

CARES Act \$2.2-Trillion Emergency Relief Now; Potential Government Investigations Later

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Enactment of the Coronavirus Aid, Relief, and Economic Security Act (**CARES Act**) created a record \$2.2-trillion emergency relief fund to combat the economic effects of the COVID-19 crisis. To meet the possibility of unprecedented fraud and abuse by those able to take advantage of the funding, a new special inspector general for pandemic recovery has been created under the CARES Act, boosting existing investigative capabilities aimed at routing out waste, fraud, and abuse.

Business Risk

Businesses able to secure CARES Act relief should consider what experts believe will be a decade of government investigations. Management decisions being made today about where and how to spend needed government subsidies, they warn, will be scrutinized later by government regulators and whistleblowers alike.

Observance of existing in-house compliance programs can protect against the risk of future investigations. As one former federal prosecutor noted, “[I]t’s just critical that those processes not be shunted to the side in the name of keeping the business going.”

The CARES Act subsidies most susceptible to regulatory oversight and inquiry over waste, fraud, and abuse include:

- *Small business relief (\$350 billion):* Companies with not more than 500 employees that maintain payroll are entitled to up to eight weeks of subsidies to prevent layoffs and closures while employees are home. These funds are available for payroll, mortgage interest, rent, or utilities and will be forgiven if administered correctly.
- *Large corporation relief (\$500 billion):* This is being set aside as loans, guarantees, and related investment for big business, with \$50 billion earmarked for the airline industry. Loans may not exceed five years, will not be forgiven, and are subject to oversight by the Treasury Department Inspector General.
- *Hospitals and healthcare relief (\$140 billion):* This has been appropriated to support the U.S. health system, with \$100 billion being made directly available to hospitals to fight COVID-19, subsidize costly acute treatments, and compensate hospitals for lost income from elective and routine medical services. Additional funds will be used to enhance stockpiles of personal protective equipment, expand COVID-19 testing, and increase Medicare/Medicaid subsidies during the pandemic.
- *Unemployment/payroll tax relief (\$250 billion):* This is to cover extended unemployment benefits of up to four months, plus additional payments of \$600 weekly beyond state program subsidies. Employers may delay payment of their portion of 2020 payroll taxes to 2021 and 2022.

Existing and Potential Oversight

Recipients of relief from the CARES Act funds outlined above need to be familiar with the government's robust oversight and compliance authority. Mechanisms of executive oversight include:

- Bipartisan Congressional Oversight Commission;
- Pandemic Response Accountability Committee (comprised of nine Inspector Generals across various government agencies);
- Special Inspector General for pandemic recovery (SIGPR); and
- House Speaker seeks administration to appoint a *temporary* select congressional committee to oversee the beginning stages of the bailout.

Risks attendant to the receipt of bailout funds and their honest, prudent use and administration are linked to the government's interest of ensuring the money is spent properly. Evident from the myriad of critical government funding opportunities available to employers to address this crisis, likewise, is significant temptation for employee abuse, self-dealing, false claims, and outright theft.

Implications

Documenting today's decision to apply for funding, including the facts and government guidance relied upon, would help protect the business. Companies should prepare now for the expected government scrutiny of their decision to accept the relief funds and how they used those funds.

Please contact a Jackson Lewis attorney with any questions.

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