

**THE FALSE CLAIMS ACT AND  
FRAUD ALLEGATIONS IN SPONSORED RESEARCH**

November 10-12, 2010  
NACUA CLE Workshop

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### Introduction

For the past several years, there has been a steady stream of college and university civil False Claims Act (“FCA”) settlements that focus on the administration of federally sponsored research. In May 2009, the U.S. Department of Justice (“DOJ”) and *qui tam* relators’ attorneys scored a series of political and legislative victories, broadening and strengthening the FCA by weakening or eliminating certain defenses to liability and obstacles to whistleblower claims. It is not unreasonable to infer that in coming years, DOJ investigations of federally sponsored research will continue and that the pace of False Claims Act settlements will at least remain steady.

This paper is meant to serve as a resource. It discusses applicable law and compliance issues associated with fraud allegations in sponsored research. First, we begin with a short primer on the FCA. Second, we discuss recent amendments to the FCA that enhance the tools available to prosecutors and open the door to increased whistleblower-initiated litigation. Third, we discuss relatively new mandatory disclosure requirements related to fraud allegations in sponsored research. Fourth, we address fraud enforcement trends and the various “hot button” issues in sponsored research. Fifth, we assess the impact of the American Recovery and Reinvestment Act (“ARRA”) on the sponsored research compliance environment, including intense federal audit activity that ARRA recipients should anticipate. We end with a brief discussion of various compliance strategies.

### The Basics: The Federal Civil False Claims Act

As noted above, the past several years have seen a steady stream of FCA cases that involve federally sponsored research. Although there is no indication of any specific federal program targeting higher education, the reader need only skim Appendix A to see that higher education institutions are likely to continue to be the target of FCA enforcement actions in the sponsored research area.

The risks associated with these enforcement actions warrant careful consideration because the FCA is a powerful enforcement tool. Under the FCA, the DOJ may take the following views: there is no need for the government to prove that the defendant specifically intended to defraud the government; there is no need for the government to prove that the accused had actual knowledge of the falsity of a claim; there is no need to prove that the government was misled; there is no need to

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prove that the government was damaged; and in some cases, there is no need to submit a claim to the government.<sup>1</sup>

Following is a basic summary of the FCA.

The FCA is still called the “Lincoln Law” by some, but the FCA of today bears only a slight resemblance to the one enacted in 1863 in response to allegations of fraud on the Union Army during the Civil War.<sup>2</sup> The FCA of today emerged when Congress amended the statute significantly in 1986.<sup>3</sup> Subsequent case law caused Congress to modify the FCA again last year, as part of the Fraud Enforcement and Recovery Act of 2009 (“FERA”) <sup>4</sup>, and most recently in March 2010 with the passage of the Patient Protection and Affordable Care Act.<sup>5</sup>

The FCA prohibits the submission of false or fraudulent claims to the government. The statute imposes civil liability on any person who, among other things, knowingly (1) submits a false or fraudulent claim for payment, (2) causes such a claim to be submitted for payment, (3) makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim, (4) conspires to get such a claim paid or approved, or (5) makes a false record or statement to conceal or avoid an obligation to pay money to the government.

Each violation of the statute is subject to treble damages and mandatory penalties of \$5,500 to \$11,000 per “false claim”.<sup>6</sup> To prove that a violation was “knowing,” neither the government nor a whistleblower need show that the defendant harbored a specific intent to defraud; rather liability may be imposed for actual knowledge, deliberate ignorance of the truth, or reckless disregard of the falsity of the claim.<sup>7</sup>

A “claim” is defined as any request or demand, whether under a contract or otherwise, for money or property that

- (i) is presented to an officer, employee, or agent of the United States; or
- (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government— (I) provides or has provided any portion of the money or property requested or demanded; or (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded. 31 U.S.C. § 3729(c).

A unique element of the FCA is that it is not just enforced by the government. Under 31 U.S.C. 3730(b)-(d), a person (a “relator”) may bring a civil action on behalf of the United States under the whistleblower, or *qui tam*, provisions of the FCA. A copy of the relator’s complaint, which is filed under seal, and a written disclosure of substantially all material evidence and information that the relator possesses must be served on the government. The government then has at least 60 days to investigate the allegations in the relator’s complaint and notify the Court whether it chooses to intervene and proceed with the action. If the government declines to intervene, the relator still retains the right to independently proceed with the action.

If the government intervenes, the relator generally receives 15 to 25 percent of the government’s recovery in the event of settlement or judgment in favor of the United States; the relator may receive



25 to 30 percent of the recovery when the government declines to intervene. In addition, the relator is entitled to a separate award for reasonable attorney's fees and costs.

### **Recent Amendments to the Federal Civil False Claims Act**

On May 20, 2009, President Obama signed legislation containing a number of significant amendments to the FCA and its *qui tam* provisions. These amendments, which are part of FERA, increase the reach of the FCA in several important ways, including at least one that may materially change how research institutions deal with cost charging problems that they discover in connection with their federal grants or contracts.

The new amendments make a number of changes to the substantive liability provisions of the FCA. These changes may be summarized briefly as follows:

- (1) The amendments create new FCA liability for knowingly concealing or knowingly and improperly avoiding an obligation to pay money to the government, including an obligation arising from "the retention of any overpayment." This potentially important provision will be discussed in more detail below.
- (2) The amendments provide that FCA liability may attach where a false statement is "material to" a government payment of the claim, and the amendments eliminate the statutory requirement that the statement be made "to get" the claim paid. This change is intended to overrule the Supreme Court's decision in *Allison Engine Co. v. United States ex rel. Sanders*, 553 U.S. 662 (2008), which held that in order to establish liability under former subsections (a)(2) and (a)(3) of the FCA, the government or relator had to show that the defendant submitted the false claim *specifically intending* that the U.S. government itself pay the claim. Now, the government or relator must show only that the false claim or statement had "a natural tendency to influence" or was "capable of influencing" the payment of the claim. Importantly, this change applies retrospectively to conduct pre-dating the enactment of the amendments.
- (3) The amendments eliminate the "presentment clause" under former subsection (a)(1), which required proof that the false claim be presented to an officer or employee of the U.S. government. The amended statute's definition of a claim now reaches not only those claims made to the U.S. government, but also those made to a recipient of federal funds if the money or property provided to the recipient will "be spent or used on the government's behalf or to advance a government program or interest," and if the government has provided or will reimburse the recipient for any portion of the money or property requested or demanded (as excerpted above).
- (4) The amendments expand the anti-retaliation provision to include claims brought not only by employees, but also by contractors or agents of the federal recipient, for any manner of discrimination "in the terms and conditions of employment" in response to that person's efforts "to stop" violations of the FCA.

The amendments also make several procedural changes to the FCA, including:

- A provision that allows the government's intervention in a *qui tam* action—including the government's addition of new claims—to “relate back” for statute of limitations purposes to the filing date of the relator's original complaint. This provision overrules a decision in *United States v. Baylor University Medical Center*, 469 F.3d 263 (2d Cir. 2006).
- Expansion of the Civil Investigative Demands (“CID”) provision, which grants DOJ broad discretion to share information obtained through the CID process with other federal, state, and local government agencies and their contractors, and with any *qui tam* relator and his or her counsel, thereby removing procedural hurdles that previously limited the use of CIDs in the investigation of *qui tam* allegations.
- A provision that allows the government or *qui tam* relator to serve the complaint, other pleadings, or any other written disclosures, while they remain under seal, on state or local government authorities charged with investigating and prosecuting such actions where the state or local government is named as a co-plaintiff with the United States.
- A provision making these three procedural amendments applicable to cases pending on the date of enactment.

Of particular interest to federal research institutions is the provision making it a violation of the FCA to avoid or conceal an obligation to pay or transmit money to the federal government. In full text, the new provision states that any person who “knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government” is liable under the damages and penalty provisions of the FCA.

It may take years and many court decisions to fully clarify the meaning of this provision. Some are interpreting it to impose heightened disclosure and repayment obligations on federal grantees and contractors who come across evidence of possible overcharges in connection with their federal awards. Although the provision is often referred to as the “overpayments” provision, the words of the provision extend not just to overpayments, but to any “obligation to pay or transmit money or property” to the federal government. “Obligation” is defined as an established duty, whether or not fixed, that arises from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

These provisions raise several important unanswered questions, including the following:

- (1) What is an “overpayment”? It seems clear enough that an overpayment occurs when a federal agency makes a payment to a grantee or contractor in an amount that exceeds what the grantee or contractor requested. For example, an inadvertent government payment of \$50,000 on an invoice of only \$40,000 would almost certainly be considered an overpayment of \$10,000. The term could be read more broadly, however, to cover any instance in which a grantee or contractor receives a payment in excess of what it was entitled to receive. For example, if a university receives \$100,000 under a federal grant as reimbursement for costs allocable to the grant, and later learns that \$25,000 of those costs were not allowable or not allocable to the grant, has the university received an “overpayment” in the amount of \$25,000?

- (2) Does the existence of a government overpayment, without more, give rise to an “obligation to pay or transmit money or property” to the government?
- (3) How much or how little knowledge of an obligation must an institution have in order to be deemed to have “knowingly” concealed or improperly avoided the obligation? Must the institution have investigated the facts and determined with some degree of certainty that an overpayment has been made, and its amount? Or is the provision triggered by general knowledge that an overpayment in some amount may have occurred, or has probably occurred?
- (4) What conduct constitutes “concealment” of an obligation? Is a failure to disclose the obligation in itself a concealment? Does a failure to investigate constitute concealment? Or must there be some affirmative “covering up”? If an overpayment is corrected without a disclosure to the government, can the obligation still be deemed to have been concealed?
- (5) Liability for avoiding or decreasing an obligation exists only where a person has acted “knowingly and improperly.” What does “improperly” mean in this context? One aspect of the legislative history of the overpayments provision is positive from the perspective of research institutions that receive federal funding through sponsoring agency “letters of credit.” The letter of credit process allows recipients to take cash drawdowns as needed to cover their estimated expenditures, with periodic (usually quarterly) transaction reports based on actual expenditures recorded in the accounting system of the institution. If drawdowns exceed actual expenditures in one quarter, an adjustment is made to reduce drawdowns accordingly in the following quarter. Until that adjustment is made, the recipient has technically received and retained an overpayment. However, a floor statement by Rep. Dan Maffei (D-NY) during the U.S. House of Representatives’ consideration of the amendments made it clear (at least from the perspective of one legislator) that the overpayments provision was not designed to “impose liability on a research institution or hospital for holding on to overpayments at a time when the applicable rules would allow them to do so pending repayment through the normal process,” including reconciliation processes established under the “statutes, regulations and rules that govern . . . various research grants and programs.” A similar statement by Sen. Jon Kyl (R-AZ) made it clear that the word “improperly” was inserted in the new obligation provision to recognize that some overpayments, including those held in due course during the period before a government proscribed reconciliation, are properly held and should not be subject to liability.

It remains to be seen whether and to what extent the overpayments provision will affect the response of a research institution that discovers possible overcharges to a federal grant or contract. It seems reasonable, however, to conclude that the provision should result in institutions considering whether a failure to investigate possible overcharges, or a failure to correct or disclose them, might be viewed as a concealment or avoidance of a federal obligation under the newly amended FCA.<sup>8</sup>

## **Mandatory Disclosure of Certain Criminal Activity, Fraud, or Overpayments in Sponsored Research**

Other federal laws now mandate disclosures of overpayments in certain circumstances. Importantly, with the exception of ARRA-funded projects, these laws apply in the context of procurement contracts as opposed to grants. Nonetheless, the new mandatory disclosure policy has significant implications for universities and research institutions. In addition to grants and other assistance agreements, many universities and research institutions hold procurement contracts with the federal government. Indeed, a significant number of universities and research institutions frequently are ranked within the top 100 recipients of federal government contracts in terms of dollar value.<sup>9</sup>

For many years, the government stressed the importance of its contractors making “voluntary disclosures” when they identify significant non-compliance.<sup>10</sup> That focus on voluntary disclosure changed on November 12, 2008, when the Federal Acquisition Regulation (“FAR”) <sup>11</sup> Council issued a final rule that caused federal contractors to reassess their fundamental approach to compliance and disclosure.<sup>12</sup> This new rule, which became effective on December 12, 2008, requires organizations that hold government contracts to notify the government whenever they have “credible evidence” of a violation of certain federal criminal laws, a violation of the FCA, or the receipt of a significant government overpayment. The penalties for failing to disclose apply to all federal government contracts, including contracts held by universities and research institutions. (The rule also requires certain organizations to develop comprehensive ethics awareness and compliance programs and internal control systems to prevent, detect, and eventually report criminal and other improper conduct.<sup>13</sup>)

Under the terms of the rule, institutions that hold government contracts are now subject to potential suspension or debarment for a “knowing failure” by a “principal” to “timely disclose” to the government “credible evidence” of (1) a violation of federal criminal law involving fraud, conflict of interest, bribery, or improper gratuity under Title 18 of the U.S. Code; (2) a FCA violation; or (3) a significant overpayment, in connection with the award, performance, or closeout of a government contract or a subcontract thereunder.

The rule also imposes a contractual requirement (FAR clause 52.203-13) for contracts and subcontracts valued at more than \$5 million and with a performance period of at least 120 days (regardless of contract type or place of performance) to disclose to the appropriate agency Office of Inspector General (OIG) whenever the organization has credible evidence of (1) a violation of federal criminal law involving fraud, conflict of interest, bribery, or improper gratuity under Title 18 of the U.S. Code; or (2) a civil FCA violation, in connection with the award, performance, or closeout of a federal government contract.

Compliance challenges include the following:

- “Principal” is defined as “an officer, director, owner, partner, or a person having primary management or supervisory responsibilities with a business entity.” The rule provides examples, such as a general manager, plant manager, and head of a subsidiary, division, or business segment. Although the FAR council’s commentary does not specifically address the term “principal” in the context of a federal research project, it does indicate that the term “principal” should be interpreted broadly to include compliance officers, directors of internal audit, and “other positions of responsibility.”

- The phrase “credible evidence” is not defined, but the rule does note that it is a higher standard than “reasonable grounds to believe” and also explains that an institution may take some time to assess whether disclosure is necessary.
- The phrase “significant overpayment” is not defined, and federal agencies may have different quantifications of “significant overpayment”.
- The requirement to disclose credible evidence of a civil FCA violation is one of the most troublesome aspects of the new rule. The elements of the FCA, especially as applied to specific factual scenarios, often are interpreted differently by both the courts and attorneys who regularly practice in the area.

Note that suspension or debarment under the FAR has a reciprocal effect on federal nonprocurement transactions (i.e., grants and cooperative agreements).<sup>14</sup> Specifically, if an organization is suspended or debarred from receiving government contracts pursuant to the FAR’s mandatory disclosure provisions, the organization could also be excluded from receiving federal grants and other federal assistance agreements under the government-wide rules applicable to nonprocurement transactions. Therefore, noncompliance with the new rule’s requirements applicable to government contracts could have severe implications for an institution’s ability to obtain grants, cooperative agreements, and other forms of federal assistance.

In addition to the FAR mandatory disclosure requirement, ARRA<sup>15</sup> contains several transparency and accountability requirements for ARRA awards, including grants, cooperative agreements, and contracts. One of these accountability requirements is similar to the FAR mandatory disclosure rule: an institution that participates in an ARRA-funded project “shall promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.”<sup>16</sup> This affirmative obligation raises many of the same challenging issues discussed above.

### **Enforcement Trends and Hot Button Issues**

The potential for government enforcement action is particularly concerning at a time when institutions are facing significant financial burdens and pressures to reduce staff. Research administration is a complex endeavor, with constantly changing regulations, inconsistencies among various federal sponsors, and, at many institutions, an infrastructure that struggles to keep pace with sponsors’ ever growing compliance expectations. It is, therefore, important to address some of the FCA-related enforcement trends in the sponsored research area, and we do so in this section.

As an initial point, it should be noted that FCA enforcement actions are initiated in a variety of ways. Many of the recent settlements began as formal whistleblower actions, filed under the *qui tam* provisions of the FCA. But not all FCA actions come in the form of formal whistleblower lawsuits. Some recent FCA actions against universities have been prompted by informal whistleblower actions—e.g., “concerned university employees”—that provide tips to law enforcement agencies. Other FCA actions commence through a referral by a government auditor or by a sponsoring agency. To the extent the government is stepping up its audit function (e.g., under ARRA awards) it may be that more fraud referrals will be made as a result of such audits. Finally, voluntary disclosure by the



awardee to the government also sometimes is the impetus for an FCA action, and this only reiterates the complicated nature of a disclosure decision.

In addition to significant financial payments, which may include financial penalties, a violation of the FCA or the settlement of alleged FCA violations may lead to:

- Negative publicity
- Additional audits and disallowances
- Federally-monitored institutional compliance programs
- Placement on “watch status”, which reduces flexibility to administer an award
- Suspension or termination of an award
- Special terms and conditions placed on all awards
- Reduced flexibility in the management of federally-provided assets

Effort reporting is the most common focus of FCA enforcement in the sponsored research financial and administrative area. As reflected in Appendix A, in some form or fashion effort reporting has been a focus in most of the FCA settlements over the past several years. If effort reporting is Issue No. 1, then cost transfers are probably Issue No. 1(a). Other “hot button” financial issues potentially leading to FCA or fraud allegations include effort commitments, improper salary supplementation, cost sharing, direct charging of administrative costs, and internal recharge and service center costs.<sup>17</sup>

The following points outline some of the possible theories that the government might advance in support of a FCA claim in several of the above-referenced areas.<sup>18</sup> In-depth discussion of these points is beyond the scope of this paper, and for purposes of these items we assume some basic familiarity with federal grant financial and accounting rules.

Faculty members could be accused of overstating their effort on federal research grants, and thereby overcharging the government, in a variety of ways, including the following:

- Prof. Jack's effort on Grant A is unsupported because there is no effort report to document that the effort was expended
- Prof. Jen's effort on Grant B is overstated because she thought new proposal writing effort may be counted as grant effort
- Prof. Joe attributes Grant C effort to Grant D because Grant C is out of funds
- Prof. John overstates effort on Grant E because he needs the grant salary support in order to maintain his full salary
- Prof. Jane overstates effort on Grant F because she failed to review the pre-printed effort percentage on the effort form before signing it
- Prof. Jeff's effort on Grant G is overstated because the certification was signed by an administrator who had no knowledge of Prof. Jeff's true effort
- Prof. Judy's effort on Grant H is misstated on her summer effort report, because the work was actually done during the academic year

As another example of how fraud allegations develop, consider the concept of abusive grant cost transfers:

- Transferring costs from Grant A to Grant B to clear a deficit on Grant A
- Transferring costs from Grant C to Grant D because Grant D's funds need to be used up before Grant D expires
- Charging Grant E for Grant F costs that Grant F will not allow

Fraud allegations also develop as a result of direct charging practices at institutions, including:

- Charging Grant A for the salary of an Administrative Assistant when the university typically charges clerical and administrative salaries as indirect costs and there is no budget justification for charging clerical and administrative salary as a direct cost
- Charging Grant B salaries that represent the proposal development effort of Prof. John (writing, editing, copying, and mailing proposals)
- Charging Grant C for copying journal articles of general interest in Prof. Judy's field
- Charging Grants D, E, and F, which have no extraordinary demands for administrative support, for paper, pens and envelopes designed for general office use
- Charging Grant G for basic computer set-up, network usage, and wireless service costs

Failure to meet cost sharing requirements also may lead to fraud allegations:

- University proposes to cost share the salary of Prof. Judy who is working on Grant A, and Prof. Judy devotes 10% effort to Grant A, but does not report any effort to Grant A on her effort report
- Prof. Jeff proposes to purchase a new piece of special-purpose equipment as a direct project cost on Grant B and identifies that equipment as cost sharing in his proposal; however, this equipment cost is never recorded as a cost sharing commitment in the institution's financial system
- Prof. John proposes to spend 40% of his effort on Grant C but to charge only 20% of his salary to the project; the remaining 20% is not tracked or recorded as cost sharing in the institution's effort reporting system

Also consider the common use of internal service providers at universities and the compliance challenges associated with appropriate service rate charges to grants based on actual costs. Fraud allegations arise as follows:

- Intentional accumulation of surplus funds in an animal service facility and use of the funds for unrelated purposes (e.g., to renovate academic offices)
- Improper classification of inventory as an actual expense in the development of a recharge rate when the inventory was not used during the year of purchase
- Inclusion of unallowable computing costs in the calculation of a recharge rate

- Omission to analyze and adjust billing rates at least once every two years, thereby maintaining rates at too high of a level

The root causes of the foregoing problems are many and beyond the scope of this paper. However, among the contributing factors could be a misunderstanding the applicable rules, lack of training, inadequate policies and procedures, lax administration, confusing forms, or inadequate infrastructure.

### **Impact of ARRA on Fraud Allegations, Audits, and Federal Agency Reviews**

ARRA allocated \$787 billion to help stimulate the nation's economy, including \$275 billion in federal research and development funding.<sup>19</sup> ARRA also provided separate appropriations to agency Inspectors General and the Government Accountability Office ("GAO") to monitor stimulus spending. So far, the federal Inspectors General and the new Recovery Accountability and Transparency Board ("Recovery Board") have received over 3,800 complaints of wrongdoing associated with ARRA funds; 424 have triggered active investigations. In addition, federal Inspectors General have completed close to 700 reviews of recipient activity involving ARRA funds.<sup>20</sup>

The immense quantity of ARRA funds, the enhanced ARRA protections for whistleblowers, the administrative demands characteristic of ARRA awards, and the additional federal scrutiny, through ARRA audits and reviews, converge to present significant potential for fraud referrals.

President Obama reiterated the government's commitment to oversight of ARRA funds in an Executive Memorandum in which he stated that the administration is "committed to transparency in tracking recovery dollars and to elimination of waste, fraud, and abuse by recipients of hard-earned taxpayer dollars."<sup>21</sup> The President called on federal agencies to intensify efforts to identify non-compliant ARRA recipients, and to take action to respond to instances of non-compliance.<sup>22</sup> Such responses have included:

- Termination of awards
- Measures such as suspension or debarment
- Rescission of ARRA funds from recipients
- Implementation of punitive actions (including FCA enforcement)

To police ARRA funds, the Office of Inspector General ("OIG") within each of the thirty federal agencies that distribute ARRA funds continually reviews recipient management of ARRA awards. The Recovery Board received approximately \$84 million in funding to oversee the audit activities of the OIGs with respect to these funds.<sup>23</sup> The OIG reviews are designed to assess recipient internal controls. Institutions with ARRA funds can expect significant activity in 2011 in the form of capacity or capability reviews, and traditional audits.

Each federal agency OIG has developed a published work plan for carrying out the ARRA reviews. For example:

- The National Science Foundation (NSF) OIG has indicated that its approach is proactive and will be carried out in phases, including an inward review of its own monitoring and controls

within the agency. NSF OIG will conduct approximately ten outward capacity or capability reviews looking at recipients' internal controls and system capabilities to support new funds and new reporting requirements. Burn rates and jobs data are also being assessed to ensure that spending and supported jobs are consistent with the aims of the stimulus funds. The NSF OIG also will conduct traditional financial audits of its ARRA recipients.<sup>24</sup>

- The Department of Health and Human Services (DHHS) OIG will employ a risk-based approach for oversight of ARRA funds. Like NSF, it will review recipient internal controls and assess the likelihood and magnitude of recipient vulnerabilities. DHHS OIG will, however, not conduct "capacity reviews". Rather, traditional audits will be performed to examine the accuracy of data reported by ARRA recipients. The audits may focus on factors such as the amount of the award, award dates, instances where the expenditures reported are greater than the amount awarded, inconsistent spending patterns, and an unreasonably high numbers of reported jobs created.<sup>25</sup>

The scrutiny over ARRA sponsored research funds has put recipients in a challenging position. The immediate focus of ARRA recipients had been on hurriedly meeting ARRA deadlines to report information on jobs created, job retained, etc. But now recipients must prepare to respond to extensive audits or even potential OIG reviews. Some suggested practices to prepare for these ARRA accountability reviews and audits include:

- Plan to assign additional resources—e.g., both legal and non-legal staff—to an ARRA audit
- Understand the special contractual terms and conditions attendant to ARRA awards versus non-ARRA awards
- Encourage administrators to maintain appropriate ARRA award documentation, including institutional policies or procedures that are up-to-date and reflect ARRA-specific compliance
- Encourage administrators to consider internal reviews or departmental self-reviews, in cooperation with inside counsel, to assess capacity and capability

### **Compliance Strategies in Sponsored Research**

The foregoing discussion suggests that institutions of higher education should be attentive sponsored research risk mitigation strategies. Research volume and complexity are mounting, and federal guidelines have become more rigorous. Noncompliance, particularly those situations involving allegations of fraud, can seriously damage the institution's research mission.

An extended appraisal of compliance strategies is beyond the scope of this paper. However, following is a broad list of sponsored research compliance program elements, which was developed by NIH in an effort to promote voluntary compliance programs among recipients of NIH awards:

- Compliance Leadership: Designating a compliance officer and compliance oversight committees
- Policies and Procedures: Implementing written policies and procedures that foster an institutional commitment to stewardship and compliance
- Roles and responsibilities: Defining roles and responsibilities across the institution and assigning oversight responsibility
- Training: Conducting effective training and education



- Communication: Developing effective lines of communication
- Monitoring: Conducting internal monitoring, quality review, auditing, and assurance
- Enforcement: Enforcing standards through well-publicized disciplinary guidelines
- Corrective Response: Responding promptly to detected problems, undertaking corrective action, and reporting to the appropriate agencies

### **Conclusions**

Given the growing complexity of applicable regulations, mandatory disclosure requirements, and the recent amendments to the FCA, it seems reasonable to infer that federal enforcement activity in the sponsored research area will continue to be a risk to colleges and universities for some time. The enforcement trends identified in this paper—and issues regarding effort reporting, cost sharing, direct charging, cost sharing, and similar issues—are consistent risk areas for most research institutions. To mitigate this risk profile, institutional counsel and administrators must understand and appreciate the primary areas of legal exposure in the sponsored research area.

**Appendix A**  
**Sample False Claims Act Settlements and Enforcement Actions**

| <b>August 2010</b>                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services, NIH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Description</b>                    | Whistleblower alleged that the principal investigator and university made false statements in a T32 fellowship training grant application and submitted progress reports containing false information. For example, the whistleblower claimed that the training curriculum described in the grant application was not adequately implemented; the allocation between research and clinical work was inaccurately described in the grant application; contrary to the grant application, the majority of patients seen by fellows were not HIV-positive; the grant application indicated clinical resources that the principal investigator never employed; and the progress reports failed to identify significant programmatic changes. A federal judge denied University's motion for summary judgment (and motion for reconsideration) and rejected University's argument that the government was not damaged. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• False statements in grant application and progress reports</li> <li>• Failure to report significant changes</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Ordered to pay \$887,714 in damages and penalties</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

| <b>January 2010</b>                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | National Science Foundation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Description</b>                    | NSF alleged that University violated the False Claims Act by failing to adequately document several charges, including salary charges and cost sharing under a \$2.5 million cooperative agreement. The institution admitted that it did not have an effort reporting system, and did not properly document several direct expenditures, including those related to its cost sharing obligations.                                                                                                                                                                                                 |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Effort reporting</li> <li>• Cost sharing</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• \$500,000 paid to the government</li> <li>• University entered into a Compliance Agreement and agreed to establish a grant compliance program that included written policies and procedures applicable to NSF awards, a code of conduct, accurate charging of costs, managing and reporting cost sharing, monitoring of subrecipients and consultants, and document management and retention. University also agreed to perform an independent annual audit of its compliance with the Compliance Agreement (in addition to the A-133 audit).</li> </ul> |

| September 2009                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services, HRSA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Description</b>                    | University received grant funds from HRSA for a Health Careers Opportunity Program (HCOP). The HCOP grant funds were intended to be used by University to increase the participation of disadvantaged students in the health care field. Instead, as reported under OIG's Provider Self-Disclosure Protocol, the Director of University's HCOP program allegedly diverted a portion of the HCOP funds for personal use. In addition, the Director allegedly made other improper grant disbursements as a result of her failure to document the eligibility of students participating in the HCOP program. In conjunction with the settlement agreement, the HHS agreed to provide University with a suspension and debarment release as part of a separate administrative agreement. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Cost allowability</li> <li>• Cost allocation</li> <li>• Grant oversight</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• \$611,117 paid to the government</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

| June 2009                             |                                                                                                                                                                                                                                                                                                    |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Defense<br>Department of Energy<br>National Science Foundation                                                                                                                                                                                                                       |
| <b>Description</b>                    | The government alleged that University improperly charged supplemental faculty compensation to federal awards. The government also asserted that administrative stipends were improperly included in institutional base salary and that summer compensation exceeded the maximum permissible rate. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Supplemental compensation</li> <li>• Institutional base salary</li> <li>• Administrative stipends</li> <li>• Summer salary</li> </ul>                                                                                                                     |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• \$636,500 paid to the government</li> </ul>                                                                                                                                                                                                               |

| March 2009                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services, NIH<br>Department of Defense                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Description</b>                    | Allegations of false statements in University's grant applications were brought to the attention of the government through a whistleblower. The <i>qui tam</i> complaint alleged that University defrauded the government and made false statements to NIH and DOD because the principal investigator failed to disclose the full extent of her various active research projects, and these omissions allegedly deprived the government of its ability to assess the researcher's ability to perform the proposed projects. The government took the position that University knew, or should have known, that its employee failed to fully disclose her active research projects in the grant applications, and that such employee's research commitments exceeded 100% of her available time. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Other support</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• \$2.6 million paid to the government</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

| December 2008                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | <p>Department of Health and Human Services, NIH</p> <p>Department of Defense</p> <p>National Science Foundation</p> <p>Department of Energy</p> <p>National Aeronautics and Space Administration (NASA)</p> <p>Several other federal agencies</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Description</b>                    | <p>University cooperated with federal authorities in a broad, multi-year investigation of federal research grant accounting going back to 1999. Authorities alleged that University mischarged federal grants through improper cost transfers designed to “spend down” grant funds, and through inaccurate and overstated effort reports that resulted in salary overcharges to federal awards. For example, the government alleged that University researchers submitted effort reports for summer salary that wrongfully charged 100 percent of summer effort to federal grants, when researchers expended significant effort on other work. University acknowledged that charging errors occurred, but University disagreed with the government on both the nature and extent of the errors.</p> |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Cost transfers</li> <li>• Effort reporting</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• \$7.6 million paid to the government</li> <li>• University significantly strengthened and improved its research compliance administration and infrastructure, which included several upgrades to its cost accounting and effort reporting system, and the issuance of revised and updated policies and procedures related to federally sponsored research</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                       |

| July 2008                             |                                                                                                                                                                                                                                                                          |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | <p>Department of Health and Human Services, NIH, CDC</p> <p>Department of Housing and Urban Development (HUD)</p>                                                                                                                                                        |
| <b>Description</b>                    | <p>A former dean filed a “whistleblower” False Claims Act lawsuit alleging that the School of Public Health allowed faculty to improperly charge additive or supplemental compensation to federal grants and failed to maintain an adequate effort reporting system.</p> |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Supplemental compensation</li> <li>• Effort reporting</li> </ul>                                                                                                                                                                |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• \$1 million paid to the government</li> <li>• University agreed to increased scrutiny of federal research compliance as part of its annual A-133 audit process</li> </ul>                                                       |

| January 2007                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services, NIH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Description</b>                    | Prosecutors alleged that the Institution drew down over \$5 million in federal grant money for costs that were not eligible for reimbursement, and submitted false financial reports on its drawdowns. This investigation grew out of a previous investigation settled in February 2000 where the Institution agreed to pay \$5 million to settle a federal lawsuit alleging that it improperly spent millions of dollars in federal funds between 1991 and 1994.                                                                                                                                                                                                                                               |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Cost allowability</li> <li>• Cost allocation</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• \$3.2 million paid to the government (\$2.3 million paid by former officers and trustees; \$500,000 paid by outside auditing firm to resolve negligence claims related to its audits of the Institution; \$400,000 paid by a financial services firm to resolve civil claims arising from its corporate financial advice to the Institute)</li> <li>• The Institution declared bankruptcy in 2004 and is no longer operating</li> <li>• The settlement does not release any of the parties from criminal prosecution, tax proceedings, or employee claims</li> <li>• None of the parties admitted liability or wrongdoing in connection with the settlement</li> </ul> |

| April 2006                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Energy                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Description</b>                    | Former employee brought False Claims Act suit alleging that University had violated the terms of a Cooperative Agreement it had with the Dept. of Energy from 1990 to 2002. Under the \$24 million Agreement, University was to use the funds to train a minority workforce in environmental sciences, but the University acknowledged that its employees made errors in accounting, reporting, and program operation and therefore the University could have received funds that it was not entitled to receive.                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Cost allocation</li> <li>• Accounting</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Agreed to pay government \$5 million over a period of 5 years</li> <li>• Removed a University official from any role in oversight of federal funds</li> <li>• Entered into a Compliance Agreement, which requires the University to: <ul style="list-style-type: none"> <li>– Develop written policies regarding its federal grants and contracts compliance program</li> <li>– Hire a Chief Compliance Officer</li> <li>– Establish and certify a Compliance Program;</li> <li>– Conduct annual A-133 audits</li> <li>– Report any findings or questions costs under the audits within 30 days and initiate remediation within 60 days</li> <li>– Expand training for all employees</li> <li>– Establish confidential disclosure program for employees to report problems</li> <li>– Provide annual reports to DOE on a variety of issues; and</li> <li>– Retain documents and records for five years</li> </ul> </li> </ul> |

| January 2006                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | EPA, Defense, Commerce, Agriculture, Education, Energy, Interior, Transportation, Health and Human Services, NASA, and NSF                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Description</b>                    | The University cooperated with federal authorities after whistleblowers charged in a False Claims Act lawsuit that the University had been overbilling on multiple research grants. The settlement covered about 500 federal grants awarded between 1997 and 2004 to two campus centers. The University failed to regularly update its billing rate structure, resulting in numerous false claims submitted to government for payment. Principal Investigators were allowed to charge a portion of their summer salary to a grant, thereby exceeding the annualized salary amount. The University also failed to provide cost sharing as stipulated by the research grants.                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Cost sharing/matching</li> <li>• Recharge center billing rates</li> <li>• Excessive compensation (summer salaries)</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Paid \$1.7 million in actual damages and \$800,000 in penalties and entered into a Compliance Agreement</li> <li>• Required to maintain for at least 5 years a comprehensive compliance program, to be overseen by a Chief Compliance Officer</li> <li>• Must require that all offices with responsibility for federal grants maintain adequate budget and accounting records</li> <li>• Must provide annual training for faculty</li> <li>• Annual audits of office and departments engaged in federal research administration, any material problems must be reported to government within 60 days</li> <li>• Must create a confidential disclosure program where employees can anonymously report inappropriate practices or procedures.</li> <li>• Government has right to access university records and interview employees</li> <li>• Settlement papers expressly refer to this settlement as a False Claims Act settlement (thereby acknowledging the applicability of the FCA to a <i>state</i> university)</li> </ul> |

| December 2005                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Description</b>                    | University voluntarily disclosed improper billing over a period of six years for physician services and hospital outpatient and inpatient care for Medicare and Medicaid patients participating in clinical cancer treatment trials when some or all of those services were not reimbursable as routine care costs associated with clinical trials, and the costs had already been covered by the research grants. University could have been subject to double damages under the False Claims Act, but because of its voluntary disclosure, University paid less and received a modified compliance agreement. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Billing clinical trial costs for physician services and hospital patient care to Medicare and Medicaid</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Paid \$1 million to government</li> <li>• For the next 3 years University is required to certify its compliance program for clinical cancer trials to DHHS</li> <li>• Required to establish new office "Research &amp; Clinical Trials Administration Office" to coordinate operational efforts</li> </ul>                                                                                                                                                                                                                                                             |

| June 2005                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services, NIH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Description</b>                    | In a False Claims Act suit, a whistleblower alleged that over an 8 year period, the full salaries of nurses, laboratory technicians, and other workers had been paid with NIH grant dollars, even though some of the employees were not involved in the research at all and others did not work full time on the project. It was also alleged that the school had double-billed Medicaid for certain services charged to the grant and had allowed a single researcher and one division to receive all of the grant money, even though the grant was supposed to support research in a broad range of scientific disciplines. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Effort reporting</li> <li>• Payroll distribution</li> <li>• Cost allocation</li> <li>• Double billing Medicaid</li> <li>• Allowing one investigator to use all federal funds in violation of grant guidelines</li> </ul>                                                                                                                                                                                                                                                                                                                                                             |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Paid \$4.38 million to government</li> <li>• Court and settlement documents are under seal</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

| May 2005                              |                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services, NIH, and other federal agencies                                                                                                                                                                                                                                                                                                                                        |
| <b>Description</b>                    | Under the False Claims Act, whistleblower brought suit alleging that Institution routinely took federal money that was supposed to be used for specific research projects and allocated it to other projects that were running short of money, thereby allowing the Institution to avoid refunding unused grant money, as required by law.                                                                      |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Cost allocation</li> <li>• Cost transfers</li> <li>• Inadequate accounting systems</li> </ul>                                                                                                                                                                                                                                                                          |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Paid \$6.5 million to government.</li> <li>• Court and settlement documents are under seal</li> <li>• DOJ press release stated that the investigation showed systemic problems in Institution's grant administration – "an accounting system that could not monitor and manage charges made to federal grant awards in the manner required by federal law."</li> </ul> |

| April 2005                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services, NIH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Description</b>                    | Former University compliance officer and physician filed suit under the False Claims Act alleging that University and affiliated physician practice group had misled the Medicare program and NIH by unlawfully billing federal health care programs for services that also were billed to sponsors of research trials; submitting Medicare claims that it lawfully could bill only to the public or private sponsors of the research trials; incorrectly reporting "Other Support" by overstating or misstating the percentage of effort that investigators worked on a grant or contract and failing to properly disclose nonfederal research activities, including those that overlap with the grant or contract applied for; basing claims for payment on documents that could not be reliably used to estimate percentage of investigators' institutional-based effort devoted to a particular federal-funded projects; failing to maintain adequate systems to reconcile effort commitments with actual effort.                                                                                                                                   |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Double billing to Medicare and federal research projects</li> <li>• Effort reporting</li> <li>• Other support</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Paid \$3.39 million to government.</li> <li>• Required to adhere to new compliance program led by Compliance Officer and Compliance Committee for 3 years which includes: <ul style="list-style-type: none"> <li>– New code of conduct for all employees and policies and procedures regarding compliance with federal programs;</li> <li>– Annual training for all persons involved in federal health care services and persons who submit claims for federal reimbursement;</li> <li>– University must maintain internal audit department and method for employees to disclose problems which will be reviewed by Compliance Officer;</li> <li>– University must have policy to identify ineligible persons who are excluded from federal programs;</li> <li>– Prompt notification and repayment of any overpayments;</li> <li>– Each entity must submit a certified annual report on its compliance efforts;</li> <li>– OIG shall have access to books, records and employees as required to monitor compliance; and</li> <li>– Each entity must maintain all records for four years</li> </ul> </li> </ul> |

| February 2005                         |                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Energy                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Description</b>                    | A 2003 audit found that the university had not properly documented whether faculty members had spent the percentage of time they had promised to spend on research projects financed by the grants. Government alleged that University improperly billed the government for scientists' time, travel, and administration expenses over a 10-year period on a single award dating back to 1995 (and several smaller awards). |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Effort reporting</li> <li>• Payroll distribution</li> <li>• Administrative costs</li> <li>• Accounting system</li> </ul>                                                                                                                                                                                                                                                           |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Paid \$11.5 million to government</li> <li>• Court and settlement documents not available</li> </ul>                                                                                                                                                                                                                                                                               |

| October 2004                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Transportation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Description</b>                    | Former University Professor pleaded guilty to embezzling more than \$900,000 from federal research grants. From April 2000 to July 2004, the professor submitted claims for fraudulent stipend and tuition payments on behalf of companies in which he was a controlling owner; approved for payment invoices containing fictitious labor, equipment and consulting expenses and made false representations to establish unauthorized graduate student stipends and a tuition scholarship for spouses of University employees. University voluntarily disclosed the problem and agreed to work with the government to improve grant oversight.                                                                                                                                                                                                                      |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Conflict of interest</li> <li>• Procurement</li> <li>• Property management</li> <li>• Grant oversight</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Professor pled guilty in April 2005; in June 2005 he was sentenced to 38 months in prison and ordered to pay \$872,221 in restitution.</li> <li>• University entered into a \$1.8 million False Claims Act settlement with the government without admitting liability (which illustrates that even if an individual embezzles funds for personal gain, the employer is still subject to prosecution under the FCA)</li> <li>• DOT OIG conducted an extensive audit and required University to implement a comprehensive corrective action plan to improve internal controls and oversight, including detailed new procedures for administering federal grants which addressed subcontractor monitoring, program income, property management, billing/invoicing, stipends, tuition, audits, and effort reporting</li> </ul> |

| July 2004                             |                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services, NIH                                                                                                                                                                                                                                                                                 |
| <b>Description</b>                    | University disclosed to government that it had, along with an affiliated hospital, overcharged NIH research and training grants by seeking reimbursement for the salaries of researchers who did not work on the grant and/or, meet citizenship requirements, and for equipment and supplies not used on the grant projects. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Effort reporting</li> <li>• Payroll distribution</li> <li>• Cost allocation</li> <li>• Procurement and accounting system</li> </ul>                                                                                                                                                 |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Government pursued the case under the FCA (despite University voluntary disclosure)</li> <li>• University and affiliated institutions paid \$3.3 million to government which included an FCA penalty</li> </ul>                                                                     |

| February 2004                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services, NIH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Description</b>                    | Whistleblower brought charges under the False Claims Act that University had knowingly overcharged the government by overstating the amount of time researchers worked on federal research projects and in at least one case charging for more than 100% of an individual's salary. NIH found that University failed to maintain adequate compliance procedures to reconcile proposed and actual effort or charge correct fringe benefit amounts, and found that documents relied on when submitting claims were not reliable. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Effort reporting</li> <li>• Payroll distribution</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Paid \$2.6 million to government</li> <li>• University agreed to investigate and identify any other unallowable costs already submitted and make appropriate adjustments with federal agencies</li> </ul>                                                                                                                                                                                                                                                                             |

| February 2004                         |                                                                                                                  |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Energy                                                                                             |
| <b>Description</b>                    | Settled False Claims Act allegations of overcharges by lab staff in the mid-1990s.                               |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Cost allocation</li> <li>• Procurement and accounting system</li> </ul> |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• Paid government \$3.9 million</li> </ul>                                |

| February 2003                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services, NIH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Description</b>                    | Whistleblower brought suit under the False Claims Act alleging overcharging to federal grants and the government alleged that: University overstated faculty members' institutional base salaries in grant applications (i.e., including in IBS salary earned by clinical faculty from separate clinical practice plans, but failing to take clinical effort into account in effort reporting); overstated effort in applications and when drawing down funds; failed to maintain adequate compliance procedures to reconcile proposed and actual effort (i.e., recipients of NIH career development awards had not dedicated required percentage of effort to award); rebudgeted expenses on federal medical research grants without getting the required approval from the funding agency; based claims for funds on documents that were not reliable. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Effort reporting</li> <li>• Payroll distribution</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• University paid \$5.5 million to government</li> <li>• University agreed to investigate and identify any other unallowable costs already submitted and make appropriate adjustments with federal agencies</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

| June 2001                             |                                                                                                                                                                                                                                                          |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Agriculture                                                                                                                                                                                                                                |
| <b>Description</b>                    | Whistleblower brought suit under the False Claims Act alleging that University improperly diverted Dept. of Agriculture grant funds from one USDA grant program to another program, in violation of Section 44 of the Food and Agricultural Act of 1977. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Grant oversight</li> <li>• Cost allocation</li> </ul>                                                                                                                                                           |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• University paid \$140,000 to government</li> </ul>                                                                                                                                                              |

| November 1998                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Description</b>                    | Whistleblower filed suit under the False Claims Act alleging that the University illegally profited for over two decades by selling an unlicensed drug, which had purportedly been improperly tested on patients without their consent; the University failed to report income from the sales. The government also charged the University with inflating billing on 29 different federal grants, including charging labor costs for employees who did not work on the grants, and supply costs for supplies that were not used. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Cost allocation</li> <li>• Program income</li> <li>• Effort reporting</li> <li>• Procurement and accounting system</li> </ul>                                                                                                                                                                                                                                                                                                                                                          |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• University paid \$32 million to government</li> <li>• University implemented new grants management system</li> </ul>                                                                                                                                                                                                                                                                                                                                                                   |

| April 1997                            |                                                                                                                                                                                                                                                                                                 |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services                                                                                                                                                                                                                                                         |
| <b>Description</b>                    | Whistleblower brought False Claims Act suit and alleged that NYU had submitted false information to government when establishing its indirect cost rate, had improperly recovered indirect costs, and sought reimbursement for unallowable expenses such as entertainment and capital expenses. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Indirect cost rates</li> <li>• Cost allocation</li> </ul>                                                                                                                                                                                              |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• University paid \$15.5 million to government</li> </ul>                                                                                                                                                                                                |

| October 1994                          |                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Office of Naval Research                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Description</b>                    | Whistleblower brought False Claims Act suit alleging that University submitted inflated overhead costs and failed to comply with the government's rules regarding indirect cost accounting from 1981-1990. The allegations covered several complex accounting issues such as the allocation of utility costs, recovery for library expenses, accounting for administrative effort, and property management. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Indirect cost accounting</li> <li>• Property management</li> <li>• Accounting systems</li> <li>• Cost allocation</li> </ul>                                                                                                                                                                                                                                        |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• University paid \$1.2 million to the government</li> <li>• University reimbursed the government for certain questionable items</li> <li>• University thoroughly reviewed its system of internal controls</li> </ul>                                                                                                                                                |

| January 1993                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Funding Source</b>                 | Department of Health and Human Services                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Description</b>                    | University employee brought False Claims Act suit alleging that the University charged inflated rates to federal researchers for using the University's mainframe computers. Under grant agreements, the University had promised to charge federal researchers at "cost." The government alleged that the University should have adjusted downward the rates charged to federal users after the University's Computing Center underwent a major reorganization. |
| <b>Compliance Issues</b>              | <ul style="list-style-type: none"> <li>• Billing rates</li> <li>• Accounting systems</li> </ul>                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Settlement/Enforcement Actions</b> | <ul style="list-style-type: none"> <li>• University paid \$2.8 million to the government</li> <li>• University agreed to provide \$300,000 of free computing services to the government</li> <li>• University agreed to restructure its rates for computer usage</li> </ul>                                                                                                                                                                                     |

**Appendix B**  
**Table of Issues and Risks in Federally Sponsored Research**

| ISSUE                            | TYPES OF RISKS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Effort Reporting and Commitments | <ul style="list-style-type: none"> <li>• Institutional Base Salary (IBS) not clearly defined or consistently applied.</li> <li>• Faculty members with teaching/admin/clinical responsibilities charging 100% of salary to sponsored projects.</li> <li>• Effort dedicated to certain NIH “K” awards less than 75 percent of total professional effort.</li> <li>• Committed cost sharing not reported.</li> <li>• Effort certified by person without first-hand knowledge, and who did not use suitable means of verification.</li> <li>• Incomplete effort distributions.</li> <li>• Salary cap not considered.</li> <li>• Lack of accurate and timely effort reporting (no certifications exist).</li> <li>• Significant cost transfers.</li> <li>• Committed effort is greater than 100 percent.</li> </ul> |
| Cost Transfers                   | <ul style="list-style-type: none"> <li>• Insufficient documentation for cost transfers.</li> <li>• Significant number of late cost transfers (greater than 90-120 days after original charge).</li> <li>• Costs transferred from an account in overrun status to an account with large balance.</li> <li>• Significant number of cost transfers from departmental account to sponsored accounts.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                    |
| Direct Charging                  | <ul style="list-style-type: none"> <li>• Charges for normal administrative support inappropriately charged as direct costs.</li> <li>• Pens, paper, clerical salary, postage, memberships, etc. are direct charged to grants in normal circumstances as opposed to unlike circumstances.</li> <li>• Departmental charges distributed to multiple grants.</li> <li>• Departmental or institute business manager allocated to multiple grants.</li> <li>• Large research centers/institutes fail to distinguish unlike circumstances and charge administrative costs as direct costs.</li> </ul>                                                                                                                                                                                                                 |
| Cost Sharing                     | <ul style="list-style-type: none"> <li>• Mandatory cost sharing commitments are not met.</li> <li>• Unallowable/inappropriate charges used to meet cost sharing commitments.</li> <li>• Effort certification system does not verify cost sharing charges.</li> <li>• University does not record and maintain documentation for reporting the cost sharing to the funding agency.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                    |

| ISSUE                       | TYPES OF RISKS                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Recharge or Service Centers | <ul style="list-style-type: none"> <li>• Recharge center intentionally generates operating surpluses.</li> <li>• Recharge center billing rates not based on actual cost.</li> <li>• All users not charged for services.</li> <li>• Recharge center not billing all users consistently.</li> <li>• Recharge center billing rates include unallowable costs in billing rates.</li> <li>• Rates not reviewed periodically.</li> <li>• Rates include cost of capital equipment.</li> </ul> |
| Subrecipient Monitoring     | <ul style="list-style-type: none"> <li>• Lack of internal controls related to subawards.</li> <li>• Lack of A-133 certification documentation.</li> <li>• Unallowable costs or lack of cost sharing documentation on subawards.</li> </ul>                                                                                                                                                                                                                                             |

<sup>1</sup> Most states have parallel state false claims act laws as well.

<sup>2</sup> Patricia Meader and Elizabeth S. Warren, *The False Claims Act: A Civil War Relic Evolves into a Modern Weapon*, 65 TENN. L. REV. 455 458 (Winter 1998).

<sup>3</sup> *Id.* at 461.

<sup>4</sup> Pub. L. No. 111-21, 123 Stat. 1617 (2009). Before FERA, the liability provisions of the FCA were codified at 31 U.S.C. § 3729 (a)(1) through (a)(7). FERA recodifies those sections at 31 U.S.C. § 3729(a)(1)(A-G).

<sup>5</sup> Pub. L. No. 111-148 (2010).

<sup>6</sup> *Id.* § 3729(a)(1).

<sup>7</sup> *Id.* § 3729(b)(1).

<sup>8</sup> Also note that hidden in the sweeping health care legislation signed into law March 23, 2010 are two amendments that could significantly increase the number of whistleblower-driven lawsuits in the federal courts. On March 21, 2010, when the House passed H.R. 3590, the “Patient Protection and Affordable Care Act,” adopting the Senate’s version of the bill, it also adopted amendments narrowing the “public disclosure bar” to *qui tam* actions whistleblowers file under the. This significantly alters the balance struck—from 1986 until now—between ensuring that only true whistleblowers can pursue FCA litigation on behalf of the federal government and protecting defendants and the United States against parasitic lawsuits. See “Health Reform Legislation Includes Significant Amendments to the False Claims Act and the Anti-Kickback Statute”, Jonathan Dieneshaus, Stephen J. Immelt, Michael C. Theis, Mitchell J. Lazris, Jessica L. Ellsworth, Hogan Lovells Update (March 2010).

<sup>9</sup> See data presented at <http://www.fedspending.org>, which was compiled using the government’s Federal Procurement Data System.

<sup>10</sup> See DoD Voluntary Disclosure Program, <http://www.dodig.mil/inspections/vdprogram.htm>

<sup>11</sup> The FAR is located in Title 48 of the Code of Federal Regulations.

<sup>12</sup> 73 Fed. Reg. 67,064, 67,064-67,093 (Nov. 12, 2008).

<sup>13</sup> For contracts valued at more than \$5 million and with a performance period of 120 days or more, the new rule imposes “internal control” requirements that may extend beyond an organization’s government contracts-related work. For example, the rule requires reviews of “business practices, procedures, policies, and internal controls for compliance with the [organization’s] code of business ethics” and “reasonable efforts” not to include as principals any individuals for which “due diligence would have exposed as having engaged in conduct that is in conflict with the institution’s code of business ethics and conduct.” 73 Fed. Reg. at 67,064; FAR 52.203.13(c)(2)(i)(B), (C).

<sup>14</sup> 68 Fed. Reg. 66,535, 66,546 (Nov. 26, 2003).

<sup>15</sup> Pub. L. 111-5, 123 Stat. 115, 215 (February 17, 2009).

<sup>16</sup> *Id.*

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<sup>17</sup> Even outside government enforcement actions, private sector allegations of fraud in university research are trending upward. Recently, three universities were in federal court defending actions brought by private investors alleging negligent misrepresentation of the commercial viability of university research results.

<sup>18</sup> The table in Appendix B provides a summary of these and other risk areas, many of which will be discussed in the authors' presentations.

<sup>19</sup> See data presented at <http://www.recovery.gov>.

<sup>20</sup> See data presented at <http://www.recovery.gov/Accountability/Pages/Investigations.aspx>.

<sup>21</sup> 75 Fed. Reg. 18043-18046 (April 8, 2010).

<sup>22</sup> Federal agencies are expected to use OMB Circular A-133 audits as a key oversight tool to pursue the accountability objectives of the ARRA. In June 2009, OMB issued an Addendum that supplements the 2009 Compliance Supplement to provide additional guidance for programs with ARRA expenditures. In July 2010, OMB issued the 2010 Compliance Supplement with Recovery Act additions. Compliance Supplements and Addendums are located at [http://www.whitehouse.gov/omb/grants\\_circulars/](http://www.whitehouse.gov/omb/grants_circulars/)

<sup>23</sup> 75 Fed. Reg. 67, 18043-18046 (April 8, 2010).

<sup>24</sup> Cutforth, K. and Hansen-Rainey, L. (2010). Auditing ARRA, National Science Foundation Office of Inspector General. *FRA Conference XI*. San Antonio, TX: NCURA

<sup>25</sup> Pilcher, L. (2010). DHHS IG Recovery Act Oversight. *FRA Conference XI*. San Antonio, TX: NCURA.