
Weekly COVID-19 Oversight & Enforcement Report

January 28, 2021

A. Congress

1. Speaker Nancy Pelosi (D-CA) said the House is [planning](#) to bring a coronavirus relief bill to a vote the first week of February. On the Senate side, Majority Leader Chuck Schumer (D-NY) [said](#) he aims to secure passage of the next round of COVID-19 relief by mid-March, just when jobless benefits from the previous package will be running out. He [told](#) Democrats on a conference call that they could vote as soon as the week of Feb. 1 on a budget resolution that would pave the way for coronavirus legislation to pass the chamber with a simple majority if a bipartisan agreement is not reached. The timeline given by Sen. Schumer reflects the length it may take to craft a stimulus using the expedited budget “reconciliation” process needed to bypass a filibuster by minority Republicans.
2. The House Committee on Oversight and Reform, Subcommittee on Economic and Consumer Policy launched an [investigation](#) into \$70 million in government contracts to procure ventilators, which were reported to be inadequate for treatment of most COVID-19 patients. Subcommittee Chair Raja Krishnamoorthi (D-IL) [seeks](#) information about the government negotiations surrounding the purchases by HHS and the Defense Logistics Agency of 11,200 ventilators from Combat Medical Systems.

B. Executive Agencies

1. President Biden last week [instructed](#) federal regulators to quickly boost COVID-19 safety protections for workers. His Executive Order on Protecting Worker Health and Safety directs the Department of Labor to issue revised guidance for employers within two weeks, review enforcement, and consider issuing emergency temporary standards for businesses to follow during the pandemic. In particular, President Biden instructed OSHA to examine mask-wearing requirements, partner with state and local governments, and offer additional resources to help employers protect their employees. (See WilmerHale’s client alert on this order [here](#).)
2. Reports [anticipate](#) continued, potentially increased, PPP enforcement in 2021. Most businesses have not yet applied to the SBA for loan forgiveness. Because lenders were permitted to rely on borrowers’ representations regarding their eligibility for loans, the SBA will retroactively determine eligibility during its loan forgiveness review. This could result in an increase in referrals from the SBA to DOJ. Additionally, we can expect to see additional enforcement under the False Claims Act, following last week’s civil settlement regarding PPP fraud. (For more on the likely role of the FCA in this area, see WilmerHale’s series of client alerts [here](#), [here](#), and [here](#).)

3. In other PPP fraud news, a Washington man [pledaded guilty](#) to perpetrating a scheme to fraudulently obtain COVID-19 relief by submitting 9 fraudulent EIDL and PPP loan applications seeking over \$1.1 million. And a California man [pledaded guilty](#) to one count of fraud in connection with CARES Act benefits involving falsified tax documents showing \$4 million in paid wages, when in fact his company did not have any employees.

C. State Attorneys General

1. Oklahoma AG Michael Hunter filed a [lawsuit](#) against PPE Supplies LLC and its owner, alleging the PPE supplier deceived the State Department of Health by promising to deliver protective masks on an expedited basis, despite knowing it may not have the capacity to deliver on such promises. According to AG Hunter, the Department canceled its orders after they were not fulfilled, demanding the return of its deposit, only a portion of which has been repaid. AG Hunter is seeking full repayment, as well as punitive damages. Unrelated to this lawsuit, AG Hunter is [working](#) with the Department to return or sell a \$2 million supply of hydroxychloroquine the state purchased from FFF Enterprises, Inc., a wholesaler, on the basis of now discredited speculation that the drug was effective in treating COVID-19.
2. Washington AG Bob Ferguson filed [suit](#) against Alpha Omicron Pi, a national sorority, and its property manager for unlawfully charging students in its University of Washington chapter for rent even though the students could not access or live in sorority housing due to the pandemic. In addition, according to AG Ferguson, the sorority charged late fees and threatened students with other sanctions if they did not pay their rent. AG Ferguson alleges that these practices violated the state's emergency eviction moratorium. In a separate matter, AG Ferguson announced a [settlement](#) in litigation his office filed against Whitewater Creek, a low-income housing provider, alleging it illegally threatened tenants with eviction. The settlement requires Whitewater Creek to pay \$50,000, comply with state executive orders, including eviction prohibitions, and notify the AG's office prior to commencing any eviction proceedings once the moratorium is lifted.
3. Colorado AG Phil Weiser reached a [settlement](#) with Nationwide Medical Supply Inc. concerning claims the company made about masks and respirators it sold and the prices charged for such PPE. According to AG Weiser, the company made a series of false and misleading claims about PPE it sold, including marketing a KN95 mask as an N95 respirator, selling masks that did not meet their claimed filtration capabilities, unlawfully using the logo of the FDA to signify an endorsement, and charging prices for masks in excess of state law. The settlement requires the company to pay \$70,000 to the state and cease unlawful business practices.
4. Minnesota AG Keith Ellison announced [settlements](#) with two restaurants that had allegedly violated state executive orders related to indoor dining. The settlements, with Cork in Anoka and Neighbors on the Rum in Princeton, include a suspended penalty and require the establishments comply with current and future executive orders.

D. Special Inspector General for Pandemic Recovery (SIGPR)

1. On January 21, the U.S. Attorney's Office for the Middle District of Pennsylvania announced a [Memorandum of Understanding](#) with the SIGPR to investigate and prosecute fraud in the distribution of relief authorized by the CARES Act. Like the other MOUs entered into by the SIGPR, this MOU will allow cooperation in matters involving loans, loan guarantees, and other investments made by the Secretary of the Treasury under the CARES Act.

E. Pandemic Recovery Accountability Committee (PRAC)

No Updates this week.