Managing CARES Act Stimulus Funds: Preparing for Robust Federal Oversight

April 2020

On March 27, 2020, the President signed the much-anticipated Phase 3 of the coronavirus disease 2019 (COVID-19) stimulus package (the Coronavirus Aid, Relief, and Economic Security Act [CARES Act]), injecting US$2 trillion into all aspects of the economy – from the airline industry to banks to small businesses to state and local governments. With an experience-based understanding that quickly sending trillions of dollars into the US economy will inevitably result in fraud, waste and abuse, Congress included in the CARES Act mechanisms for robust and aggressive federal oversight of the stimulus funds.

CARES Act Oversight

Specifically, the CARES Act establishes three separate oversight bodies: (1) the Office of the Special Inspector General for Pandemic Recovery within the Treasury Department (the Special Inspector General); (2) the Pandemic Response Accountability Committee; and (3) the Congressional Oversight Commission. While the Special Inspector General has oversight over the CARES Act funds, the Pandemic Response Accountability Committee and the Congressional Oversight Commission are tasked with ensuring accountability in the disbursement of funds from the CARES Act and two prior legislative vehicles related to the COVID-19 response, the Coronavirus Preparedness and Response Supplemental Appropriations Act and the Families First Coronavirus Response Act. Additionally, on April 2, 2020, House Speaker Nancy Pelosi announced the creation of a new special House of Representatives committee to oversee "all aspects" of the federal response to the global pandemic, including the CARES Act.

Preparing for Federal Oversight

After the financial crisis stimulus package of a decade ago, the federal government – through the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) and Congress – launched myriad investigations and hearings, with SIGTARP recovering over US$11 billion to date. In addition, federal regulators, including banking regulators, heavily scrutinized the financial services firms that received TARP funds. Similarly, federal agencies, including the Department of Homeland Security, the Department of Housing & Urban Development, and the Government Accountability Office, conducted investigations relating to the deployment of funds to combat the effects of other crises, such as the terrorist attacks of September 11, Hurricane Katrina, Superstorm Sandy and Hurricane Maria, just to name a few.

If past is prologue, organizations that receive and distribute CARES Act stimulus funds, regardless of industry and whether they are in the public or private sector, will be similarly scrutinized. Taking the lessons learned from SIGTARP, congressional investigations and comparable oversight, relief fund recipients can protect themselves from unwarranted scrutiny through strong upfront controls designed to track, manage and monitor those funds. And, when authorities make inquiries or commence an investigation, organizations that implemented strong controls around the stimulus funds at the outset and, therefore, have a strong audit trail, will be better positioned to weather the intense scrutiny of government investigators and potential private litigants, along with the associated reputational concerns.

Why Choose Us

With our leading investigations and compliance and public policy practices, we are uniquely positioned to help clients expertly navigate the legal, political and practical risks associated with accepting funds from the CARES Act and other coronavirus-related legislation. From our own time in a number of key government agencies (including Offices of Inspector General, the Department of Justice, the Securities and Exchange Commission, and the Congress) and our years as private practitioners, we have deep experience with assisting clients in proactively addressing complex compliance issues quickly, practically and effectively. We routinely advise clients on the design, implementation and evaluation of compliance frameworks to detect and prevent waste, abuse, fraud and other kinds of crime. When necessary, we draw on this experience to defend clients in Executive branch, regulatory and congressional investigations. Our experience also includes serving as federal and state monitors in a variety of contexts, including law enforcement, construction, regulatory and the Foreign Corrupt Practices Act, and as governance and ethics counsel to public entities.

Our Multidisciplinary Team

Margaret E. Daum
Partner, Washington DC
T +1 202 457 6468
E margaret.daum@squirepb.com

Margaret Daum represents clients in complicated, high-profile investigations by US Congress, State Attorneys General and the US Department of Justice. During more than a decade on Capitol Hill, Margaret led or played a major role in conducting investigations in both the Senate and House of Representatives. She previously served as Democratic Staff Director at the Senate Homeland Security & Governmental Affairs Committee and its powerful Permanent Subcommittee on Investigations, during which Margaret led a wide range of oversight and investigations examining possible criminal activity, fraud, waste, abuse or mismanagement. Prior to serving in the Senate, she served as Counsel for the House of Representatives Committee on Oversight and Government Reform.

Clark K. Ervin
Partner, Washington DC
T +1 202 457 5234
E clark.ervin@squirepb.com

Clark Ervin represents clients under investigation by federal Inspectors General, the US Department of Justice and other Executive Branch agencies, Congress, and/or State Attorneys General. He previously served as Inspector General of the US Department of State and as the founding Inspector General of the US Department of Homeland Security. He also served as one of eight members of the independent, bipartisan congressional Commission on Wartime Contracting in Iraq and Afghanistan, as well as former Special Counsel to the Governance and Ethics Committee of the Board of Commissioners of the Port Authority of New York and New Jersey, and as former Deputy Attorney General of Texas and Counsel to the Attorney General.

Kevin P. McCart
Partner, Washington DC
T +1 202 457 6457
E kevin.mccart@squirepb.com

Kevin McCart advises financial institutions, corporations, and sovereigns on all manner of financial crime-related issues, including Bank Secrecy Act, economic sanctions, money laundering, counter-financing of terrorism, bank fraud, asset recovery, False Claims Act, and Foreign Corrupt Practices Act matters. His work includes compliance program design, assessment, and remediation as well as the defense of regulatory, civil, and criminal investigations. He regularly represents clients in investigations conducted by the US Department of Justice, the US Department of Treasury, the US Department of Health and Human Services, and the US Department of Labor, as well as in inquiries and proceedings before other federal and state entities.

Edward J. Newberry
Global Managing Partner for Public Policy, Investigatory and Regulatory Solutions, Washington DC
T +1 202 457 5285
E edward.newberry@squirepb.com

Described by The New York Times as a "King of K Street," Ed Newberry is the global managing partner of the Public Policy Practice, Investigatory and Regulatory Solutions and is a member of the firm's Executive Leadership Group. He is a trusted advisor to a wide range of corporate and sovereign government clients, including among the highest profile and most difficult policy challenges. His current projects include helping the largest technology company in the world address challenges with the US government; assisting one of the largest Korean conglomerates in expanding its business operations in the US; and leading efforts to secure US government approval of the Pebble Mine in Alaska (which contains the largest copper reserves in the world); as well as assisting major sovereign nations in their relations with the US government.

Claiborne (Clay) W. Porter
Partner, Washington DC
T +1 202 457 6511
E claiborne.porter@squirepb.com

Clay Porter regularly represents clients in complex financial crime investigations and compliance matters. His extensive government experience includes various leadership and supervisory roles in the Money Laundering and Asset Recovery Section of the US Department of Justice's Criminal Division (MLARS), including Acting Principal Deputy Chief of MLARS and Chief of MLARS's Bank Integrity Unit. During Clay's MLARS tenure, he led sophisticated financial crime investigations, including alleged violations of the Bank Secrecy Act, fraud statutes (financial and health care), money laundering laws, and US economic sanctions. He regularly conducted parallel investigations with Inspectors General, federal and state bank regulators, and civil litigation divisions of US Attorneys' Offices.

Benjamin D. Wood
Partner, Washington DC
T +1 202 457 6685
E benjamin.wood@squirepb.com

Ben Wood assists clients in federal and state litigation at the trial and appellate levels, and in government investigations and enforcement matters. Ben has represented financial institutions, corporations, individuals, political organizations, campaigns and foreign governments in matters involving economic sanctions, money laundering, bank fraud, Bank Secrecy Act, public corruption, industrial disasters, healthcare fraud and campaign finance litigation.