

The False Claims Act

What Every Administrator Needs to Know

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False Claims Act

31 U.S.C. §§ 3729 - 3733

- Omnibus federal civil fraud statute
- Enacted in 1863 (Civil War)
- Prohibits:
 - knowingly presenting or causing to be presented, a false or fraudulent claim for payment or approval
 - knowingly making, using or causing a false record or statement material to a false or fraudulent claim
 - “reverse false claims” – avoiding an obligation to pay the United States
 - other, less common forms of false claims
- Violations can also be pursued criminally (18 U.S.C. §287)
- Treble damages



The FCA and Sponsored Research

- Federally sponsored research grants can form the basis for a False Claims Act case, from the grant proposal to close out
- Potential bases for false claims act cases
 - › Whether expenses charged to the grant comply with cost principles, i.e., are allowable, allocable, reasonable, and consistent
 - › Whether activities performed under the grant are outside the scope of the original grant/proposal documents



FCA Liability Related to Cost Principles

Allowable

- Within regulations and terms and conditions of award

Allocable and Verifiable

- Benefits the project and proportional

Reasonable and Necessary

- Necessary for performance of the project

Consistently Treated

- Consistency in estimating, charging, and reporting of direct costs and F&A



FCA Liability Related to Cost Principles (cont'd)

- Yale University Settlement (2008)
 - Yale University entered into a \$7.6 million settlement with the Department of Justice to resolve allegations it violated the FCA
 - Investigation identified two types of mischarges to grants
 - Unallocable charges: researchers transferred charges to a federal grant that were not allocable to it when the grant was winding down and the remaining funds needed to be spent
 - Salary charges: researchers charged 100 percent of their summer effort to federal grants despite spending much of their time on unrelated work



Activities Outside the Scope of the Grant

- *United States ex rel. Daniel Feldman v. Wilfred van Gorp and Cornell University Medical College* (2d Circuit, 2012)
 - Grant relating to HIV-related research fellowships
 - Jury found fraud based on deviations from information presented in the grant application and progress reports, including:
 - Certain key faculty identified in the grant application had no involvement with fellows under the grant
 - Fellows never were taught core courses and curriculum identified in the grant application
 - A large portion of the research conducted by the fellows was unrelated to HIV



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Red Flags to Avoid FCA

- Effort Certification
 - › Required by A-21
 - › New Effort policy implemented in September
- Salary Supplementation
 - › Summer effort
- Cost Transfers
 - › This was the issue in the Yale case
 - › 4 Principles



Effort

- Signing of the ledgers is a certification to the time allocation for the PI. Only they should be signing off as it must be someone with the requisite knowledge as to how the PI's time was spent that month.
- Required by University Policy and the OMB circulars
- If a change, how much and does the sponsor need to be notified



Salary

- Is the PI receiving compensation from somewhere else
- How is this affecting their effort
- Has it been disclosed for Conflict of Interest?
- Summer salary



Cost Transfers

- Appropriate costs
- Consistent with A-21- Learn in CLASP
- Allowable, allocable, necessary, reasonable consistent treatment
- PI is to sign off on the monthly ledger reports. Not just time, but also expenses



UR Policies

- Generally
 - <http://www.rochester.edu/ORPA/policies/index.html>
- Effort Reporting
 - <http://www.rochester.edu/ORPA/policies/EffortReportingPolicy.pdf>
- Salary and COI
 - <http://www.rochester.edu/ORPA/policies/SummerSalaryMemo.pdf>
 - http://www.rochester.edu/ORPA/COIPolicyFaculty_Aug2012.pdf
- Cost Transfers
 - <http://www.rochester.edu/adminfinance/finance/Departments/ORACS/costtransfer-programs.html>
 - <http://www.rochester.edu/adminfinance/finance/Departments/ORACS/costtransfers-faq.html>



Avoiding Problems

- 1) Know what is in the proposal
- 2) Keep a dialogue with ORACS, ORPA, Sponsor
- 3) If you see a problem ask questions
 - ORPA Rep
 - Office of Counsel



Questions?



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