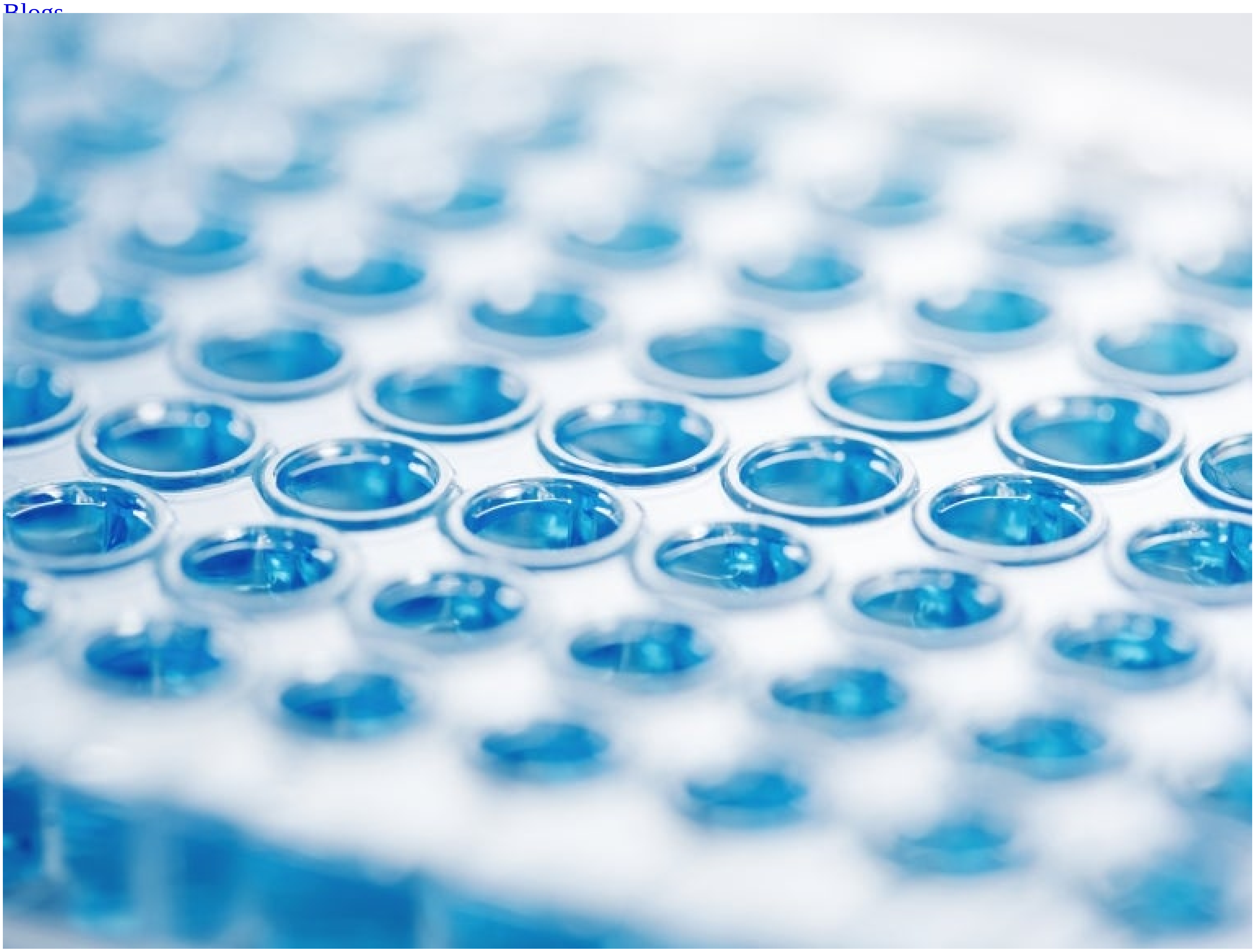
Blogs



As this blog has previously noted, the Coronavirus pandemic, like other crises before it, is likely to increase prosecutions for fraud, particularly under the Payment Protection Program ("PPP") created by the federal government's Coronavirus stimulus packages.

Two new prosecutions announced by the Department of Justice mark some of the first prosecutions under the PPP, and signal where and how the government will be looking for wrongdoing. In the first prosecution announced out of the Eastern District of Texas, the government alleged that the defendant submitted two fraudulent claims under the PPP. In those PPP claims, the defendant represented that his company had 250 employees and was required to pay $4 million in payroll expenses each month. But Texas state records showed that the defendant's company paid no wages in 2020 and reported no revenues in the late 2019 or 2020, suggesting those representations were false. The defendant has been charged with wire fraud, bank fraud, and making false statements. In the second prosecution announced out of the Northern District of Georgia, the defendant obtained over $2 million in PPP funds by claiming he needed to pay 107 employees about $1.5 million each month. The defendant is alleged to have used the money for personal expenses, like to pay child support and buy personal luxury items like watches and cars. The defendant has been charged with bank fraud. **Looking Ahead** These early prosecutions shed some light on what's to come. ***First***, expect further government scrutiny of PPP applications themselves. While the above case out of Texas was one in which the false statements were apparent on their face—the defendant appears to have claimed payroll obligations that simply did not exist—it is reasonable to conclude that after picking off this sort of "low-hanging fruit," the government will turn its focus to other parts of the PPP application. As this blog has noted previously, the PPP loan application is not easy, requiring the applicant to, among other things, certify the "economic necessity" for PPP funds. ***Second***, expect the government to investigate how PPP funds are being used. Again, the above case out of Georgia was clearly out of bounds, given that the defendant spent PPP funds on things like jewelry and cars. But the government is likely to keep looking into whether PPP funds are spent on allowable PPP costs like payroll, mortgage interest, rent, and utility payments. Businesses should work closely with their tax advisors and attorneys to ensure they are spending PPP funds on allowable expenses. Businesses should also ensure they create and maintain records to substantiate all expenses covered by PPP funds. ***Third***, expect a groundswell of similar prosecutions. The Attorney General has implored U.S. Attorneys across the country to "remain vigilant in detecting, investigating, and prosecuting wrongdoing related to the crisis." That vigilance is being shown both inside and outside the DOJ—the above cases were investigated by not only the DOJ and FBI, but also the Small Business Administration, Federal Housing Finance Agency, Federal Deposit Insurance Corporation, and U.S. Postal Inspection Service. The cases also suggest a close coordination with State officials, including through state-and-federal task forces. The input of all these various agencies suggest that the search for PPP fraud has captured much of the attention of federal investigative agencies. It will remain that way for the foreseeable future.

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