

## CLIENT ALERT

### Senate Judiciary Committee Hearing Highlights COVID-19 Enforcement Trends and Priorities

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On June 9, the U.S. Senate Judiciary Committee held a committee hearing entitled “COVID-19 Fraud: Law Enforcement’s Response to Those Exploiting the Pandemic” for representatives of the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and the Secret Service to address how they are combatting, investigating, and prosecuting COVID-19-related crimes. The witnesses included DOJ Associate Deputy Attorney General William Hughes, U.S. Attorney for the District Of New Jersey Craig Carpenito, FBI Assistant Director of the Criminal Investigative Division Calvin A. Shivers, and U.S. Secret Service Assistant Director Michael D’Ambrosio.

The witnesses identified similar threats that their agencies are targeting, including: price gouging and hoarding; fraud relating to the CARES Act’s Paycheck Protection Program (PPP); sales of fraudulent personal protective equipment (PPE) and COVID-19 treatments, cures, and tests; child exploitation; consumer protection; the use of stolen identities to obtain government benefits; and loan fraud, bank fraud, money laundering, and aggravated identity theft relating to CARES Act funds.

DOJ highlighted the formation of its Hoarding and Price Gouging Task Force, which is focused on: (1) investigating and prosecuting instances of illegal hoarding, price gouging and profiteering by parties selling PPE and other goods at substantial profit margins; and (2) identifying counterfeit and misbranded PPE imported into the U.S. from abroad. The Department has seized hundreds of thousands of hoarded N95 respirator masks and other medical supplies and has brought criminal charges against several perpetrators under the Defense Production Act, in addition to wire fraud and health care fraud charges. In addition to investigating and prosecuting a variety of fraud schemes arising from the pandemic, prosecutors are particularly focused on charging fraud in connection with PPP loan applications, having already brought six cases in Texas, Georgia, Oklahoma, Rhode Island, and California as of June 3 against parties that fraudulently represented the number of employees and used the PPP funds for personal and non-business related expenses.

The Department also discussed efforts on the antitrust enforcement front to combat for price fixing, bid rigging, and any for collusive practices in the sale of such products to federal, state, and local agencies. The Procurement Collusion Strike Force (PCSF) will be helping agencies safeguard their procurement, grant, and program funding processes from collusion and corruption. The DOJ and the Federal Trade Commission also announced that: (1) antitrust enforcers will be monitoring employer collusion to disadvantage workers; (2) an expedited procedure will be established for reviewing proposed conduct by industry aimed at addressing responses to COVID-19 and determining whether they intend to take antitrust action in response.

In addition its newly formed COVID-19 Working Group, the FBI established a PPP Fraud Working Group in coordination with the Department’s Fraud Section and the Small Business Administration Office of Inspector General, which has already initiated nearly 100 investigations with over \$42 million in potential fraud identified and over \$900,000 recovered. The FBI is also investigating fraudulent schemes targeting government sponsored health care programs, particularly Medicare and Medicaid, and private health insurance plans, including overbilling for services, billing for services not rendered, and billing for medically unnecessary services.

The Secret Service's response is focused on four categories of COVID-19-related crime: COVID-19-related scams, including the sale of fraudulent medical equipment and nondelivery scams; risks of cybercrime resulting from increased telework; ransomware; and the defrauding of government and financial institutions. Thus far, it has initiated over 100 criminal investigations, prevented approximately \$1 billion in fraud losses, and successfully disrupted hundreds of online COVID-19-related scams.

The testimony highlighted a growing collaborative and coordinated effort between law enforcement agencies on federal, state, local levels as well as a focus on public education, engagement, and reporting to tackle fraud and threats developing in the wake of the pandemic. Crowell is closely watching enforcement trends and is working with companies on risk mitigation and preparedness measures.

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