

Thanks for the Cash, Government: It Doesn't Come Without Strings

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Agenda

- **Understanding Federal Grants**
 - The regulatory landscape
 - Key obligations/tripwires
 - Disputes
 - Around the corner: Revamped Uniform Guidance
- **Federal Enforcement Landscape**
 - DEI Enforcement
 - New Certifications
 - Tax Exempt Status
 - Fraud & the False Claims Act
 - Administrative False Claims Act
 - Emphasis on State Medicaid Enforcement
 - Recent Judicial Pushback on DOJ
- **Practical Strategies to Reduce Legal Risks**

Understanding Federal Grants

The Regulatory Landscape

- The Uniform Guidance, 2 CFR Part 200
- HHS-Specific Regulations: 45 CFR Part 75
- When do these apply?
 - Rural Health Transformation (Iowa's Healthy Hometowns Program)
 - HRSA grants
 - Graduate Medical Education Expansion
 - USDA Rural Development Grants
 - Research grants
 - FEMA grants
 - Other one-time programs (e.g., COVID-19 Provider Relief Funds)
 - Other federal grants (may come through State or other entities)
- Your grant terms & conditions; know your documents!

Key Obligations/Tripwires

- **Single Audit Requirement**
- **Documentation Requirements**
- **Reporting Requirements**
- **Allowable/Disallowable Costs**
- **Audit Responses**
- **State/PTE-specific Requirements**

Disputes

- **Terminations & Disallowances**
- **Administrative Procedure Act v. Court of Federal Claims**
 - Is a grant a contract?
- **Administrative appeals**

Around the Corner: the Revamped UG

- **Proposed Rulemaking: Not yet in effect**
- **More political grantmaking processes**
- **Explicit restrictions on use of funds to “fund, promote, encourage, subsidize, or facilitate”:**
 - **race discrimination**
 - **“denial...of the sex binary in humans or the notion that sex is a chosen or mutable characteristic”**
 - **illegal immigration, or**
 - **“any other initiatives that compromise public safety or promote anti-American values.”**

Around the Corner: the Revamped UG (cont'd)

- **Termination for convenience**
- **Alignment with federal administrative priorities**
- **Restrictions on foreign collaborations**
- **Speech-related Restrictions**
- **Preferences for lower indirect cost rates**



Federal Enforcement Landscape



DEI Enforcement

- Across industries, wherever federal dollars are spent
- DOJ's "problematic practices"
 - Creating/tracking demographic "goals"
 - Tying employee compensation to diversity
 - Tying employee compensation to developing demographic goals
 - Training/mentoring programs for select groups
 - Targeting "proxies"

PRESS RELEASE

Deloitte Agrees to Pay \$21.5M to Resolve Alleged Employment Discrimination Violations

PRESS RELEASE

IBM Pays \$17 Million to Resolve Allegations of Discrimination Through Illegal DEI Practices



New Certifications

- **EO 14398 “Addressing DEI Discrimination by Federal Contractors”**
- **Common themes:**
 - Vague definitions (e.g., “DEI”) and obligations
 - Compliance tied to payment/materiality
 - Incorporates federal government’s interpretation of civil rights law, EOs
 - Harsh consequences, inc. ineligibility for future funds
 - Flow-down obligations
- **New exposure from old certification language?**

4. Compliance Requirements

The Provider agrees to comply with all applicable federal, state, and local laws, including:

- Title VI of the Civil Rights Act (42 U.S.C. § 2000d)

IA Medicaid Provider Agreement



Tax Exempt Status

- **September 4, 2026, notice of proposed rulemaking for private schools:**

Nondiscrimination requirement. A private school is not operated exclusively for exempt purposes if it adopts, maintains, or enforces any policy or practice that discriminates on the basis of race, color, or national or ethnic origin in the administration of any educational policy, admissions policy, scholarship or loan program, athletic program, or other school-administered or school-supported program. For purposes of this section, discrimination on the basis of race, color, or national or ethnic origin includes any discrimination on the basis of race, color, or national or ethnic origin for any purpose.

- **Administration's interpretation of *Bob Jones University v. United States*, 461 U.S. 574 (1983).**



Fraud & False Claims Act Updates

- **National Fraud Enforcement Division**
 - Consolidated other criminal fraud sections
- **False Claims Act Working Group**
 - HHS/DOJ initiative, focuses on MA, Rx, AKS, DME, and EHR
- **Task Force to Eliminate Fraud**
 - White House, DOJ, Treasury, HHS, DOL, DHS, and others; emphasizes data sharing
- **Enforcement & Affirmative Litigation**
- **Commercial Litigation Branch, Frauds Division (“CivFrauds”)**
 - DOJ directed to evaluate if “non-criminal elements of the Department” should be incorporated into NFED



Administrative False Claims Act

- Formerly known as the “Program Fraud Civil Remedies Act of 1986”
- 45 CFR Part 79 (HHS)
- Administrative corollary to the False Claims Act, with limitations
- Second Trump administration directed agencies to update regulations to align more closely with FCA



Emphasis on State Medicaid Enforcement

- Increased pressure on states to target Medicaid fraud
- MFCU/NAMFCU
- Iowa's Medicaid Fraud Elimination Task Force
- Pulled funding for NY/HI MFCU
- Keep an eye out:
 - Licensing board actions;
 - Consumer complaints;
 - Multistate presence;
 - High-profile incidents.



Judicial Pushback on DOJ

- Longstanding judicial deference to administrative subpoenas
- Second Trump Administration's no-holds-barred approach
- Subpoenas issued for “improper purpose”
- Caselaw still developing



Practical Strategies to Reduce Legal Risks

An Ounce of Prevention: Building and maintaining internal controls and monitoring for federal grant compliance:

- **Written policies and procedures for grant compliance;**
 - **Clear approval and authorization processes for unbudgeted or other expenses;**
 - **Establish clear retention policies and practices;**
 - **Control procurement through strict vendor selection rules and post-award approval processes;**
 - **Engrain conflicts of interest disclosure processes in procurement, contracting, and other decision-making;**
- **Real time documentation of grant expenses (invoices, receipts, payroll, etc.);**
 - **Build contemporaneous recordkeeping directly into your everyday workflows tied to the grant;**
- **Staff training on all grant controls;**
- **Segregate duties for a single grant;**
- **Audits and internal reviews to monitor compliance;**
- **Timely reporting; and**
- **Reviewing, clarifying, and/or interpreting contractual provisions and flagging unilateral modifications.**

An Ounce of Prevention, cont'd

- Clear role assignments
 - Assign grant compliance owner(s):
 - Who is the point person for each grant award to track deadlines and documentation?
 - Who is responsible to develop, organize and maintain records?
 - Who is responsible for the financial transactions under the grant?
 - » tracking cost allowability, frequent reviews of grant terms and budget allocations; mapping out all financial and performance reporting deadlines in advance; uses data analytics to quickly find spending anomalies or problems
 - Who is responsible for facilitating feedback between finance and operational/execution teams to make sure there are no silos (everyone knows what the money can be used for and how it is being used)
 - Ensure no single person manages the full financial transaction cycle (checks and balances)
 - Engage senior leaders and boards to make sure they are actively aware of the grant and compliance obligations

An Ounce of Prevention, cont'd

- **Careful scrutiny of HR practices, including:**
 - Hiring/promotions;
 - Affinity groups;
 - Internal opportunity/training programs;
 - Website, policies, and both internal and external documents.
- **Being both proactive and reactive to potential “red flag” events**
 - Proactive: clear anti-retaliation protections, internal complaint mechanisms, training
 - Reactive: conducting internal investigation, providing response to complainants (as appropriate), disciplining employees (when warranted)
- **Know your data**
 - Relators & DOJ scouring data
- **When fraud/irregularities are suspected:**
 - investigate timely, document, escalate to leadership and the board, corrective action, Consider when to loop in regulators (HHS OIG Self-Disclosure)

Q&A

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