

---

## FRAUD AND GOVERNMENT INVESTIGATIONS IN THE WAKE OF COVID-19 RELIEF

Businesses across the country, large and small, are facing financial and operational challenges in the wake of the novel coronavirus (COVID-19) public health crisis. To address those challenges, many businesses are taking advantage of local, state, and federal emergency relief programs, including programs available under the \$2.2 trillion Coronavirus Aid, Relief and Economic Security Act (CARES Act). Others are taking advantage of new opportunities to contract with the government for crisis related supplies and services.

Historically, government relief programs and crisis spending have generated numerous fraud and false statement prosecutions as well as false claims litigation. Prosecutors at all levels of government have already indicated that they will actively investigate and prosecute COVID-19 related fraud, and plaintiffs' attorneys are already encouraging whistleblowers to aid the government in bringing civil and criminal false claims litigation and securities and tax actions.

Crises call for fast action, out of the box thinking, and quick decision-making. However, businesses should be aware that their near term actions with respect to government contracting and government programs may come under scrutiny in the future, and they should take steps to protect themselves against future false claims, false statement and fraud investigations.

### Who Should Be Diligent?

- Businesses accepting Small Business Administration (SBA) and other loans and loan forgiveness;
- Businesses accepting direct rebates and other tax relief;
- Businesses accepting additional government resources;
- Businesses taking advantage of relaxed regulations or waivers;
- Businesses providing government funded or government directed supplies; and
- Businesses engaged in public private partnerships or joint ventures.

### What Can Businesses Do to Prepare and Protect Themselves?

- **Be Careful, Accurate, and Complete.** Businesses should read all their submissions to the government carefully and ensure that they are accurate and complete. This includes any documents attached to a submission, including financial records or tax documents.
- **Pay Attention to Certifications.** If a business is certifying that something is necessary for a certain purpose, it should document why. If a business is certifying it is complying with a particular regulatory regime or federal statute, it should ensure that it is actually complying

and it has policies, procedures, or other documentation to that effect. If a business is certifying that a product meets particular standards or that personnel with particular qualifications are performing a service, the business needs to ensure that its certification is correct and documented.

- **Seek Clarification and Document It.** If a business has any questions or concerns about whether it is entitled to particular funds, whether it is completing a submission correctly, or whether its product meets specific requirements, the business should seek clarification from counsel or the relevant government agency. The business should then document the advice it received and from whom and its reliance on that advice in taking a particular action. This approach also applies to any waivers or modifications of government contracts.
- **Stay Up To Date on Evolving Regulations.** Heavily regulated businesses or those accepting government funds, such as Medicare and Medicaid funds, should designate specific personnel to stay up to date on evolving waivers, exceptions, and other regulations.
- **Be Cautious of Anything that Could Be Deemed Anti-Competitive Conduct.** In this time of panic, prosecutors are being particularly vigilant in policing price fixing and other anti-competitive conduct involving medical and relief supplies.
- **Track Funds.** Businesses should be particularly attentive to tracking any funds received from government relief programs and how they are spent. Businesses may wish to segregate these funds in separate external or internal accounts.
- **Internally Address Potential Complaints.** To ensure that any concerns are detected early and resolved internally, businesses should make sure they have (i) an established, widely publicized means (preferably anonymous) for employees to report concerns (e.g., a compliance hotline); and (ii) an established protocol to investigate, track, and resolve complaints. Businesses should be particularly attentive to threats or complaints raised by employees who are leaving or changing roles involuntarily.
- **Continue with Compliance Monitoring and Auditing If Possible.** With increased economic pressures, businesses may be tempted to cut back on auditing or other compliance monitoring measures. Businesses should maintain strong compliance programs if possible and should prioritize compliance in areas associated with COVID-19 funds or contracts.

If you have additional questions related to the above information, please contact [Erica Williamson Barnes](#) or your Maynard Cooper relationship partner.

Maynard Cooper's [COVID-19 Coronavirus Task Force](#) is closely monitoring all updates to pending legislation related to the Coronavirus pandemic. We are dedicated to providing client-focused services, and it is the goal of the [Task Force](#) to continue this level of service to each and every client as they face challenges about planning for and responding to the threats posed by the virus. If you have any questions, please reach out to your relationship partner or any of the lawyers serving on the [Task Force](#).

This Client Alert is for information purposes only and should not be construed as legal advice. The information in this Client Alert is not intended to create and does not create an attorney-client relationship.