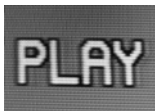


## **Fraud and Ethical Considerations**

### **Lesson Goals**

- To introduce students to fraud and ethical situations that small businesses and individuals need to be aware of.

### **Start Video**



- Please watch the video now.
- Use the following pages to take notes.

### Fraud & Ethical Considerations

- Civil Fraud

- Civil False Claims Act

- Qui Tam Provisions

- Health Care Fraud

- Program Fraud Civil Remedies Act

Civil False Claims Act

- Permits Government to recover treble damages and penalties from any person who submits a false claim to a federal agency.
  
- Person may be liable under \_\_\_\_ USC §3628 if he/she:
  - Knowingly presents, or causes to be presented to a Government official, a \_\_\_\_\_ or \_\_\_\_\_ claim for payment or approval;
  
  - Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved;
  
  - Conspires to defraud the Government by getting a false or fraudulent claim allowed or paid; or
  
  - Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

### Qui Tam Provisions

- Allow private individuals (whistleblowers) to initiate civil false claim lawsuits on behalf of themselves and the Government and to keep a share of the Government's recovery.
- Between 1998-1999, Government recovered \$2.5 billion in a total of 2,770 civil "qui tam" actions. Involved whistleblowers received \$300M.
- More recent cases involve allegations of Medicare and Medicaid provider fraud.

### Health Care Fraud

- Health insurance plans and other health care companies that provide medical supplies and services under federal health care programs are subject to the laws and regulations that apply to most Government contractors as well as additional requirements imposed by Congress and Government agencies specifically to target \_\_\_\_\_  
\_\_\_\_\_.

- Special statute prohibits an individual from knowingly making a false statement in relation to an application for payments under certain health care programs.

#### Criminal Fraud

- Criminal False Claims At
- False Statements Act
- Mail & Wire Fraud
- Major Fraud Act
- Health Care Fraud

#### Criminal False Claims Act

- In existence since the Civil War (18 USC §287)

Whoever makes or presents to any person or officer in the civil, military, or naval service of the US, or to any department or agency thereof, any claim upon or against the US, or any department of agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

### False Statements Act

- Most widely used federal laws in prosecuting criminal fraud cases against contractors.

Whoever, in any matter within the jurisdiction of any department or agency of the US \_\_\_\_\_ and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

### Corruption

- Anti-Kickback Act
- Bribery Statute
- Illegal Gratuities Statute
- Procurement Integrity Act
- Lobbying Restrictions

### Anti-Kickback Act

- Efforts to control commercial bribes paid by subcontractors, vendors, and suppliers to prime contractors, or other subcontractors in return for favorable contractual treatment.
  
- Forbids any \_\_\_\_\_l or business entity from:
  - Providing, attempting to provide, or offering to provide any kickback
  
  - Soliciting, accepting, or attempting to accept any kickback
  
  - Including (directly or indirectly) the amount of any prohibited kickback in the price charged by a subcontractor to a prime contractor or high-tier subcontractor, or in the price charged by the prime contractor to the Government.
  
- Kickback is defined 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 or subcontractor or their employees for the purpose of improperly

obtaining or rewarding favorable treatment in connection with a prime contractor or in connection with a subcontract relating to a prime contract.

- Act extends to any type of Government contract.
- Prohibits offers and attempts as well as executed kickbacks.

### Other Statutes

- Bribery

- Prohibits the giving to and receipt of bribes by public officials

- Applies to all federal public officials and punishes both sides of the transaction

- Illegal Gratuities

- Applies to offers and solicitations of gifts.

- Intent requirement. Higher degree of intent is bribery.

### Procurement Integrity Act

- Imposes extremely broad restrictions on the conduct of Government procurement officials and their contractor counterparts.
- Intensive effort by Congress “to correct the seedy trade of favors and information and thus restore the public’s confidence in the procurement process.”
- Targets both improper conflicts of interest and improper disclosure or receipt of procurement information.

### Lobbying Restrictions

- Byrd Amendment
  - Places Government-wide restrictions on the use of federal appropriated funds for legislative and executive branch lobbying.
  - Prohibits an awardee of a federal contract, grant, loan, or cooperative agreement from using appropriated funds to attempt to influence any officer or employee of any agency or of Congress in connection with a contract award or modification.

### Lobbying Disclosure Act

–Enacted to create a comprehensive scheme for reporting and registering lobbyists.

–Requires individuals spending at least 20% of their time on lobbying activities and any organization employing at least one lobbyist to register with the House of Representatives and the Senate within 45 days after first making a lobbying contact.



#### **Mini-Lab**

Look up the definition of civil fraud on

<http://en.wikipedia.org/wiki/Fraud> .

Definition

**Notes:**

References

- FAR
- DFARS
- USC Code
- CFR
- *Government Contract Guidebook*, Donald P. Arnavas, Thompson-West, 2001.