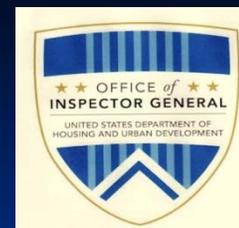


# *2014 Suspension and Debarment Workshop*

*“Total Accountability: Suspension,  
Debarment and Beyond”*

## Additional Remedies



# First Panel

## Moderator:

**Glenn Harris, Counsel to the Inspector General, SBA OIG**

## Panelists:

**Dane Narode, Associate General Counsel, HUD OIG**

**Michal Tingle, Assistant Director, Civil Division, Commercial Litigation Branch, Fraud Section, DOJ**

**Bryan Howell, Associate Counsel to the Inspector General, HUD OIG**

**Travis J. Farris, Assistant Counsel to the IG, SBA OIG**

# What We Will Cover

- Considerations for Civil, Administrative and Contractual/Program Referrals
- The False Claims Act
- The Program Fraud Civil Remedies Act
- Dep't of Labor Office of Federal Contract Compliance Programs Debarment

# Four General Categories

- Criminal – Title 18 Violations
- Civil – The False Claims Act, Priority Act
- Administrative – PFCRA, Suspension, Debarment, Licensure
- Contractual/Programmatic
  - Agency Specific Enforcement Remedies
  - Contract/Grant Termination, Program Termination Remedies

# Remember . . .

- Deterrence
  - Increases Compliance
  - No Safe Harbors
- Recycling
  - Work Products
  - Facts

# The False Claims Act

31 U.S.C. §§ 3729-3733



# FCA Overview

- Enacted to address Civil War contract fraud
- Amended & strengthened in 1986 and 2009
- FCA Remedies:
  - Mandatory treble damages, plus
  - A civil penalty of \$5,500 to \$11,000 per claim
- Cases initiated by:
  - Main Justice or USAOs, *or*
  - Relators filing *qui tam* actions

# False Claims Act Recoveries

- From 1986 thru FY2013, \$39 billion in settlements and judgments
- FY 2013 -- \$3.8 billion in settlements and judgments, including:
  - \$2.6 billion in healthcare
  - \$887 million for procurement fraud
  - \$664 million trial judgment against UTC
- Record high 752 new *qui tam* suits in FY2013

# FCA Violations

## ■ Most common FCA violations

- False Claims. Knowingly presents or causes to be presented false claims for payment.
- False Statements. Knowingly uses, or causes to be used, a false record or statement material to a false claim.
- Reverse False Claims. Knowingly makes or uses, causes to be made or used, a false record to conceal, avoid, or decrease an obligation to pay the U.S.
- Conspiracy to violate the FCA.

# Elements: A Claim

- A “claim” is any request or demand for government money or property
- A claim must be presented to:
  - An officer, employee or agent of the gov’t, or
  - A contractor, grantee or other recipient if the money is to be spent on the gov’t’s behalf or to advance a federal program or interest, and the U.S. has paid or will reimburse.

# Elements: Falsity and Materiality

## ■ Falsity

- A claim is false if it seeks money to which the claimant is not entitled
- Falsity can be “implied”; need not be express
- Can be based on fraudulent course of conduct

## ■ Materiality

- A natural tendency to influence, or be capable of influencing, the payment or receipt of money or property

# Elements: Knowledge

- Knowledge
  - “No proof of specific intent to defraud” is required for FCA, unlike criminal standard
  - The FCA standard is:
    - Actual knowledge; or
    - Deliberate ignorance; or
    - Reckless disregard
- Government knowledge is not a defense to FCA action, but may be relevant to whether defendant met the FCA knowledge standard in some cases

# Damages

- Not an element of an FCA cause of action
- Don't let "hand in the cookie jar" repayments discourage a civil referral.
  - Damages are trebled first before deducting repayments.

# Think Comprehensively About Potential Remedies

- Criminal remedies may not fully address harm to the U.S.
  - The scope of civil cases can be broader because the burden of proof and standard of knowledge are lower, the SOLs longer, and the potential for additional defendants.
- Criminal conduct can also be a basis for civil action. *E.g.*, FCA cases can be based on kickbacks and bribery.

# The Program Fraud Civil Remedies Act of 1986 “PFCRA”

31 U.S.C. § 3801 *et seq*

Or, the Baby False  
Claims Act.



# PFCRA - Overview

- 1986 – Congress enacted PFCRA as an administrative remedy to cover frauds not selected for False Claims Act cases.
- Agencies litigate PFCRA cases in front of Administrative Law Judges (ALJs)
- Agencies can pursue claims of up to \$150,000 with multiple claims in one case.
- PFCRA provides liability of double damages plus \$5,000 per false claim

# Statutory Elements

- Impose civil penalties and assessments on:
  - Persons who
  - Make, Submit or Present or,
  - Cause to Be Made, Submitted or Presented
  - False Fictitious or Fraudulent
  - Claims or Statements
  - They Knew or Had Reason to Know were False
  - To Federal Authorities or their Agents.

# What is a PFCRA claim?

- A request for property or services supported by a statement that is:
  - false, fictitious, or fraudulent;
  - supported by a false, fictitious, or fraudulent material fact; and/or
  - omits a material fact the maker has a duty to include.
- Agencies can also pursue \$5,000 penalty for a false statement without a claim paid

# Procedure

- The Investigating Official investigates and prepares a Report of Investigation (ROI).
- The Reviewing Official looks at the ROI and determines whether to proceed with a PFCRA case. If proceeding with a PFCRA action, the Reviewing Official seeks DOJ approval.

# Procedure Continued

- DOJ reviews, and if appropriate, approves the PFCRA case.
- Agency attorneys litigate the case in front of an Administrative Law Judge.
- Post-judgment remedies as needed.

# HUD/HUD OIG Collaboration on PFCRA Referrals

- HUD has made the vast majority of PFCRA Referrals.
- Between FYs 2011 and 2013, HUD obtained \$5.4 million in judgments or settlements on approximately 600 cases.
- Discussion of HUD OGC/HUD OIG Roles
- Referring, Settling and Litigating PFCRA Cases

# DOJ Consideration of PFCRA Referrals

- Discussion of DOJ Consideration of PFCRA Referrals and Priorities

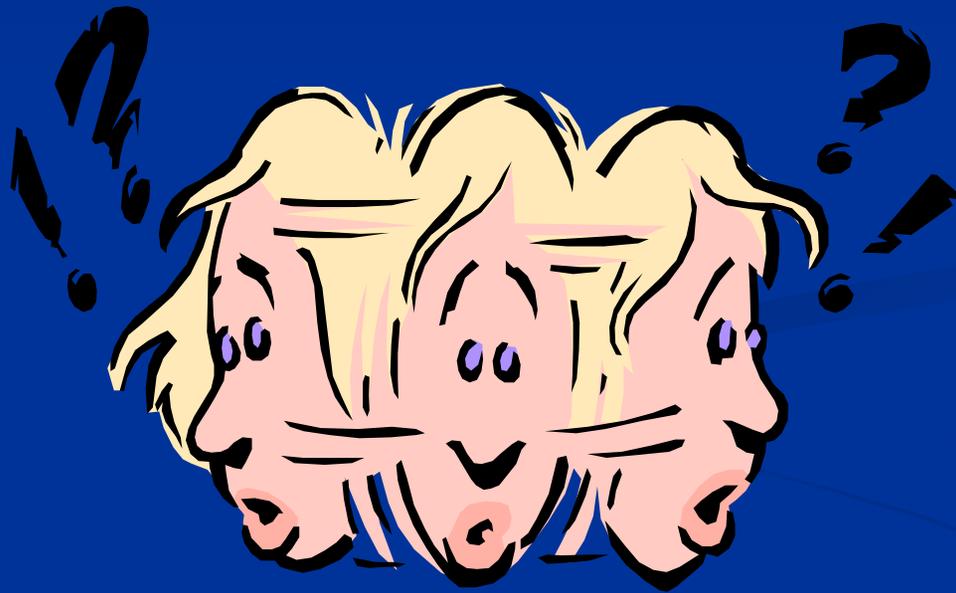
# CIGIE - PFCRA Working Group

- Nov. 2012 - CIGIE Approves Cross Cutting Project
- Background – GAO Report from 2010 regarding use of PFCRA
- Dec. 2012 – Working Group Formed

# CIGIE - PFCRA Working Group

- 2013 Accomplishments
  - Development of Practitioner's Guide
  - Development of Templates with DOJ
  - Survey of Inspector General Offices
  - Identification of ALJ Availability

# QUESTIONS???



# Department of Labor Office of Federal Contract Compliance Programs



## Panelists:

- **Jeff Lupardo, Senior Attorney, Office of the Solicitor, DOL**
- **Herman Narcho, Branch Chief, Enforcement, Office of Federal Contract Compliance Programs, DOL**

# Background On the Office of Federal Contract Compliance Programs

- Protects Worker Civil Rights
- Executive Order/Statutory Requirements
- Scope of Establishments Covered
- OFCCP Enforcement Responsibilities

# OFCCP Suspension and Debarment Authority

- Types of Debarments
- Consequences of Debarments

# OFCCP Suspension and Debarment Procedures

- Final Agency Decision
- Consultation with Relevant Contracting Agencies
- Notification
- Case Example

*QUESTIONS???*



**Thank you for  
your Attention,  
and Have a Nice  
Weekend!**

