

Federal Contracting News

## Sweeping Stimulus Law Golden Opportunity for Scam Artists

By Daniel Seiden

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- Unprecedented spending could attract fraudsters
  - 'Chum in shark-infested waters' for false claims suits
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The sweeping \$2 trillion economic stimulus package signed into law by President Donald Trump on March 27 will undoubtedly help millions of people in need, but it is also expected to attract its share of shady operators looking to make a fast buck.

"Wherever there is federal money, there is a potential for fraud," David Colapinto of Kohn, Kohn & Colapinto LLP, a law firm that represents whistleblowers, said. "When trillions of dollars are involved, the potential for fraud is almost endless. We've never seen this much money pumped in at one time."

Colapinto specializes in representing whistleblowers under the False Claims Act, a federal law that allows those who report fraud to get a share of any funds recovered by the government from unscrupulous contractors. The Justice Department recovered more than \$3 billion in False Claims Act cases last year.

The FCA became law during the Civil War because contractors were supplying the Army with inferior weapons and horses. The rush to get medical supplies to hospitals to combat the novel coronavirus now will likely involve unscrupulous vendors behaving the same way, Colapinto said.

### 'Practical Obstacles'

Contractors and grantees that get work during the coronavirus crisis will have to meet emergent and sometimes unrealistic demands, through truncated and accelerated award processes, said Bob Rhoad of Nichols Liu LLP, a firm that represents federal contractors in false claims litigation.

Their ability to perform "in a fully compliant way is made particularly challenging by all the practical obstacles involved with the partial paralysis of our infrastructure, commerce, and economy," he said.

Whistleblowers and the government will play "Monday morning quarterback" in their assessments of contractors "who, even with the best intentions and efforts, may not be equipped to meet and/or even be capable of meeting exacting compliance standards," he said.

The spending “is like chum in shark-infested waters for enterprising whistleblowers and their counsel who may seek to take advantage of this crisis to obtain a bounty for themselves,” he said.

The government is very interested in getting what it was promised, as shown by a settlement resolving claims that a security company supplied the Army with guards that failed marksmanship requirements.

Failing to follow healthcare billing rules can mean big trouble as well. A jury awarded nearly \$350 million in 2017 in a case over a nursing home services provider’s allegedly erroneous Medicare charges. The status of that award is pending appeal at the U.S. Court of Appeals for the Eleventh Circuit.

### **Steep Learning Curve**

The stimulus provides for oversight, but “there is no way that the inspector general or a board governing oversight of \$500 billion will be able to monitor and detect every fraudulent representation made in furtherance of government payment,” said Reuben A. Guttman of Guttman, Buschner & Brooks PLLC, a firm that represents whistleblowers.

Democrats pushed for and secured independent oversight of \$500 billion for distressed businesses, Bloomberg News reported.

False Claims Act whistleblowers will be needed to help the inspector general do the job, Guttman said.

“The government’s first instinct in an emergency is to put money out without putting guidelines into place to make sure it will be well spent,” he said. “Products like ventilators and masks will have integrity problems because of this rush.”

Another compliance challenge could involve keeping tabs on suppliers performing services for the federal government for the first time.

Those suppliers are “likely to be unfamiliar with the regulatory requirements associated with receiving government funds,” said David B. Robbins of Crowell & Moring LLP, a firm that represents federal contractors in false claims litigation. “That increases dramatically False Claims Act and other potential risks.”

Compliance, ongoing training, and recordkeeping will be of paramount importance as a risk mitigation step, he said.

“Anytime there are new entrants, at any tier of the supply chain, there is a learning curve. And it will be steep here,” he said.

### **Justice Department**

Regulatory changes in the stimulus can also provide opportunities for bad actors, said Anne Hayes Hartman, who represents whistleblowers with Constantine Cannon LLP.

One such change, involving the expansion of telehealth services, is significant because healthcare providers “often contract with outside telehealth companies to provide these services, and there is potential for kickbacks and other unlawful payment arrangements in agreements between providers and telehealth companies,” she said.

We should be on the alert for misconduct in pharmaceuticals and medical licensing as well, she said. Healthcare “is an area where whistleblowers can provide information that would otherwise be missed,” she said. “It is encouraging to see DOJ urging people to report fraud.”

A week ago, Attorney General William P. Barr urged the public to use a national hotline to report suspected fraud and directed all U.S. attorneys to prioritize coronavirus-related fraud schemes.

The DOJ’s first enforcement action involving Covid-19 accused the operators of a website of engaging in a wire fraud scheme to profit from the confusion surrounding the virus, it said March 22.

“The Department of Justice will not tolerate criminal exploitation of this national emergency for personal gain,” Assistant Attorney General Jody Hunt said then.

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