

Borrowers Beware: US Attorney Announces New Initiative to Combat CARES Act Fraud

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Those who sought loans in connection with the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 should take note that this week, the U.S. Attorney's Office in Massachusetts (USAO) announced a new law enforcement collaboration focused on combatting CARES Act fraud.

The USAO has entered into a Memorandum of Understanding (MOU) with the newly-created Office of the Special Inspector General for Pandemic Recovery (SIGPR), to investigate and prosecute fraud in connection with the massive relief package authorized by the CARES Act. The formalization of this collaboration positions the District of Massachusetts as one of the primary offices of choice for SIGPR criminal and civil referrals.

According to a USAO press release issued on July 28, 2020, echoing a similar MOU announcement in the Eastern District of Virginia earlier this month, the MOU outlines four objectives:

1. to provide a coordinated response to CARES Act funding fraud, with an emphasis on organized criminal activity, as well as criminal and civil fraud affecting federal money, vulnerable victims, and fraud recidivists;
2. to speed up legal process, case intake, and prosecution of CARES Act-related fraud;
3. to link and associate isolated CARES Act-related complaints with larger schemes and related unlawful activity; and
4. to deter future CARES Act funding fraud by increasing awareness of successful criminal prosecutions and civil enforcement actions against individuals and companies involved in CARES-related financial fraud.

Signaling that this initiative will be an enforcement priority for the federal government, Special Inspector Brian D. Miller said: "Identifying fraud and preventing any waste or abuse of the money provided under the CARES Act is a top priority for both of our offices, and we are determined to bring those who attempt to steal from American taxpayers to justice."

Why This Development Matters To All Recipients of CARES Act Loans

If you were involved in seeking a CARES Act loan, and did so in the honest belief that you were acting appropriately, you may welcome this new development. After all, the MOU seems designed to speed up enforcement; under the MOU, SIGPR's resources will be enhanced, as prosecutors from both the Criminal and Civil Divisions of the USAO as well as other USAO staff will partner with SIGPR to ferret out fraud.

However, overzealous enforcement can trap well-intentioned borrowers as well as actual fraudsters. While the MOU may suggest that enforcement is imminent, and will focus only on clear wrongdoers, enforcement efforts may not actually unfold that way. For example, businesses that sought PPP loans with the honestly-held belief that a loan was "necessary" as required under the CARES Act, may find themselves second-guessed. In addition, the government's resources remain limited, and it will undoubtedly take some time for the government to complete its enforcement efforts. Accordingly, entities that enrolled in CARES Act programs with honest intentions should ensure that they maintain documentation supporting their entitlement to CARES Act loans, and should take quite seriously any government effort to audit or otherwise investigate the application process.

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