National Endowment for the Arts

Office of Inspector General: Grant Fraud Awareness

General Grant Information

- Each year, the United States Government awards nearly $450 billion dollars in Federal Assistance Agreements, most commonly in the form of grants that help to:

1. Support national infrastructure programs in transportation, homeland security, criminal justice, agriculture, human health, and the environment.
2. Fund scientific research, studies, and analyses.
3. Further social sciences, art, literature, and promote cultural enrichment.

- Unfortunately, grant dollars are susceptible to fraud, waste, and abuse.

Grant Recipient's Responsibilities

- Recipients of federal grants have been awarded funds to carry out the goals and objectives identified in the grant. These funds are subject to certain regulations, oversight, and audit.

1. Grant recipients are stewards of federal funds.
2. Grant dollars must be used for their intended purpose.
3. Where applicable, grant recipients must account for costs and justify expenditures.

- Using federal grant dollars for unjust enrichment, personal gain, or other than their intended use is a form of theft, subject to criminal and civil prosecution under the laws of the United States.

Grant Fraud Statutes

- Federal grant dollars are susceptible to several forms of financial theft, most commonly in the form of specific federal violations, including:

1. Embezzlement
2. Theft or Bribery concerning programs receiving Federal funds
3. False Statements
4. False Claims
5. Mail Fraud and Wire Fraud

- Each of these violations of law are subject to criminal prosecution, fines, restitution, and civil penalties.

Who Commits Grant Fraud?

- When business entities, individuals, communities, and other organizations receive federal grant dollars, they are entrusted with their appropriate expenditure.
- Grant fraud is most often committed by:

1. Grant recipients, company officers, business partners, board members, and managers.
2. Bookkeepers, financial staff, and employees.
3. Contractors and subcontractors engaged with the recipient.
4. Recipient consultants.

Common Grant Fraud Scenarios

- *Grant fraud occurs in many ways, but some of the most common fraud scenarios include:*

1. Charging personal expenses as business expenses against the grant.

2. Charging for costs which have not been incurred or are not attributable to the grant.

3. Charging the same costs to multiple grants *(even from different grantees)*

4. Charging inflated labor costs or hours, or categories of labor which have not been incurred (i.e., fictitious employees, contractors, or consultants)

Common Grant Fraud Risks -

Conflicts of Interest

Grantees are required to use funds in the best interest of their program. Decisions about the use of funds must be free of undisclosed personal or organizational conflicts of interest– both in appearance and fact. Typical issues include:

- Less than Arms-Length Transactions: purchasing goods or services or hiring an individual from a related party such as a family member or a business associated with an employee of a grantee.
- Sub grant award decisions and vendor selections must be accomplished using a fair and transparent process free of undue influence. Most procurements require full & open competition.
- Consultants used to administer grants can play an important role in programs; however, their use requires a fair selection process, reasonable pay rates, and specific verifiable work products.

“Lying” or Failing to Properly Support

A grant agreement is essentially a legally binding contract and grantees are obligated to use their grant funds as outlined in the agreement and to act with integrity when applying for grants and reporting their actual use of funds. Grantees are also obligated to properly track the use of funds and maintain adequate supporting documentation. Typical issues include:

- ❑ Unilaterally redirecting the use of funds in a manner different than outlined in the grant agreement.
- ❑ Failing to adequately account for, track or support transactions such as personnel costs, contracts, subcontracts, indirect cost rates, matching funds, program income, or other sources of revenue.
- ❑ Grantee’s must accurately represent their eligibility for funding and cannot provide false or misleading information in their application or subsequent narrative progress or financial status reports.

Theft

Theft is the most common issue in almost all organizations– including those that receive federal grant funding. Some considerations:

- People that embezzle funds can be extremely creative and appear very trustworthy– precisely why they can do so much damage to an organization and remain undetected for extended periods of time.

- Poor or no internal controls equal virtually inevitable theft. A lack of appropriate separation of duties is one of the most common weaknesses (the same person making and recording payments/charges).

- Checks routinely written to employees as “reimbursement” of expenses and the use of ATM / Debit / Gift / Credit Cards must be carefully controlled and require robust oversight.

Prohibition Against Kickbacks

- The Anti-Kickback Act of 1986, 41 USC § 51, *et seq*., prohibits offering, providing, soliciting, or receiving kickbacks in connection with Government contracts and subcontracts.

- The Act defines a "kickback" as "any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly" to any prime contractor or subcontractor or their employees "for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract“

- Any person who knowingly and willfully engages in conduct prohibited by the Act can be imprisoned for up to 10 years, subjected to a fine, or both Mandatory reporting where reasonable grounds exist to believe a violation occurred

What Can Be a "Kickback"?

- Meals
- Money
- Trips
- Souvenirs
- Gift Certificates
- Invitations to attend or participate in any sporting, performance, or other event
- Any other item of value

Avoiding False Claims Act Liability

- The False Claims Act is one of the Government’s primary weapons against fraud – recoveries exceeded $15 billion between 1987 and 2005

- Avoiding liability requires training and systems designed to ensure (among other things) that employees
  – charge all labor and material costs accurately and to the appropriate account
  – do not falsify time reports or other records

- Contractors also should
  – develop redundant invoice review systems
  – conduct periodic, random audits to verify rates, amounts, etc.
  – promptly correct errors (including return of mischarges)

Prohibition Against False Claims
(18 USC § 287 and 31 USC § 3729)

Basis for Liability

1. Submission of "claim for payment" to the federal government;
2. The claim is "false" or "fraudulent;" and
3. The defendant acted "knowingly."

DAMAGES:
1. Triple the amount of damages suffered by the United States *PLUS*
2. A civil forfeiture of between $5,500 and $11,000 per false claim; damages can be reduced in some cases from triple to double
*criminal penalties also exist

Means . . .

1. Actual knowledge;
2. Acts in deliberate ignorance of the truth or falsity of the information; or
3. Acts in reckless disregard of the truth or falsity.

PROGRAM FRAUD CIVIL REMEDIES ACT ALLOWS FOR SMALL FALSE CLAIMS TO BE ADJUDICATED BY AN ADMINISTRATIVE LAW JUDGES – DAMAGES NOT NEED OCCUR – ONLY THE ATTEMPT BY SUBMISSION OF FALSE CLAIMS, OR OMISSION OF INFORMATION. PENALTY IS $10,957 PER FALSE CLAIM AND UP TO DOUBLE THE ATTEMPTED DAMAGES

What Grantees can do to protect their organization and the source of their federal funds by detecting and preventing fraud:

1. Establish an adequate and effective system of accounting, internal controls, records control, and records retention, including separation of duties and review/audit.
2. Implement an internal compliance and ethics program that encourages the recognition and reporting of fraud, waste, or abuse

If you suspect possible fraud or abuse
because something just doesn't look right

Contact the NEA Office of Inspector General Hotline

- by phone at 1-877-535-7446; Local (202) 682-5479;
- by FAX 202-682-5649;
- by e-mail oig@arts.gov;
- or In-Person at NEA's OIG Washington, DC Headquarters.

Information is confidential, can be provided anonymously, unless identification is unavoidable through judicial action; and receives whistleblower protection