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

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<th>Allowable</th>
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<tbody>
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<td>• Benefits the project and proportional</td>
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<td>Reasonable and Necessary</td>
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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

  - 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

- Cost Transfers
  - http://www.rochester.edu/adminfinance/finance/Departments/ORACS/costt
    ransfer-programs.html
  - http://www.rochester.edu/adminfinance/finance/Departments/ORACS/costt
    ransfers-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?
ORPA

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