

CARES ACT FEDERAL EFFORTS AT FRAUD PREVENTION

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides assistance to workers and employers affected by Covid-19. Because it utilizes federal funds and other funds administered through federal programs, a range of federal enforcement statutes will be implicated. These may include civil and criminal remedies that can be invoked when abuse is detected. The enforcement agency will vary depending upon the particular program involved, but the resulting civil litigation and/or criminal prosecution would be handled by the United States Department of Justice and the applicable United States Attorney's Office.

As with other federal programs, enforcement statutes provide a range of options for law enforcement authorities:

- Any material deception, either in writing or made verbally, can be prosecuted as a False Statement or as a Conspiracy to Defraud the United States.
- The same activity would likely give rise to a violation under the False Claims Act.
- A material deception in connection with a bank loan could be prosecuted as a Bank Fraud, a Wire Fraud or a Mail Fraud.
- Receipt of funds and misuse of them could constitute an Embezzlement under separate federal statutes.
- Some of these crimes, if resulting in proceeds that are "hidden" or used to further a fraud scheme, could give rise to Money Laundering charges.

Many of the crimes outlined above could provide a basis for federal authorities to seize and forfeit any funds or assets derived from or utilized in the scheme. This could include seizure of cash in savings or investment accounts and other property traceable to fraudulent proceeds.

There is a long tradition in federal law enforcement of using both the civil and criminal process to protect the integrity of federal programs. Given the scope of the federal funding provided under the CARES Act, it's probable that aggressive enforcement will occur. This may include:

- **Civil Enforcement.** If civil enforcement is pursued, remedies could include money judgements, fines, debarment from further participation in federal programs and forfeiture of assets. Businesses who become targets of civil investigations will receive Civil Investigative Demands. Civil enforcement will take place in Federal District Court.

Reply to:

Tacoma Office

1201 Pacific Ave., Suite 2100
Tacoma, WA 98402

(253) 620-6500
(253) 620-6565 (fax)

Seattle Office

600 University, Suite 2100
Seattle, WA 98101

(206) 676-7500
(206) 676-7575 (fax)

- **Criminal Enforcement.** If selected for criminal prosecution, potential punishments could include imprisonment, fines and forfeiture of assets. Conviction of any felony crime would likely also result in debarment from further participation in federal programs. Criminal enforcement will be through use of a federal grand jury seated in the geographic district where the crime occurred. A determination by authorities to investigate the matter as a criminal case would be followed by issuance of grand jury subpoenas to business associates, and sometimes to the target of the investigation. It may also involve execution of search warrant. A civil investigation can later become a criminal investigation.

The primary federal law enforcement agencies conducting investigations of the crimes listed above would be the FBI and the Office of Inspector General for the Small Business Administration. Because of the size of the program other law enforcement agencies will likely assist.

Any business or individual receiving funds through any of the CARES Act programs should take immediate action if notified of any criminal or civil inquiry or investigation by a federal law enforcement agency.

For assistance in matters related to enforcement please contact Gordon Thomas Honeywell attorneys Kurt Hermanns and/or Steven Fawcett at the earliest possible stage of investigation. Mr. Hermanns has helped a range of defendants in federal criminal proceedings, with a specialty in white collar crime matters. His preference is to become involved early during a grand jury investigation and help avoid criminal prosecution. Mr. Hermanns spent a lengthy career at the US Attorney's Office prosecuting complex criminal cases including Program Frauds identical to those under the CARES Act. If the matter is determined to be civil, the case can easily be transferred to one of Gordon Thomas Honeywell's highly experienced civil litigation attorneys.

Reply to:
Tacoma Office
1201 Pacific Ave., Suite 2100
Tacoma, WA 98402

(253) 620-6500
(253) 620-6565 (fax)

Seattle Office
600 University, Suite 2100
Seattle, WA 98101