

ALERT

U.S. Attorney's Office for the Eastern District of Virginia (EDVA) Positions Itself as Key District For COVID-19 Fraud Enforcement

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Late last week, Eastern District of Virginia (EDVA) U.S. Attorney G. Zachary Terwilliger and Special Inspector General for Pandemic Recovery (SIGPR) Brian D. Miller announced a key partnership that fortifies the central role that EDVA will play in coronavirus (COVID-19) related fraud enforcement actions going forward.

The EDVA-SIGPR Memorandum of Understanding (MOU)

The MOU entered between EDVA and SIGPR centered around four specific objectives:

- To provide a coordinated response to the Coronavirus Aid, Relief, and Economic Security Act (CARES) funding fraud, with an emphasis on organized criminal activity, as well as criminal and civil fraud affecting federal money, vulnerable victims, and fraud recidivists;
- To facilitate legal process, case intake, and swift prosecution of CARES Act-related fraud;
- To link and associate isolated CARES Act-related complaints with larger schemes and related unlawful activity; and
- To deter future CARES Act funding fraud through an enhanced awareness of successful criminal prosecution and civil enforcement against individuals and companies involved in CARES Act-related financial fraud.

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Other specific highlights of the nexus between EDVA and SIGPR include:

- The appointment of two Assistant U.S. Attorneys (one from the Criminal Division and one from the Civil Division) to serve as liaisons to the SIGPR office, including a full-time criminal paralegal and forensic audit support for civil enforcement cases.
- The opening of the SIGPR office next door (within "75 yards") to the EDVA office and the U.S. District Court; and
- Creation of streamlined intake and procedures for approvals of investigatory actions taken in the cases.

While the formalization of this relationship may appear more ceremonial in nature, it actually has multiple practical effects that positions EDVA as a "go-to" office for SIGPR criminal and civil referrals.

Indeed, the MOU can be likened to a "preferred provider" for SIGPR – where the client investigative agency is signaling its desire to refer criminal and civil referrals to EDVA; and likewise, the U.S. Attorney's office is pledging to aggressively pursue SIGPR cases and devote resources and prioritization to CARES Act enforcement.

Unique Aspects of SIGPR

SIGPR was specifically created as part of the CARES Act (enacted on March 27, 2020), which provided over \$2 trillion in federal stimulus for the economy due to the COVID-19 pandemic.

SIGPR was created within the Treasury Department to "conduct supervise, and coordinate audits and investigations" of the Treasury programs included in the CARES Act and any other Treasury programs established under the Act. SIGPR will have to submit quarterly reports to Congress, and therefore will be pressed repeatedly by Congress about the work that it is conducting.

Its legal authority parallels two other special inspectors general: the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) and the Special Inspector General for Afghanistan Reconstruction (SIGAR), both of which still exist today and continue to investigate matters and refer cases to U.S. Attorney's offices throughout the country.

Given the size of the stimulus packages stemming from the COVID-19 pandemic, SIGPR will likely exceed the scope and size of SIGTARP and SIGAR.

And, as Congress debates adding trillions of stimulus relief to help individuals and businesses as the pandemic continues on, SIGPR's scope will likely grow in lock step with the stimulus packages that are enacted.

Significantly, the Senate recently confirmed the SIGPR – Brian D. Miller. There are several notable aspects about SIGPR Miller's appointment that further make EDVA a natural destination for referrals for SIGPR cases.

First, SIGPR Miller is an alumnus of EDVA, having served as an Assistant U.S. Attorney there for over a decade where he worked on a variety of civil and criminal enforcement matters. These ties to EDVA should not be understated, because they demonstrate a deep familiarity with not only the attorneys in EDVA, but also the judges in EDVA and in the Fourth Circuit Court of Appeals.

Second, SIGPR Miller also served as the Inspector General of the U.S. General Services Administration (GSA OIG) for 9 years, where he managed hundreds of auditors, special agents, attorneys, and staff. GSA OIG has, over the years, notably referred a number of prominent fraud cases to EDVA involving procurement fraud and cyber fraud. Therefore, not only does SIGPR Miller have a window into EDVA as a former alumnus, but also as a former client while he was the GSA Inspector General.

Unique Aspects of EDVA

The U.S. Attorney's office for EDVA is among the oldest U.S. Attorney's offices, and its main office is across the Potomac River in Alexandria, Virginia (in addition to offices in Newport News, Norfolk, and Richmond). The office has a lengthy track record on government-program related fraud cases, given the sizable presence of federal agencies and government contractors in EDVA.

The office is also well-known because the district court in EDVA is often referred to as the "rocket docket" – a reference to how swiftly the court processes cases. Indeed, it is routinely known to process civil cases in the shortest amount of time among the entire federal judiciary, and it is counted among the fastest when dispensing of criminal cases as well. It is also known to have a more government-friendly jury pool, as compared, for example, to the neighboring District of Columbia.

As a result, due to EDVA's reputation, for an investigative agency looking to expedite enforcement actions, EDVA is a forum that investigative agencies would likely favor.

And, given the priorities that U.S. Attorney Terwilliger has clearly pledged here through the MOU – including the specific allocation of resources – this indicates that the office will expeditiously process SIGPR referrals without delay. The programmatic expertise that EDVA will also likely develop will further make it a destination office for SIGPR to give it a leg-up versus other U.S. Attorneys' offices.

Consequently, any individual or entity concerned about defending inquiries with respect to COVID-19-related fraud enforcement issues should pay close attention to EDVA going forward. It is now positioned to be a major player for fraud cases going forward.

Wiley's White Collar Defense and Government Investigations Practice includes several alumni – in the criminal and civil divisions – of the U.S. Attorney's Office for the Eastern District of Virginia, and regularly counsel clients on investigations commenced by that office.