



12 STEPS FOR REDUCING CARES ACT ENFORCEMENT RISKS

Pub K

PUBLIC CONTRACTS



Bill Olver
Managing Editor
PubKGroup





Dominique Casimir
Partner
BlankRome

BLANK**ROME**



Justin Chiarodo
Partner
BlankRome

BLANK**ROME**



Bill Lawler
Partner
BlankRome

BLANK**ROME**



Greg Linsin
Partner
BlankRome

BLANK**ROME**

HOUSEKEEPING

- ◎ Q&A
- ◎ Materials
- ◎ CLEs

AGENDA

- ◎ **CARES Act Overview**
- ◎ **Oversight Regime**
- ◎ **12 Steps to Reduce Risk**

1

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

Overview

**12 steps for
reducing
CARES Act
enforcement
risks**

The CARES Act provided more than \$1 trillion to:

- ⦿ **Reimburse contractors for employees and subcontractors that are unable to perform work due to COVID-19 restrictions**
- ⦿ **Create the Paycheck Protection Program**
- ⦿ **Fund millions of dollars in grants**
- ⦿ **Support businesses critical to maintaining national security**

2

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

Oversight and Enforcement Regime

**12 steps for
reducing
CARES Act
enforcement
risks**

CARES Act oversight is constantly evolving:

- ◎ **DoD has issued draft guidance on submitting Section 3610 reimbursement requests**
- ◎ **Paycheck Protection Program requirements continue to evolve; June 11 interim final rule clarified key changes**
- ◎ **OMB issued general guidance to agencies, leaving reimbursements to their discretion**

3

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

12 Steps to Reduce Risk

**12 steps for
reducing
CARES Act
enforcement
risks**

Step One: Monitor changes regarding relief efforts, program administration, and enforcement

**12 steps for
reducing
CARES Act
enforcement
risks**

Step One: Monitor changes

- ⦿ Expect new and ongoing guidance
- ⦿ Be ready to change processes, procedures
- ⦿ Stay in contact with your agency

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Two: Stay on top of your supplier, subcontractor, and vendor relationships, and agreements

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Two: Stay on top of your relationships

- ◎ **Future claims may involve subcontractors, vendors**
- ◎ **Monitor compliance of COVID-related claims by suppliers and subcontractors**
- ◎ **Ensure you have indemnity and protection for these claims**

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Three: Keep evaluating your risk management and compliance practices

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Three: Keep evaluating risk and compliance

- ◎ **Ensure practices for health, safety, and fraud prevention are updated to reflect new policies and guidance**
- ◎ **Invest in compliance today to avoid liability tomorrow**

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Four: Document guidance received from the government

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Four: Document guidance received from the government

- ◎ Document all communications during pre-bid, proposal, and post-award stages, including requests for clarification or guidance
- ◎ Follow-up on verbal communications with a confirmation letter or email

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Five: Create a file of potentially helpful documents

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Five: Create a file of potentially helpful documents

- ⦿ **Commendations and praise**
- ⦿ **Temporary allowances for absent employees**
- ⦿ **Deadline extensions or other short-term allowances**

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Six: Designate a primary point of contact

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Six: Designate a primary point of contact

- ◎ **Connect with agency on COVID-related issues, such as performance impacts and waivers**
- ◎ **Collect and maintain key documents and communications**

**12 steps for
reducing
CARES Act
enforcement
risks**

**Step Seven: Ensure that
dealings with the federal
government comply with your
own governance requirements**

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Seven: Comply with your own governance requirements

- ◎ Document compliance with internal processes, such as board votes and management recommendations
- ◎ Demonstrate you acted thoughtfully when making decisions and taking actions

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Eight: Incorporate legal review

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Eight: Incorporate legal review

- ◎ **Consider incorporating periodic legal reviews of internal procedures**
- ◎ **Document any advice given or actions taken**

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Nine: Reinforce the imperative of compliance to your workforce

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Nine: Reinforce compliance

- ⦿ **Set the right tone from the top**
- ⦿ **Communicate expectations for ethical behavior**
- ⦿ **Remind employees of reporting mechanisms for questions and concerns**
- ⦿ **Deploy ethics and compliance professionals to ensure programs are active even with telework**

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Ten: Implement, and ensure adherence to, internal controls for preparation of government submissions

**12 steps for
reducing
CARES Act
enforcement
risks**

**Step Ten: Implement internal controls for
preparation of government submissions**

- ⦿ **Develop procedures to ensure program requirements are met before submitting bids to the government**
- ⦿ **Consider creating a system to document the accuracy and basis for any certifications**

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Eleven: Confirm internal accounting procedures for the expenditure of funds

**12 steps for
reducing
CARES Act
enforcement
risks**

**Step Eleven: Confirm internal accounting
procedures for the expenditure of funds**

- ◎ Contractors new to the government should have a process to document and track receipt and use of funds
- ◎ Consider conducting periodic financial audits to ensure proper documentation is maintained

**12 steps for
reducing
CARES Act
enforcement
risks**

Step Twelve: Plan for future IT migrations and personnel departures

**12 steps for
reducing
CARES Act
enforcement
risks**

**Step Twelve: Plan for future IT migrations and
personnel departures**

- ◎ **Ensure relevant documents are retrievable from legacy IT systems**
- ◎ **Create a plan for maintaining access, tracking documents, and ensuring knowledge transfer when employees leave the company**

12 steps for reducing CARES Act enforcement risks

One

Monitor changes regarding relief efforts, program administration, and enforcement.

Two

Stay on top of your supplier, subcontractor, and vendor relationships, and agreements.

Three

Keep evaluating your risk management and compliance practices.

Four

Document guidance received from the government.

Five

Create a file of potentially helpful documents.

Six

Designate a primary point of contact.

12 steps for reducing CARES Act enforcement risks

Seven

Ensure that dealings with the federal government comply with your own governance requirements.

Eight

Incorporate legal review.

Nine

Reinforce the imperative of compliance to your workforce.

Ten

Implement, and ensure adherence to, internal controls for preparation of government submissions.

Eleven

Confirm internal accounting procedures for the expenditure of funds.

Twelve

Plan for future IT migrations and personnel departures.

Thank
you



Dominique Casimir
Partner
BlankRome



Justin Chiarodo
Partner
BlankRome

BLANKROME

*Thank
you*



Bill Lawler
Partner
BlankRome



Greg Linsin
Partner
BlankRome

BLANKROME



Thank
You

THANKS!

Any questions?

You can find me at bill@pubkgroup.com

Questions about subscriptions or CLEs can
be sent to admin@pubkgroup.com