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Insights

Beware of the Strings Attached To The Receipt of FFCRA, CARES Act, and Other Federal Funding During the COVID-19 Crisis

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The federal government has offered several resources to aid those impacted by the COVID-19 pandemic. But such resources, including the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, if misused or fraudulently obtained, could result in substantial consequences under the False Claims Act (FCA). Under the FCA, it is illegal to knowingly submit claims for payment from federal government programs that are false or fraudulent.[1] Thus, participating in or seeking payment from a federal program such as the FFCRA—including reimbursement for Paid Sick Leave and Expanded Family Medical Leave—and the CARES Act—including reimbursement for additional unemployment compensation under the CARES Act, funds from the Paycheck Protection Program, and funds from an Economic Injury Disaster Loan—could lead to future FCA lawsuits if the requirements of those programs are not followed.

The FCA contemplates two types of lawsuits to address the submission of false or fraudulent claims for federal funding. The federal government can, on its own, file an action for violation of the FCA. In addition to the government enforcing the FCA, whistleblowers can also report false or fraudulent claims via *qui tam* actions. These actions allow a business partner, employee, customer, or competitor to file a private claim alleging a violation of the FCA. The penalties for each violation of the FCA range from around $10,000 - $20,000.[2] Moreover, those who violate the FCA are liable for three times the amount that the government lost on the claims, plus attorney's fees.[3] Whistleblowers are entitled to a percentage of the government's recovery.

The U.S. Department of Justice (DOJ) has already announced it will prioritize the investigation and prosecution of COVID-19 related fraud schemes. Attorney General William Barr directed U.S. Attorneys to appoint a "Coronavirus Fraud Coordinator" in each district and has also established a national system for whistleblowers to report suspected fraud. Additionally, the Pandemic Response Accountability Committee, created by the CARES Act, will assist the DOJ to oversee the distribution of funds.

It is critical for organizations accepting federal funding to ensure that they are providing accurate information to the government and complying with all aspects of these federal programs. Organizations also need to stay up to date on changes to these programs. Organizations should implement thorough risk management and auditing procedures to ensure compliance with all government funding requirements. If there are waivers of any government compliance requirements, those should be properly documented. Organizations should promptly and thoroughly investigate compliance complaints and take action to remediate any identified issues or vulnerabilities. Organizations should also keep in mind that the FCA prohibits retaliation against employees who report suspected fraud or non-compliance to their superiors. Any adverse employment action taken unrelated to whistleblowing activity should be well-documented.

Program requirements and compliance can be overwhelming, particularly during a crisis. We encourage your business to seek legal counsel when applying for and complying with federal funding programs. Please contact **Marc T. Quigley**, **Elizabeth M. Roberson**, or a member of our **Litigation Practice Group** for further assistance or questions regarding FCA claims.

[1] 31 U.S.C. § 3729(a).
[2] Civil Monetary Penalties Inflation Adjustment, 81 Fed. Reg. 42,491, 42,501 (June 30, 2016).
[3] Id.