

INVESTIGATIONS AND WHITE COLLAR DEFENSE

Navigating COVID-19: Top Issues for Investigations and White Collar Defense

Businesses should be prepared for the unique investigation and compliance issues generated by the COVID-19 pandemic. Government funding must be properly used and tracked, allegations of wrongdoing should be thoroughly investigated, and related government inquiries should be handled with particular care.

Manatt's investigations and white collar defense lawyers have previously served as federal and state prosecutors and have extensive experience serving clients in healthcare, banking and finance, securities, and media and entertainment. We stand ready to assist clients with the numerous issues likely to arise from COVID-19, including the top issues detailed below.

Key Issues to Consider

Oversight Issues Related to the Expenditure of CARES Act Funds

The Issue: The CARES Act allocates \$2.2 trillion to support individuals, small businesses and key industries with additional funding already in the pipeline. This massive appropriation of federal funding will no doubt attract fraud, waste and abuse. To mitigate these threats, the CARES Act allocates funding to existing inspectors general (IG) offices in the federal agencies and also creates a Congressional Oversight Commission and two new law enforcement agencies.

How Manatt Can Help: Manatt can assist clients in responding to inquiries from these bodies and in cultivating working relationships with the government officials managing federal programs. These three new bodies, as well as the U.S. Department of Justice and existing IGs, will be looking closely at companies receiving CARES Act funds and conducting a large number of audits and investigations.

Special Considerations for Healthcare Entities Accessing Federal Funding

The Issue: Healthcare providers are eligible to receive funding from a variety of federal programs under the CARES Act, including Small Business Administration loans and the Provider Relief Fund. But issues unique to healthcare can make it more challenging to apply for, access and use federal funding, including certifications of eligibility and accounting for fund use.

How Manatt Can Help: Manatt's investigations and white collar team can guide healthcare providers and related entities through the particular challenges to accessing these funds and help navigate government investigation and enforcement actions that are certain to materialize. With the industry already a key focus for government enforcement, healthcare organizations should expect False Claims Act (FCA) investigations, *qui tam* filings and related litigation on the horizon.

Bank Secrecy Act Compliance Issues for Small-Business Lending

The Issue: Nonbank lenders that want to take part in the Paycheck Protection Program must ensure they have robust anti-money laundering (AML) and know-your-customer (KYC) compliance programs in place.

How Manatt Can Help: Manatt can help you navigate the complexities of the Bank Secrecy Act (BSA), the FFIEC's BSA/AML Examination Manual, develop and maintain adequate AML and KYC compliance programs, and fulfill reporting requirements to mitigate against regulatory enforcement action or civil or criminal liability.

False Claims Act Liability for Lenders Participating in the Paycheck Protection Program

The Issue: Although federal regulators repeatedly have assured banks that they can make Paycheck Protection Program loans without fear of later reprisals, there remains potential for liability under the federal FCA.

How Manatt Can Help: Manatt's attorneys can review your compliance protocols and suggest risk mitigation strategies. Lenders should not assume there is absolutely no FCA risk and should ensure they have robust compliance and investigations procedures in place. If an FCA complaint is brought, we can defend you against *qui tam* and government actions.

Conducting Internal Investigations During a Pandemic

The Issue: In times of crisis, criminal activity involving theft and fraud tends to spike, but the usual methods for conducting a meaningful and thorough investigation will need to change. In-person document collection and review, face-to-face witness interviews, and other issues will present challenges to investigation protocols.

How Manatt Can Help: Our team can provide innovative solutions to ensure effective preservation of documents, facilitating cross-border document transfers and conducting witness interviews. Manatt's attorneys can provide hands-on counsel to ensure your investigations can move forward with the same effectiveness.

CFIUS Considerations for Foreign Lenders

The Issue: There is a heightened risk of U.S. businesses defaulting on their loan obligations in the wake of the COVID-19 crisis. If a default could result in a change in control of the U.S. business, placing a foreign lender at the helm, or if the lender could acquire an ownership interest in the business, the resulting transaction could fall within the scope of CFIUS review.

How Manatt Can Help: Manatt can assist foreign lenders with assessing their rights and the subsequent implications of exercising them to help mitigate risks concerning CFIUS oversight.

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