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Understanding and Minimizing COVID-19 Fraud Risks



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Today's Speakers



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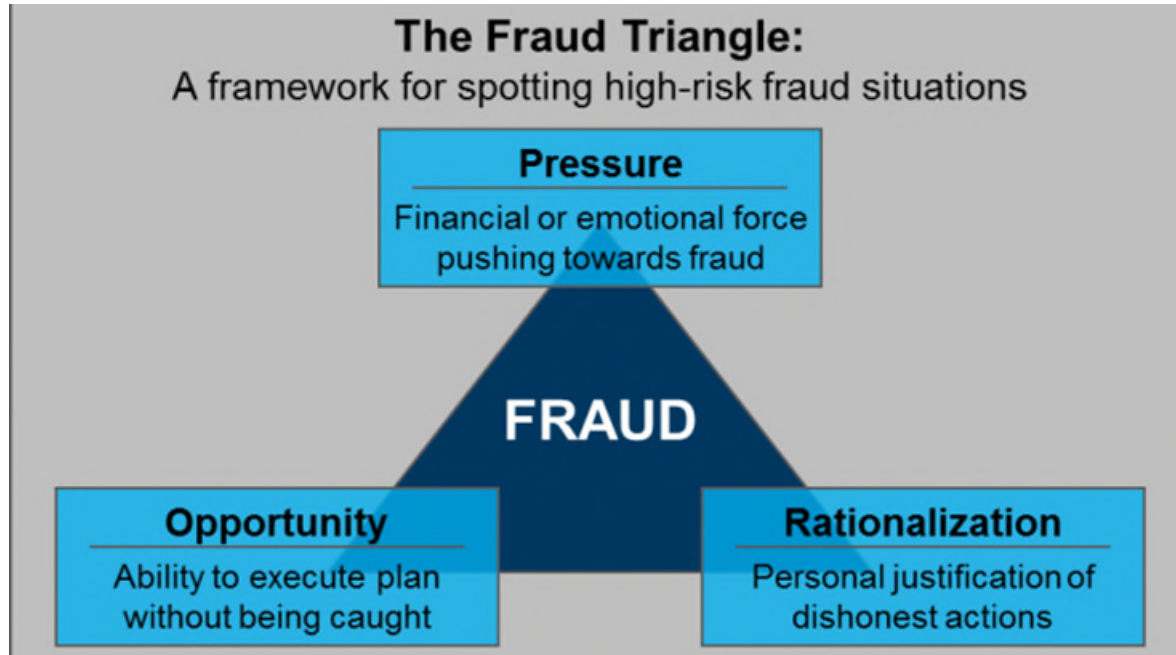


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Agenda

- High Level Risk in the Time of COVID-19
 - Fraud: Heightened in times of crisis, i.e., pandemic
 - Stimulus: What is it? How much is it? What are the requirements?
 - Regulation and Enforcement: Who is watching? Multiple oversight bodies
- Government Oversight
 - Types of risks
 - DOJ and others
 - Lessons learned so far
 - What comes next
- Best Practices: Compliance Considerations
 - Concerns and Considerations
 - Implementation, How to operate

The Fraud Triangle



Stimulus 2020

- More than \$4 trillion in funds
 - PPP: \$659 billion
- Protect the American Public
 - PPP Program: Stated intention of helping “small” businesses make payroll
 - Keeping America Employed

Stimulus: Requirements

- PPP Requirements:
 - 75% must be used for payroll
 - No bankruptcy debtors
 - “Necessary” certification
 - April 3, 2020: Federal and State banking regulators responsible for the enforcement of mortgage servicing issued a joint statement indicating that these agencies plan to take a “flexible” supervisory and enforcement approach during the COVID-19 emergency regarding certain communications required by the mortgage servicing rules
 - June 5, 2020, the PPP Flexibility Act signed into law on June 5th
 - The PPP Flexibility Act amends the CARES Act to allow PPP borrowers greater options in using PPP funds

PPP Certification

- The CARES Act: requires that a PPP loan applicant certify, in good faith, that **“the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient.”**
- The SBA’s PPP loan application phrased the certification slightly differently: **“Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”**
- **SBQ FAQ #31: 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**
- Loans with an original principal amount of less than \$2 million will be deemed to have made the necessity certification in “good faith”

Massive Federal Stimulus = Future Enforcement and Litigation

- The huge funding and associated requirements that stem from these stimulus packages are certain to become the source of significant litigation and enforcement risk
- Entities and Individuals
- Both Sides of the Equation:
 - Applicants: Certifications, Disclosures, Representations and Omissions
 - Lenders: Underwriters, Handling Applications, Decisions
 - Foreclosure and Eviction Restrictions
 - Mortgage Credit Reporting
 - Forbearance (180 + 180): No fees, penalties, interest
 - Expectation to waive fees, increase credit limits, payment accommodations

The Past is Prologue: 2009 TALF Task Force

- **Multiple Federal Agencies Form Term Asset-Backed Securities Loan Facility (TALF) Task Force to Deter, Detect, and Investigate any Instances of Fraud and Abuse**
 - Comprised of: SIGTARP, FRB-OIG, FBI, FinCEN, ICE, IRS-CI, SEC, USPIS
- **Why these organizations?**
 - Investigators
 - Some can bring cases, but most work with DOJ, State AGs, Local DAs
 - Always need a prosecutorial body
- **Same as it ever was: Expect the same from SIGPR**

Myriad Oversight: Agendas and Budgets

- Pandemic Response Accountability Committee
 - Oversight of funds, prevent and detect fraud, waste, abuse and mismanagement
 - Mitigate risk across agency and program boundaries
- SIGPR: Special Inspector General for Pandemic Recovery (within US Treasury Dept.)
 - Full subpoena power, both civil and criminal
 - Broad ability to investigate
- DOJ/USAO/IG Offices
 - March 16, 2020 Memo, AG Barr directed all US Attorney's Offices to "prioritize the detection, investigation, and prosecution of all criminal conduct related to the current pandemic"
- State Regulators
 - Some states, including NJ, Virginia, Connecticut have formed joint state/federal task forces to investigate COVID-19-related fraud
- Congressional Committees including the Congressional Oversight Commission (oversees implementation)
- GAO

Government Oversight

- Regulatory and law enforcement fraud advisories
 - Multiple agency bulletins since April 2020
 - SBA, Treasury, FinCEN, FTC, FBI, HHS, DOJ
 - Increased risk of fraud of numerous typologies during COVID-19 pandemic
 - Evolution of risk
 - Heightened risk due to the work-from-home environment

Government Oversight: Fraud Typologies

- COVID-Related Fraud:
 - Identity theft
 - Business e-mail compromise scams
 - Health care fraud
 - Scams involving virtual currency
- Stimulus-Related Fraud:
 - Unemployment benefits scams
 - Paycheck Protection Program (PPP)

Government Oversight: DOJ and Other Agencies

- Department of Justice
 - DOJ Efforts to combat widespread fraud during the pandemic
 - Acting Assistant Attorney General Rabbit: “You will be identified. You will be held accountable. You will face the severest of consequences for trying to exploit your fellow Americans’ suffering for your own personal gain.”
 - DOJ PPP cases to date:
 - 73 prosecutions in seven months
 - Low-hanging fruit
 - Cases limited to borrowers
 - Two types of PPP fraud cases
- Treasury Department, Small Business Administration, FinCEN

Government Oversight: DOJ and Other Agencies

- Other Enforcement Risks:
 - Lender liability
 - AML Risk for financial institutions
 - FinCEN Advisories
 - Record number of SARs in the first seven months of 2020
 - Major red flags in PPP applications
 - Second bite at the fraud detection apple: loan forgiveness requests

Government Oversight: Going Forward

- Lessons learned so far:
 - Difficulty of bringing enforcement actions in the instance of more complex fraud schemes
 - Significant gray area lends itself to subjectivity
- What comes next:
 - SBA and Treasury audit of PPP loans greater than \$2 million
 - If this framework holds, 99.4% of PPP loans will not be scrutinized
 - Potential increased in scrutiny and enforcement under a Biden administration
 - Role of whistleblowers

Best Practices: Compliance Considerations

COVID-19 Fraud Compliance Concerns

- Client Exploitation of COVID-19 Programs
 - PPP fraud
 - Financial Institutions as “GateKeepers”
 - Regulatory scrutiny
 - Reputational harm
- Increased Email Fraud and Cyber Threats
 - Email impersonation/imposters
 - Elaborate phishing scams relating to COVID-19
- Internal Employee Misconduct
 - Possible conspiracy
 - Personal fraud outside of work

Potential Pitfalls

- Existing Policies and Procedures Inadequate
 - Stagnant processes insufficient to address evolving fraud
 - “Square peg in a round hole” problem
- Ignore Red Flags
 - Willful, reckless, or negligent
 - Employee incentives are aligned with fraudsters
- Whistleblower Allegations Mishandled
 - Failure to properly identify and investigate
 - Failure to escalate/disclose

Controls: Best Offense and Defense for COVID-19 Fraud Risks

- Enhanced Policies and Procedures
- Audit of Compliance
- Specific Fraud Training
- Documentation
- Disclosure (e.g., SARs)

A blue-tinted image featuring a magnifying glass positioned over a financial line chart. The chart shows a fluctuating line with a downward trend, set against a grid with numerical values like 60, 80, 100, and 120. The word "Questions?" is written in a large, white, sans-serif font across the center of the image. The background is a blurred document with some text and a pen resting on it.

Questions?



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