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HHS OIG Offers Guidance, Form to Encourage Grantee Self-Disclosure of Possible Wrongdoing

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Some parents mete out a weaker punishment when their children admit to misbehaving, as opposed to catching them in the act. So, too, does the federal government—at least it has that option.

Federal law allows the government to collect up to triple damages for amounts of federal dollars considered misspent, but, as an incentive to self-disclose, it can drop that down to one-and-a-half times.

Organizations are required to self-disclose some actual or potential violations of law, such as bribery, but they may choose to report others, including research misconduct. The HHS Office of Inspector General (OIG) would like to encourage both mandatory and voluntary self-disclosures, and has newly released guidance it hopes will help that occur. At the same time, OIG is reminding entities that it has fairly recently gained expanded authority to impose civil monetary penalties (CMPs) when there are false statements or other violations involving federal grants and contracts.

While the 21st Century Cures Act may be best known for calling for the creation of a Research Policy Board (which has yet to be formed), the 2016 law also gave OIG expanded authority under the civil monetary penalty law (CMPL), as OIG senior counsel Geeta Taylor explained to *RRC*.

Specifically, OIG can now enter into settlements or assess penalties without the involvement of the Department of Justice (DOJ) for actions that do not violate relevant federal criminal law (are not related to fraud, bribery or gratuity violations). “We were taking actions in concert with DOJ and [under] other False Claims Act authority or working with the awarding agency to take appropriate action,” Taylor explained. “This provide[s] us an opportunity to impose penalties on our own.”

Announced July 12, OIG’s new Grant Self-Disclosure Guidance addresses “sanctions for improper conduct related to HHS awards,” stating that, “OIG may sanction anyone that engages in fraud or certain other improper conduct related to HHS grants, contracts, and other agreements.”

Under the Cures Act expansion, CMPs are imposed or agreed to as part of administrative actions OIG may undertake, in contrast to criminal prosecutions and lawsuits stemming from False Claim Act (FCA) violations, which also remain available. (Organizations and individuals can also be banned from participation in federal programs under the FCA.)

Conduct that may now trigger the amended CMPL include:

- “Knowingly presenting a specified claim under a grant, contract, or other agreement that is false or fraudulent” and
 - “Knowingly making or using any false statement, omission, or misrepresentation of a material fact in any application, proposal, bid, progress report, or other document submitted to HHS in order to receive funds under an HHS grant, contract, or other agreement.”
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