



## Coronavirus Response And Relief Supplemental Appropriations Act And Its Implications For The Entertainment Industry

By Allison K. Riddle

DECEMBER 27, 2020. On December 27, 2020, the Coronavirus Response and Relief Supplemental Appropriations Act (“the Act”) was signed into law.<sup>1</sup> The Act authorizes \$908 billion in spending to small business, grant programs, rental assistance, hospital funding, and more.<sup>2</sup> Applications to receive this latest round of coronavirus relief funding will open on January 10, 2021. With this latest round of funding, opportunities for fraud will resurface. To combat this, an increase of government enforcement actions under the False Claims Act<sup>3</sup> (the “FCA”) is expected.

### Background of the FCA

The FCA was enacted during the Civil War to fight contractors’ false claims to the Union Army.<sup>4</sup> In addition to criminal liability, the FCA creates a civil cause of action against any person or company who knowingly defrauds a federal program. Incorporated into the FCA’s civil enforcement procedures is a “qui tam” provision that allows whistleblowers to bring false claims on behalf of the federal government. These whistleblowers are essential for reporting fraud and abuse of government funds. Most FCA cases arise from abuse of funds in federal healthcare programs, but FCA claims may arise from any federally funded program. With the Act’s new federal funding, it is anticipated that FCA qui tam actions will expand to target nontraditional industries—such as the entertainment industry.

### The Act Provides Grants for Entertainment Venues

Under Section 324, entitled “Grants for Shuttered Venue Operators” (the “Grant Program”), \$15 billion has been authorized for live venue operators, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, or talent representatives that have lost *at least 25%* of their revenues. The Grant Program staggers assistance. First, the neediest—those that lost 90% of their revenues—can receive assistance during the Grant Program’s first two weeks. Next, those that lost 70% of their revenues can receive assistance in the Grant Program’s next two weeks. Finally, any venues that lost less than 70% but at least 25% of their revenues can receive assistance after the Grant Program’s first four weeks. As with the Paycheck Protection Program, the grants must be used for payroll costs, rent, utilities, and personal protection equipment. The grants are administered through the Associate Administrator for the Office of Disaster Assistance. An initial grant of up to \$10 million is available to an eligible person or entity, which can then be supplemented by another grant equal to 50% of the initial grant.<sup>5</sup> The supplemental grants will not be awarded until after the Grant Program’s first four weeks have ended.

In addition to the stringent oversight provisions established in the CARES Act, such as the Pandemic Response Accountability Committee, the Special Inspector General for Pandemic Recovery, and the Congressional Oversight Commission, the Grant

Program includes a provision which dictates that the Act’s “Administrator shall increase oversight of eligible persons and entities.”<sup>6</sup> As part of this oversight, a grant recipient can be required to retain records documenting compliance with the Grant Program, including employment records, for four years.<sup>7</sup> In instances of fraud, the Administrator can require repayment of the funds and pursue legal action to collect them.<sup>8</sup> The Administrator is required to submit a monthly report of oversight and audit activities to Congress.<sup>9</sup> These monthly reports are statutorily required to continue for up to one year after the Act’s enactment.

### Recipients Should Implement Compliance Program for Grants

With increased oversight and scrutiny, recipients of the Grant Program should implement a compliance program to actively avoid misstatements, errors, or negligent acts that could lead to a governmental investigation or a whistleblower action. A compliance program focused on substantive actions, not just checking the boxes, is key. Grant recipients are advised to seek the advice of outside counsel to ensure the creation of an effective compliance program. A few key items to consider when creating a substantive compliance program:

1. Review and update financial records—the recipient will be submitting financial records directly to the government, so these records must be accurate and complete. To ensure this, the recipient should have its records reviewed, updated, and independently audited.<sup>10</sup>
2. Review and update employment records —ensure that the employment record keeping system is up to date with the employee’s current wage, part-time or full-time status, and contact information.

3. Identify and designate a compliance officer—this should be the individual dedicated to Grant Program compliance. The officer should receive guidance from any outside counsel on the requirements of the Act and maintain regular contact with counsel until full compliance with the Act has been achieved.<sup>11</sup>
4. Create and conduct training—develop a training for the designated compliance officer and any employee responsible for Grant Program funding to ensure all requirements are understood.<sup>12</sup>
5. Monitor enforcement trends and guidance— designate an employee to monitor trends and help the designated compliance officer flag ever-evolving COVID-19 related enforcement trends.<sup>13</sup>

With the Act’s new funding for venues, the entertainment industry should be better positioned to weather the pandemic as the world moves towards a post-COVID social life. The attorneys at Briglia Hundley are here to guide any individuals through the new Act’s grant process.

### Notes

1. Burgess Everett, et al., *Trump Backs Down, Sign Stimulus Packages*, *POLITICO* (DEC. 27, 2020, 9:28 PM), <https://www.politico.com/news/2020/12/27/congress-stimulus-deal-450380>. A full text of the Law can be found here: <https://rules.house.gov/sites/democrats.rules.house.gov/files/bills-116hr133sa-rcp-116-68.pdf>
2. *Id.*
3. 31 U.S.C.A § 3729.
4. One notable example of war profiteering is the sale of sawdust-filled crates to the army instead of muskets.
5. The recipient of the funds is required to return any amounts not expended on or before one year after the disbursement.
6. *Coronavirus Response and Relief Supplemental Appropriations Act*, <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf>
7. *Id.*
8. *Id.*
9. *Id.*
10. See Christopher Hotaling, et. al., *Managing Risks that Come with Federal Funds*, *CORPORATE COMPLIANCE INSIGHTS*, <https://www.corporatecomplianceinsights.com/managing-risks-with-federal-funds/>
11. See *id.*
12. See Paul Rosen, *CARES Act Compliance, Oversight and Investigations: A Basic Checklist for Business*, *FORBES*, <https://www.forbes.com/sites/paulrosen/2020/04/28/cares-act-compliance-oversight-and-investigations-a-basic-checklist-for-business/?sh=bd09c2969a2c>.
13. See *id.*

### ABOUT US

Briglia Hundley was founded in 1993 and practices throughout the mid-Atlantic region. Our practice features attorneys who have been listed as “Legal Elite” by Virginia Business magazine, named to Super Lawyers, and listed in Best Lawyers.

We are a forward-thinking law firm that relies upon our experienced and energetic attorneys to reliably and responsibly meet the legal needs of our clients in Virginia, Maryland, and the District of Columbia.

### CONTACT BRIGLIA HUNDLEY

#### Tysons Corner Office

1921 Gallows Road, Suite 750  
Tysons Corner, Virginia 22182

Telephone: 703.883.0880

Fax: 703.883.0899