crowell moring

CLIENT ALERT

February Reports from PRAC and SIGPR Confirm Government's Focus on Pandemic Funding Oversight and Enforcement Challenges

Feb.17.2021

On February 3, 2021, the Pandemic Response Accountability Committee (PRAC) issued an update to its Top Challenges in Pandemic Relief and Response, identifying new challenges in funding oversight and reiterating others identified in its original report issued in June 2020. The updated report, based on feedback received from Offices of Inspectors General (OIG) at more than 40 agencies, identifies four new challenges focused on ferreting out fraud related to pandemic funding and the health and safety of federal employees: (1) preventing and detecting fraud against government programs; (2) informing and protecting the public from pandemic-related fraud; (3) data transparency and completeness; and (4) federal workplace safety. The PRAC also identifies contributory risk factors within each new challenge and makes recommendations for agencies to conduct additional oversight. This PRAC update, along with a recently-issued quarterly report from the Special Inspector General for Pandemic Recovery (SIGPR), confirm the rising tide of civil enforcement activity with respect to pandemic relief funds and the attendant risks to recipients and entities involved in administering such funds, particularly in light of the punitive damages provided for by the government's most powerful civil fraud enforcement tool, the False Claims Act, 31 U.S.C. § 3729.

For example, PRAC lists two primary contributing factors to the challenge of preventing and detecting fraud associated with the administration of pandemic response funds: (1) self-certification of compliance with the threshold requirements by funding applicants; and (2) lack of due diligence into applicants by government agencies as well as lenders. While the Small Business Administration (SBA) dispersed 1.6 million separate Paycheck Protection Program (PPP) loans in fourteen days, which totaled over $342 billion, the SBA OIG determined that SBA "lowered the guardrails" that it would normally have had in place to protect against fraud, waste, and abuse in approving applications for those loans. Similarly, the Department of Labor (DOL) OIG reported that DOL did not even intend to measure improper unemployment insurance payments under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) because the agency considered the funding an "episodic, temporary program." PRAC further noted that these are but two examples of weak controls providing increased opportunity for fraud in the disbursement of relief funds. The PRAC concludes that "it is imperative that federal agencies put in place better controls to safeguard taxpayer dollars and prevent improper payments."

The updated report also provided updates to the challenges identified in its initial June 2020 report, including identifying four significant challenges in agency financial management during this pandemic period: (1) payments have been made without the appropriate checks and controls in place to verify the expenditures; (2) contracts have been noncompetitively awarded due to the exigent circumstances and pose potential conflicts of interest; (3) contractors have not delivered products by specified due dates; and (4) agencies may struggle to maintain current capabilities while balancing commitments to contractors who are unable to fulfill existing requirements due to COVID-19 restrictions. The report flagged similar risks for grant and guaranteed loan management, and notes that pandemic-relief guaranteed loans have totaled $548 billion. The increase in available grant funding and pressure to provide COVID-related grant funding quickly has created concerns with overseeing the use of grant funds, the monitoring of performance to ensure grants achieve intended results, and potentially fraudulent guaranteed loans disbursed through the COVID loan programs. One OIG determined that effective monitoring and oversight of the pandemic period grant funds will remain a challenge for years to come.

The updated report also includes a "management challenge" identified by the SIGPR– preventing entities from double and triple-dipping into separate CARES Act funding sources. According to the PRAC and SIGPR, agencies are susceptible to potential double-dipping because of inconsistent datasets and SIGPR recommends that agencies identify, share, and analyze data to prevent potentially fraudulent activity. Only two days prior to the release of the PRAC update, SIGPR issued its own Quarterly Report to the United States Congress summarizing its efforts to "aggressively" identify fraud, waste, and abuse. So far, those efforts have (1) identified investigative leads for suspected CARES Act fraud, sixty-nine of which have been referred to law enforcement; (2) initiated five investigations, three of which are being handled with United States Attorneys' Offices; (3) vetted twenty-seven complaints and referred two to law enforcement; and (4) developed "risk scores" for the Main Street Lending Program data to help identify potentially fraudulent activities.

Ultimately, the updated PRAC report confirms the Government's focus on identifying fraud in the wake of massive pandemic relief funding and emphasizes the importance of agencies sharing information with each other as they continue to administer these funds, including pandemic-related contracts and grants. Crowell & Moring will continue to monitor PRAC's activities.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Brian Tully McLaughlin
Partner – Washington, D.C.
Phone: +1 202.624.2628
Email: bmclaughlin@crowell.com

Lyndsay A. Gorton
Counsel – Washington, D.C.
Phone: +1 202.654.6713
Email: lgorton@crowell.com

Stephanie L. Crawford
Associate – Washington, D.C.
Phone: +1 202.624.2811
Email: scrawford@crowell.com