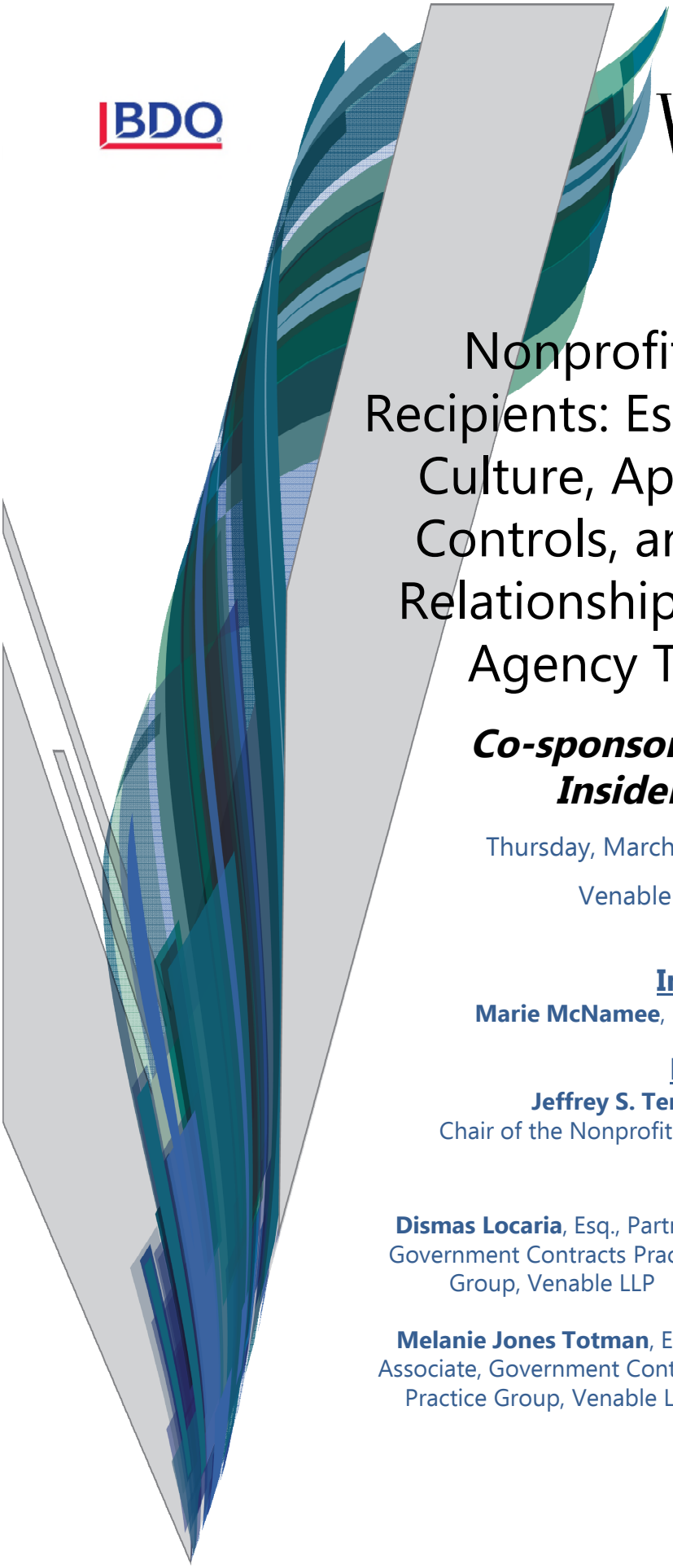

Nonprofit Federal Award Recipients: Establishing an Ethical Culture, Appropriate Internal Controls, and a Collaborative Relationship with Your Federal Agency That Adds Value

Co-sponsored by Venable LLP, InsideNGO, and BDO

Thursday, March 10, 2016, 12:30 – 2:30 pm ET

Venable LLP, Washington, DC

Introduction

Marie McNamee, Director of Programs, InsideNGO

Moderator

Jeffrey S. Tenenbaum, Esq., Partner and
Chair of the Nonprofit Organizations Practice, Venable LLP

Speakers

Dismas Locaria, Esq., Partner, Government Contracts Practice Group, Venable LLP

Laura A. Rousseau, Special Agent, Middle East and Asia, USAID Office of Inspector General

Melanie Jones Totman, Esq., Associate, Government Contracts Practice Group, Venable LLP

Andrea Wilson, Managing Director, Nonprofit and Education Advisory Services, BDO

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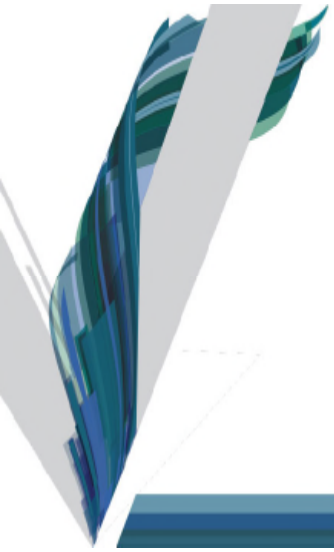
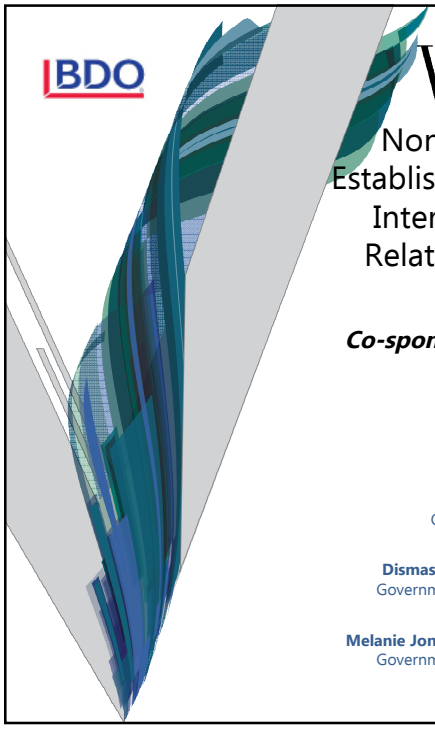


Presentation



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2

Upcoming Venable Nonprofit Events

Register Now

- **April 5, 2016:** UBIT: What Your Nonprofit Needs to Know about Sponsorships, Advertising, Royalties, and Cause Marketing
- **May 19, 2016:** Election-Year Activity: How Your Nonprofit Can Be Legally Active in the Political World

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Mandatory Disclosure

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Mandatory Disclosure Under the Uniform Guidance

- Mandatory Disclosure – 2 C.F.R. § 200.113:
  - Requires organizations to disclose:
    - "[I]n a timely manner"
    - In writing
    - To the awarding agency (or pass-through entity)
    - "[A]ll violations of federal ***criminal*** law involving fraud, bribery, or gratuity violations potentially affecting the federal award"
      - This may include violations under both Titles 15 and 18 of the U.S.C.
  - An organization's failure to make the required disclosures can result in a number of actions, including suspension and/or debarment

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Mandatory Disclosure Under the FAR

- FAR 52-203-13:
  - "[T]imely"
  - In writing to the agency OIG, with a copy to the Contracting Officer
  - "[C]redible evidence" that a principal, employee, agent, or subcontractor of the contract has committed:
    - A violation of federal criminal law violations in Title 18 U.S.C. (e.g., fraud, bribery, etc.)
    - Violation of False Claims Act
- Preamble to the rule provides that the "credible evidence" standard is intended to allow contractors the opportunity to conduct a preliminary examination of the evidence before deciding to disclose

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Uniform Guidance v. FAR Mandatory Disclosure Requirements

- Uniform Guidance is a clear move toward the FAR arena, which has a mandatory reporting requirement, ***but does not:***
  - Require disclosure to the awarding agency's OIG
  - Include all crimes under Title 18 of the U.S.C.
  - Apply to ***civil*** acts of fraud, such as those that may be alleged under the False Claims Act (FCA)
- "All violations" of the Uniform Guidance versus the "Credible evidence" standard of the FAR
- What about meaning of "timely"?
  - No guidance provided by the Uniform Guidance

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Standard Provisions for U.S. Nongovernmental Organizations

A Mandatory Reference for ADS Chapter 303 Partial

Consistent with 2 CFR §200.113, applicants and recipients must disclose, in a timely manner, in writing to the USAID Office of the Inspector General, with a copy to the cognizant Agreement Officer, all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Subrecipients must disclose, in a timely manner, in writing to the USAID Office of the Inspector General and to the prime recipient (pass through entity) all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award

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Standard Provisions for U.S. Nongovernmental Organizations

A Mandatory Reference for ADS Chapter 303 Partial

- Disclosures must be sent to:
  - U.S. Agency for International Development Office of the Inspector General P.O. Box 657 Washington, DC 20044-0657
  - Phone: 1-800-230-6539 or 202-712-1023 Email: ig.hotline@usaid.gov
  - URL: https://oig.usaid.gov/content/usaid-contractor-reporting-form
- Failure to make required disclosures can result in any of the remedies described in 2 CFR §200.338 Remedies for noncompliance, including suspension or debarment (See 2 CFR 180, 2 CFR 780 and 31 U.S.C. 3321)
- The recipient must include this mandatory disclosure requirement in all subawards and contracts under this award

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Internal Controls

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Internal Control Requirements

- Section 200.303 – Internal Controls:
  - The non-federal organization must:
    - Comply with federal statutes, regulations, and the terms and conditions of the Federal awards
    - Evaluate and monitor the non-federal organization's compliance with statute, regulations and the terms and conditions of federal awards
    - Take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings
    - Take reasonable measures to safeguard protected personally identifiable information and other information the federal awarding agency or pass-through organization designates as sensitive or the non-federal organization considers sensitive consistent with applicable federal, state and local laws regarding privacy and obligations of confidentiality
    - These internal controls ***should*** be in compliance with guidance in ''Standards for Internal Control in the Federal Government'' issued by the Comptroller General of the United States ***and*** the ''Internal Control Integrated Framework,'' issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)

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Internal Control Best Practices

- Design and document internal controls with written policies and procedures
- Establish monitoring practices to ensure actual practices are consistent with documented processes, including review of established policies and procedures
- Establish reporting requirements for potential noncompliance, including recommended corrective action plans and milestones for implementing corrective actions;
- Develop and provide training to applicable personnel
- Part Six of the current OMB A-133, Compliance Supplement, advises auditors to evaluate internal controls against the COSO framework or Greenbook standard

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COSO v. "Green Book"

It is important to point out the differences between the COSO Integrated Framework and the Green Book standards when assessing your internal control structure

COSO Framework	Green Book Standards
Can satisfy ***global*** operations	Can satisfy ***government*** operations
More in depth	Direct
Information technology general controls	Information technology general ***and*** application controls
More focus on ***organization's*** responsibilities	More focus on ***management's*** responsibilities

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Components of Internal Control

1. Control Environment
2. Risk Assessment
3. Control Activities
4. Information and Communication
5. Monitoring Activities

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Questions?

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Partner, Government Contracts Practice, Venable LLP
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Melanie Jones Totman, Esq.,
Associate, Government Contracts Practice, Venable LLP
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To view an index of Venable's articles and presentations or upcoming programs on nonprofit legal topics, see www.Venable.com/nonprofits/publications or www.Venable.com/nonprofits/events.

To view recordings of Venable's nonprofit programs on our YouTube channel, see www.YouTube.com/VenableNonprofits or www.Venable.com/nonprofits/recordings.

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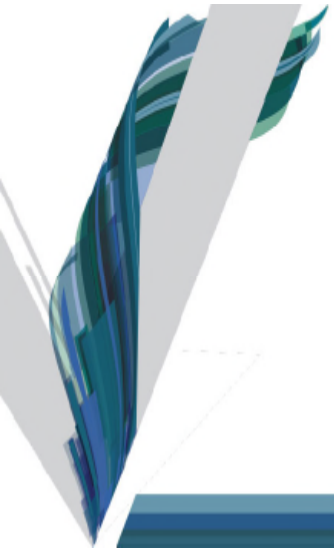
15



Speaker Biographies

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Jeffrey S. Tenenbaum

Partner

Washington, DC Office

T 202.344.8138 F 202.344.8300

jstenenbaum@Venable.com

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 2012-16 editions of *The Best Lawyers in America* for Non-Profit/Charities Law, and was selected for inclusion in the 2014 and 2015 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.

AREAS OF PRACTICE

Tax and Wealth Planning
Antitrust
Political Law
Business Transactions Tax
Tax Controversies and Litigation
Tax Policy
Tax-Exempt Organizations
Wealth Planning
Regulatory

INDUSTRIES

Nonprofit Organizations and Associations
Financial Services

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

REPRESENTATIVE CLIENTS

AARP
Air Conditioning Contractors of America
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 Council of Education
American Friends of Yahad in Unum

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

MEMBERSHIPS

American Society of Association Executives

New York Society of Association Executives

American Institute of Architects
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
Biotechnology Industry Organization
Brookings Institution
Carbon War Room
CFA Institute
The College Board
CompTIA
Council on Foundations
CropLife America
Cruise Lines International Association
Design-Build Institute of America
Erin Brockovich Foundation
Ethics Resource Center
Foundation for the Malcolm Baldrige National Quality Award
Gerontological Society of America
Global Impact
Goodwill Industries International
Graduate Management Admission Council
Habitat for Humanity International
Homeownership Preservation Foundation
Human Rights Campaign
Independent Insurance Agents and Brokers of America
Institute of International Education
International Association of Fire Chiefs
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
Money Management International
National Association for the Education of Young Children
National Association of Chain Drug Stores
National Association of College and University Attorneys
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
Trust for Architectural Easements
The Tyra Banks TZONE Foundation
U.S. Chamber of Commerce
United States Tennis Association
Volunteers of America
Water Environment Federation
Water For People

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.), 2012-16

Selected for inclusion in *Washington DC Super Lawyers*, Nonprofit Organizations, 2014-15

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 Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* 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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Dismas Locaria

Partner — *Washington, DC Office*

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AREAS OF PRACTICE

Government Contracts

Homeland Security

Investigations and White Collar Defense

INDUSTRIES

Cybersecurity

Government Contractors

Nonprofit Organizations and Associations

BAR ADMISSIONS

District of Columbia

Maryland

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).

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Melanie Jones Totman

Associate — *Washington, DC Office*

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Melanie Jones Totman is an associate with Venable's Government Contracts team where she provides clients with legal advice related to both federal and state procurement law, including complex compliance matters under the Federal Acquisition Regulation, the Office of Management and Budget Circulars, and various state procurement laws and grant regulations. She generally advises clients on small business, False Claims Act, and mandatory disclosure issues. Ms. Totman has broad experience in the defense of audits by various Offices of Inspector General, federal agencies, and the Defense Contract Audit Agency. She represents clients in a variety of bid protests before the United States Government Accountability Office and the United States Court of Federal Claims. Some of Ms. Totman's work includes:

- Representing clients in responding to *qui tam* and other whistleblower allegations of civil and criminal False Claims Act violations.
- Investigating internal allegations of false claims related to complex contractual relationships and cost data.
- Defending large contractors, nonprofit organizations, and state agencies awarded federal grant funds in audits before the Offices of Inspectors General for the Department of Homeland Security and the Department of Housing and Urban Development.
- Successfully challenging and defending small business size determinations before the United States Small Business Administration, Office of Hearings & Appeals. *Size Appeals of BA Urban Solutions, et al.*, SBA No. SIZ-5521 (2013); *Size Appeal of GPA Technologies, Inc.*, SBA No. SIZ-5307 (2011).

Immediately prior to joining Venable, Ms. Totman served as the judicial law clerk to Judge Christine O.C. Miller of the United States Court of Federal Claims. She also served as the judicial law clerk to Chief Judge Joyce Bihary of the United States Bankruptcy Court in the Northern District of Georgia.

AREAS OF PRACTICE

Government Contracts

Investigations and White Collar Defense

BAR ADMISSIONS

Georgia

District of Columbia

EDUCATION

J.D., Duke University School of Law, 2008

B.A., *summa cum laude*, Furman University, 2005

JUDICIAL CLERKSHIPS

Honorable Christine O.C. Miller, U.S. Court of Federal Claims

Honorable Joyce Bihary, U.S. Bankruptcy Court for the Northern District of Georgia

Marie McNamee

Director, Program & Member Services

Marie McNamee is the Director of Programs & Member Services at InsideNGO, a membership association of 325+ international NGOs, foundations, universities, and national NGOs involved in international relief and development. She has over thirty years of domestic and international non-profit operational experience in human resources, administration, finance and ICT at organizations including: Helen Keller International, Rainforest Alliance and Trinity Church Wall Street. At InsideNGO, Marie is responsible for providing resources, education, and advocacy-support to human resources, ICT, and legal; as well as lead cross functional initiatives including member symposia on topics such as Fraud and Duty of Care.

Andrea Wilson

RAS Managing Director
BDO Greater Washington, D.C.
703-752-2784
aewilson@bdo.com

EXECUTIVE SUMMARY

An accomplished finance and operations advisor, Andrea has more than 15 years of experience providing advisory services to government awardees and contractors on a wide range of services, including: compliance matters, cost allowability and recovery issues, cost accounting, procurements, and project management. Her experience is achieving superior performance by designing and implementing new operational systems and internal controls to reduce costs, increase information efficiencies, accuracy and compliance with USG policies and regulations.

PROFESSIONAL AFFILIATIONS

National Council of University Research Administrators
Society for International Development

EDUCATION

Graduate Certificate in Procurement and Contracts Management, University of Virginia
B.S., Business Administration, University of California – Berkeley, Haas School of Business

Laura A. Rousseau

Special Agent
USAID/OIG/Investigations
Middle East and Asia Division
Washington, D.C.
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Special Agent 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.

Additional Information

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GOVERNMENT CONTRACTS UPDATE

February 29, 2016

NEW PROPOSED RULES AFFECTING ALLOWABILITY OF CONGRESSIONAL INVESTIGATION AND IR&D COSTS

AUTHORS

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February 2016 brought contract cost principles and procedures to the forefront with two potential amendments to the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) to make certain costs associated with congressional investigations and inquiries unallowable and to enhance oversight of Independent Research and Development (IR&D) costs.

Prohibition on Reimbursement for Congressional Investigations and Inquiries

On February 17, 2016 the FAR Council proposed to amend the FAR to implement Section 857 of the National Defense Authorization Act for Fiscal Year 2015 (NDAA 2015). **Section 857 of NDAA 2015** amended 10 U.S.C. § 2324(e)(1) to make unallowable "[c]osts incurred by a contractor in connection with a congressional investigation or inquiry into an issue that is the subject matter of a proceeding resulting in a disposition," such as a criminal conviction, a determination of contractor civil liability for fraud, a penalty for whistleblower reprisal, suspension or debarment, rescission of a contract, termination of a contract for default, or a settlement of an action that might have resulted in any of these penalties. **10 U.S.C. § 2324(e)(1)(Q), (k)(2)**.

The **proposed rule** would amend **FAR 31.205-47** to add as unallowable those costs incurred in any congressional investigation or inquiry that is associated with a criminal conviction, suspension or debarment, termination for default, etc., the costs of which are already unallowable under FAR 31.205-47. The proposed rule would also amend **FAR 31.603** (relating to the requirements of Contracts with State, Local, and Federally Recognized Indian Tribal Governments) to include the same prohibition on costs associated with congressional investigations or inquiries.

Even though Section 857 of NDAA 2015 applies only to Department of Defense (DoD), NASA, and Coast Guard contracts, the proposed rule would make Section 857 applicable to all agencies subject to the FAR.

Comments on the proposed FAR amendment are due April 18, 2016.

Enhancing Oversight of Independent Research and Development

On February 16, 2016 the DoD issued a proposed rule to amend the DFARS "to improve the effectiveness of independent research and development investments by the defense industrial base that are reimbursed as allowable costs." The **proposed rule** is based on the IR&D initiative outlined in **Better Buying Power 3.0** of April 9, 2015, which sought a limited reversion back to the pre-early 1990s when IR&D was more heavily regulated and supervised by DoD.

The DoD is proposing to amend **DFARS 231.205-18** to require that, "as a prerequisite for the subsequent determination of allowability," starting in Fiscal Year 2017 contractors must engage in discussions with a technical or operational DoD employee before IR&D costs are generated, "so that contractor plans and goals for IR&D projects benefit from the awareness and **feedback** by a DoD employee who is informed of related ongoing and future potential interest opportunities" (emphasis added). The stated intent behind this requirement is to increase awareness of the IR&D efforts between contractors and the DoD and "provide industry with some feedback on the **relevance**" (emphasis added) of their IR&D work, not to establish a necessity for DoD approval prior to commencing IR&D projects.

This requirement would apply only to major contractors, which are those whose covered segments allocated a total of more than $11 million in IR&D and bid and proposal costs to covered contracts during the preceding fiscal year. Contractors would still be required, as they are now, to use the Defense Technical Information Center (DTIC) online form to report IR&D costs, but they would also need

to document the technical interchange on the DTIC form, including the name of the DoD employee with whom the contractor met and the date of the interchange.
The proposed rule is scarce on details as to how the technical interchanges would proceed. Questions that remain unanswered include:

- What sort of "feedback" will the DoD employee provide?
- Will the DoD employee be an expert in the technical field in which the contractor is operating?
- How is "relevance" determined? Must the IR&D work be connected to some established DoD initiative?
- What happens if the DoD employee determines that the contractor's IR&D work is not relevant? What if the contractor proceeds with the IR&D after learning from the DoD employee that it is not relevant? Is that a factor in determining the allowability of the subsequent IR&D costs?

Comments on the proposed DFARS amendment are also due April 18, 2016.

* * * * * * * * * * *

For more information on how the proposed amendments might impact your business, or to better understand the requirements regarding the related cost principles and procedures, please contact any of the attorneys in Venable's **Government Contracts Practice Group**.

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December 2015

U.S. SUPREME COURT TO PROVIDE GUIDANCE ON "IMPLIED CERTIFICATION" FALSE CLAIMS ACT LIABILITY: WHAT DOES THIS MEAN FOR NONPROFITS?

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On Friday, December 4, 2015, the Supreme Court of the United States (SCOTUS) granted review in ***United States v. United Health Services, Inc.***, 780 F.3d 504 (1st Cir. 2015) *cert. granted in part*, 84 U.S.L.W. 30337 (U.S. Dec. 4, 2015) (No. 15-7), to determine important issues about the scope of the federal False Claims Act (FCA), 31 U.S.C. § 3729, a statute that makes it unlawful for any person to knowingly submit a false or fraudulent claim for payment to the federal government. The FCA applies to both federal contractors and recipients of federal grant and cooperative agreement assistance. The steep damages associated with an FCA violation (three times the damage sustained by the government, plus civil penalties of $5,500 to $11,000 per claim) have enabled the federal government in recent years to recover billions of dollars from various entities, including numerous nonprofit organizations, in both court victories and FCA settlements.

Much of the significant uptick in government enforcement actions is a result of the government's increasingly aggressive assertion of the "implied certification" theory under the FCA. Under this theory, a claim for reimbursement submitted when a recipient of federal funds is noncompliant with a grant, regulation, or other federal, state, or local law is "false" under the theory that the government would not have paid for the services had it known of the nonprofit's noncompliance. Under the implied certification theory, this is true even where the government does not expressly condition payment on the breached provision, regulation, or law. The theory raises important questions about the difference between a breach of the contract or grant agreement and "defrauding" the government.

Circuit Courts are split over how to interpret and administer the implied certification theory. The Seventh Circuit rejected implied certification altogether, stating that the theory "lack[ed] a discerning limiting principle." *See* ***United States v. Sandford-Brown, Ltd.***, No. 14-2506, 2015 WL 3541422, at *12 (7th Cir. June 8, 2015). The Second and Sixth Circuits recognize the implied certification theory, but only if the government expressly conditions payment on compliance. *See* ***Mikes v. Strauss***, 274 F.3d 687, 700 (2d Cir. 2001); ***Chesbrough v. VPA, P.C.***, 655 F.3d 461, 468 (6th Cir. 2011). The First, Fourth, and D.C. Circuits recognize the condition of payment requirement; they do not require the legal obligation in question to be explicitly designated as a condition of payment. *See* ***U.S. ex rel. Hutcheson v. Blackstone***, 647 F.3d. 377, 386-388 (1st Cir. 2011); ***United States v. Triple Canopy, Inc.***, 775 F.3d 628, 636 (4th Cir. 2015); ***United States v. Sci. Apps. Int'l Corp.***, 626 F.3d 1257, 1269 (D.C. Cir. 2010).

The specific questions before the Court are:

. Whether the "implied certification" theory of legal falsity under the FCA—applied by the First Circuit below but recently rejected by the Seventh Circuit—is viable; and

. Whether, if the "implied certification" theory is viable, a government contractor's reimbursement claim can be legally "false" under that theory if the provider failed to comply with a statute, regulation, or contractual provision that does not state that it is a condition of payment, as held by the First, Fourth, and D.C. Circuits; or whether liability for a legally "false" reimbursement claim requires that the statute, regulation, or contractual provision expressly state that it is a condition of payment, as held by the Second and Sixth Circuits.

Preparing for the SCOTUS Decision

The SCOTUS decision could substantially affect the way that nonprofit organizations manage their risk of noncompliance, particularly where the newly implemented Uniform Guidance governing grant and cooperative agreements now requires more contract-like requirements, including **conflicts of interest** and **mandatory disclosure**. The increased federal regulations pose greater risk for noncompliance and,

consequently, greater concern that nonprofits will be increasingly subject to the implied certification theory for failing to comply with these regulations. However, regardless of outcome, nonprofits should remember that:

- Robust compliance programs are the best defense under any theory of FCA liability.
- An ethical culture will arm nonprofits with the personnel needed to make reasonable, appropriate, and, sometimes, difficult decisions that are thoughtful and above reproach. Underscoring the importance of ethics must come from the highest levels of management. Nonprofit organizations that operate oversees must carefully choose their overseas partners and establish rigorous subrecipient and subcontractor vetting and monitoring processes.
- Nonprofits should continually seek to *detect* and *prevent* fraud, waste, and abuse within the organization through:
  - Internal reporting procedures. Each employee, down to the lowest-paid employee, must be encouraged to report problems and concerns. Nonprofits should follow up with employee concerns, explaining how the organization is either working to resolve or has resolved the employee's concerns.
  - Information-sharing. If a nonprofit detects a potential noncompliance issue within the organization, that issue should be shared with appropriate personnel across other business units to ensure that the scope of the problem is contained.
  - Systematic audits by neutral personnel or third parties. Nonprofits should provide a schedule for auditing each of their contracts and grants that seeks to examine whether their current policies and procedures are effective. Smaller nonprofits may work with their A-133 auditors to ensure proper auditing of their policies and procedures in a more cost-efficient manner.
  - Training of and communication with its employees. Again, employees are an organization's frontline access to mounting problems. Management should try to discover its weaknesses by establishing a rapport with the frontline employees who are best positioned to spot issues. To that end, nonprofits must give their employees relevant, practical training on an ongoing basis.
- Certifications should be thoughtfully given and should comprehensively include all relevant personnel—including finance, program, and legal personnel—to the certification.
- Outside counsel may be able to provide helpful third-party review and enable the organization to take advantage of the protections afforded by the attorney-client privilege.

* * * * * * * * * *

While SCOTUS has not set a briefing schedule in *United States v. Universal Health Services, Inc.*, Venable will be providing updates as more information becomes available. The Court will issue a decision no later than the end of June 2016.

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The University of Florida recently agreed to pay $19,875,000 to settle an alleged civil False Claims Act (**31 U.S.C. § 3729**) violation brought by the U.S. Department of Justice (DOJ), on behalf of the U.S. Department of Health and Human Services (HHS). According to DOJ, the university overcharged employee salaries to a grant, inflated the cost of services performed by an affiliate, and directly charged equipment and supplies that were not within the scope of the relevant grant. The university first discovered some of the issues in 2006 during an internal audit of the school's grant-reimbursement system. Although the school made some changes to its reimbursement system at that time, the government first learned of the incident in 2009 during a routine federal audit.

This case is a strong reminder that the federal government is increasingly interested in reviewing the integrity of its federal awards to nonprofit grantees, including universities. Principal Deputy Assistant Attorney General Benjamin C. Mizer publicly stated that the "settlement demonstrates that the Department of Justice will pursue grantees that knowingly divert those funds from the project for which they were provided." A representative of the Office of Inspector General for HHS stated that "prudent oversight of those funds is absolutely essential."

The case also demonstrates how important it is for nonprofits that receive federal funds – including grants and cooperative agreements, along with contracts – to promptly and appropriately respond when a noncompliance and/or potential overcharge first comes to their attention. In nearly all instances, it is much better for a nonprofit grantee to make the government aware of the potential issues rather than wait for a government auditor to detect the issue independently. As discussed below, how an organization incorporates the mandatory disclosure rule into its compliance program will often determine the outcome of a potential noncompliance issue.

The Mandatory Disclosure Rule

As we have explained previously, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) now require that all federal assistance awardees disclose, in writing, "violations of criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award" (**2 C.F.R. § 200.113**). An organization's failure to make the required disclosure could result in the government suspending or debarring the organization, among other consequences. Because of the significant penalties for failing to comply, nonprofit grantees should consider the following strategies for implementing policies related to the Mandatory Disclosure Rule.

- **Consider disclosure of a broader panoply of noncompliances.** Although the federal rules for *grantees* require disclosure only for a criminal violation of fraud, bribery, or gratuity, any nonprofits with federal *contracts*, where credible evidence is found, must disclose potential violations of the civil False Claims Act or significant overcharges (e.g., the Federal Acquisition Regulation's disclosure requirement). Notwithstanding the clear difference in disclosure standards, Inspectors General do not always consistently apply the standards, and appear to expect nonprofit grantees to report far more than what would be specifically covered by the disclosure requirement under the Uniform Guidance. As a consequence, nonprofit grantees may want to consider a broader application of the disclosure requirement in order to avoid having a trust-sapping technical dispute with their partner agency, where the underlying noncompliance rises to the level of credible evidence of a civil false claim.

- **Establish a reporting mechanism within your organization, for employees and subawardees.** Nonprofits should establish a reporting system that fosters internal reporting of potential concerns, including reports from subawardees, subcontractors, agents, and vendors. Some agencies are now requiring (or expecting) subawardees to report their own matters directly to the government. A nonprofit must carefully review its award for any heightened reporting standards and know and understand its agency's expectations. If a heightened reporting system exists, nonprofits should incorporate into their subagreements the requirement that the nonprofit is notified, where

possible, prior to any such report, and, at the very least, conjunctively. Of course, any reporting mechanism should include an anti-retaliation policy to protect current employees from adverse employment action in response to good-faith reports.

- **Establish an investigation strategy.** Nonprofits must consider who in the organization will lead an investigation into allegations, and when the organization will reach out to outside counsel to avail itself of the attorney-client privilege. Although government officials often counsel nearly immediate disclosure, the federal standard generally permits awardees time to perform an investigation prior to disclosure, and it is strongly recommended that the investigation and disclosure occur within the context of a well-developed strategy.

While the mandatory disclosure provision of the Uniform Guidance is new, the concept of voluntarily reporting certain noncompliances to the federal government is not. As a result, experienced federal award recipients have a good deal of insight into the nuances of the requirements, the consequences of failing to comply, and tips and best practices for establishing workable and effective investigation and disclosure strategies. Nonprofits that do not have this know-how, given the University of Florida settlement, would be wise to consult with knowledgeable individuals or organizations to ensure they have appropriate policies and procedures in place.

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There were a few actions this month that serve as important reminders to nonprofits that noncompliance with ever-changing federal funding requirements, especially ethical requirements, can result in liability not just to the organization, but to individuals personally as well. In addition, the U.S. Department of Labor (DOL) issued a proposed rule for paid sick leave for federal contractors.

Agency Implementation of the Uniform Guidance Continues to Shift Grantee's Requirements under New Awards

On February 16, 2016, several federal agencies finalized their implementation of the Uniform Guidance, including the Office of the Chief Financial Officer, Farm Service Agency, Commodity Credit Corporation, National Institute of Food and Agriculture, Rural Utilities Service, Rural Business-Cooperative Service, and Rural Housing Service. While many agencies have been slow to officially adopt (and even slower to implement) the Uniform Guidance, the specific adoption and implementation of the Uniform Guidance for these agencies reminds us of the importance of assessing each award with each agency for compliance. Nonprofit grantees should establish a protocol for reviewing the requirements for each award. Consider the following actions:

- Designate a point person to oversee compliance with each requirement.
- Review each requirement. Ensure that you have reviewed each regulation or policy guidance incorporated by reference. Remember that while the Uniform Guidance is meant to provide consistency, each award and each agency is different, and must be treated individually.
- Determine how the organization will comply with each requirement. Consider drafting a compliance matrix that assigns responsibility for compliance with each requirement. Track the versions of this compliance matrix as the grant requirements are modified or otherwise clarified, and as the facts on the ground change compliance requirements. This compliance matrix can act as a tool to document your organization's rationale as to why it can certify confidently that it is compliant with all requirements.

Failure to follow changing regulatory requirements can have a significant impact, not just for the organization, but for individuals within the organization as well.

USAID Contractor Employee's Sentence Reflects the Policy Shift to Examination of Individual Liability Early in an Investigation

According to the **U.S. Department of Justice** (DOJ), a former nonprofit contractor employee was sentenced to 46 months in prison for his role in a bribery scheme involving a federal program in Afghanistan and conspiracy to structure financial transactions to avoid certain reporting requirements.

This case is a significant reminder, especially in the post-**Yates Memorandum** environment, that nonprofits should be particularly mindful of adhering to federal requirements. The Yates Memorandum, a policy memorandum titled "Individual Accountability for Corporate Wrongdoing" and issued by Deputy U.S. Attorney General Sally Yates on September 9, 2015, signaled a policy shift by the DOJ to the prosecution of more individuals in corporate fraud cases. In doing so, the Yates Memorandum established six guidelines intended to "strengthen [DOJ's] pursuit of corporate wrongdoing":

- "To be eligible for any cooperation credit, corporations must provide to the Department all relevant facts about the individuals involved in corporate misconduct";
- "Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation";
- "Criminal and civil attorneys handling corporate investigations should be in routine communication with one another";

- "Absent extraordinary circumstances, no corporate resolution will provide protection from criminal or civil liability for any individuals";
- "Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitation expires and declinations as to the individual in such cases must be memorialized"; and
- "Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual on considerations beyond that individual's ability to pay."

Given the foregoing, and the clear interest of the DOJ in pitting organizations against their employees, it is particularly important for nonprofits to take the steps summarized above, among others, to ensure regulatory and ethical compliance.

DOL Proposes Rule Which Would Require Nonprofit Federal Contractors to Provide Employees with Paid Sick Leave

On February 25, 2016, the DOL published its Notice of Proposed Rulemaking implementing Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors (NPRM). Executive Order 13706, which was signed by President Obama on September 7, 2015, requires parties, including nonprofits, who enter into contracts with the federal government to provide covered employees with up to seven days of paid sick leave on an annual basis, for such reasons as the employee's medical condition, care for a close family member's medical condition and absences resulting from domestic violence, sexual assault, and stalking.

Contracts Covered. Pursuant to the NPRM, Executive Order 13706 applies to four types of a nonprofit's contractual agreements:

- Procurement contracts for construction covered by the Davis-Bacon Act (DBA);
- Service contracts covered by the McNamara-O'Hara Service Contract Act (SCA);
- Concessions contracts, including any concessions contracts excluded from the SCA by the Department's regulations at 29 CFR 4.133(b); and
- Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

A nonprofit's grant agreements are one of the few contractual agreements excluded from coverage. Executive Order 13706 applies only to new nonprofit federal contracts resulting from solicitations issued on or after January 1, 2017 or that are awarded outside the solicitation process on or after January 1, 2017.

Employees Covered. The NPRM provides that the Executive Order applies to any individual engaged in performing work on or in connection with a contract covered by the Executive Order whose wages under such contract are governed by the SCA, DBA, or Fair Labor Standards Act (FLSA). It is important to note that, unlike the Minimum Wage Executive Order, this proposal also covers a nonprofit federal contractor's employees who are exempt from the FLSA minimum wage and overtime provisions.

Accrual and Use of Leave. Under the NPRM, employees of covered nonprofit federal contractors would accrue at least one hour of paid sick leave for every 30 hours worked, up to a maximum of 56 hours per year. Employees would be permitted to carry over accrued, unused paid sick leave from one year to the next, but would not be entitled to payment for any accrued, unused leave upon separation of employment. However, nonprofit federal contractors would be required to reinstate an employee's accrued, unused paid sick leave if the employee is rehired by the same nonprofit federal contractor within 12 months following separation of employment. The proposal notes that, if certain conditions are met, a covered nonprofit federal contractor's existing paid time off policy may satisfy the requirements of the Executive Order.

Interested parties have only 30 days to provide comments on the NPRM.

Upcoming Nonprofit Luncheon/Program and Webinar

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 and InsideNGO

Thursday, March 10, 2016 | 12:00 - 2:30 p.m. ET

As nonprofit federal grantees begin to live out policies and procedures that conform to the Uniform Guidance, compliance and legal departments are faced with an unprecedented number of real-world issues that arise from the implementation of those new policies. This program will feature both public (USAID Inspector General's Office) and private (Venable LLP and BDO) practitioners in a discussion on how to create trust with your federal partners in working through some of the trickiest compliance scenarios. We will discuss how to foster trust, cooperation, and collaboration between grantees and their federal agencies through the creation of important internal controls and reporting mechanisms. We also will discuss practical approaches to a culture of ethics and compliance that add tangible value to grantees by strengthening an organization's internal controls.

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We are glad to start the year off on a positive note, with a case in which a nonprofit federal grantee successfully defended against an accusation made under the federal False Claims Act, partly on the basis that a false statement was not material to the alleged fraudulent claim. We note the importance of this case, because with the recent proliferation in False Claims Act investigations and settlements, many cases never go to trial. Yet, should a nonprofit grantee be forced to go to trial, it is heartening to see that some courts are willing to hold the federal government (and its relators) to the materiality requirement of the False Claims Act.

Potterf v. The Ohio State University

In ***Potterf v. The Ohio State University, et al.***, the court emphasized that in order for a grantee to be found liable under the False Claims Act for an alleged false statement made in order to receive grant funding, that false statement must be material to the government's decision to award the grant to the nonprofit. The materiality standard is an important threshold for the defendants under the False Claims Act that can shield grantees from frivolous allegations. In the *Potterf* case, the owner of a gym, Ohio Fit Club, LLC, brought an FCA lawsuit under the statute's *qui tam* provision against Ohio State University and a researcher at the University, Steven T. Devor. Devor conducted a study focused on more than forty members of the plaintiff's gym and published his findings in an article the relator the plaintiff alleged helped Devor to bolster his reputation. The plaintiff further alleged that the University and Devor falsified the results of a fitness study. The plaintiff asserted that the defendants' falsified results aided in their ability to obtain $273 million in subsequent grants from the National Institutes of Health (NIH).

Importantly, the court in *Potterf* examined whether the alleged misstatement was material to the University's and Devor's receipt of grant funding, and determined that it ultimately was not. Specifically, the court noted that a "reputation, by definition, is not a statement, false or otherwise, made by its owner." Furthermore, even assuming that defendants owed their entire reputation to the disputed statement, the defendants did not receive grant funds in exchange for their reputations, but rather in exchange for promises to conduct research and publish findings. Because the plaintiff made no allegations that the NIH did not receive exactly what the defendants provided, namely scientific research and publication of their findings, the court held that the alleged false statement was not material to NIH awarding subsequent grant funds.

Lessons Learned on the FCA's "Materiality" Requirement

In light of the highlighted case, we want to take the opportunity to remind nonprofits of the importance of creating appropriate controls to ensure that incorrect (or false) statements material to claims for payment from the federal government are not actually submitted to the federal government. Some of these controls may include the following:

- Performing a risk and compliance assessment of all federal awards to determine the most salient requirements of each and ensuring the organization is taking appropriate steps to comply with such requirements. This will enable organizations to more confidently execute award-specific representations and certifications that may accompany requests for funds, invoices, and other drawdown activities.
- Ensure the cross-pollination of various stakeholder departments. For example, the finance department often is responsible for requesting the reimbursement of funds, drawing down such funds, or invoicing the government. Yet we sometimes see that finance is not in communication with operations, which may know of potential noncompliance. Thus, the finance department could be drawing down funds, whereby it makes certain certifications, while material noncompliance may be known by another department.

- Authorize only certain personnel to make representations and certifications on behalf of the organization. These individuals should be at a sufficient level within the organization to discuss issues across departments (as noted above), as well as have the authority to halt the submission of requests for funding, representations, certifications, and the like until accuracy can be ensured.
- When in doubt, do not permit a noncompliant status quo. In other words, if the organization becomes aware of noncompliance or an incorrect statement that is material, do not permit the submission of a request for reimbursement or invoice simply because that is the normal course of business. Should an issue arise, the organization should take action to curtail any noncompliance, investigate the matter, and, if necessary, disclose those issues to the proper authorities. Regardless of whether the concern is ultimately meritless, it is important that any issue not be compounded by the submission of subsequent false statements and potentially false claims.

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