

## Fraud, Waste, and Abuse

**NOTE:** Grants Management Advisories (GMAs) provide guidance for 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.

### ISSUES:

What do we mean by fraud, waste, and abuse, and what are some potential signs?

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?

### DEFINITIONS AND INDICATORS:

*Fraud* means knowingly using Federal funds for purposes other than their intended use and falsifying records or misrepresenting how funds and resources are being used. A false representation of a material fact can occur by means of words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives another so that he acts, or fails to act, to his detriment. Such activity may be prosecutable under both the criminal and civil laws of the United States and is subject to fines, restitution, and civil or criminal penalties. Fraudulent uses of grant or cooperative agreement funds include, but are not limited to, embezzlement, theft, bribery, false statements, or false claims, i.e., for payments under the award.

*Waste* means the extravagant, careless, or needless expenditure of Federal funds or consumption of Federal property. The term also includes improper practices not involving prosecutable fraud or rising to the level of abuse. Waste will often be the result of lax oversight. Examples of waste are (1) 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 (2) buying more supplies than the project requires.

*Abuse* involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the same facts and circumstances. Abuse includes intentional misuse of rank, authority, or position for personal financial interests or those of an immediate or close family member or business associate, as well as misuse of funds or other Federal or federally provided resources, such as property. 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.

**KEY POINTS:**

- Fraud, waste, or abuse may result from action or inaction 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. Under ONC programs, because of the involvement of healthcare providers, this GMA extends to actions by providers.
- The number and dollar value of Federal grant programs increase the potential for fraud, waste, and abuse. The American Recovery and Reinvestment Act of 2009 (Recovery Act) also focused attention on fraud, waste, and abuse.
- 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 auditable documentation. 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 reporting, 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 Office of Management and Budget Circular A-133 audits 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, 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 (individuals making reports should not provide original documents). An individual can make a report to the OIG Hotline by
  - regular mail: Office of the Inspector General, HHS TIPS Hotline, PO Box 23489, Washington, DC 20026
  - calling: 1-800/HHS-TIPS (1-800-447-8477) or TTY 1-800-377-4950
  - e-mail: HHSTips@oig.hhs.gov
  - fax: 1-800-223-8164 (maximum of 10 pages)

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

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- Recovery.gov also provides alternative means to report suspected fraudulent activity related to the use of Recovery Act funds to the Recovery Accountability and Transparency Board (Recovery Board) ([http://www.recovery.gov/Contact/ReportFraud/Pages/Report\\_Fraud.aspx](http://www.recovery.gov/Contact/ReportFraud/Pages/Report_Fraud.aspx)). These include 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).
  - 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 should provide the information **BOTH** through his/her supervisory and management chain and to the HHS OIG or Recovery Board. 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. 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. If the employee does not want his or name released, he or she can request that the OIG or Recovery Board keep the individual's identity 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.
- Be certain of what you are signing when submitting an application, required report, or payment request to ONC. For example, when the authorized organizational representative (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

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the applicant or AOR to criminal, civil, or administrative penalties under U.S. Code, Title 18, Section 1001. Each Federal Financial Report you submit includes a similar statement.

- Ensure the adequacy of your organization's internal controls, conflict of interest, 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 and test whether employees are following the stated policies and procedures.
- 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  
2 CFR Part 180, 2 CFR Part 376  
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 79  
45 CFR Part 74  
45 CFR Part 92  
OMB Circular A-133 and Compliance Supplement  
2 CFR Parts 220, 225, 230 (OMB cost principles)  
HHS Grants Policy Statement

**CONTACT:**

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