

COVID-19 Oversight and Enforcement

COVID-19 ENFORCEMENT TRENDS IN 2020 AND THEIR IMPLICATIONS FOR 2021

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A year after the COVID-19 pandemic hit the U.S., it remains to be seen how the Biden Administration will approach enforcement against businesses who received pandemic relief through the CARES Act and other federal spending packages. Nonetheless, patterns of enforcement related to pandemic assistance in 2020 may provide insight into potential enforcement trends in 2021. While initial cases have largely focused on small businesses that submitted fraudulent applications for relief funds (i.e. low-hanging fruit), these cases may set the stage for DOJ enforcement against larger companies.

Enforcement cases in 2020 focused on the most obvious cases of fraud. The vast majority of enforcement cases concerned fraudulent applications and use of stimulus funds for small businesses, including the Paycheck Protection Program (PPP) and Economic Injury Disaster Loans (EIDL). Many of these enforcement actions alleged that individuals submitted applications for non-existent businesses, inflated their payroll expenses by overstating the number of employees, and submitted manipulated tax documentation with their applications. For example, on December 14, 2020, a New Jersey man was charged with fraudulently obtaining over \$5.6 million in PPP funds. He allegedly submitted falsified payroll and tax information to show that he paid wages in 2019, when New Jersey Department of Labor records showed he had not paid any wages in 2019 and that the wages purportedly paid in 2020 were mostly to individuals whose submitted Social Security numbers did not correspond to their submitted names.¹ New enforcement actions related to COVID-19 are tracked by Sheppard Mullin's [COVID-19 Oversight & Enforcement Response Team](#) in the [COVID-19 Enforcement Actions Tracker](#).

The DOJ has also prosecuted conspiracies to recruit other business owners to submit fraudulent PPP applications on their behalf in exchange for kickbacks. The U.S. Attorney's Office for the Southern District of Florida charged 12 individuals for conspiring to submit over \$24 million in fraudulent PPP applications.²

The DOJ has also brought charges related to fraudulent medical treatments for COVID-19. Several charges have been related to individuals peddling false cures³ and vaccine scams.⁴ Recently, the DOJ brought its first criminal charges on false Medicare claims. At the end of December, two owners of over a dozen pharmacies in New York City and Long Island were indicted for using COVID-19

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¹ [Sussex County Man Charged with Fraudulently Obtaining \\$5.6 Million Loan Meant to Help Small Businesses During COVID-19 Pandemic | USAO-NJ | Department of Justice](#).

² [Florida Recording Artist and Pennsylvania Man Charged for Role in \\$24 Million COVID-Relief Fraud Scheme | OPA | Department of Justice](#).

³ [Tulare County Man Indicted for Falsely Marketing Herbal Mixtures as FDA-Approved Treatment for COVID-19 | USAO-EDCA | Department of Justice](#).

⁴ [Three Baltimore-Area Men Facing Federal Charges for Fraud Scheme Purporting to Sell Covid-19 Vaccines | USAO-MD | Department of Justice](#)

emergency override codes to submit over \$30 million in false claims to Medicare.⁵ There are surely more criminal healthcare fraud charges to come.

While enforcement in 2020 has largely focused on individuals engaged in relatively minor fraud, the enforcement theories will likely be applied against larger companies alleging more significant fraud in the near future. COVID-19 relief funds disbursed to corporations generally included strict certification requirements like those in the PPP, and the government will scrutinize whether recipient companies submitted false documentation to obtain relief funds. The government may investigate larger companies that wrongfully received PPP funds they did not qualify for, or companies that fraudulently obtained funds from other sources like the Main Street Lending Program or Provider Relief Fund. Enforcement in 2021 may also shift its attention to fraud related to COVID-19 treatment, such as through fraudulent billing.

Civil enforcement actions are also certain to appear. On January 12, 2021, the DOJ announced its first civil settlement related to fraudulent PPP loans, which included claims under the False Claims Act (FCA) and the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA).⁶ The settlement previewed the government's expected use of civil enforcement actions to recover losses in cases with less blatant criminal fraud, and the number of new civil enforcement actions will likely explode in the near future.

With the expected confirmation of Merrick Garland as Attorney General, the DOJ may begin to shift its focus to larger companies that have received pandemic relief funds. For the most part, changes in administration do not have a large impact on run-of-the-mill enforcement policies. However, given the size and political salience of the federal stimulus in response to COVID-19—as well as the possibility of additional stimulus in the near future—the DOJ under Garland may aggressively pursue fraud claims, focusing on ensuring that relief funds are spent on proper recipients. The Democratic Congress is also highly motivated to investigate the Trump Administration's handling of COVID-19 relief, and have already launched investigations demanding information from companies that received government funds.

Companies that have received federal stimulus funds should review the representations they made to the government in order to receive such payments. The SBA has announced plans to automatically audit PPP loans of \$2 million or more, and other agencies are also likely to investigate high-dollar aid recipients. If necessary, recipients of stimulus funds should consult with outside counsel with expertise in government enforcement for advice on preparing for and handling potential audits and enforcement actions. Outside counsel will also be able to perform internal investigations under the protection of attorney-client privilege to identify potential misrepresentations and liabilities related to federal stimulus funds. These precautionary measures will help put companies in the best position possible if the government refocuses its attention on recipients who may have made mistaken misrepresentations but not engaged in outright fraud.

⁵ [Florida Recording Artist and Pennsylvania Man Charged for Role in \\$24 Million COVID-Relief Fraud Scheme | OPA | Department of Justice](#).

⁶ [Eastern District of California Obtains Nation's First Civil Settlement for Fraud on Cares Act Paycheck Protection Program | USAO-EDCA | Department of Justice](#)