific purpose.⁷⁰ Thus, for all practical purposes, an entity or individual who is debarred is precluded from receiving any further federal funds from any source for the period of the suspension or debarment.

Federal agencies are required to adopt regulations implementing suspension and debarment procedures in accordance with overarching regulatory guidance provided by the Office of Management and Budget.⁷¹ Federal agencies may use the debarment and suspension system to exclude from federal programs persons who are “not presently responsible.”⁷² Although the term “presently responsible” is not clearly defined, the regulations broadly provide that a federal agency may debar a person for, among other things, civil judgments that indicate a “lack of business integrity or business honesty,” “[v]iolation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program,” or “[a]ny other cause of so serious or compelling a nature that it affects your present responsibility.”⁷³ Suspension and debarment proceedings are informal processes administered by each agency.⁷⁴ However, if there are disputed facts, more formal fact-finding proceedings are conducted, often by an ALJ.⁷⁵

In addition to these enforcement mechanisms, statutes apply to certain government-regulated industries that may provide for additional or alternative monetary penalties.

Enforcement Mechanisms for Misuse of Federal COVID-19 Funding

As a result of the enforcement mechanisms described above, the potential for civil liability arises virtually every time a participant in a federal loan or grant program provides informa-

tion, documentation, and certifications to the government concerning eligibility for funding, use of the funds, and compliance with various regulatory requirements. The rapid rollout of many of the COVID-19-related business assistance programs has caused confusion within both government agencies and the public concerning applicable regulations and requirements.⁷⁶ Particularly with respect to the PPP, the SBA has had to make frequent changes to informal guidance and interim regulations, some of which contradict previous guidance and interim regulations. Due to the rapidly changing regulatory landscape, and because many recipients of COVID-19 relief funds are small businesses with minimal experience with government loan programs, there is a significant risk that borrowers and grantees will run afoul of program requirements. And no specific intent to defraud the government must be proven to establish liability under the government enforcement mechanisms described above.

With respect to the PPP, the GAO has already recognized that “the limited safeguards and lack of timely and complete guidance and oversight planning have increased the likelihood that borrowers may misuse or improperly receive loan proceeds.”⁷⁷ It has also noted that the limited underwriting required from lenders has left the program vulnerable to fraud.⁷⁸ At this time, it appears that the majority of audits, investigations, and enforcement actions regarding the PPP will be directed toward borrowers rather than lenders. The SBA has announced that it may review whether borrowers were eligible for the loan, calculated the loan amount correctly, used the funds for allowable purposes, and were entitled to loan forgiveness in the amount claimed.⁷⁹ Borrowers must retain PPP documentation in their files for six years after the date the loan is forgiven or repaid in full.⁸⁰ However, lenders still face potential liability with respect to even their limited underwriting obligations and required certifications. For example, if a lender does not obtain all required documentation from a borrower or misses obvious signs of misrepresentation, the lender may be subject to investigation and prosecution.

With respect to the Provider Relief Fund, there was considerable confusion regarding

the terms and conditions that were published after healthcare providers had already received distributions from the fund. Because of the timing, and because healthcare providers will be deemed to have accepted the terms and conditions if they do not return the funds, some healthcare providers may not realize the extent of the regulatory requirements and restrictions applicable to the funding. As noted above, HHS has already announced that reporting concerning the use of the funds will be required, and scrutiny of those reports will inevitably follow. Finally, with respect to the Main Street Lending Program, both lenders and borrowers may be subject to scrutiny concerning the underwriting process, particularly for loans that ultimately fail.

To date, both HHS and SBA have publicly released detailed information concerning the recipients of federal COVID-19 funding. Given this widely available information and the large amount of publicity surrounding these programs, it is inevitable that borrowers, grantees, and lenders will be subject to *qui tam* actions concerning their involvement with the PPP and the Provider Relief Fund. Indeed, the National Whistleblower Center has already formally requested that DOJ “establish a task force to monitor and investigate violations of the False Claims Act related to allegations of fraud committed in federal programs related to the Coronavirus crisis.”⁸¹

Best Practices to Minimize Risk

Government investigations and enforcement actions are costly to the subjects of such actions, both financially and in terms of reputational harm. This is true for formal litigation under the auspices of the FCA and FIRREA as well as for more informal administrative enforcement actions. However, borrowers, lenders, and grantees can take proactive steps to minimize potential exposure. All of these recommendations are grounded in one fundamental rule of thumb when dealing with government programs: documentation.

First, given the rapidly changing nature of the guidance applicable to COVID-19-related grant and loan programs, it is important to document and save the guidance that was relied upon when

applying for and expending government funds. Government agencies do not always maintain comprehensive or easily accessible archives of past rules and guidance, particularly when that guidance is informal or interim.

Second, borrowers and grantees should carefully document their eligibility for, and use of, the funds. Lenders should ensure that all documentation supporting the underwriting decision is included in the loan file. Documentation will enable program participants to quickly and credibly respond to government investigations instead of being put in the disadvantageous position of having to reconstruct the decision-making process after the fact.

Third, borrowers, grantees, and lenders should have a plan in place to ensure compliance with regulatory requirements and monitor for noncompliance. The plan should, among other things, ensure careful tracking of the use of federal funds and compliance with all applicable regulatory requirements, ensure retention of relevant documentation, and identify a process

for handling internal or external complaints or reports of wrongdoing. Any instances of non-compliance should be remedied and reported, if necessary; structural changes should be implemented where applicable; and all steps taken in response to the noncompliance should be carefully documented.

Conclusion

We are in a new era of government funding and relief programs. Given the nature of the pandemic and its widespread economic effects, more individuals and entities are receiving government funding than ever before. Many of these individuals and entities have little experience with the morass of rules, regulations, and certifications inherent in government programs. Even well-meaning individuals may run afoul of these regulations, particularly given the acknowledged confusion surrounding many of these programs. However, using best practices, particularly careful documentation, can minimize many of the risks. ^{CL}



Jennifer Lake is a civil litigator with Childs McCune in Denver. Her practice focuses on complex commercial litigation, eminent domain, and real estate-related litigation. Previously, Lake clerked for the Honorable Robert N. Scola Jr. of the US District Court for the Southern District of Florida and served as a trial attorney at the US Department of Housing and Urban Development—jlake@childsmccune.com.

Coordinating Editors: Mary Elizabeth Geiger, megeiger@garfieldhecht.com; Jennifer Seidman, jseidman@burgsimpson.com

NOTES

1. This article focuses on civil liability, but the potential for criminal liability exists in some circumstances as well.
2. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).
3. The PPP was authorized by § 1102 of the CARES Act. Additional funding was subsequently provided by the Paycheck Protection Program and Healthcare Enhancement Act, Pub. L. No. 116-139, 134 Stat. 621 (Apr. 24, 2020). The PPP requirements were supplemented and modified further by the Paycheck Protection Program Flexibility Act of 2020, Pub. L. No. 116-142, 134 Stat. 641 (June 5, 2020).
4. Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Revisions to First Interim Final Rule, 85 Fed. Reg. 124, 38301 (proposed June 26, 2020) (to be codified at 13 CFR pt. 120).
5. SBA OIG, Flash Report Small Business Administration's Implementation of the

- Paycheck Protection Program Requirements at 2 (May 8, 2020), https://www.sba.gov/sites/default/files/2020-05/SBA_OIG_Report_20-14_508.pdf.
6. SBA PPP, Additional Program Information, <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.
7. Paycheck Protection Program—Additional Eligibility Revisions to First Interim Final Rule, 85 Fed. Reg. 124 at 38302.
8. See GAO, COVID-19: Opportunities to Improve Federal Response and Recovery Efforts at 3 (June 25, 2020), <https://www.gao.gov/reports/GAO-20-625>.
9. See PPP Borrower Application Form Revised June 12, 2020, <https://www.sba.gov/sites/default/files/2020-06/PPP%20Borrower%20Application%20Form%20%28Revised%20June%2012%202020%29-Fillable-508.pdf>; PPP Loan Forgiveness Application Revised June 16, 2020, <https://www.sba.gov/sites/default/files/2020-06/PPP%20>

Loan%20Forgiveness%20Application%20%28Revised%206.16.2020%29-fillable_0-508.pdf.

10. See PPP Borrower Application Form, *supra* note 9 at 2.
11. See Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 73, 20811, 20815-16 (Apr. 15, 2020) (to be codified at 13 CFR Part 120).
12. SBA, Economic Injury Disaster Loan Emergency Advance, <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>.
13. See Board of Governors of the Federal Reserve System (hereinafter BOG), Main Street Lending Program, <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>.
14. See, e.g., BOG, Main Street New Loan Facility Borrower Certifications and Covenants Instructions and Guidance, <https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/msnlf-lender-transaction-specific-certifications-and-covenants.pdf?la=en>. See also COVID-19 Economic Injury Disaster Loan Application, <https://covid19relief.sba.gov/#>.
15. See, e.g., BOG, Main Street New Loan Facility Lender Transaction Specific Certifications and Covenants Instructions and Guidance, <https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/msnlf-lender-transaction-specific-certifications-and-covenants.pdf?la=en>.
16. HHS, CARES Act Provider Relief Fund: General Information, <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/general-information/index.html>.
17. *Id.*
18. HHS, Terms and Conditions for Relief Fund Payment from \$30 Billion General Distribution, <https://www.hhs.gov/sites/default/files/terms-and-conditions-provider-relief-30-b.pdf>; HHS, Terms and Conditions for Relief Fund Payment from \$20 Billion General Distribution, <https://www.hhs.gov/sites/default/files/terms-and-conditions-provider-relief-20-b.pdf>.
19. *Id.*
20. *Id.* at 1.
21. *Id.*
22. HHS, CARES Act Provider Relief Fund: FAQs, Auditing and Reporting Requirements, <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/faqs/index.html#auditing-reporting-requirements>.
23. GAO, *supra* note 8 at 45.
24. DOJ, Hurricane Katrina Fraud Task Force Second Year Rep. to the Att'y Gen. at 1 (Sept. 2007), <https://www.justice.gov/sites/default/files/criminal-disasters/legacy/2012/07/30/09-04-07AG2ndyrprogprpt.pdf>.
25. *Id.* at 1-2.
26. Press Release, DOJ, Hurricane Katrina Contractor Accepts \$4 Million Judgment Under the False Claims Act (Apr. 24, 2009), <https://www.justice.gov/opa/pr/hurricane-katrina-contractor-accepts-4-million-judgment-under-false-claims-act>.

27. US Attorneys' Bulletin, First Year Report—Financial Fraud Enforcement Task Force, vol. 59, no. 2 at 2.3 (Mar. 2011), <https://www.justice.gov/sites/default/files/usao/legacy/2011/06/06/usab5902.pdf>.
28. Cox, Deputy Associate Attorney General, DOJ, Keynote Remarks at the 2020 Advanced Forum on False Claims and Qui Tam Enforcement (Jan. 27, 2020), <https://www.justice.gov/opa/speech/deputy-associate-attorney-general-stephen-cox-provides-keynote-remarks-2020-advanced>.
29. *Id.*
30. SIGTARP, SIGTARP Quarterly Report to Congress at 13 (July 27, 2016), https://www.sig tarp.gov/Quarterly%20Reports/July_27_2016_Report_To_Congress.pdf.
31. See, e.g., *id.* at 14.
32. See Cong. Research Serv., IN11328, Special Inspector General for Pandemic Recovery: Responsibilities, Authority, and Appointment (Apr. 13, 2020) (hereinafter SIGPR Notice), <https://crsreports.congress.gov/product/pdf/IN/IN11328>; Cong. Research Serv., IN11304, COVID-19 Congressional Oversight Commission (COC) (Apr. 2, 2020) (hereinafter COC Notice), <https://crsreports.congress.gov/product/pdf/IN/IN11304>; Cong. Research Serv., IN11343, The Pandemic Response Accountability Committee: Organization and Duties (updated Apr. 28, 2020), <https://crsreports.congress.gov/product/pdf/IN/IN11343>.
33. SIGPR Notice, *supra* note 32 at 1.
34. About PRAC, <https://www.pandemicoversight.gov/our-mission/about-the-prac> (quoting Michael E. Horowitz).
35. COC Notice, *supra* note 32 at 1.
36. GAO, *supra* note 8 at 4.
37. Memorandum from Att'y Gen. William Barr to United States Attorneys (Mar. 16, 2020), <https://www.justice.gov/ag/page/file/1258676/download>.
38. CARES Act Provider Relief Fund FAQs, Terms and Conditions, How will HHS recoup funds from providers that are required to repay all or part of a Provider Relief Fund payment?, *supra* note 22.
39. SBA, Paycheck Protection Program Loans Frequently Asked Questions, FAQ 31 (June 25, 2020), <https://www.sba.gov/sites/default/files/2020-06/Paycheck-Protection-Program-Frequently-Asked-Questions%20062520-508.pdf>.
40. See *id.* at FAQs 39, 46.
41. *Id.* at FAQ 46.
42. Business Loan Temporary Program Changes; Paycheck Protection Program—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, 85 Fed. Reg. 105,33012 (proposed June 1, 2020) (to be codified at 13 CFR pt. 120).
43. GAO, *supra* note 8 at 37 n.84.
44. *Id.* at GAO Highlights.
45. *Universal Health Servs., Inc. v. U.S. ex rel. Escobar*, 136 S.Ct. 1989, 1996 (2016) (internal citations and quotations omitted).
46. 31 USC §§ 3729(a)(1)(A)–(B).
47. 31 USC § 3729(b)(2).
48. 31 USC § 3729(b)(4).
49. 31 USC §§ 3729(b)(1)(A)–(B).
50. 31 USC § 3729(a)(1)(G); Civil Monetary Penalties Inflation Adjustment, 85 Fed. Reg. 119,37004-6 (June 19, 2020) (to be codified at 28 CFR pt. 85).
51. Press Release, DOJ, Justice Department Recovers over \$3 Billion from False Claims Act Cases in Fiscal Year 2019 (Jan. 9, 2020), <https://www.justice.gov/opa/pr/justice-department-recovers-over-3-billion-false-claims-act-cases-fiscal-year-2019>.
52. *Id.*
53. 31 USC § 3730(b).
54. 31 USC § 3730(b)(2).
55. Press Release, *supra* note 51. See also 31 USC § 3730(d).
56. Press Release, *supra* note 51.
57. *Id.*
58. 12 USC § 1833a(c).
59. 12 USC § 1833a(f).
60. 12 USC § 1833a(b).
61. 12 USC § 1833a(b)(3).
62. 31 USC § 3802(a)(1).
63. 31 USC § 3802(a)(2); 31 USC § 3803(c)(1).
64. Counsel of the Inspectors General on Integrity and Efficiency, Program Fraud Civil Remedies Act Practitioner's Guide at 17 (Nov. 19, 2013), <https://www.nsf.gov/oig/outreach/sbirworkshop/PFCRA%20Practitioners%20Guide.pdf>.
65. 31 USC §§ 3803(e)–(h), 3809.
66. 31 USC §§ 3803(g)(2).
67. SBA OIG, Semiann. Rep. to Congress at 3–5 (Oct. 2019), https://www.sba.gov/sites/default/files/2019-11/SBA-OIG-Fall-2019-Semiannual-Report_1.pdf.
68. See, e.g., *id.* at 15, 17–18, 47–51.
69. 2 CFR § 180.130.
70. See 2 CFR §§ 180.200, 180.210, 180.970.
71. 2 CFR § 180.20.
72. 2 CFR § 180.125(b).
73. See 2 CFR § 180.800.
74. 2 CFR §§ 180.740, 180.835.
75. 2 CFR §§ 180.830(b), 180.840, 180.735(b), 180.745.
76. GAO, *supra* note 8 at GAO Highlights.
77. *Id.* at 34.
78. *Id.* at 36.
79. *Id.* at 37.
80. Paycheck Protection Program—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, 85 Fed. Reg. 105 at 33012.
81. Letter from Stephen M. Kohn, chair of the Bd. of Dirs., Nat'l Whistleblower Center, to Att'y Gen. William Barr (Mar. 16, 2020), <https://kkc.com/wp-content/uploads/2020/03/AG-Letter-final.pdf>.



Did you know what local foundation gives grants to expand legal services, promote law-related education and improve the administration of justice?

See our page later in this edition for more information or take a look at the Colorado Bar Foundation website: **www.coloradobarfoundation.org**. We rely on our generous donors who make these important grants possible. Please go to our website and make a contribution.