Federal Funds: Be Careful and Accurate – the Cop is on the Beat

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Wayne State University, like the vast majority of private and public colleges and universities, benefits from federal funding and loan guarantees-whether it be in form of federally backed student loans (Title IV), military tuition assistance, federally funded research grants, construction projects, health care or otherwise. As Wayne State almost learned the hard way, however, receiving federal funding opens the door to costly lawsuits by opportunistic lawyers and disgruntled former employees under the federal False Claims Act (the "FCA"), which provides draconian penalties for a party who presents a false claim for payment or makes a false statement relevant to a claim paid by the federal government.

The FCA was enacted to fight fraud against the federal government and enhance the government's ability to recover losses from fraudulent claims. False claims include not only outright fraud, but also claims for inflated or unjustified federal funding. If a recipient is found to have violated the FCA, the government is entitled to *three times* the amount fraudulently obtained, plus a penalty of between $5,500 and $10,000 for *each false statement*, plus attorney's fees and court costs. While the penalties are steep, the real bite of the FCA lies in its enforcement mechanisms. The FCA contains a whistleblower provision which allows a private citizen with knowledge of the fraudulent claim (typically an employee or former employee), to bring a lawsuit, known as a "*qui tam*" action, on behalf of the government, to share in the government's recovery (between 15%-30%) and to recover his attorney's fees. A federal appeals court has described the effect of this provision as offering financial "bonanzas [in exchange] for valuable information." As the proliferation of *qui tam* lawsuits and *qui tam* lawyers demonstrates, the promise of a "financial bonanza" is a strong motivation for rank and file employees (and their attorneys) to pursue these claims.

Educational institutions have become frequent and easy targets of *qui tam* lawsuits. In 2015, Wayne State was hit with a *qui tam* lawsuit by a former associate professor claiming that the school inflated the costs associated with certain federal research grants, including the researchers' salaries and the amount of time spent working on the grants, in order to expand the funding it received from the federal government. Wayne State faced the prospect of paying hundreds of thousands, perhaps millions, of dollars in damages, penalties, and fees to the federal government, the

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former professor and his very aggressive attorneys, not to mention the costs of defending the case. However, the federal court dismissed the case in December 2015, ruling that Wayne State is a public institution or, in the court's words an "arm of the state," which is not subject to *qui tam* actions under FCA. Wayne State got lucky.

Client Tip: *For schools that are not public or quasi-public educational institutions, the costs and risks of a qui tam action are very real. It is critical that such institutions create and implement policies, practices and protocols to ensure that all applications and reports to the federal government concerning federal funds are properly vetted for accuracy and do not run afoul of the requirements on the FCA.*

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