

# DOJ's Pandemic Fraud Enforcement Efforts Accelerating

March 18, 2022

On March 10, 2022, the Department of Justice [announced the appointment of Associate Deputy Attorney General Kevin Chambers to serve as the DOJ's first Director for COVID-19 Fraud Enforcement](#). This announcement comes two years after Congress passed the \$2.2 trillion economic relief bill known as the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and less than one year after the DOJ established its COVID-19 Fraud Enforcement Task Force. With this appointment, DOJ is signaling its commitment to increased COVID-related enforcement. As we enter the third year of the COVID-19 pandemic, it is as important as ever that companies remain vigilant to compliance and enforcement concerns as they relate to pandemic relief programs.

We have previously written [about the risks of government enforcement for companies that received CARES Act funds](#). Companies and their executives may face civil and criminal liability under federal law, including under the False Claims Act, for their actions related to participation in the pandemic relief program. To date, the DOJ has brought criminal charges against 1,000+ defendants with alleged losses exceeding \$1.1 billion, and more than 240 civil investigations into 1,800+ individuals and entities for misconduct in connection with a total of more than \$6 billion in pandemic relief loans. While the majority of those prosecutions and investigations have involved clear fraud schemes, the DOJ has signaled aggressive scrutiny of a broader range of activity, including by entities that processed fraudulent loans. As we explained previously, [while government enforcement may be slow at first in the wake of a crisis, it often increases, rather than decreases, as the crisis wanes](#).

## White House and DOJ plan significant increase in pandemic fraud investigations

President Joe Biden first previewed the DOJ's plans to appoint a Director for COVID-19 Fraud Enforcement in his State of the Union Address on March 1. In a fact sheet released that same day, the White House [explained that the director would lead teams of specialized prosecutors and agents focused on major targets of pandemic fraud](#), such as those "committing large-scale identity theft, including foreign-based actors." The teams, which the White House called "strike force teams," will also use "state-of-the-art data analytics tools" to identify complex fraud schemes, signaling that investigations could be initiated by data analytics tools alone. This focus on the use of data analytics continues a trend that has been predominant in other areas of fraud investigations, particularly healthcare fraud enforcement.

Further exemplifying the commitment by Biden and the DOJ to uncover pandemic fraud, Attorney General Merrick Garland announced during a speech on March 3 that [the DOJ will hire 120 additional attorneys to bolster efforts to combat pandemic-related fraud](#). Garland also promised continued focus on white collar crime more broadly, and noted that in 2021, US attorney's offices throughout the country charged 5,521 individuals with white collar crimes, representing a 10% increase over the previous year. Garland touted this increase as due in part to "a major crackdown on all forms of pandemic-related fraud, particularly as related to CARES Act programs like the Paycheck Protection Program and the Provider Relief Fund."

## Dealing with a government investigation

The DOJ has been conducting COVID-related investigations into companies and individuals since soon after the CARES Act was enacted, but the DOJ's increased commitment to pursuing pandemic-related fraud with the appointment of a Director for COVID-19 Fraud Enforcement and additional attorneys likely will result in a greater number and broader range of investigations and enforcement actions over the next few years. Additionally, the DOJ's use of data analytics tools to identify what it deems to be outlier or questionable loans could result in companies receiving a subpoena or civil investigative demand (CID) based on nothing more than statistics. Of course, analytical data is rarely definitive proof of misconduct. A company that is prepared to promptly respond to a subpoena or CID with documents and information supporting eligibility and compliance with program requirements may be able to resolve or significantly narrow an investigation.

That is why we recommend that companies get ahead of any potential investigation by verifying that appropriate documentation exists – and will continue to be preserved – to support initial loan certifications, compliance with loan terms, and any subsequent certifications and/or claims made to the government. This becomes particularly important as time passes, and especially if employee turnover has occurred since this documentation was originally created. The same

is true for nonrecipient entities, such as lenders and other financial institutions, who may begin receiving an increased number of inquiries.

As we have previously written, while most inquiries to lenders will still target potentially fraudulent borrowers, [lenders could expose themselves to greater scrutiny if they are unable to produce the documents and information they were required to collect from borrowers under certain CARES Act programs](#), or if regulators notice a pattern of fraudulent borrowing tied to a single institution. Further, companies – both borrowers and lenders – can minimize exposure by ensuring that internal allegations are taken seriously, addressed and resolved in a timely fashion, as whistleblowers often report claims of fraud internally before going to the government. Finally, a parallel internal investigation or review in the face of a government investigation is often critical to identifying helpful and potentially problematic information to best protect and advocate on behalf of the company.

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