CLIENT ALERT

CARES Act Means Welcome Relief for Many, But Not Without Plenty of Scrutiny for Those Who Partake

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provides for an expansive, $2 trillion stimulus package. The Act affords direct relief to individuals, funding for the medical sector, and various forms of assistance for small and other businesses impacted by the coronavirus outbreak, among other provisions previously discussed here. Money and other relief doled-out as part of the CARES Act will be subject to several layers of Congressional and agency oversight, and recipients of funds and other relief under the CARES Act will be scrutinized for what they do – or don't do – with the federal assistance they receive. This heightened scrutiny puts a premium on compliance, and companies and individuals benefiting from the CARES Act are wise to ensure that they have appropriate oversight in place before putting CARES Act funds to use.

One key layer of oversight codified in the CARES Act is the newly created Office of the Special Inspector General for Pandemic Recovery ("the Office" or SIGPR), which will be situated in the U.S. Department of the Treasury. Section 4018 of the CARES Act creates the SIGPR position, and vests the Office with the power and resources to conduct, supervise, and coordinate "audits and investigations of the making, purchase, management and sale of loans, loan guarantees, and other investments" by the secretary of the Treasury under any program established under the CARES Act. SIGPR will operate for five years, has $25 million in appropriations to fulfill its mission, and has the powers and duties outlined by the Inspector General Act of 1978; legislation that establishes the responsibilities and duties of an Inspector General, and which, for purposes of the SIGPR, grants it extensive authority. This includes the authority to receive full access to all records and materials relevant to its areas of oversight; to determine which audits, investigations, and reviews are necessary; to issue administrative subpoenas and execute warrants; and to refer criminal and civil matters to the Department of Justice (DOJ).

In operation, SIGPR is likely to follow the path of the Office of the Special Investigator General for the Troubled Asset Relief Program (SIGTARP), an inspector general office with oversight authority over TARP– the Treasury Department initiative that invested billions of dollars in banks and other financial institutions following the 2008 financial crisis. SIGTARP regularly audited TARP programs, and generated a large volume of investigative work through the use of its subpoena authority and other tools, including referrals to the DOJ. SIGTARP's efforts led to the criminal conviction of or civil resolution (i.e., fines) with 380 defendants, and 24 enforcement actions brought by the DOJ, Securities & Exchange Commission, and other regulators.

Given the very real prospect of scrutiny from SIGPR and others, beneficiaries of the CARES Act must have sufficient controls in place to ensure compliance with the requirements tied to CARES Act funds. This includes a mechanism to track the use of federal dollars, and a compliance infrastructure to operate as a constant check and balance for funding oversight. There are steps that a company can - and should - take now to best position itself to respond to a potential audit or investigation. Namely, making sure that there's a procedure in place that addresses key audit issues, such as who to notify (i.e., a central point of contact) in the event of contact from authorities; making sure relevant records and materials are preserved; and protecting, as applicable, privileged documents and communications from disclosure. Preparation is key, and investments in compliance and oversight of

CARES Act funding now can help best position a company to respond to audit requests, and mitigate the risk of costly investigations down the road.

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