

A NEW OPTION FOR GRANT NONCOMPLIANCE: OIG RELEASES GRANTEE SELF-DISCLOSURE PROGRAM

On July 11, 2019, the Office of Inspector General (“OIG”) for the U.S. Department of Health and Human Services (“HHS”) released the new [Grant Self-Disclosure Program Guidance](#) (“Grant Guidance”) for HHS grant recipients and subrecipients. Through the Grant Guidance, OIG provides new self-reporting options for HHS grant recipients and subrecipients who determine that they have not followed grant requirements. This could be an important opportunity for grantees who want to proactively self-report grant noncompliance before the situation can escalate further. Grantees are not always aware that the federal False Claims Act or Civil Monetary Penalty Law (“CMP”) could be implicated for significant noncompliance in this arena.

LEGAL BACKGROUND

Under 45 C.F.R. § 75.113, recipients and subrecipients of HHS grant funding are required to disclose all violations of federal criminal law involving fraud, bribery or gratuity violations potentially affecting the HHS award to the HHS awarding agency and to System for Award Management (“SAM”). Since the promulgation of this rule, there has been some confusion about how to comply with its mandatory disclosure requirements. OIG’s new Grant Guidance now gives a framework for complying with the mandatory disclosure requirements as well as evaluating and resolving the issues.

MANDATORY & VOLUNTARY DISCLOSURE

Under the Grant Guidance, OIG clarifies that recipients and subrecipients must disclose all violations of federal criminal law involving fraud, bribery or gratuity violations potentially affecting the HHS award to the HHS awarding agency and OIG. An HHS awarding agency is any organization under HHS that is authorized to make and administer awards. Note that the Grant Guidance specifies disclosures must be made to OIG rather than directly to SAM as stated under the regulation. Disclosure under the Grant Guidance fulfills this obligation with regard to OIG, but separate disclosure must still be made to the HHS awarding agency.

Recipients may also voluntarily disclose other non-criminal conduct that might create liability under the CMP or that might violate civil law, administrative law or other conduct that does not clearly fall within the scope of offenses under 45 C.F.R. § 75.113.

PENALTIES

Improper conduct relating to HHS grants may be sanctioned by OIG. Improper conduct includes: 1) knowingly making or using a false or fraudulent statement, omission or misrepresentation of material fact on an application, proposal, bid, progress report or other document submitted to HHS to receive an HHS grant, contract or other agreement; or 2) knowingly presenting a false or fraudulent claim under an HHS grant, contract or other agreement. Sanctions include CMPs, assessments or full exclusion from federal healthcare programs.

BENEFITS OF SELF-DISCLOSURE

Recipients and subrecipients of HHS grant money who promptly self-disclose may be rewarded with reduced monetary penalties. Generally, OIG will only apply a 1.5 times multiplier to damages for self-disclosed violations as opposed to the 2 to 3 times multiplier usually applied to violations that are not self-disclosed. Further, OIG is less likely to require a self-disclosing party to enter into a Corporate Integrity Agreement, which usually requires parties who have not done such a self-disclosure to undertake additional obligations in compliance, auditing and reporting.

SELF-DISCLOSURE PROCESS

To submit a self-disclosure, OIG directs grant recipients and subrecipients to complete the [HHS OIG Grant Self-Disclosure Submission Form](#) and submit it by mail or email. However, before completing the form, if a recipient or subrecipient learns of a potential violation of law relating to their grant, then they should first timely conduct an investigation that is as intensive as may be necessary under the circumstances, then assess the amount of federal grant money involved, and finally take corrective action. Taking these steps prior to self-disclosure will help demonstrate to OIG that the organization has an effective compliance program in place.

PRACTICAL TAKEAWAYS

- After long uncertainty, OIG has provided guidance on the Self-Disclosure process for recipients and subrecipients of HHS grants, contracts and other agreements.
- HHS grant recipients and subrecipients **MUST** self-disclose all violations of federal criminal law involving fraud, bribery or gratuity violations potentially affecting the HHS grant, contract or other agreement.
- HHS grant recipients and subrecipients **MAY** also self-disclose to the OIG violations of civil or administrative law potentially affecting the HHS grant, contract or other agreement.
- If a recipient or subrecipient proactively self-discloses in this manner, then they usually will be in a much better position than if they were to instead become a target of a federal investigation regarding the same noncompliant practices.

The release of the new OIG Grant Guidance has been long awaited; however, it may signify that OIG will become more active in grant enforcement in the near future. If you have any questions about the OIG Grant Guidance, please don't hesitate to contact:

- **Scott Taebel** at (414) 721-0445 or staebel@hallrender.com;
- **Lindsey Croasdale** at (414) 721-0443 or lcroasdale@hallrender.com;
- **James Junger** at (414) 721-0922 or jjunger@hallrender.com; or
- Your regular Hall Render attorney.

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More information about Hall Render's Compliance Counsel services can be found [here](#).