Identifying and Preparing for COVID-19 Compliance Risks

May 1, 2020

The COVID-19 pandemic creates significant compliance risks to businesses throughout the United States. There are risks associated with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)\(^1\) loans; COVID-19-related SEC reporting requirements; health care decision-making and quality of medical equipment and supplies; potential hoarding and price-gouging of certain "protected" items, such as test kits, personal protective equipment, and other health care equipment; as well as myriad other risks. It is impossible to list every risk but our intent is to offer several examples that demonstrate the importance of the compliance function.\(^2\)

The CARES Act created a new Inspector General to audit and investigate potential criminal conduct relating to the COVID-19 crisis and provided massive funding for oversight, investigation and prosecution of violators. Businesses who are already struggling to survive financially must now also identify potential compliance risks associated with the COVID-19 pandemic, implement procedures to detect those risks, develop effective plans to deter violations of company policies and procedures, and prepare for audits or other investigations that may occur in the not-so-distant future. This alert is designed to assist businesses in this difficult process.

COVID-19 government enforcement

The CARES Act created a Special Inspector General for Pandemic Recovery (SIGPR) to audit and investigate the $2.2 trillion in CARES Act loans and programs for fraud, abuse and other crimes. Congress provided initial funding of $25 million to create the SIGPR office. The CARES Act also established the Pandemic Response Accountability Committee (Committee) to promote transparency and conduct and support oversight to prevent and detect fraud, waste, abuse and mismanagement. The Committee was appropriated $80 million from the CARES Act funds. The Act also created a Congressional Oversight Commission, which has broad powers to oversee the $2.2 trillion in federal funds allocated to address the COVID-19 crisis.

In addition to the Act's newly formed investigatory bodies, the Department of Justice (DOJ) has made clear that investigation and prosecution of criminal activity related to the coronavirus pandemic is a top DOJ priority. Attorney General William Barr—in a March 24, 2020 memorandum to all US Attorneys and DOJ department heads\(^3\)—gave this direction:

To protect the safety and security of our nation during the current crisis, the Department must remain vigilant in deterring, detecting, investigating, and prosecuting wrongdoing related to the COVID-19 pandemic. While this crisis has brought out the best in most Americans, there appear to be a few unfortunate exceptions. We will not tolerate bad actors who treat the crisis as an opportunity to get rich quick.

As part of the DOJ's focus on coronavirus-related criminal conduct, the Deputy Attorney General ordered all US Attorneys to designate a Coronavirus Coordinator who will oversee audits, investigations and prosecutions in their
The Securities and Exchange Commission (SEC), Federal Trade Commission (FTC), Food and Drug Administration (FDA), Internal Revenue Service (IRS), and Offices of Inspectors General at the Department of Health and Human Services, Department of Defense and other federal agencies each have additional investigation and enforcement powers related to coronavirus issues, creating a massive federal government network of individuals and agencies who have made it a priority to identify fraud, abuse and other criminal activity related to the coronavirus.

COVID-19 prosecutions will likely follow the blueprint established by the TARP bailout

As part of the 2008 financial crisis bailout, Congress created the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), whose office spent the next twelve years investigating businesses and corporate executives for myriad offenses relating to the receipt of TARP funds and making referrals for prosecution to the Department of Justice. Nearly 300 individuals, mostly bankers and other corporate executives, have been convicted and sentenced to prison—some for over twenty years. To date, the federal government has recovered over $11 billion through enforcement actions relating to the TARP funds.

Targets of the SIGTARP investigations were prosecuted for, among other offenses, wire fraud, mail fraud, bank fraud, honest services fraud, paying bribes, making false statements to government agencies, falsification of documents, anti-competitive practices, paying or receiving kickbacks, theft of government funds, securities fraud, and conspiracy to commit these offenses.

The Special Inspector General for Pandemic Recovery and the DOJ are likely to pursue similar criminal cases against those whom they believe committed crimes relating to the coronavirus pandemic. On March 20, 2020 Attorney General William Barr directed all US Attorneys to "prioritize the investigation and prosecution of coronavirus-related fraud schemes."

What can businesses do now to minimize the risks?

Not all businesses are likely to become targets of the numerous state, federal and local law enforcement agencies who are on high alert for COVID-19-related wrongdoing. Those that act now to identify risk areas and adapt or modify their compliance programs accordingly will greatly reduce the risk of becoming the target of an investigation. If they do find themselves at the center of a subsequent investigation, they will be better prepared to defend themselves. We will discuss below some of the most likely target areas and risks companies are facing, as well as some compliance recommendations that may assist businesses in navigating through these troubled times.

Risks associated with the Small Business Administration's Paycheck Protection Program

On March 27, 2020, the President signed into law the CARES Act which, among other things, created the Paycheck Protection Loan Program (PPP) for which Congress allocated $349 billion. The PPP offers forgivable low-interest loans if businesses retain workers, maintain payroll and cover certain other existing overhead costs. Generally speaking, companies with fewer than 500 employees are eligible to apply for 2.5 times the amount of their average

respective federal judicial districts.\textsuperscript{4}
monthly payroll costs (as defined in the CARES Act). The PPP loan can then be forgiven if—during the 8-week period after the PPP is originated and funded—the borrower incurs and pays expenses for qualifying payroll costs, mortgage interest, rent and utilities.

While traditional Small Business Administration (SBA) loans are administered by the SBA itself, the CARES Act deputized financial institutions meeting certain criteria with broad authority to administer these loans. Lenders and borrowers alike worked their way through the PPP, the final form of application for the loans and the related guidance (the "Application"), as well as the interim final rule issued on April 2, 2020 (Rule), and continuously updated answers to FAQs issued by the SBA in consultation with the Department of the Treasury (FAQ). Although the overall framework of the PPP appears rather straightforward, the form Application, the Rule and the FAQ added detail not contained in the CARES Act itself, resulting in ambiguities and uncertainty for borrowers and lenders alike.

Businesses who have applied for PPP loans were required to certify, among other things, that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." At the time many businesses applied for these loans, no guidance or clarity had been provided with respect to the requirement that the PPP loan be "necessary." On April 23, 2020—after many businesses applied for and received PPP loans—the SBA issued additional guidance that made it clear that there were some companies that, in the opinion of the SBA, should not have received PPP loans because they were not "necessary." In part, this guidance stated, "Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business." The guidance establishes a May 7, 2020, deadline for companies that have already received PPP loans to re-evaluate whether they can certify eligibility under this new guidance, and if not, to return their PPP loans. If they do so, the SBA stated there will be a presumption that their initial application was in good faith, even though the recipient subsequently decided to return the funds. This April 23 guidance from the SBA has caused a number of companies to repay the funds they have already received under the PPP loan program, and other businesses are now considering whether they should do the same.

From a compliance perspective, businesses that applied for PPP loans should re-evaluate whether they satisfy the eligibility requirements. If they fail to meet the standards, they should consider repaying any loan proceeds they received by May 7. If, on the other hand, businesses conclude they are entitled to retain the loans, they should ensure that they have thoroughly documented their eligibility and the factual basis upon which the eligibility decision was made.

Many TARP prosecutions were brought years after loans were obtained. It may be several years before the SIGPR, DOJ, or other agencies begin investigating whether certain businesses were, or were not, eligible for PPP loans. Unless businesses have diligently and thoroughly documented their eligibility decisions at the time the decisions were made, it may be very difficult to reconstruct those decisions years later. Similarly, businesses who received PPP loans may be entitled to loan forgiveness if they certify compliance with the CARES Act and SBA Rule requirements. Businesses who apply for loan forgiveness should document their compliance, including meticulous documentation of how CARES Act funds were spent. Being able to show a good faith basis for its representations and understanding of the eligibility rules and laws, will greatly help a business demonstrate that any errors that are discovered later were not knowingly or intentionally made. Honest mistakes do not give rise to civil False Claims Act (FCA) liability or criminal culpability. The more businesses do now to document their good faith beliefs that their representations were truthful, the greater the likelihood they will be able to successfully defend any audits or investigations that may subsequently arise.

As with any interaction with a bank or a governmental entity, disclosure appears to bridge the gap. One way for borrowers to navigate this uncertain statutory and regulatory landscape—and minimize their risks of becoming targets of a government investigation—is to use an addendum to the application or certification to disclose any relevant facts
relating to why the business concluded it was eligible either for the loan or for loan forgiveness. While nothing will shelter an applicant from questions, disclosure should help thwart claims of fraudulent behavior. The essence of any fraud allegation is that the individual or business made a misrepresentation of a material fact to obtain something of value (e.g. a loan or loan forgiveness). If the business has accurately disclosed all material facts, they are less likely to be accused of fraud or deceptive practices.

Businesses should, to the extent possible, segregate the PPP borrowed funds, or at least meticulously account for them, to be able to document in an audit or investigation that the funds were spent as permitted by law, and to document the percentage of PPP loans that were used for non-payroll expenses. It may be difficult for businesses to reconstruct decisions, representations and expenditures several years later in an audit or investigation if they were not timely documented. Businesses should also ensure that their document retention policies require retention of relevant documents for at least five years, the statute of limitations for most federal criminal prosecutions.

**SEC risks to publicly traded and privately held companies**

With the financial markets collapsing and a global recession looming, both publicly traded and privately held companies are facing numerous enforcement additional risks. By focusing on certain key areas, however, both types of companies can mitigate their exposure once the pandemic concludes. The pandemic may also have the salubrious effect of helping prepare companies for future crises and help them address compliance holes that may until now have gone unnoticed.

**Specific risks to publicly traded companies**

In our view, the biggest enforcement risks to publicly traded companies during the current pandemic are (1) failing to provide adequate financial and other risk-based disclosures, and (2) insider trading.

**Inadequate Disclosures**

Given its widespread effect on the US and global economy, COVID-19 is a material risk for virtually all public companies, and should almost certainly be disclosed as such. COVID-19 has likely already impacted most public companies' operations, financial condition and liquidity, and shareholder suits for COVID-19-related issues are beginning to be filed.9 As the SEC suggested in its March 25, 2020 guidance, disclosure of COVID-19-related effects and risks should potentially be included in the portions of SEC filings that cover management's discussion and analysis, business, risk factors, legal proceedings, disclosure controls and procedures, internal control over financial reporting, and the financial statements.10 Many companies are already withdrawing or restating their earnings guidance.11

What can companies do to ensure they are accurately disclosing COVID-19's effects and risks? First and foremost, public companies will want to work carefully with internal and external auditors, accountants, lawyers and outside experts, to ensure company assessments and uncertainties about COVID-19's impact on the company are being thoroughly analyzed and communicated to those potentially making investment and voting decisions. The SEC has noted that this is particularly true with respect to novel accounting issues that may utilize non-GAAP financial assessments.12 The SEC has also stated it is important for companies to disclose whether they plan to access coronavirus-related bailout funds or additional funds from private investors.13

Next, the SEC has warned companies to begin their disclosure processes early,14 and has even extended the date of
Insider Trading

When in the midst of a global recession, it can be tempting for employees to capitalize on material nonpublic information by selling stock before share prices tumble. Accordingly, the SEC has warned public companies to be mindful of their obligations not to trade on material non-public information. This means that where COVID-19 has affected a company in a way that would be material to investors; or where a company has learned of a COVID-19-related risk that would be material to investors, the company, its directors and officers, and other corporate insiders and employees who are aware of the information; those individuals should refrain from trading in the company's securities until the information is properly disclosed to the public.

What can a company do to mitigate the risk of COVID-19-related insider trading? First, public companies should refresh their insider trading policies and trainings in order to remind all employees—and particularly insiders—of their legal duties. Next, companies should revisit who they have designated as "insiders," and consider expanding the list to include individuals responsible for managing COVID-19-related issues. Third, companies should tighten their information disclosure policies so that material bits of information are not selectively leaked. Last, companies should be wary of requests to change 10b5-1 trading plans, or to create new 10b5-1 plans, as such movements could be viewed as attempts to provide "cover" for insider trading activities.

Specific risks to privately held companies

While privately held companies are not subject to the same types of disclosure obligations as publicly traded companies, depending on their makeup—including how many and what types of investors they have, and how much money those investors have placed with the company—privately held companies may still face SEC reporting requirements, and they are certainly subject to the anti-fraud provisions of the federal securities laws.

As a result of COVID-19, more and more privately held companies are turning not only to banks and stimulus funds for increased lending, but also to other sources of cash, such as business development companies, hedge funds and private equity. For purposes of regulatory scrutiny, privately held companies will therefore need to be just as mindful as public companies of the types of COVID-19 effects on their businesses, and make sure they are making appropriate financial and other disclosures to lenders and investors. In addition, as is always the case, because privately held companies are typically not subject to the same number of disclosures that public companies are, it is often easier for financial issues to remain "buried in the books," and potentially not surface until after a loan or investment has transpired. This is particularly true, and problematic, for items like improper payments that violate the...
FCPA, or other bribery or corruption-related cash payments.

Privately held companies can best mitigate the risks of regulatory enforcement actions during this time by making sure to retain experienced external legal counsel, accountants, and/or auditors in connection with their preparation of their investment, loan or sales documents. Privately held companies may need to also hire outside counsel to conduct select internal investigations prior to making key disclosures to potential lenders or buyers. Areas that privately held companies may need investigative help with include financial irregularities, issues involving senior management, bribery and corruption-related payments, or any other areas where in-house counsel may not feel able to do an independent investigation or provide independent advice to the company.

Remember, not only will focusing on these matters in the present assist with regulators like the SEC, but they will also prevent whistleblowers from having grounds to come forward and report hidden problems to authorities. There is no more potent a motive to become a whistleblower than the tinderbox of a disgruntled employee facing potential furloughs, pay cuts, termination and illness.

Health Care Risks

Health care providers are exposed to additional risks in this COVID-19 environment. The DOJ has already accused some businesses and individuals of making false statements to the public in marketing personal protective equipment (PPE) such as masks and ventilators, vaccines and other coronavirus treatments. The DOJ has also charged one provider with paying kickbacks for referrals for COVID-19 testing. Attorney General William Barr has threatened aggressive enforcement action against individuals and businesses who hoard and price-gouge medical equipment and devices needed to fight the coronavirus.

Manufacturers and distributors of medical equipment, devices and drugs necessary in the coronavirus pandemic may also be exposed to additional risks. There have already been reports of N95 masks that were defective, coronavirus test kits that did not work, and other defects in the quality of medical devices or equipment specifically designed to test or treat COVID-19 patients. Individuals and businesses that make representations as to quality of their products to induce sales run the risk of civil and criminal liability for fraudulent misrepresentations of their products if those representations prove to be inaccurate. Businesses involved in the manufacture and distribution of such medical devices and supplies may qualify for immunity under the Public Readiness and Emergency Preparedness Act (PREP Act), Public Law 109-148, codified at 42 U.S.C. 247d-6d. Pursuant to the PREP Act, the Secretary of the US Department of Health and Human Services issued a Declaration on March 17, 2020 that was made effective on February 4, 2020, that "the spread of SARS-CoV-2 or a virus mutating therefrom and the resulting disease COVID-19 constitutes a public health emergency." Pursuant to the PREP Act and the Secretary's Declaration, businesses that qualify as "Covered Persons" who provide "Covered Countermeasures" are granted immunity from liability for certain activities covered by the Declaration. However, Covered Persons are not immune from "willful misconduct." Nor are they immune from fraud or other criminal conduct. Thus, manufacturers and distributors should seek the advice of counsel on the specific risks they may be subjected to and whether the PREP Act protects them for their business activities during the COVID-19 pandemic.

Even before the coronavirus pandemic, there were hundreds of civil False Claims Act (FCA) lawsuits and criminal health care fraud cases brought against health care providers and companies that allegedly sold defective medical drugs or products. Whether businesses will be deemed immune from such FCA cases will be determined on a case-by-case basis based, in large part, on whether the business qualifies as a "Covered Person" and provided "Covered Countermeasures."

In addition, under the civil False Claims Act and criminal health care fraud statutes, businesses may be liable for
billing Medicare, Medicaid and other government health care benefit programs for "worthless" services and products. The FCA was enacted by Congress during the Civil War to recoup funds paid for defective and "worthless" ammunition, canons and other military equipment sold to the Union Army. Today it is often used by whistleblowers, including disgruntled ex-employees, and the federal government to sue health care providers and suppliers for a wide range of claims involving, among other things, health care fraud, including billing for defective products. Some law firms that advertise for civil FCA cases have already begun marketing for COVID-19 defective product cases. It is not clear whether immunity under the PREP Act would preclude FCA civil liability or criminal fraud culpability. Since the PREP Act specifically excludes "willful misconduct" from its immunity protections, businesses should expect whistleblowers and the government to argue that fraud – the essence of a violation of the civil FCA or criminal fraud statutes – necessarily includes "willful misconduct" such that the PREP Act immunity does not apply.

Beyond the possible immunity provided by the PREP Act, businesses that provide health care equipment and supplies may also limit their liability for selling defective products in a number of ways. Liability under the civil FCA requires that the business "knowingly" violated the Act. "Knowingly" is defined in the FCA to includes "actual knowledge," "deliberate ignorance of the truth or falsity of the information," or acting in "reckless disregard of the truth or falsity of the information." Criminal liability under the health care fraud statute, wire fraud statute, and most other federal criminal statutes that federal prosecutors might rely upon, require that a defendant act "knowingly" and "willfully." It is therefore essential that businesses document the factual basis for their beliefs that their representations about the quality of their products are accurate. If their representations are based on representations made to them by other suppliers, it would be prudent to make those disclosures to potential buyers. Similarly, if businesses distribute products—even products they have converted factories to make to meet the emergency needs of health care providers and the public in this coronavirus crisis—without thorough testing and without FDA approval, they should disclose these facts. Businesses should disclose that they expedited production and distribution to meet the current coronavirus emergency and therefore did not conduct quality testing that would have been done in non-emergency times. Let the buyer beware. While such statements may not completely absolve businesses of civil liability under contract or tort law—assuming they are not immune from liability under the PREP Act—they would have a defense that they did not make any material misstatements about the product, which would be helpful in defending civil FCA lawsuits or criminal investigations or prosecutions.

On March 23, 2020, President Trump issued Executive Order 13910, which, among other things, delegated to the Secretary of the Department of Health and Human Services (HHS) authority under the Defense Production Act of 1950 (the Act) to designate certain items as "scarce" or "threatened" materials. Once designated, it becomes a federal crime for any person to accumulate such materials "(1) in excess of the reasonable demands of business, personal or home consumption, or (2) for the purpose of resale at prices in excess of prevailing market prices." Violations are punishable by a fine of up to $10,000, imprisonment of up to one year, or both. In his March 24, 2020 memorandum to all US Attorneys and Department Heads referenced above, Attorney General William Barr made it clear that the government will vigorously pursue anyone who attempts to take advantage of the COVID-19 crisis by hoarding and price-gouging needed medical supplies:

We are beginning to receive reports of individuals using the crisis to hoard vital medical items and then make inappropriate, windfall profits at the expense of public safety and the health and welfare of our fellow citizens. Hoarding and price gouging activities inhibit the government, health care professionals and the public from implementing critical measures to save lives and mitigate the spread of the virus. These practices also make it harder for our healthcare providers and first responders to resist the spread of COVID-19.

In that same memorandum, Attorney General Barr announced that the DOJ had formed a nationwide task force "to address COVID-19-related market manipulation, hoarding, and price gouging." The following day, the Secretary of
HHS formally designated fifteen items as protected materials under the Act.\textsuperscript{31} As of April 28, 2020, no additional items have been designated.

Many US Attorneys have announced partnerships with state Attorneys General regarding the formation of additional task forces aimed at combatting price gouging and other COVID-19-related crimes. These partnerships are significant, as more than thirty states have their own anti-price gouging laws, several of which carry heavy penalties\textsuperscript{92}. Given that price gouging laws vary greatly from state-to-state, companies should identify—and ensure they are compliant with—the applicable price gouging laws of every state in which such companies conduct business.

Businesses that fall within the scope of Executive Order 13910—i.e. those that sell “designated” materials, such as “filtering facepiece respirators,” “air-purifying respirators and appropriate particulate filters/cartridges,” portable ventilators, drug products containing the active ingredients “chloroquine phosphate or hydroxychloroquine HC1,” certain sterilization services or sterilizers, medical gowns or apparel, surgical masks,” or other types of personal protective equipment – or are otherwise subject to state price gouging laws, should consider the following proactive measures:

- Ensure sales teams/departments are properly educated and trained regarding compliance with applicable price gouging laws;
- Implement a protocol or procedure regarding oversight and approval of any proposed price increases;
- Avoid unnecessary price increases—especially those solely for the purpose of capitalizing on heightened demand;
- If price increases are necessary due to upstream price increases from suppliers, maintain sufficient documentation of such increases and ensure that your resulting increases are proportionate and reasonable;
- Monitor and document competitor pricing to ensure that vis-à-vis competitors, your company’s prices are not outliers; and
- Avoid unnecessary stockpiling.

Other potential risks

Businesses and their executives also face other potential risks arising from the COVID-19 crisis. In the aftermath of the TARP bailout, the Special Inspector General and Department of Justice investigated numerous businesses and individual corporate executives for a wide range of criminal offenses involving TARP funds, including bribery, honest services fraud, falsification of documents, offering or receiving kickbacks, theft of government property, tax fraud, conspiracy, and aiding and abetting. Similar investigations are likely in the COVID-19 aftermath.

Additional compliance recommendations

A crisis is the time to be observant of compliance, not blind to it. Most, if not all, general counsel of companies have seen their fair share of emergencies. In such cases, compliance and crisis programs provide the roadmap for stabilization.

What standards will we be judged by in the future, when new standards are evolving in this crisis minute by minute? It is imperative to properly document the rationale applied in a contemporaneous document.

The following compliance recommendations may help businesses avoid becoming the subject of an audit or investigation relating to the coronavirus pandemic, and if they do become a target, may assist them in resolving
• Maintain and strengthen Compliance Departments. The Department of Justice Manual directs federal prosecutors to consider "the adequacy and effectiveness" of a company's compliance program in determining whether to pursue criminal charges against it:

The "Principles of Federal Prosecution of Business Organizations" in the Justice Manual describe specific factors that prosecutors should consider in conducting an investigation of a corporation, determining whether to bring charges, and negotiating plea or other agreements. JM 9-28.300. These factors include "the adequacy and effectiveness of the corporation's compliance program at the time of the offense, as well as at the time of a charging decision" and the corporation's remedial efforts "to implement an adequate and effective corporate compliance program or to improve an existing one."


• Ensure you have the bench strength for the task at hand. Privilege appropriate communications. Be mindful that you may need to fight for resources; but remember that your actions, documentation and communications are critical.

• Identify risk areas and develop specific compliance components to address them.

• Revisit and update your Code of Conduct and your Enterprise Risk Management (ERM) analysis.

• Board governance must be maintained.

• Analyze new risk dynamics and factors.

• Look at cyber security and data risks in your virtual communications.

• Examine the risk of virus spreading in workplace and your continuity plans.

• Review financial stresses and debt covenants. Do financial staff understand their fiduciary duties and know how principles of fair disclosure apply?

• Operational uncertainties: are these shared with the senior management team?

• New supply chains—how reliable are they? Have you kicked the tires and audited them? Are you qualifying new vendors, suppliers and distributors on a ticking clock?

• Are there new alternative arrangements, intermediaries or joint ventures? Are they sound or full of antitrust temptations?

• Is the company maintaining EHS (environment, health and safety) standards? Are managers short cutting the quality process? Are environmental concerns hushed up?

• Review accounting and internal controls.
  • Are you locking hands with Internal Audit?

• Train employees
  • New and old employees need to be trained and supported. You should use virtual training and encourage communication with employees and all other stakeholders. Compliance is in everyone's interest.

• Enforce compliance
  • These are times for the Compliance Committee to be regularly videoconferencing with local compliance
committees so as to ensure that the local teams know the communication pipeline is wide open. Even if the top country person is on the committee, the familiarity built up with the global members, plus global members questions and their responses, will elicit the dialogue especially needed at such times.

- After a crisis, it's time to stabilize, recover, reform

We can help you on your way!

Join our webinar

Date and time:
Start:  May 1, 2020, 11:00 AM EDT
End:  May 1, 2020, 11:30 AM EDT

We are pleased to invite you and your colleagues to join Dentons for the next briefing in our weekly webinar series on policy and critical issues related to COVID-19 (coronavirus) in the US. During this interactive conversation, we plan to discuss how COVID-19 presents some unique challenges for businesses who are quickly adjusting to a new way of doing business or trying to maintain solvency during shut down orders. Our team outlines some of the specific compliance risks companies are facing in this new environment and provides recommendations to mitigate those risks. Some areas include:

- Government Loan Program Risks, including SBA loans
- SEC Risks, including insider trading, reporting of coronavirus risks
- Health Care Fraud Risks, including and minimizing False Claims Act whistleblower risks

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2 For example, there are numerous employment and labor risks, including issues relating to OSHA requirements, that are beyond the scope of this Alert.
5 Note that there were two different forms of application. An earlier version made it impossible for foreign-owned subsidiaries to apply—a hurdle which was ultimately removed from the latest version of the application.
8 Pub.L. 116-136, Section 1102(a)(2).
12 Id.
14 See n. 2, id.
20 Frequently asked questions about exempt offerings, SEC, https://www.sec.gov/smallbusiness/exemptofferings/faq
22 31 U.S. Code § 3729(b)(1).
23 18 U.S. Code § 1347.
24 18 U.S. Code § 1343.
25 18 U.S. Code § 1341.
30 Id.

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