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Federal Grant & Contract News for Nonprofits - August 2013

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Several matters have recently arisen which are especially important for organizations that submit invoices or claims for funds from federal and/or state governments. As the current government fiscal year draws to a close, these events should remind nonprofits of the need to ensure strict compliance with federal procurement and grant requirements. Over the past several years, the federal government has utilized the civil False Claims Act (FCA) with increasing frequency, and it appears that many states are looking to follow suit. The following describes some recent FCA settlements involving nonprofits and relatively recent changes to the federal and state false claims landscape.

Nonprofits' FCA Settlements

In late July, Northwestern University agreed to settle for nearly $3 million in an Illinois whistleblower lawsuit that accused one of its former researchers of misusing funds from the National Institute of Health (NIH). According to the U.S. Department of Justice, the NIH grants were supposed to fund research into adverse drug reactions, drugs for the blood cancer multiple myeloma, quality of care issues for cancer patients, and a blood-clotting disorder. Instead, the researcher allegedly used the funds for personal use, such as paying for family trips, food, and hotels for himself and his friends, as well as fraudulent consulting agreements with unqualified family members and friends.

On August 21, 2013, a federal judge rejected the defendants' motion to dismiss a *qui tam* complaint alleging that two nonprofits lied to secure more than $600 million in government contracts even though the relator (whistleblower) – a former employee – was informed that his complaint did not sufficiently specify its allegations with particularity. Rather than dismiss the complaint, the judge granted the plaintiff leave to amend his complaint – an unusual approach for FCA cases. According to court documents, the suit focuses on the operations of the Laogai Research Foundation and the China Information Center, two nongovernmental organizations raising awareness about China's forced-labor prison camps and creating a media outlet free from censorship by Chinese authorities, respectively. The complaint alleges that the organizations, their founder, and others provided the U.S. Department of State with false information about employees' backgrounds and spent grant money on prohibited lobbying efforts. While the case remains pending, it demonstrates some courts' willingness to allow FCA cases that are insufficiently pled to continue. The case, before the U.S. District Court for the District of Columbia, is *Si v. Laogai Research Foundation et al.*, No. 1:09-cv-02388.

Federal FCA Legislation

In late July, Representatives Howard Coble (R-NC) and David Scott(D-GA), introduced bipartisan legislation that would amend the FCA by creating a new procedural step before federal authorities could open an investigation into suspected Medicare and Medicaid fraud. In particular, the legislation would impose a minimum-dollar amount for fraud inquiries, and require authorities to examine their rules and regulations to ensure that a fraud investigation is necessary before initiating an actual investigation. The aim of this legislation would be to foreclose potential FCA claims arising over unintentional and minor billing mistakes. For the full text of the bill, **click here**.

States Mirroring the Federal FCA

Currently 36 states and the District of Columbia have statutes similar to the federal FCA, most of which allow for whistleblower suits akin to the FCA's *qui tam* provisions; however, many of these states and their courts have been aligning their statutory language to the federal law, and state courts have been interpreting state law in the same manner as their federal counterparts. Last year, for instance, both Georgia and California amended their false claims act statutes to more closely align with the FCA.

Effective July 1, 2012, Georgia changed its law to mirror the FCA's civil penalties of $5,500 to $11,000 per false claim, allow for treble damages and attorneys' fees, and provide additional investigatory and prosecutorial powers to the state Attorney General. See H.B. 822, 2011-12 Leg., Reg. Sess. (Ga.

2012). Last fall, California amended its false claims act to parallel the federal law. The amendment, Assembly Bill 2492, took effect on January 1, 2013 and incorporated several of the FCA's definitions, civil penalties, and matters with respect to relators. A California appeals court also relied on federal case law dealing with the implied certification theory to reach its result in *San Francisco Unified Sch. Dist. ex rel. Contreras v. Laidlaw Transit, Inc.*, 182 Cal. App. 4th 438 (2010).

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For more information, please contact **Dismas Locaria**, **Melanie Jones Totman**, **Elizabeth Buehler**, or **Jeffrey Tenenbaum**.

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