

October 23, 2012

Fraud, Waste, and Abuse under Office of the National Coordinator for Health Information Technology Grants and Cooperative Agreements

NOTE: Grants Management Advisories (GMAs) provide guidance for Office of the National Coordinator for Health Information Technology (ONC) grant and cooperative agreement recipients in selected areas based on ONC's receipt of recurring questions or other factors. Their purpose is to provide a common interpretation for all ONC recipients of how ONC will apply existing policy as reflected in award terms and conditions. They do not replace or modify award terms and conditions.

This revised GMA supersedes the original version of GMA 2012-02.

ISSUES:

What are some potential signs of fraud waste and abuse?

What are your responsibilities and those of your employees in avoiding, identifying, and reporting fraud, waste, or abuse?

What actions may ONC take if fraud, waste, or abuse is occurs under an ONC award?

KEY POINTS:

- Because of the number and dollar value of Federal grant programs, the Federal government is concerned about the potential for fraud, waste, and abuse in general. The American Recovery and Reinvestment Act of 2009 (Recovery Act) focused specific attention on fraud, waste, and abuse using funds provided under that Act.
- Fraud, waste, and abuse includes, but is not limited to, embezzlement, misuse, or misappropriation of grant funds or property, and false statements, whether by organizations or individuals. Examples of *fraud* are theft of grant funds for personal use; using funds for non-grant-related purposes; theft of federally owned property or property acquired or leased under a grant; charging inflated building rental fees for a building owned by the recipient; submitting false financial reports; and submitting false financial data in bids submitted to the recipient (for eventual payment under the grant). Examples of *waste* are charging a grant or cooperative agreement for more days of travel than are required, e.g., staying overnight if the traveler could return the same day that the conference ends, or buying more supplies than the project requires. Examples of *abuse* include using property purchased under a grant or cooperative agreement for personal use or trying to influence the selection of a contractor under an award.
- Fraud, waste, or abuse may result from action by applicants for, or recipients of, grants or cooperative agreements, or others associated with preparing or approving an application or performing an award. The latter generally includes officers and employees of the recipient, board members, and subrecipients or contractors or under the award.
- The Federal government may pursue administrative, civil, or criminal action under a variety of statutes that relate to fraud and false statements or claims. Even if the Federal government does not make an award, the applicant may be subject to penalties if the

October 23, 2012

information contained in or submitted as part of an application, including certifications and assurances, is found to be false, fictitious, or fraudulent.

- To minimize the potential for fraud, waste, or abuse, you are required to have formal policies and procedures that include adequate internal controls, address avoidance of conflicts of interest, and require maintenance of documentation to demonstrate compliance with award requirements (as provided in 45 CFR 74.53 and 45 CFR 92.42, as applicable). Internal control is a process designed to provide reasonable assurance that an organization is achieving its objectives for effective and efficient operations, maintaining reliable financial information, and complying with applicable laws and regulations. An example on an internal control is separation of responsibilities, i.e., having different individuals prepare and approve reports and or authorizing and approving purchases. ONC monitoring and audits under Office of Management and Budget (OMB) Circular A-133 will consider the adequacy of your policies and procedures, including internal controls, and your adherence to them.
- Section 1553 of the Recovery Act provides whistleblower protection to non-Federal employees whose employer received Recovery Act funds. It provides that an employee of a non-Federal employer receiving funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to certain entities or individuals listed in the Act, including a disclosure made in the ordinary course of an employee's duties, information related to a grant or cooperative agreement funded by the Recovery Act that the employee reasonably believes is evidence of (1) gross mismanagement; (2) a gross waste; (3) a substantial and specific danger to public health or safety; (4) an abuse of authority; or (5) a violation of a law, rule, or regulation.
- The Department of Health and Human Services (HHS) Office of Inspector General (OIG) maintains a post office box and a toll-free hotline for receiving information concerning fraud, waste, or abuse under HHS grants and cooperative agreements. An individual can make a report to the OIG Hotline by
 - regular mail: Office of the Inspector General, Attn: OIG Hotline Operations, PO Box 23489, Washington, DC 20026
 - calling: 1-800/HHS-TIPS (1-800-447-8477) or TTY at 1-800-377-4950
 - e-mail: HHSTips@oig.hhs.gov
 - fax: 1-800-223-8164 (maximum of 10 pages)

Individuals making reports should not provide original documents.

The OIG Hotline Guide is available at <http://oig.hhs.gov/fraud/hotline>.

- Recovery.gov provides a means to report to the Recovery Accountability and Transparency Board (Recovery Board) (http://www.recovery.gov/Contact/ReportFraud/Pages/Report_Fraud.aspx) suspected Recovery Act-related fraudulent activity. This includes submitting a Complaint Form electronically; calling the Recovery Board Fraud Hotline at 1-877-392-3375 (1-877-FWA-DESK); faxing the Recovery Board: 1-877-329-3922 (1-877-FAX-FWA2); or writing to the Recovery Board (Recovery Accountability and Transparency Board, Attention: Hotline Operators, P.O. Box 27545, Washington, D.C. 20038-7958).

October 23, 2012

- You may not know if fraud, waste, or abuse is present in a given situation, pending a review. However, if a Principal Investigator/Project Director (PI/PD) or other recipient employee or manager suspects fraud, waste, or abuse, whether by the recipient or any organization or individual associated with an application or award, the individual should report the information. He or she generally should provide the information **BOTH** through his/her supervisory and management chain and to the HHS OIG or Recovery Board. However, based on the sensitivity of the information, an individual may make a report directly to the OIG or Recovery Board without going through the supervisory and management chain. In addition, once the PI/PD is aware of an employee's report (unless he or she is the subject of the report), the PI/PD must notify the ONC grants management officer (GMO) named on the Notice of Grant Award. If the PI/PD is the subject of the report, an authorized organizational representative (AOR) must notify the GMO.
- When providing the information to the HHS OIG, you may do so anonymously; however, the lack of contact information can prevent a comprehensive review of the complaint and will prevent further communication between you and HHS OIG. If you submit your complaint anonymously, take care to withhold any personally identifiable information from your complaint narrative and any attachments. If you do identify yourself, be aware that all complaints submitted to the Hotline are treated confidentially and are shared only within HHS for the purpose of evaluating your complaint. Public disclosure of personally identifiable information is restricted by the Privacy Act. When making a complaint to the Recovery Board, you must supply your name, but may request that your information be kept confidential.
- If ONC, the OIG, or the Recovery Board finds that you, the designated PI/PD or any of your other employees, or others spending your ONC grant or cooperative agreement funds, e.g., a subrecipient, has engaged in fraud, waste, or abuse, ONC may take one or more of the following administrative remedies in addition to any appropriate legal remedies:
 - Recommend suspension or debarment of the organization or the PD/PI (as a "principal" as defined in 2 CFR Part 376)
 - Request replacement of the PI/PD or other employee
 - Suspend the award or withhold payment pending corrective action
 - Convert the award to the reimbursement payment method
 - Terminate the award
 - Disallow costs under the award or subaward
 - Designate your organization as "high risk."
- Your responsibilities also extend to any suspicions of fraud, waste, or abuse by Federal staff.

RECIPIENT RESPONSIBILITIES:

- Be aware of activities that the Federal government could consider wasteful or an abuse of your status as an ONC grant or cooperative agreement recipient.

October 23, 2012

- Be certain of what you are signing when submitting an application, required report, or payment request to ONC. For example, when the AOR signs (or the electronic equivalent) a grant or cooperative agreement application, he or she is acknowledging that false, fictitious, or fraudulent statements or claims may subject the applicant or AOR to criminal, civil, or administrative penalties under U.S. Code, Title 18, Section 1001 and other applicable laws. Each Federal Financial Report you submit includes a similar statement.
- Ensure the adequacy of your organization's internal controls, conflict of interest policies, and other policies to minimize the potential for fraud, waste, and abuse.
- Have the ability through an internal compliance and ethics program or other means to, at least annually, inform employees of their responsibilities related to avoidance and reporting of fraud, waste, or abuse.
- Report suspected instances of fraud, waste, or abuse to the HHS OIG or Recovery Board and the GMO.

REFERENCES:

American Recovery and Reinvestment Act of 2009 (Public Law 111-5)
Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*
Criminal False Claims Act, 18 U.S.C. 287 and 18 U.S.C. 1001
Civil False Claims Act, 31 U.S.C. 3729(a)
Inspector General Act
45 CFR Part 74
45 CFR Part 79
45 CFR Part 92
2 CFR Part 180 and 2 CFR Part 376
OMB Circular A-21 (2 CFR Part 220), OMB Circular A-87 (2 CFR Part 225) and OMB Circular A-122 (2 CFR Part 230)
OMB Circular A-133 and Compliance Supplement
HHS Grants Policy Statement

CONTACT:

If you have any questions concerning this GMA, contact your GMO.