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How to Protect Nonprofits' Federally Funded Programs with Global Anti-Corruption Controls

Tuesday, September 20, 2016, 12:30 – 2:00 pm ET

Venable LLP, Washington, DC

Moderator

Jeffrey S. Tenenbaum, Esq.,

Partner and Chair of the Nonprofit Organizations Practice,
Venable LLP

Speakers

Laura A. Rousseau,

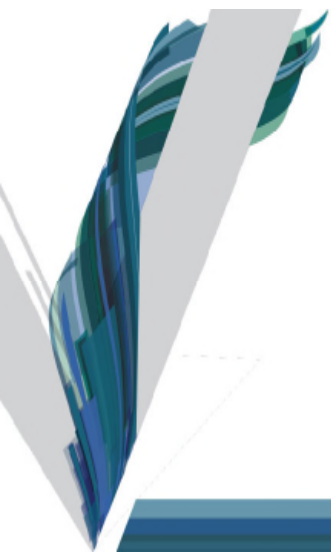
Assistant Special Agent in Charge, Africa/Europe/Latin
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General/Investigations

Dismas Locaria, Esq.,

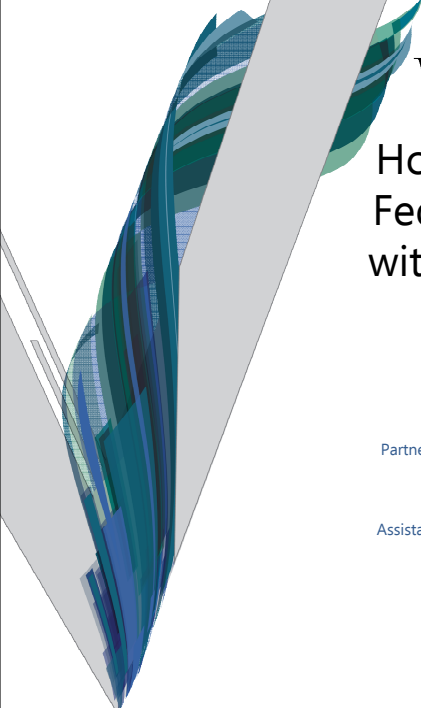
Partner, Government Contracts Practice, Venable LLP

Carrie Kroll McMullan, Esq.,

Counsel, International Trade Practice, Venable LLP



Presentation



VENABLE[®] LLP **INSIDE NGO**

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Upcoming Venable Nonprofit Events


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- **October 13, 2016:** [How Your Nonprofit Can Operate a Legally Sound Certification or Accreditation Program](#)
- **November 10, 2016:** [Federal and State Regulators and Watchdog Groups Are Bearing Down on Charities and Their Professional Fundraisers: How to Prepare for the Regulatory Storm](#)
- **December 12, 2016:** [Top Ten Risks Facing Nonprofits Operating Internationally, Co-Sponsored by Venable LLP and BDO](#)

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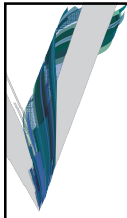
Agenda

- USAID OIG: A Case Study
- OMB's Rules for Pre- and Post-Award Controls
 - Risk Assessments
 - Monitoring
- Anti-Bribery Laws and Due Diligence
 - Global anti-bribery laws
 - U.S. Foreign Corrupt Practices Act
 - Due Diligence and Know Your Customer Guidance

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USAID OIG: A Case Study

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Reports of Corrupt Practices in Cross-Border Aid to Syria

May 6, 2016 – USAID/OIG Press Release:

- Network of commercial vendors, NGO employees, and others colluded to engage in bid-rigging and multiple bribery and kickback schemes related to contracts to deliver humanitarian aid in Syria
- Lack of fully competitive procurements, insufficient oversight, and the absence of adequate internal controls for obtaining, storing, and delivering relief supplies

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Statement by USAID Spokesperson Ben Edwards on Syria Humanitarian Operations

May 11, 2016:

"USAID places the highest priority on ensuring that taxpayer funds are used wisely, effectively and for their intended purpose. We have a zero tolerance policy for fraud and abuse of American taxpayer resources and will take every measure at our disposal to recover misspent funds."

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Statement of The Honorable Ann Calvaresi Barr Inspector General, U.S. Agency for International Development


July 14, 2016:

- Collusion between vendors and implementers' procurement and logistics staff who accepted bribes or kickbacks in exchange for contract steering
- Schemes involving product substitution of food and non-food items, inflated billing, and false claims
- Resulted in more than \$11.5 million in savings, 6 program suspensions, the removal of 10 employees of USAID implementers, and suspension or debarment actions against 15 individuals or companies involved in collusive bidding schemes

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Statement of The Honorable Ann Calvaresi Barr Inspector General, U.S. Agency for International Development (Con't)

- Seven referrals to USAID outlining internal control deficiencies and potentially illegal acts committed by implementer staff and commercial vendors.
- Large-scale effect on the Syria assistance program
 - Programmatic suspensions on activities under six Syrian humanitarian response awards valued at \$305.8 million
 - These program suspensions remain in place for awards valued at \$239 million

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Statement of The Honorable Ann Calvaresi Barr Inspector General, U.S. Agency for International Development

- Questions Raised:
 - Appropriateness of implementers' procurement policies and practices given the high-risk environment
 - Extended use of emergency waivers to bypass established procurement policies and procedures—including full and open competition—in an effort to expedite procurements
 - A failure on the part of one implementer to conduct historical market analyses to detect inflated billing
 - Logistics, quality control, and monitoring procedures
 - Allowing vendors to ship items directly across the border without inspecting them in advance
 - Implementer staff accepted inappropriate clothing, substandard products, and other humanitarian items that did not meet invoiced technical specifications

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Statement of The Honorable Ann Calvaresi Barr Inspector General, U.S. Agency for International Development

- Questions Raised (Con't):
 - Implementer tracking of information and response to allegations of fraud
 - o Implementers did not pursue allegations or did not notify USAID or OIG of internal investigations into allegations of bid rigging, inflated billing, conflicts of interest, and other fraud. They also had evidence that corroborated the fraud allegations—including subject matter expert statements, emails, and company profile information—but concluded there was no evidence of fraud



Statement of The Honorable Ann Calvaresi Barr Inspector General, U.S. Agency for International Development

“Providing aid in war-ravaged regions frequently calls for flexible contracting, award, and hiring practices to expedite the delivery of goods and services to the most vulnerable populations. However, as our investigations demonstrate, flexibility cannot eclipse rigor. Lax internal controls, monitoring, and oversight put taxpayer dollars at risk and, in the case of Syria, have delayed the delivery of millions of dollars of assistance to those in need.”



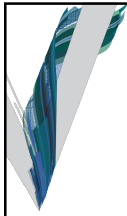
Considerations

- Risk Management
 - Have you asked yourselves if you can or want to implement this program at all?
- Growing group of individuals taking control and advantage of humanitarian aid programs
- USAID/OIG is sharing information with bilateral donors



Links

- [Reports of Corrupt Practices in Cross-Border Aid to Syria](#)
- [Statement by USAID Spokesperson Ben Edwards on Syria Humanitarian Operations](#)
- [Fraud Investigations Expose Weaknesses in Syria Humanitarian Aid Programs](#)

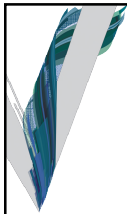


Rules of the Road: What You Need to Know

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OMB's Rules for Pre- and Post- Award Controls

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OMB's Rules for Pre- and Post-Award Controls

- One of the most significant changes is the more stringent requirements for subrecipient monitoring
- Examples of expanded pass-through entity responsibilities include:
 - Requirement for consistent practice to distinguish subrecipient from contractor
 - Identifying or negotiating an appropriate subrecipient indirect cost rate at the time of award
 - Ensuring “flow-down” of new requirements are included within sub agreements, as applicable
 - Evaluating subrecipient risk of noncompliance and determining necessary monitoring activities – including on-site reviews
 - Imposing remedies for subrecipient noncompliance, when necessary

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OMB's Rules for Pre- and Post-Award Controls – Risk Assessments

- Subrecipient monitoring plan must ensure that the subaward:
 - Is used only for authorized purposes
 - Is in compliance with Federal statutes/regulations and subaward Ts&Cs
 - Achieves its performance goals
 - Considers risk of subrecipient noncompliance
- Risk assessment is based on:
 - Prior/past experience with similar subawards
 - Previous audit results
 - Significant changes in personnel or systems
 - Extent and results of Federal awarding agency monitoring

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OMB's Rules for Pre- and Post-Award Controls – Monitoring

- Minimum monitoring activities must include:
 - Reviewing financial and programmatic reports
 - Conducting on-site reviews/audits based on risk assessment
 - Conducting follow-up reviews to ensure timely completion of corrective actions required to address deficiencies – as identified through on-site reviews, audits or other means
 - Issuing a management decision for audit findings pertaining to the Federal award
 - Verifying that each subrecipient receive completed audits, as required
- Design of monitoring plan will vary based on subrecipient risk assessment:
 - e.g., more stringent monitoring plan is required for high risk subrecipients

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OMB's Rules for Pre- and Post-Award Controls – Monitoring (cont'd)

- Subrecipient monitoring procedures should include:
 - Informing your subrecipient of pertinent information
 - Ensuring your subrecipients are receiving audits when necessary
 - Reviewing financial and programmatic reports:
 - Reconcile the subrecipient's budgeted expenditures to actual expenditures
 - Perform an on-site visit to the subrecipient to review financial and programmatic records and observe operations
 - Desk review - review financial and program reports submitted by subrecipients for allowable use of the grant funds
 - Establishing a tracking system to ensure timely submission of required reporting
 - Having a second party within your organization periodically review the adequacy of subrecipient monitoring for all programs
 - Document! Document! Document!

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Anti-Bribery Laws and Due Diligence

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Anti-Bribery Laws Apply

- US and Foreign anti-corruption/anti-bribery laws apply to nonprofits, NGOs, and aid-related work subject to awards and grants – **No exceptions.**
- Enforcement has become a global effort:
 - 40 countries adopted the **OECD Anti-Bribery Convention**, requiring national legislation criminalizing the bribery of foreign officials
 - Commercial bribery – national laws of many foreign countries prohibit official and/or commercial bribery (e.g., UK Bribery Act)
 - International anti-corruption enforcement continues to grow, and several foreign law enforcement agencies assisted in U.S. investigations in 2013-2015

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U.S. Foreign Corrupt Practices Act (FCPA)

- FCPA was enacted by Congress in the wake of the “Watergate” scandal to halt the rampant bribery of foreign government officials
- Anti-bribery Provisions (**15 U.S.C. § 78dd-1**):
 - Prohibits the paying, offering, promising to pay (or authorizing to pay or offer) of money or “anything of value,”
 - With corrupt intent,
 - Directly or indirectly,
 - To a “foreign government official” or political party official
 - For the purpose of influencing an official act or decision, or
 - Causing the official to fail to perform his lawful duty, or
 - To secure any improper business advantage, or
 - To assist in obtaining or retaining business for or with any person.
- Certain **limited** exceptions and affirmative defenses

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Affirmative Defenses and Exceptions

- **Extremely limited and difficult to rely on!**
- Two affirmative defenses:
 1. When the payment was lawful under the written laws of foreign country:
 - ... But, we have yet to find such a written law.
 2. When payment is a reasonable and *bona fide* expenditure:
 - Made in connection with either efforts to sell a product (directly relating to promoting, demonstrating or explaining the product), or
 - Performing a lawful contract with foreign government.
- Facilitation Payment Exception – Narrow for nominal payments:
 - Action sought to be facilitated must be ministerial
 - Must not involve any discretion by the foreign government official
 - Amount paid must be modest
 - Contrary to OECD recommendations
 - Violates the U.K. Bribery Act
 - Violates the national law of most nations, including China

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Operational Risks: What Should I Think About?

- **Geographic:** FCPA risk is especially high in less developed regions and areas of “conflict” with reputations for corruption: including Central and West Africa; former Soviet Union; S. America; Middle East
- **Industry:** Medical, agricultural and food industries have seen increased levels of FCPA enforcement over the past several years. No industry is exempt!
- **Activities:** Certain activities—such as interacting with foreign government officials in seeking permits, importing product, or in hosting or sponsoring officials—can lead to anti-corruption risks
- **Agents:** Use of third parties such as subcontractors, consultants, agents, and other partners means increased risk

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Know Your Customer/Partner

- **Know Your Customer “Red Flags” to Consider:**
 - Did you “screen” potential partner, agent, customer against the US Government’s “Lists to Check”? See [Consolidated Screening List](#).
 - Did customer/third party provide a contact name, mailing address (not PO Box), and contact information (phone, e-mail, fax)?
 - Is customer/third party requesting unusual payment terms? Are payment methods questionable? – e.g., payment in cash, to “offshore” accounts, or through third parties.
 - Is customer/third party proposing to take on a role that fits in with its line of business?
 - **Due Diligence:**
 - Is the country in question prone to corruption?
 - Does the customer/third party have a corrupt or questionable reputation?
 - Does the customer/third party refuse to provide anti-corruption representations or certifications?
 - Is the customer/third party a government agent?
 - Does the customer/third party have familial or other personal relationships with government officials and/or representatives?
 - Will the customer/third party be dealing with government officials, e.g. employees of government-owned or -controlled hospitals, businesses, schools?
 - Was the customer/third party recommended by a government official?

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FCPA: Due Diligence

- **Due Diligence Check List:**
 - Assess risk of doing business in each country
 - Check applicable anti-bribery conventions and local national law
 - Consult with U.S. Embassy
 - Due diligence regarding third parties prior to engagement (Use of 3rd party risk consultants)
 - Match degree of due diligence to risk
- Periodic audits must be conducted
- A senior manager with independent decision making authority should have direct responsibility over overseas programs
- Organization should track and monitor (Document! Document!):
 - Management and oversight of award funds
 - Management and reporting in accordance with OMB rules
 - Internal accounts
 - Charitable giving
 - Entertainment expenses (if any)
 - Payments to middlemen, agents or distributors



Discussion



Questions?

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presentations, and relevant nonprofit news and commentary.



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Political Law
Tax Controversies and Litigation
Tax Policy
Tax-Exempt Organizations
Regulatory

INDUSTRIES

Nonprofit Organizations

GOVERNMENT EXPERIENCE

Legislative Aide, United States
House of Representatives

BAR ADMISSIONS

District of Columbia

EDUCATION

J.D., Catholic University of
America, Columbus School of Law,
1996

B.A., Political Science, University
of Pennsylvania, 1990

MEMBERSHIPS

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is a highly accomplished author, lecturer, and commentator on nonprofit legal matters. Based in the firm's Washington, DC office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting charities, foundations, trade and professional associations, think tanks, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media. He also has served as an expert witness in several court cases on nonprofit legal issues.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, and was an inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award. He was only a handful of "Leading Lawyers" in the Not-for-Profit category in the prestigious *Legal 500* rankings for the last four years (2012-15). Mr. Tenenbaum was recognized in 2013 as a Top Rated Lawyer in Tax Law by *The American Lawyer* and *Corporate Counsel*. He was the 2015 recipient of the New York Society of Association Executives' Outstanding Associate Member Award, the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. Mr. Tenenbaum was listed in the 2012-17 editions of *The Best Lawyers in America* for Non-Profit/Charities Law, and was selected for inclusion in the 2014-16 editions of *Washington DC Super Lawyers* in the Nonprofit Organizations category. In 2011, he was named as one of Washington, DC's "Legal Elite" by *SmartCEO Magazine*. He was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. Mr. Tenenbaum started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill as a legislative assistant.

REPRESENTATIVE CLIENTS

AARP
Academy of Television Arts & Sciences
Air Conditioning Contractors of America
Air Force Association
Airlines for America
American Academy of Physician Assistants
American Alliance of Museums
American Association for the Advancement of Science
American Bar Association
American Cancer Society
American College of Cardiology
American College of Radiology

American Society of Association
Executives

American Council of Education
American Institute of Architects
American Nurses Association
American Red Cross
American Society for Microbiology
American Society of Anesthesiologists
American Society of Association Executives
America's Health Insurance Plans
Association for Healthcare Philanthropy
Association for Talent Development
Association of Clinical Research Professionals
Association of Corporate Counsel
Association of Fundraising Professionals
Association of Global Automakers
Association of Private Sector Colleges and Universities
Auto Care Association
Better Business Bureau Institute for Marketplace Trust
Biotechnology Industry Organization
Brookings Institution
Carbon War Room
CFA Institute
The College Board
CompTIA
Council on Foundations
CropLife America
Cruise Lines International Association
Democratic Attorneys General Association
Design-Build Institute of America
Entertainment Industry Foundation
Erin Brockovich Foundation
Ethics Resource Center
Foundation for the Malcolm Baldrige National Quality Award
Gerontological Society of America
Global Impact
Good360
Goodwill Industries International
Graduate Management Admission Council
Habitat for Humanity International
Homeownership Preservation Foundation
Human Rights Campaign
Independent Insurance Agents and Brokers of America
InsideNGO
Institute of International Education
International Association of Fire Chiefs
International Rescue Committee
International Sleep Products Association
Jazz at Lincoln Center
LeadingAge
The Leukemia & Lymphoma Society
Lincoln Center for the Performing Arts
Lions Club International
March of Dimes
ment'or BKB Foundation
National Air Traffic Controllers Association
National Association for the Education of Young Children
National Association of Chain Drug Stores
National Association of College and University Attorneys
National Association of College Auxiliary Services
National Association of County and City Health Officials
National Association of Manufacturers
National Association of Music Merchants
National Athletic Trainers' Association
National Board of Medical Examiners
National Coalition for Cancer Survivorship
National Coffee Association

National Council of Architectural Registration Boards
National Council of La Raza
National Defense Industrial Association
National Fallen Firefighters Foundation
National Fish and Wildlife Foundation
National Propane Gas Association
National Quality Forum
National Retail Federation
National Student Clearinghouse
The Nature Conservancy
NeighborWorks America
New Venture Fund
NTCA - The Rural Broadband Association
Nuclear Energy Institute
Peterson Institute for International Economics
Professional Liability Underwriting Society
Project Management Institute
Public Health Accreditation Board
Public Relations Society of America
Romance Writers of America
Telecommunications Industry Association
The Tyra Banks TZONE Foundation
U.S. Chamber of Commerce
United States Tennis Association
Volunteers of America
Water Environment Federation
Water For People
WestEd
Whitman-Walker Health

HONORS

Recipient, New York Society of Association Executives' Outstanding Associate Member Award, 2015

Recognized as "Leading Lawyer" in *Legal 500*, Not-For-Profit, 2012-15

Listed in *The Best Lawyers in America* for Non-Profit/Charities Law (Woodward/White, Inc.), 2012-17

Selected for inclusion in *Washington DC Super Lawyers*, Nonprofit Organizations, 2014-16

Served as member of the selection panel for the *CEO Update* Association Leadership Awards, 2014-16

Recognized as a Top Rated Lawyer in Taxation Law in *The American Lawyer* and *Corporate Counsel*, 2013

Washington DC's Legal Elite, *SmartCEO Magazine*, 2011

Fellow, Bar Association of the District of Columbia, 2008-09

Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006

Recipient, *Washington Business Journal* Top Washington Lawyers Award, 2004

Recipient, The Center for Association Leadership Chairman's Award, 2004

Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997

Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95

AV® Peer-Review Rated by *Martindale-Hubbell*

Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter and on the American Society of Association Executives' Public Policy Committee. He previously served as Chairman and as a member of the ASAE *Association Law & Policy* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, now in its second edition, published by the American Society of Association Executives. He also is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. In addition, he is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. Mr. Tenenbaum is a frequent author on nonprofit legal topics, having written or co-written more than 700 articles.

SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer on nonprofit legal topics, having delivered over 700 speaking presentations. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *NBC News*, *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *ESPN.com*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine*, *The Chronicle of Philanthropy*, *The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal topics on Fox 5 television's (Washington, DC) morning news program, Voice of America Business Radio, Nonprofit Spark Radio, and The Inner Loop Radio.



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BAR ADMISSIONS

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EDUCATION

J.D., *with honors*, University of Maryland School of Law, 2003
Articles Editor, *Maryland Law Review*

B.A., *magna cum laude*, San Francisco State University, 1999

Dismas (Diz) Locaria is a member of the firm's Government Contracts Group. Mr. Locaria's practice focuses on assisting government contractors in all aspects of working with the Federal government. Mr. Locaria has extensive experience assisting clients with regulatory and contract/grant term counseling, compliance (including ethics and integrity compliance), responsibility matters, such as suspension, debarment and other contracting/grant exclusions, small business matters and GSA Federal Supply Schedule contracting. Mr. Locaria also represents and counsels clients with the peculiarities of the Homeland Security Act, including obtaining and maintaining SAFETY Act protections.

Government Contract and Grant Counseling and Compliance: Mr. Locaria has a wealth of knowledge regarding applicable contract (*e.g.*, the Federal Acquisition Regulation) and grant (*e.g.*, OMB Circular A-110 and A-122) regulations, including the application of these regulations to both prime contractors/grant recipients and subcontractors/subgrantees. This knowledge has enabled Mr. Locaria to assist both for-profit and nonprofit organizations with meeting the requirements for becoming a federal contractor or grantee, interpreting the implication of regulatory, contract and grant term to clients' work and operations, evaluating and advising contractors and grantees on intellectual property issues and contract modifications, among many other issues.

Mr. Locaria also assists clients with their efforts to remain compliant with the myriad of applicable regulations and requirements. This includes providing training on relevant regulations and contract and grant terms, as well as federal ethics laws and practices, conducting internal audits and investigations, making improvement and/or remedial recommendations, implementing such recommendations, making appropriate disclosures to cognizant federal and state agencies, and defending clients during federal and state audits and investigations.

As a result of Mr. Locaria's deep understanding of government contractor/grant compliance matters, Mr. Locaria is often involved in business formation, merger and acquisition and related business matters to provide expertise and advice on the implication of such activity on a client's existing and future contracts/grants.

Suspension and Debarment: Mr. Locaria represents clients in suspension and debarment matters, as well as other eligibility and responsibility issues raised by federal and state agencies. In this capacity, Mr. Locaria has represented clients before all the various defense agencies (*e.g.*, Army, Navy, Air Force, Defense Logistics Agency (DLA)), as well as various civilian agencies, such as the General Services Administration, the Department of Homeland Security, as well as DHS's sub-agency, Immigration and Customs Enforcement (ICE), the Environmental Protection Agency (EPA), Health and Human Services, Housing and Urban Development, as well as several others.

Some of the suspension- and debarment-related matters Mr. Locaria and the Venable team successfully resolved included:

- Representing a national manufacturing company with a host of Clean Air Act, Clean Water Act, OSHA, and civil and criminal violations to avoid discretionary suspension or debarment. Mr. Locaria and his Venable colleagues were able to secure a voluntary exclusion for certain segments of the company while the matter was under review. Ultimately, Venable was able to reinstate those facilities subject to a statutory ineligibility, the entities under the voluntary exclusion were reinstated and the entire company entered into a compliance agreement with EPA. The company recently completed its time under the compliance agreement without incident and has maintained full contracting authority.
- Assisting a nonprofit, quasi-governmental mass-transit entity with resolving a statutory ineligibility with EPA and restoring the entity to full grant eligibility within a matter of days following its conviction.
- Representing an international company convicted on several counts of fraud and false statements before DLA regarding its present responsibility and contracting future with DoD. Ultimately, Mr. Locaria and his Venable colleagues were able to secure a compliance agreement for the company, which allowed it to continue to contract with the DoD and other federal agencies. This also required liaising with other agencies, such as GSA, which issued a show cause letter to the company for the same bases of debarment as DLA.
- Representing a multi-national company before the Maritime Administration to demonstrate that despite various criminal violations implicating the company's integrity and ethical business practices, such company was in fact presently responsible. Ultimately, Mr. Locaria and his Venable colleagues were able to secure a compliance agreement for the company to allow it to fully contract with and received subsidies and other assistance from the federal government. This matter also involved a statutory ineligibility issue related to a Clean Water Act violation that was handled before EPA.
- Representing several entities, individuals, small businesses and non-profits before ICE for immigration-related convictions. In each instance, Mr. Locaria and his Venable colleagues were able to convince ICE that no action was necessary to protect the public interest.

Small Business Matters: Mr. Locaria has extensive experience working with small businesses to determine their size status, 8(a) and other socio-economic statuses, including analyzing affiliation issues. Mr. Locaria represents clients in both the prosecution and defense of small business size protests before the Small Business Administration and the Office of Hearing and Appeals.

GSA Federal Supply Schedule Contracting: Mr. Locaria is also well-versed in assisting clients with GSA Federal Supply Schedule matters, in particular advising clients on how best to structure proposals to avoid price reduction clause (PRC) issues, and addressing PRC, Trade Agreements Act and other compliance matters post-award.

Homeland Security and the SAFETY Act: Mr. Locaria represents a number of clients in homeland security-related matters including drafting guidelines for various companies' information handling, such as Sensitive Security Information, or in harnessing all the benefits of the SAFETY Act. In fact, Mr. Locaria has assisted several clients in receiving SAFETY Act Certification, the highest level of protection afforded under the Act. Mr. Locaria has published on the topic of the SAFETY Act and is a co-author and contributor to Venable's Homeland Security Desk Book.

ACTIVITIES

Mr. Locaria actively participates in the American Bar Association as a vice chair of the Section of Public Contract Law Committee on Debarment and Suspension. He is also on the Board of Editors and a regular columnist for *The Government Contracting Law Report*.

PUBLICATIONS

"Frankel v. Board of Regents of the University of Maryland System - In the Name of Equality: The Proper Expansion of Maryland's Heightened Rational Basis Standard," 61 MD L. REV. 847 (2002).

- September 6, 2016, The FAR Council Issues Its Regulations Implementing the Fair Pay and Safe Workplace Executive Order, Government Contracts Update

- August 2016, Federal Grant and Contract News for Nonprofits - August 2016
- July 2016, Federal Grant and Contract News for Nonprofits — July 2016
- July 28, 2016, GSA Releases Additional Information and Guidance on Controversial Transactional Data Reporting Pilot Program, Government Contracts Update
- June 2016, Federal Grants and Contract News for Nonprofits - June 2016
- June 27, 2016, GSA Finalizes Major Shift in GSA Contracting: New Rule Eliminates the Price Reduction Clause and Commercial Sales Practices Disclosure Requirements, but Raises New Issues, Government Contracts Update
- June 21, 2016, In *Universal Health Services, Inc. v. United States*, Federal Government Contractors Win Some and Lose Some, Government Contracts Update
- June 20, 2016, New U.S. Supreme Court False Claims Act Ruling: The Implications for Nonprofit Federal Contractors and Grantees
- May 2016, Federal Grant and Contract News for Nonprofits - May 2016
- May 23, 2016, Government Contractors Must Heed the Cyber Basics: Federal Agencies to Require Basic Safeguarding of Contractor Information Systems, Government Contracts Update
- May 6, 2016, Continued Focus on Refining the Standards and Penalties under the False Claims
- April 2016, Federal Grant and Contract News for Nonprofits - April 2016
- April 28, 2016, Oral Argument Suggests Supreme Court Will Uphold Implied Certification Theory of Liability, Government Contracts Update
- March 2016, Federal Grant & Contract News for Nonprofits - March 2016
- March 10, 2016, Nonprofit Federal Award Recipients: Establishing an Ethical Culture, Appropriate Internal Controls, and a Collaborative Relationship with Your Federal Agency That Adds Value
- February 2016, Federal Grant & Contract News for Nonprofits - February 2016
- January 2016, Federal Grant & Contract News for Nonprofits - January 2016
- January 2016, What Now? Assessing Your New Compliance Program for Combating Trafficking in Federal Contracts, Government Contracts Update
- December 2015, Federal Grant & Contract News for Nonprofits - December 2015
- December 2015, SCOTUS to Provide Guidance on "Implied Certification" FCA Liability, Government Contracts Update
- December 2015, U.S. Supreme Court to Provide Guidance on "Implied Certification" False Claims Act Liability: What Does This Mean for Nonprofits?
- November 2015, Federal Grant & Contract News for Nonprofits - November 2015
- November 19, 2015, Credibility: Evaluating Allegations and Reporting Requirements for Nonprofit Federal Grantees
- November 16, 2015, Beyond CIP Compliance: Managing Cyber and Physical Security Risk Under the SAFETY Act, *Transmission & Distribution World*
- October 2015, Federal Grant & Contract News for Nonprofits - October 2015
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- July 2015, Federal Grant and Contract News for Nonprofits - July 2015
- June 2015, Federal Grant & Contract News for Nonprofits - June 2015
- May 2015, Federal Grant & Contract News for Nonprofits - May 2015
- April 29, 2015, Federal Grant & Contract News for Nonprofits - April 2015
- March 31, 2015, Federal Grant & Contract News for Nonprofits - March 2015
- March 11, 2015, GSA Proposes Radical Shift in Price Reduction Clause, Government Contracts Update
- March 2015, Association TRENDS 2015 Legal Review
- February 27, 2015, Federal Grant & Contract News for Nonprofits - February 2015
- February 18, 2015, One Year Later: Time for Nonprofits to Implement the Super Circular

- January 29, 2015, Federal Grant & Contract News for Nonprofits - January 2015
- January 28, 2015, Calculation of Annual Receipts, Recertification Requirements, and Service-Disabled Veteran-Owned and HUBZone Small Business Regulations, Government Contracts Update
- January 2015, The SBA Gets Down to (Small) Business: Venable's 5-Part Series on the SBA's Proposed Rules to Implement the 2013 NDAA, Government Contracts Update
- Winter 2014 - 2015, Reducing Cyber Risk; Marine transportation system cybersecurity standards, liability protection, and cyber insurance, *The Coast Guard Journal of Safety & Security at Sea*
- December 2014, Federal Grant & Contract News for Nonprofits - December 2014
- November 2014, Federal Grant & Contract News for Nonprofits - November 2014
- November 2014, NIST Holds Sixth Workshop on Cybersecurity Framework, Cybersecurity Alert
- October 2014, Federal Grant & Contract News for Nonprofits - October 2014
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- April 2014, The SAFETY Act: Providing Critical Liability Protections for Cyber and Physical Security Efforts
- March 2014, Federal Grant & Contract News for Nonprofits - March 2014
- March 20, 2014, The OMB Super Circular: What the New Rules Mean for Nonprofit Recipients of Federal Awards
- March 2014, A New Report, But the Same Approach to Assessing the Federal Suspension and Debarment Program, Government Contracts Update
- March 11, 2014, The OMB Super Circular: What the New Rules Mean for Nonprofit Recipients of Federal Awards
- February 2014, Federal Grant & Contract News for Nonprofits - February 2014
- February 18, 2014, Will 'SAFETY' Act Keep Your Company Safe from Cyber Liability?, *Baltimore Business Journal*
- February 2014, NIST Releases Framework for Improving Critical Infrastructure Cybersecurity, Cybersecurity Alert
- January 2014, Federal Grant & Contract News for Nonprofits - January 2014
- January 2014, Lessons from the *Agility Defense* Case, Part 2: Agencies' New Court-Appointed Muscle, Government Contracts Update
- December 2013, Federal Grant & Contract News for Nonprofits - December 2013
- December 9, 2013, The Perfect Storm for Increased Scrutiny of the Cleared Workforce: What Contractors Need to Know, *Westlaw Journal Government Contract*
- November 2013, Federal Grant & Contract News for Nonprofits - November 2013
- November 2013, NIST Holds Fifth Workshop on Cybersecurity Framework; Incentives Still Lacking, Cybersecurity Alert
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- August 2013, Federal Grant & Contract News for Nonprofits - August 2013
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- August 5, 2013, NIST's Proposed Cybersecurity Research and Development Center, *Westlaw Journal Government Contract*
- July 2013, Federal Grant & Contract News for Nonprofits - July 2013
- July 2013, NIST Holds Third Workshop on Cybersecurity Framework Development, Identifies Greatest-Risk Critical Infrastructure, Cybersecurity Alert
- July 2013, New SBA Regulations Focus on Small Business Size and Status Integrity, Government Contracts Update
- June 2013, Federal Grant & Contract News for Nonprofits - June 2013
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- May 2013, Federal Grant & Contract News for Nonprofits - May 2013
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- May 2013, NIST Revises Security and Privacy Controls Before Public Meeting, Cybersecurity Alert
- April 2013, Federal Grant & Contract News for Nonprofits - April 2013
- April 24, 2013, SAFETY Act: A Cybersecurity Win-Win For Gov't, Industry, *Law360*
- April 9, 2013, NIST Holds First Workshop on Executive Order Cybersecurity Framework, Cybersecurity Alert
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- March 2013, NIST Issues Request for Information, Begins Developing Cybersecurity Framework Under Recent Executive Order, Cybersecurity Alert
- February 2013, Federal Grant & Contract News for Nonprofits - February 2013
- February 2013, NIST Seeking Comments on Revised Standards for FISMA Compliance, Cybersecurity Alert
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- February 2013, Executive Order Opens Consultative Processes to Draft Cybersecurity Framework for Critical Infrastructure, Cybersecurity Alert
- February 12, 2013, The Top Ten Federal Grant and Contract Pitfalls for Nonprofits
- January 2013, What You Need to Know About the Proposed Maryland Investment Tax Credit for Cybersecurity, Cybersecurity Alert
- January 2013, Federal Grant & Contract News for Nonprofits - January 2013
- December 2012, Record Civil False Claims Act Recoveries: The Implications for Nonprofits
- December 2012, Record Civil False Claims Act Recoveries Point to Increased Whistleblower Cases in 2013, *Law360*
- November 9, 2012, Crucial Legal Issues in the Recovery from Hurricane Sandy
- August 7, 2012, Lessons from the *Agility Defense* Case: Severing Affiliation with a Suspended Contractor, Government Contracts Update
- July 13, 2012, Suspension & Debarment: New Trends and the Continuing Due Process Debate, Government Contracts Update
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- January 2012, The Public Disclosure of Contractor Information on FAPIIS is Here to Stay, Government Contracts Update
- January 18, 2012, New IT Security Requirements For GSA Contractors, *Law360*
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- January 10, 2012, Pitfalls for Nonprofits that Receive Federal Funds: Lessons Learned from ACORN
- December 13, 2011, Pitfalls for Nonprofits that Receive Federal Funds: Lessons Learned from ACORN
- December 2011, House Intelligence Committee Announces Cybersecurity Legislation: Path Forward Uncertain, Cybersecurity Alert
- October 18, 2011, A Roadmap To The U.S. Government Contracts Market, *Law360*
- July 2011, Proposed DFARS Rule Would Impose New Protection and Reporting Requirements on Defense Contractors, Government Contracts Update
- October 26, 2010, "GTSI's Suspension Shows That Contractors Should Ensure Accurate Representations Concerning Small Business Matters", *Federal Contracts Report*
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- June 2010, Government Contractors Toolkit - Selling to the Federal Government
- March 2010, Contractors Can Challenge the Government's In-Sourcing Efforts
- December 2009, The GSA Schedules: How to "Get on Schedule" and Broaden Your Business, *Originally published in the December 2009 issue of Contract Management magazine, © 2009, the National Contract Management Association*
- November 18, 2009, Proposed Rules Issued For Prevention of Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions, Government Contracts Update
- August 27, 2009, New OMB Guidance Further Signals the Sea Change in Government Contracting, Government Contracts Update
- July 13, 2009, The Federal False Claims Act - What Does It Mean for Nonprofit Organizations?
- May 29, 2009, The Federal Government Provides Significant Opportunities for Asset Managers Looking to Expand Their Business, Financial Services Alert
- March 2009, Suspension and Debarment: New Developments and Future Challenges, *Contract Management*
- February 24, 2009, Increased Oversight of Government Contracts, Government Contracts Update
- February 3, 2009, GSA Proposes Several Significant Changes to its Federal Supply Schedule Contracting Program, Government Contracts Update
- October 2008, The National Defense Authorization Act for FY09's Clean Contracting Act Mandates Significant Changes in Federal Acquisitions, Government Contracts Update
- August 8, 2008, 2007 Year in Review: Analysis of Significant Federal Circuit Government Contracts Decisions
- July 31, 2008, Department of Justice Updated Guidance on Seeking Waivers of Attorney-Client Privilege May Not Go Far Enough, Government Contracts Update
- July 23, 2008, GAO'S New Bid Protest Jurisdiction May Aim to Foster Competition but Leaves Many Questions Unanswered, Government Contracts Update
- March 2008, 2008 DoD Authorization Bill Adds Relief and Complexity to DoD's Procurement of Specialty Metals, Government Contracts Update
- October 2007, Court of Federal Claims Makes Unusual Request for FTC Opinion on OCI Issue, Government Contracts Update
- August 31, 2007, 2006 Year In Review: Analysis of Significant Federal Circuit Government Contracts Decisions, *Public Contract Law Journal*
- June 2007, The U.S. Supreme Court Narrows Relators' Ability to Pursue Qui Tam Claims, Government Contracts Update
- January 2007, New Department of Justice Guidance on Circumstances in Which Prosecutors Should Seek Access to Privileged Information Does Not Eliminate Many Concerns, Government Contracts Update
- September 7, 2006, Homeland Security Deskbook: Private Sector Impacts of the War

Against Terrorism

- Fall 2006, Final SAFETY Act Rule Resolves Some Questions, Generates Others, and Creates Important Procurement Linkage to the SAFETY Act, *Procurement Lawyer*
- August 2006, Administrative Remedies: Contractors Should be Concerned With Losing More Than Just Dollars in a Civil Suit, Government Contracts Update
- May 12, 2006, Possible Changes on the Horizon for Berry Amendment, *Northern Virginia Technology Council B2G Committee Legal Updates*
- April 2006, Possible Changes on the Horizon for the Berry Amendment, Government Contracts Update
- April 2005, Former 8(A) Business Not Liable for Warranty and Upgrade Services, Government Contracts Update
- December 2004, SBA Issues Final Rules For Subcontracting Assistance Program, Government Contracts Update
- September 2004, Reliance on Government Estimates, Government Contracts Update
- May 2004, Critical Infrastructure Information Act, Government Contracts Update

SPEAKING ENGAGEMENTS

- September 20, 2016, How to Protect Nonprofits' Federally Funded Programs with Global Anti-Corruption Controls, co-sponsored by Venable LLP and InsideNGO
- March 10, 2016, "Nonprofit Federal Award Recipients: Establishing an Ethical Culture, Appropriate Internal Controls, and a Collaborative Relationship with Your Federal Agency That Adds Value," co-sponsored by Venable LLP, InsideNGO, and BDO
- December 10, 2015, "New FAR Human Trafficking Rules: What Every Contractor Needs to Know" for Thomas Information Services
- December 9, 2015, "2016 Legal Challenges for Small and Veteran-Owned Small Businesses" for the Small Business Administration
- November 19, 2015, "Credibility: Evaluating Allegations and Reporting Requirements for Nonprofit Federal Grantees" at When it Happens to You! Responding Internally/Externally to Fraud & Corruption, an InsideNGO Fraud Symposium
- November 10, 2015, Legal Quick Hit: "Establishing a Compliance System to Address the New Ethics Requirements: Common Pitfalls for Nonprofit Federal Grant Recipients" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- September 17, 2015, "Suspension and Debarment" for the 2015 Government Contractors' Conference
- June 2015, Unique Issues Facing Nonprofit Recipients of Federal Grants for Overseas Programs
- April 28, 2015, Disaster Recovery and Resilience: Tips, Techniques and Best Practices for Public and Private Organizations
- February 18, 2015, One Year Later: Time for Nonprofits to Implement the Super Circular
- January 27, 2015, Disaster Recovery and Resilience: Tips, Techniques and Best Practices for Public and Private Organizations
- August 5, 2014, Managing Liabilities from Cyber Threats Using the SAFETY Act
- July 17, 2014, "Liability Management – Evolving Cyber and Physical Security Standards and the SAFETY Act" for the American Association of Port Authorities
- June 10, 2014, "Mentoring in a Minute" at GovConnects Cyber 5.0 Conference
- April 10, 2014, Government Contracts Symposium
- March 20, 2014, The OMB Super Circular: What the New Rules Mean for Nonprofit Recipients of Federal Awards
- March 11, 2014, Legal Quick Hit: "The OMB Super Circular: What the New Rules Mean for Nonprofit Recipients of Federal Awards" for the Association of Corporate Counsel's Nonprofit Organizations Committee

- January 17, 2014, ABA PCL Suspension & Debarment Committee Meeting
- November 14, 2013, Ten Federal Grantee Compliance Pitfalls: What Your Nonprofit Needs to Know
- November 13, 2013, "New Small Business Contracting Rules - Risks & Opportunities," Tysons Regional Chamber of Commerce's GovCon Council Roundtable
- October 9, 2013, CyberMaryland 2013
- October 1, 2013, "Federal Contracting Options: Subcontracting/Teaming/Joint Ventures" for the 2013 GovConnects Fall Educational Series
- September 25, 2013, Cyber Sticks and Carrots – How the NIST Cybersecurity Framework, Incentives, and the SAFETY Act Affect You
- September 19, 2013, Time to Update Your Internal Controls – Take Steps Now to Limit Liability from Severe Civil and Criminal Penalties
- April 17, 2013, Government Contracts Symposium
- March 11, 2013, Cybersecurity Executive Order – A Briefing
- February 20, 2013, Government Contracting Group Breakfast: "Subcontract Compliance and Reporting Issues from Both Sides of the Table" for the Center Club
- February 12, 2013, The Top Ten Federal Grant and Contract Pitfalls for Nonprofits
- January 31, 2013, State of the Government Services Market: Preparing for Change
- October 11, 2012, "The New World of Debarment and Suspension Actions," WMACCA Government Contractors Forum
- September 30, 2012 - October 3, 2012, Association of Corporate Counsel (ACC) 2012 Annual Meeting
- September 13, 2012, "Ethics and Compliance for Federal Contractors in an Increasingly Scrutinizing World," NCMA Webinar
- August 9, 2012, "GSA Schedules: Federal Contracting Made Easy," NCMA Webinar
- March 19, 2012, "Ethics and Compliance for Small Businesses," Cyber Incubator at UMBC
- March 4, 2012 - March 6, 2012, International Restaurant and Foodservice Show of New York
- February 15, 2012, "What You Don't Know Can Hurt You – Compliance Basics in the New Age, and a Few Timeless Ideas" for the National Contract Management Association (NCMA)
- December 13, 2011, Legal Quick Hit: "Pitfalls for Nonprofits that Receive Federal Funds: Lessons Learned from ACORN" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- June 7, 2011, "Ensuring Compliance with Small Business Set-Aside Requirements: Lessons for Small and Large Businesses" for SC&H Group
- December 7, 2010, "Ensuring Compliance in a Post-GTSI Environment: Lessons for Small and Large Businesses," hosted by Venable LLP
- July 14, 2009, Legal Quick Hit: "The Federal False Claims Act - What Does It Mean for Nonprofit Organizations?"
- September 4, 2008, National Contract Management Association, NOVA Chapter - Monthly Meeting
- January 17, 2008, National Contract Management Association: Greater Johnstown Chapter's Dinner Meeting
- November 1, 2007, Northern Virginia Chapter of the National Contract Management Association (NCMA)



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AREAS OF PRACTICE

International Trade and Customs
Foreign Corrupt Practices Act and Anti-Corruption
Homeland Security
Consumer Finance
Brand and Content Protection
Regulatory
Legislative and Government Affairs

INDUSTRIES

Maritime
Transportation and
Transportation Infrastructure

BAR ADMISSIONS

Maryland
District of Columbia

COURT ADMISSIONS

U.S. Court of International Trade

EDUCATION

J.D., *cum laude*, American
University, Washington College of
Law, 2007

Senior Staff Member, *American*

Carrie Kroll McMullan's practice focuses on a wide range of international trade issues at Venable, including advising companies on compliance with import and export control laws and regulations before numerous regulatory authorities, such as the U.S. Customs and Border Protection (CBP), International Trade Commission, Commerce Department's Bureau of Industry and Security (BIS), State Department's Directorate of Defense Trade Controls (DDTC), Treasury Department's Office of Foreign Assets Control (OFAC), and the Committee on Foreign Investment in the United States (CFIUS).

Ms. McMullan has experience counseling multinational companies on export controls compliance, including overall license authorization and registration needs. She has assisted clients in assessing and developing internal compliance programs, including compliance training on U.S. export and import laws. She has also worked on voluntary disclosures and has defended exporters facing investigations for alleged violations of U.S. export control laws.

Concerning import transactions, Ms. McMullan has worked on disclosures to U.S. Customs and has defended clients during detentions, forfeitures, seizures, investigations and related matters, such as ruling requests and protests, as well as compliance with U.S. Fish and Wildlife Service regulations (e.g. Lacey Act and CITES). She has assisted companies navigating preferential trade programs and U.S. Customs assessments (e.g. ISA and C-TPAT).

Ms. McMullan has advised multinational companies in the transportation and logistics sectors; avionic, high technology, petrochemical, pharmaceutical, food and retail industries; as well as trade associations, on international transactional matters and conducting trade activities overseas. She regularly provides guidance regarding compliance with the anti-bribery provisions of the U.S. Foreign Corrupt Practices Act.

ACTIVITIES

Ms. McMullan maintains an active pro bono practice, including legal work to support the relief efforts undertaken by NGOs in the land tenure and anti-corruption sectors in Haiti after the 2010 earthquake. Additional pro bono experience includes handling asylum and landlord-tenant cases in DC and Maryland.

PUBLICATIONS

- September 8, 2016, There's a New Sheriff in Town for AD and CVD Orders, *Law360*
- August 2016, Do You Import Goods Subject to AD and CVD Orders?, *International Trade Alert*
- June 2016, Federal Grants and Contract News for Nonprofits - June 2016
- June 30, 2016, Making the New Miscellaneous Tariff Bill ("MTB") Process Work for

University International Law Review
International Human Rights Law Clinic

M.A., International Affairs,
American University, School of
International Service, 2007

B.A., University of Virginia, 2001

MEMBERSHIPS

American Bar Association,
International and Administrative
Law Sections

Maryland Bar Association

LANGUAGES

Spanish

You, International Trade Alert

- June 17, 2016, Receive a BIS-Issued Subpoena and Wonder What It's All About?, International Trade Alert
- May 9, 2016, Chinese Government Passes Landmark Law Tightening Controls on Nonprofits
- September 29, 2015, The Obama Administration Continues to Expand Opportunities in Cuba, International Trade Alert
- April 20, 2015, Closing the 100-mile Gap: Delisting Would Bring the U.S. Closer to Liberalizing Trade and Investment with Cuba, International Trade Alert
- April 10, 2015, White House Opens New Front to Combat Cyber Attacks, Cybersecurity Alert , International Trade Alert
- January 22, 2015, Advertising Law News & Analysis - January 22, 2015, Advertising Alert
- January 21, 2015, U.S. Business Looks to Cuba under New Obama Rules, International Trade Alert
- December 2014, Russian Roulette: Congress Gives President Discretion to Impose New Sanctions Against Russia, International Trade Alert
- December 18, 2014, "Overseas Operations – Managing Risks Related to International Activities" Chapter in Exposed: A Legal Field Guide for Nonprofit Executives
- October, 2014, Decoding Export Controls: Does the Latest BIS Settlement Signal a Trend in Increased Enforcement Actions Involving Encryption?, International Trade Alert
- February 20, 2014, Conducting Operations Overseas: What Every Nonprofit Should Know
- February 2014, BIS Proposes First Rewrite of Routed Export Rules in Over a Decade, International Trade Alert
- February 2014, Iran Sanctions Deal Does Not Alleviate Current U.S. Economic Sanctions: "Iran Is Not Open for Business," International Trade Alert
- December 2013, Enforcing the New Export Control Regime, International Trade Alert
- December 2013, WTO Trade Facilitation Package Will Reform Least-Advanced Customs Administrations, International Trade Alert
- October 15, 2013, Rolling Out a New Export Control Regime During a Government Shutdown, International Trade Alert
- October 2013, Closing Time: How the Government Shutdown Affects Global Trade, Client Alerts
- September 2013, License Exception Strategic Trade Authorization: Understanding How It May Work for You, International Trade Alert
- September 26, 2013, Nonprofit Executive Summit: Bringing Nonprofit Leaders Together to Discuss Legal, Finance, Tax, and Operational Issues Impacting the Sector
- September 2013, October 15th Export Control Reform Changes Are Around the Corner: Take Time Now to Understand the Impact on Your Existing Licenses & Authorizations, International Trade Alert
- September 2013, State Department Publishes Long-Awaited Interim Final Rule Amending ITAR Brokering Provisions, International Trade Alert
- July 2013, OFAC Expands General License for Export of Basic Medical Supplies to Iran; Provides Additional Guidance, International Trade Alert
- July 2013, DC Court Strikes SEC Rule Requiring Extractive Industries' Reporting of Payments to Foreign Governments, International Trade Alert
- June 2013, Executive Order Targets New Sectors of Iranian Economy for Sanctions: Are You Prepared to Comply?, International Trade Alert
- March 1, 2013, Safe Passage: Managing Legal Risks when Your Association Meets Abroad
- December 2012, Developments in Eastern Congo Highlight Need for Companies to Prepare for SEC Conflict Mineral Rule Compliance, *Law360*

- November 2012, The New Foreign Corrupt Practices Act Resource Guide: An Opportunity to Review Your Nonprofit's Compliance
- October 2012, Time to Check the Entity List: Eleven U.S. and Russian Companies and Individuals Charged in Illegal Export Scheme and 165 Added to BIS' Entity List, International Trade Alert
- July 2012, Nicaragua Falls Short Again: Tariff Preference Level Reduced by 3% for 2012, International Trade Alert
- July 2012, OFAC Issues General Licenses Authorizing Investment and Exports of Financial Services to Burma, International Trade Alert
- July 12, 2012, Advertising News & Analysis - July 12, 2012, Advertising Alert
- July 2012, After Nearly Ten Years Under Review, CBP Revises Its Policy to Allow Post-Import Pricing Adjustments for Related Party Goods, International Trade Alert
- May 2012, U.S. Suspends Restrictions on Investment and Exports of Financial Services to Burma, International Trade Alert
- May 2012, IP Buzz - May 2012, IP Buzz
- May 21, 2012, U.S. Customs Adopts New Rule to Help Brand Owners Identify Counterfeits, *MARQUES Ltd.*
- April 2012, CBP Adds a New Tool to its Anti-Counterfeit Arsenal: New Rule Brings IP Rights Holders into Pre-seizure Investigative Process, International Trade Alert
- March 2012, Korea-U.S. Free Trade Agreement Enters Into Force, *International Trade and International Arbitration Alert*
- February 22, 2012, Overseas Operations: What Every Nonprofit Should Know Before Crossing U.S. Borders
- November 8, 2011, Considering Operations Overseas?: What Every Nonprofit Should Know Before Crossing U.S. Borders
- May 18, 2011, Update: Developments in Compliance & Enforcement under the Lacey Act
- March 2011, Obama Bans Transactions with Libyan Government and its Controlled Entities, International Trade Alert
- March 2, 2011, Party Politics Versus Trade Policy
- 2011, Emerging Enforcement Target: Global Commerce – Logistics and Transport Sector Targeted by Increased U.S. Export Controls and Anti-corruption Enforcement Actions: How to Protect Your Company, *Wolters Kluwer Global Trade and Customs Journal*
- February 2011, Capitol View - February 2011
- October 2010, U.S. Trade Representative Seeks Public Comment For List of Markets Notorious for Counterfeiting, Client Alerts
- August 2010, New Financial Sanctions Regulations Target Iranian Business Activities of Non-U.S. Financial Institutions, International Trade Alert
- August 2010, DDTC Levies \$42 Million Fine for Export Control Violations, International Trade Alert
- August 2010, A Lesson in Successor Liability: GE Settles Oil for Food FCPA Allegations, FCPA and Anti-Corruption News E-lert
- August 2010, Proposed DDTC Rule Would Reform Requirements Affecting Dual- and Third-Country National Employees, International Trade Alert
- July 2010, Implementation of U.K. Bribery Act Postponed for Six Months, FCPA and Anti-Corruption News E-lert
- July 2010, Significant Changes to U.S. Export Control Regulations on Encryption: First Steps to "Mass Market" and "Ancillary" Cryptography Products, International Trade Alert
- June 2010, DoD Contractors and Subcontractors: Are You Complying with the New Flowdown Notice Requirement on U.S. Export Control Laws?, Government Contracts Update
- April 2010, FMC Issues Long-Awaited Proposed Rule on NVOCC Tariff Rules, International Trade Alert

- April 2010, If You Export, Proposed Sweeping Export Control Reforms Will Likely Affect Your Business, International Trade Alert
- March 2010, FMC Votes to Grant NVOCCs Relief from Current Tariff Publishing Requirements, International Trade Alert
- February 2010, U.S. Customs and Border Protection "10 + 2 Initiative": Enforcement Has Begun!, International Trade Alert
- January 2010, DOJ Targets Pharmaceutical & Life Sciences Companies for FCPA Enforcement, Client Alerts
- August 2009, Exporters Beware: Recent BIS Settlements Forewarn Strict Adherence to Heightened Penalties—Even with Voluntary Disclosures!, International Trade Alert
- August 13, 2009, Recent Crackdown on U.S. Export Compliance for Logistics Providers, International Trade Alert
- August 2009, Organization of Economic Cooperation and Development (OECD) Releases Firm Policy Statement on Bribery in International Business Transactions, Client Alerts
- March 2009, Consumer Product Safety Improvement Act and Issues for U.S. Importers

SPEAKING ENGAGEMENTS

- September 20, 2016, How to Protect Nonprofits' Federally Funded Programs with Global Anti-Corruption Controls, co-sponsored by Venable LLP and InsideNGO
- June 18, 2015, The Changing Sanctions Landscape: Past, Present and Future
- February 20, 2014, Association of Corporate Counsel Webcast: "Conducting Operations Overseas: What Every Nonprofit Should Know"
- September 26, 2013, Nonprofit Executive Summit: Bringing Nonprofit Leaders Together to Discuss Legal, Finance, Tax, and Operational Issues Impacting the Sector
- September 24, 2013, "International Association Legal Issues" at GLOBALSTRAT's Global Growth Workshop, Washington, DC
- September 19, 2013, "International Association Legal Issues" at GLOBALSTRAT's Global Growth Workshop, Chicago
- February 22, 2012, Overseas Operations: What Every Nonprofit Should Know Before Crossing U.S. Borders
- November 8, 2011, Legal Quick Hit: "Considering Operations Overseas?: What Every Nonprofit Should Know Before Crossing U.S. Borders" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- May 18, 2011, "Lacey Act Compliance Update" webinar for NAMM
- April 9, 2010, Foreign Corrupt Practices Act (FCPA) Assessing Risk and Maintaining Compliance Webcast



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Assistant Special Agent in Charge Laura Rousseau is an investigator with the United States Agency for International Development (USAID), Office of Inspector General (OIG). She has spent 14 years of her federal career detecting and deterring waste, fraud, and abuse while investigating allegations of criminal, civil and administrative fraud against employees, contractors, and grantees of the U.S. Government. She has traveled extensively both domestically and internationally to conduct a variety of sensitive and complex investigations involving bid rigging, bribery, money laundering, public corruption, embezzlement, collusion, and conflicts of interest. Eight of those years were spent as a special agent with the Department of Justice, OIG, Fraud Detection Office, and four years as a Foreign Service officer with USAID/OIG. She recently returned from a two year overseas Foreign Service assignment in Islamabad, Pakistan. She has also provided procurement and grant fraud investigative training to U.S. federal agencies as well as foreign government law enforcement counterparts.



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August 2016

FEDERAL GRANT AND CONTRACT NEWS FOR NONPROFITS - AUGUST 2016

As the summer and FY16 wind down, several changes and proposed changes have been issued, some of which may be of interest to nonprofits. Most notably, the U.S. Department of Labor (DOL) issued a final rule on fair pay and safe workplaces that could have significant ramifications for those organizations found not to be in compliance with various labor laws. The U.S. Agency for International Development (USAID) and the U.S. Office of Management and Budget (OMB) also issued a proposed rule and request for comments. As always, we will continue to monitor developments of particular import to nonprofits.

Final Fair Pay and Safe Workplaces Federal Regulations Are Published

On August 25, 2016, the DOL and the Federal Acquisition Regulatory (FAR) Council published the **final regulations** and guidance implementing President Obama's "Fair Pay and Safe Workplaces" Executive Order (**E.O. 13673**) (the Executive Order). The Executive Order, often referred to as the "blacklisting" executive order, and the applicable regulations, require current and prospective federal contractors, including nonprofits, with covered contracts to disclose labor law decisions (i.e., administrative determinations, arbitral awards, and civil judgments) as well as violations of 14 federal workplace laws, including the Fair Labor Standards Act, the Family Medical Leave Act and the National Labor Relations Act, along with state law equivalents (to be determined at a later date by the DOL). Federal agencies must then consider and assess these workplace compliance histories in determining whether to award contracts or subcontracts valued at \$500,000 or more. In addition, the Executive Order and final rules impose pay transparency obligations on covered contractors and subcontractors, which require the provision of information regarding hours worked, overtime hours, pay, deductions, exempt/nonexempt status and, if applicable, status as an independent contractor, to covered workers. Finally, the regulations prohibit contractors with contracts valued at \$1,000,000 or more from entering into, prior to disputes, agreements with employees under which Title VII or any tort-related claims would be subject to mandatory arbitration.

Of primary importance, the final regulations clarify issues left open by the proposed regulations, by setting forth a phased-in implementation schedule for reporting and compliance requirements. Specifically:

- *Voluntary Pre-Assessments*: Beginning September 12, 2016, for purposes of future bids, contractors may request from the DOL pre-assessments of their workplace compliance history.
- *Effective Date and Applicability to Certain Prime Contractors*: On October 25, 2016, the final regulations become effective. Disclosures and workplace compliance assessments begin for all prime contractors under consideration for contracts valued at or greater than \$50 million. The initial reporting disclosure period is one year, but gradually increases to three years by October 25, 2018.
- *Paycheck Transparency Obligations*: On January 1, 2017, the paycheck transparency obligations become effective.
- *Decrease in Prime Contract Value Threshold*: On April 25, 2017, disclosures and workplace compliance assessments begin for all prime contractors under consideration for contracts valued at or greater than \$500,000.
- *Applicability to Subcontractors*: On October 25, 2017, disclosures and assessments begin for all subcontractors under consideration for subcontracts valued at or greater than \$500,000. Subcontractors must make the requisite disclosure to the DOL and report the DOL assessment to the prime contractor.

While neither the Executive Order nor the final rule impacts grant recipients and will most certainly will

face legal challenges, the Fair Pay and Safe Workplaces Executive Order and its implementing regulations place additional burdens on entities, including nonprofits, engaged in contracting directly or indirectly, through subcontracts, with the federal government.

NOTICE: PROPOSED RULE CHANGE—USAID Rule Would Allow Use of Foreign Contracting Officers

On August 19, 2016, the USAID issued a [proposed rule](#) that would allow the agency to expand a pilot program that has been in place since 2011 to use certain foreign nationals as contracting officers. According to the agency, it currently possesses a warranted contracting staff of just 150 personnel located overseas. This rule is intended, at least in part, to help the agency address a shortage of U.S. contracting officers while also helping to bolster host country technical capacity.

While the rule seeks to lift previous restrictions on citizenship for contracting officers, it is unclear what parameters will be imposed, as the rule fails to set out hiring criteria or minimum requirements. Thus, while certain aspects of this effort appear appealing, it is unclear whether this will be an ultimate improvement over the thinly spread staff of today. In addition, the new rule seeks to make clear that USAID's rule that certain employment restrictions related to third-country nationals and cooperating country nationals employed by a USAID contractor do not apply to consultants.

Nonprofits should consider carefully whether these changes could impose additional contracting hurdles or hardships, or conversely should be supported, and submit comments accordingly. Comments are due no later than October 18, 2016.

NOTICE: COMMENTS SOLICITED—OMB Seeks Comments for a Second Time on Anti-Kickback Procedures

On August 26, 2016, the OMB issued a [notice of request for public comments](#) of a previously approved information collection requirement concerning anti-kickback procedures. This is OMB's second attempt at soliciting input (no comments were received after its [first public notice](#) dated May 18, 2016).

The FAR 52.203–7, Anti-Kickback Procedures, requires that all contractors have in place and follow reasonable procedures designed to prevent and detect, in their own operations and direct business relationships, violations of 41 U.S.C. Chapter 87, Kickbacks. Whenever prime contractors or subcontractors have reasonable grounds to believe that a violation of the statute may have occurred, they are required to report the possible violation in writing to the contracting agency's inspector general, the head of the contracting agency if an agency does not have an inspector general, or the U.S. Department of Justice. The federal government uses the information to determine if any violations of the statute have occurred. There is no federal government-wide data collection process or system that identifies the number of alleged violations of 41 U.S.C. Chapter 87 that are reported annually.

Public comments are particularly invited on: whether the collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether the federal government's estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility and clarity of the information to be collected; and ways in which the government can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

This notice is important for at least two reasons. First, nonprofits should consider whether they wish to provide input on a process that they may ultimately find themselves subjected to, if for no other reason than how such information should be handled or how the data submitted is to be utilized. Second, nonprofits should heed the federal government's interest in this area as a warning that increased scrutiny and enforcement activity in the anti-kickback arena may be on the horizon and, thus, review their code of conduct and related policies to ensure they meet the FAR's requirements and embody best practices in this area.

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July 2016

FEDERAL GRANT AND CONTRACT NEWS FOR NONPROFITS - JULY 2016

In July, there were several notable changes to federal regulations impacting nonprofits, including a final rule issued by the U.S. Agency for International Development (USAID) to update its acquisition regulations, a final rule by the U.S. Office of Government Ethics (OGE) to update rules relating to executive branch personnel seeking outside employment, and a proposed rule issued by the U.S. Department of Health and Human Services (HHS) to make changes to its adoption of the U.S. Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

USAID Updates Its Acquisition Regulations

On July 26, 2016, the USAID issued a **final rule** amending the U.S. Agency for International Development Acquisition Regulation (AIDAR) to maintain consistency with federal and agency regulations and incorporate current and new USAID clauses into the regulation.

The highlights of the changes are as follows:

- Sections 722.810 and 752.222-71 are added to encourage all USAID contractors performing and recruiting entirely outside the United States to develop and enforce employment nondiscrimination policies with regard to race, color, religion, sex (including pregnancy and gender identity), sexual orientation, marital status, parental status, political affiliation, national origin, disability, age, genetic information, veteran status, or any other conduct that does not adversely affect the performance of the employee.
- New part 729, subpart 729.4, sections 729.204-70 and 752.229-70 require contractors to report the amounts of foreign taxes assessed by a foreign government on commodities financed with U.S. Foreign Assistance funds. The reporting is used to require the countries to reimburse the taxes or duties imposed on U.S. foreign assistance funds and for certain reporting to Congress.
- Sections 731.205-43 and 752.231-72 are added to mitigate the risk of inappropriate spending, as mandated by Executive Order 13589, "Promoting Efficient Spending," dated November 9, 2011. Contractors are required to obtain USAID written approval prior to committing costs related to USAID-funded conferences that meet the criteria provided in section 731.205-43.
- New section 752.7036 directs contractors to register with the Implementing Partner Notices (IPN) Portal, where USAID uploads contract modifications that affect multiple awards and provides notices to contractors.
- Section 752.7037 is added to promote child safeguarding when implementing USAID programs. The clause complements the USAID Counter Trafficking in Persons (C-TIP) Code of Conduct by expanding the range of actions prohibited by USAID to include abuse, exploitation, or neglect of children.

It is critical for USAID contractors and subcontractors to review and analyze these changes and, importantly, examine new contracts, renewals and modifications to determine whether these provisions are included.

Changes to the Standards of Ethical Conduct for Employees of the Executive Branch Revise Rules for Executive Branch Employees Seeking Other Employment

On July 26, 2016, the OGE issued a **final rule** amending portions of the Standards of Ethical Conduct for Employees of the Executive Branch regarding seeking other employment. The final rule incorporates past interpretive advice, updates examples, improves clarity, and makes technical corrections. In addition, the final rule implements the statutory notification requirements that apply to individuals required to file public financial disclosure reports under section 101 of the Ethics in Government Act of 1978 when they negotiate for or have an agreement regarding future employment or compensation.

The proposed rule was published on February 17, 2016 with a 60-day comment period, which ended on April 18, 2016. The OGE did not receive any comments, but it made nine changes in the final rule, the most notable of which include:

- Adding the phrase "personally and substantially" in several places within the regulation. OGE explains that the use of this phrase is consistent with the statutory language at 18 U.S.C. 208(a) and is parallel to the language that is currently within the regulation.
- Adding the citation for the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, to 5 CFR 2635.602(b) (3).
- Clarifying in 5 CFR 2635.604, Example 2 to paragraph (b) that the employee is reviewing an application from the same pharmaceutical company, which is seeking FDA approval for a new drug product. This language parallels the discussion in the recusal section of the previous regulation and corresponds to 5 CFR 2635.604(b) in the proposed rule.
- Replacing the word "should" with the word "must" in 5 CFR 2635.604, Example 2 to paragraph (b): "Once the employee makes a response that is not a rejection to the company's communication concerning possible employment, the employee must recuse from further participation in the review of the application." This language corresponds to 5 CFR 2635.604(b) in the proposed rule.

Given these updates and the wind-down of the Obama administration, during which it would not be unusual to see many federal officials move to the private sector, it is critical that nonprofits review and familiarize themselves with these rules prior to recruiting and/or hiring executive branch officials.

HHS Proposes Changes to Department's Adoption of the Uniform Guidance

On July 13, 2016, the HHS issued a **notice of proposed rulemaking** (NPRM) seeking to make various changes to its adoption of the Uniform Guidance. These changes, in sum, are as follows:

- A proposal to add language to 45 CFR 75.102, clarifying that the audit requirements and cost principles applicable to contracts and compacts awarded pursuant to the Indian Self Determination and Education Assistance Act (ISDEAA) are governed by subparts E and F, including § 75.505 Sanctions, enforceable through § 75.371 Remedies for noncompliance, and that certain other sections and subparts of these regulations do not apply to the ISDEAA contracts and compacts.
- Two proposed changes to 45 CFR 75.300:
 - First, codifying a prohibition, in the provision of services, against discrimination on the basis of age, disability, sex, race, color, national origin, religion, sexual orientation, or gender identity.
 - Second, codifying its implementation of the decisions in ***U.S. v. Windsor***, 570 U.S. __ (2013) and ***Obergefell v. Hodges***, 576 U.S. __ (2015), the codification of which ensures that same-sex spouses, marriages, and households are treated the same as opposite-sex spouses, marriages, and households in terms of determining beneficiary eligibility or participation in grant-related activities.
- A proposal to clarify the language currently codified in 45 CFR part 75 regarding the applicability to states of certain payment provisions. Because the current language applies the provisions of Treasury—State Cash Management Improvement Act agreements and default procedures codified at 31 CFR part 205 and TM 4A–2000, and such agreements may not contain specific provisions addressed by 45 CFR 75.305, the HHS seeks to modify the language to ensure clarity.
- A proposed amendment to 45 CFR 75.365, related to restrictions on public access to records, in

order to implement the President's [Executive Order 13,642](#) (May 9, 2013) and corresponding law.

- A proposal to amend 45 CFR 75.414(c) to add a provision to restrict indirect cost rates for certain grants. This conforms with HHS's long-standing policy of restricting training grants to a maximum 8 percent indirect cost rate. The HHS proposes additionally to impose this same limitation on foreign organizations and foreign public entities, which typically do not negotiate indirect cost rates.

As is clear from the above summary, these proposed changes alter the HHS's grant programs (and thus grant recipients) in varying ways. Some are narrow in the application, while others may have a far broader impact, such as the restriction on indirect cost rates. Therefore, nonprofits should review each of the changes closely to determine the potential impact on their organization. Comments on the proposed rulemaking are due August 12, 2016.

Upcoming Nonprofit Luncheon Programs/Webinars:

Key Trademark and Copyright Developments Around the World: Implications for Nonprofits in China, Europe, Cuba, and Beyond

Wednesday, August 17, 2016 | 12:00 - 2:00 p.m. ET

The operations of so many U.S.-based nonprofits extend far beyond our borders these days, often all around the globe. Among other things, this means that U.S.-based nonprofits' trademarks and copyrights are being used in foreign countries where the systems and methods for protecting and licensing this intellectual property are very different from those in the United States. This program will focus on some of the latest developments in trademark and copyright law and procedures around the globe, and their impact on nonprofits. This will be an invaluable program for nonprofit executives and staff who are tasked with creating, marketing, and/or managing brands and original products worldwide.

[Click here for more information and to register.](#)

How to Protect Nonprofits' Federally Funded Programs with Global Anti-Corruption Controls, co-sponsored by Venable LLP and InsideNGO

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June 2016

FEDERAL GRANT AND CONTRACT NEWS FOR NONPROFITS - JUNE 2016

This June has been memorable. Earlier this month, the U.S. Supreme Court issued an important **decision** on the federal False Claims Act (FCA) that provided a bit of a mixed bag for nonprofits. Recently unsealed pending cases may provide important guidance as federal courts begin the task of implementing *Escobar* in relation to federal funding recipients—particularly those with an international presence. Further, the Financial Action Task Force (FATF) updated its recommendations to regulating countries regarding money laundering and terrorist funding in nonprofits. The U.S. General Services Administration (GSA) also made **notable changes** to key provisions of the Federal Supply Schedule (FSS) contract that GSA FSS contractors should review.

Renewed Expectations for NGOs: Preventing Money Laundering and Terrorist Financing

On June 27, 2016, the FATF **revised its recommendations to include: "Recommendation 8: Non-profit Organizations."** FATF is an inter-governmental policy-making body that sets forth international standards for anti-money laundering and anti-terrorist financing by making recommendations to countries for the establishment of national policies.

Recommendation 8 specifically asks countries to review their laws and regulations governing nonprofits. Although Recommendation 8 is not itself a regulation for nonprofits to follow, it provides valuable insights for nongovernmental organizations (NGOs) and other nonprofits into the measures that may be expected by grant makers and regulators in preventing serious financial misdealing.

Importantly, FATF recommends that NGOs be required to exercise "reasonable" due diligence for parties giving to and receiving funds from nonprofits, but FATF goes on to say that NGOs should not have to meet the higher "Know Your Customer" standard of financial institutions. Given the uncertainty of a reasonable due diligence standard, funding agencies may be looking to the FATF standards as a guide. NGOs should review their current policies and practices for the prevention of money laundering and terrorist financing, including:

- Confirmation of the identity of people who control activities and funds, such as senior managers and board members;
- Confirmation of the identity and credentials of beneficiaries and those receiving funding;
- Monitoring on-the-ground activities;
- Full accounting of funds;
- Use of regulated financial systems wherever feasible;
- Documentation of the identity of significant donors while respecting their confidentiality; and
- Retention of records of transactions for at least five years, with sufficient detail to verify funds received and expended.

While not directly addressed in the FATF standards, policies should be practical, as measured by a risk matrix to determine what parties, places, and activities require respective levels of scrutiny. A policy also should include a process for evaluating and reporting suspicions of funding misuse to appropriate management and authorities.

In addition, governments are also encouraged by FATF to conduct training, require licensing and financial reporting of NGOs, and develop investigative expertise.

Along these lines, Venable will be holding a global anti-corruption controls luncheon/program and webinar for nonprofits on September 20, 2016 to discuss these and similar issues, as well as internal controls and compliance considerations. For more information and for registration, [click here](#).

The Importance of Developing a Compliance Process for Performing under Federal Grants and Contracts

The U.S. District Court for the Southern District of New York recently unsealed a lawsuit against a

contractor accused of defrauding the U.S. Agency for International Development (USAID) for projects seeking to rebuild Pakistan's infrastructure following the 2005 earthquake ([Case No. 1:14-cv-09107](#)). In particular, the contractor is accused of not providing qualified personnel, billing for hours not performed, and failing to provide the promised project supervision, all of which resulted in substandard work at an excessive cost.

Meeting contractually agreed-upon labor qualifications, accurately recording time, and sufficiently monitoring a project may appear to be requirements that are relatively basic and, in many respects, simple to ensure. Nevertheless, nonprofits overseeing contractors, and contractors themselves, inadvertently fail to meet these requirements. Furthermore, while the recent *Escobar* decision makes clear that the FCA is *not* intended to be used to enforce basic contract terms, it is clear that the U.S. Justice Department and federal agency Inspectors General will be examining the goods and services the parties fundamentally contracted for (i.e., the reason for the contract), and whether the failure to disclose noncompliance undermines the parties' representations related to those goods and services.

For these reasons, we advise clients (or their contractors) that before starting work on any project, that a team review the applicable federal agreement (whether grant, cooperative agreement, or contract) and the associated regulatory requirements and develop a compliance matrix that lists the key requirements, as well as the person responsible for ensuring compliance with each key provision. The process itself will help to provide a defense against allegations of "reckless disregard," the standard under the FCA, and create greater internal accountability. This process will help both the nonprofit and the federal government clarify which provisions are ambiguous. For example, with the heightened standards of oversight set forth under the Uniform Guidance, nonprofits need to establish clear standards with their government customers on what level of oversight is required—particularly for work done in distant places. The process also may highlight the requirements the organization may need to seek an exception for, such as seemingly insignificant labor qualifications. Any deviation of labor qualification should be approved by your grants agreement officer in writing.

Finally, since the above-referenced matter was initiated through the *qui tam* whistleblower mechanism under the FCA, we continue to stress to nonprofits that they must develop and publicize a compliance program, educate their workforce (and their contractor's workforce) on the program, and create strong channels through which employees, vendors, and/or business partners can report their problems. This then gives the organization the ability to review and appropriately address concerns, rather than making employees feel that they must approach a federal agency to avoid their own personal liability.

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