

# Bloomberg Federal Assistance e311 Content Workshop: **Preventing Fraud, Waste, and Abuse**

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# e311 Fraud, Waste, and Abuse Experts

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# Workshop Goals

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- ✓ Understand fraud, waste, and abuse in connection with federal funds
- ✓ Provide proactive tools to identify, detect, and prevent fraud
- ✓ Showcase examples of fraud and lessons learned
- ✓ Provide a perspective on fraud, waste, and abuse from the local and federal Inspector General perspective
- ✓ Facilitate an engaging presentation with questions and areas of concern for municipalities
- ✓ Ensure that participants are aware of the resources available on this topic through the e311 Program

# Establish an Oversight Presence

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## ❖ HUD OIG Fraud Presentation

U.S. HUD OIG Grantee Disaster Fraud Presentation 2019

*“The existence of a fraud policy and proper handling of fraud is itself a deterrent to clients, vendors and employees”*

*“The occurrence of fraud alone is not a sign of a poorly run or mismanaged agency”*

*“The reaction to the occurrence of fraud is what defines the management of an agency”*

# Agenda

## Overview of Fraud, Waste, and Abuse

Areas of Common Fraud & Importance of Audits

Compliance and Reporting

OIG Perspective

Best Practices to Mitigate FWA & Train/Report on FWA

Conclusion and Q&A

# Fraud, Waste, and Abuse Common Elements

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**Fraud** – False representation and/or intentional deception intended to result in financial or personal gain

- Transparency and ample documentation is important in distinguishing fraud from a mistake

**Waste** – Needless, careless, or excessive spending  
e.g., the purchase of unneeded supplies or material

**Abuse** – Improper use of an employee's position  
e.g., knowingly directing work to a vendor without going through the required contracting process

# FWA Management – Risk Assessments

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- **A risk assessment is a key planning tool to help support the use of federal funds and develop a baseline of the operational and fraud risks that are associated with a program**
- **Review all existing policies, procedures, and controls**
- **Identify areas of high-risk and likelihood of occurrence**
- **Identify the impact such risk will have on the program**
- **Design and implement a prevention program to address risk areas and the need for corrective action**

## Common Risk Areas

- Grant management protocols
- Asset misappropriation
- Financial reporting
- Violation of federal or state laws
- Procurement
- MWDBE Program
- Health and safety program
- Environmental compliance
- Buy America(n)

# FWA Management – Oversight of Programs

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- ❖ Assess your agency's experience and staffing capacity to manage federal funds (e.g., org. structure, supervisory roles, delegation of authority, line level staffing, experience at all levels, responsibilities and relations within / between different divisions / offices)
- ❖ Implement a monitoring and oversight plan to assess your continued performance and compliance with federal fund requirements, federal and state laws and regulations
- ❖ Determine how you will ensure that recipient and subrecipients adhere to all requirements relating to their receipt of fund (e.g., use of funds, reports required to submit documenting use of funds)
- ❖ Review recipients or subrecipients to determine if they have been the subject of prior negative audit findings and recommendations that could impact oversight
- ❖ Develop templates / forms or other documentation to report the results of the funding awards such as responding to oversight bodies seeking to ascertain who received funds, the amount of funds, and date funds distributed



# Agenda

Overview of Fraud, Waste, and Abuse

## **Four Areas of Common Fraud & the Importance of Audits**

Compliance and Reporting

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# Understanding MWDBE Fraud

- ❖ Certified by the state in which business is being conducted
- ❖ At least 51% owned / controlled by minority, women, or service-disabled veteran members
- ❖ Ownership interest is real, substantial and continuing, and beyond *pro forma* ownership
- ❖ Exercises the authority to independently control the day-to-day business decisions
- ❖ Criteria (e.g., minority, women, or service-disabled member's personal net work does not exceed required threshold and gross receipts cannot exceed required threshold)
- ❖ Area of Specialty (e.g., business must work in its area of specialty that is most reflective of the firm's expertise)
- ❖ Contract specific goals may be implemented for a project
- ❖ Good Faith Efforts (e.g., took all necessary and reasonable steps to achieve sufficient diversity participation in the performance of a contract)
- ❖ Contracts may state that only a certain percentage of the work performed by suppliers and distributors may count toward contract participation goals

## Identifying Red Flags & Solutions

- “Pass-Through” MWDBE partakes in a government project in name only with no material contribution
- “Flip-Flopping” the employees of a non-MWDBE entity are temporarily placed on the payroll of a MWDBE
- Amount paid and method of payment to workers
- Business names on equipment /vehicles covered with paint or magnetic signs
- Orders / payments for supplies made by individuals not employed by the MWDBE
- MWDBE owner/supervisor rarely present at job site
- Use of joint bank accounts between contractor and MWDBE
- Absence of written contracts between contractor/subcontractor
- *Educate internal auditors and field staff to proactively monitor risks*
- *Educate MWDBE firms about prohibited conduct associated with MWDBE fraud*

# MWDBE Fraud Case Study

- ❖ 2008 to 2012 MCC Construction Company entered into an agreement with two MWDBE companies (e.g., small businesses owned / controlled by socially economically disadvantages individuals) – (District of Columbia)
- ❖ MCC was awarded 27 government contracts totaling \$70M that required MWDBE participation. MCC did not utilize the MWDBE companies, instead falsified paperwork and performed the work themselves
- ❖ MCC paid \$1.77M in criminal penalties and forfeiture
- ❖ The owner of MCC, Thomas Harper, paid \$166K in restitution
- ❖ A GSA contracting officer filed a protest regarding MCC's relationship with one of the MWDBE company and MCC made false statements to SBA about the nature of the relationship

<https://www.justice.gov/usao-dc/pr/former-mcc-construction-company-officer-and-owner-pleads-guilty-conspiring-obstruct>

# Understanding Procurement Fraud

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- ❖ Procurement is one of the most frequent areas of clawbacks
- ❖ Based on the municipality's procurement rules and dollar thresholds, qualified bidders are subject to a competitive bid process (e.g., bid tabulation, bid analysis, independent cost estimates and review of bid tabulation, public advertisement of bids)
- ❖ Subcontractors should include required language provided by the municipality and contractor
- ❖ Due diligence of contractors and vendors (e.g., establishing a prequalification / vetting process to identify viable bidders)
- ❖ Contractors colluding to manipulate and submit falsified bids
- ❖ Subrecipient Oversight (e.g., monitoring work of subrecipients to ensure compliance with contract terms and quality of work)

## Identifying Red Flags & Solutions

- Lack of documentation and transparency
- Winning bid exceeds cost estimates
- Losing bidders hired as subcontractor
- Incomplete, identical, or similar bids
- Favoritism towards one bidder
- Significant number of qualified bidders failed to bid
- Qualified bidder disqualified for questionable reasons
- Unreasonably narrow contract specifications
- Allowing an unreasonably short time limit to bid
- Adopting unreasonable pre-qualification procedures
- Failure to adequately publicize requests for bid
- Winning bid just under the next lowest bid
- Acceptance of late bids
- *Educate procurement staff and contractors on rules of engagement during bid process*
- *Implement a Code of Ethics policy*
- *Real-time and post awards audits*

# Procurement Fraud Case Study: Bid Rigging

- ❖ Combined MWDBE and procurement fraud
- ❖ 2011 to 2021 TriMark USA LLC and its subsidiaries TriMark Gill Marketing and Gill Group Inc. worked with (3) small businesses to obtain contracts set-aside for service-disabled veteran-owned businesses (Spokane, Washington)
- ❖ TriMark performed substantially all the work
- ❖ Small business served as face of contract and billing the government for the work
- ❖ TriMark instructed companies on how to prepare bids and prices to propose
- ❖ TriMark employees had access to use the small businesses email to send “ghostwrote” emails on their behalf to the government
- ❖ TriMark employee posed as a representative of the small business
- ❖ Shared office space and equipment between TriMark and small businesses
- ❖ TriMark paid \$48.5M and former executive \$100K in penalties
- ❖ Largest recovery of small business contracting fraud case

[dojpr-022322-government-contractor-agrees-pay-record-485-million-resolve-claims-related-fraudulent-procurement-small-business-contracts-intended.pdf \(dhs.gov\)](#)

# Understanding Bribery and Unlawful Gratuities

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- ❖ Bribery is the act of giving or receiving something of value to influence the actions of another individual
- ❖ Bribery is conducted “under the table”
- ❖ City employees cannot accept bribes and/or payoffs from city bidders, contractors, and/or subcontractors by using their position to influence any governmental decision or action

## Identifying Red Flags & Solutions

- Lavish lifestyle (e.g., cars watches, real estate)
- Frequent travel and entertainment
- Frequent request for gifts or entertainment
- Quid pro quo
- Request for cash
- Hiring unqualified candidates or agents
- Continued acceptance of poor-quality work
- Vague description of third-party services rendered
- Fast-tracked approvals
- *Educate staff, contractors, and suppliers on conflict rules and bribery (E.g. obligation to report fraud)*
- *Implement zero-gift policy applicable to city employees / family members*
- *Maintain a constant high visible anti-fraud presence for the duration of the project*
- *Prominently display fraud hotlines for reporting bribes and other unethical conduct*

# Bribery Case Study

- ❖ Combined bribery and procurement fraud
- ❖ Michael K. LumHo, a former government employee was sentenced to 7.5 years in prison for accepting bribes in relation to a contract he oversaw
- ❖ LumHo oversaw federal contract for telecommunication services and equipment from 1 of 2 national companies
- ❖ LumHo solicited / accepted bribes from William S. Wilson in exchange for steering a contract to Wilson's company
- ❖ No competitive bid
- ❖ Wilson's company lacked relevant experience / expertise, had no employees based in location of the project
- ❖ Bribes disguised as payroll payments to a relative of LumHo for a non-existent job
- ❖ Bribes deposited into account controlled by LumHo
- ❖ Purchased orders for "specialized IT support services" in order to mark up prices, but bought standard items
- ❖ High-end camera and stereo equipment purchased directly by government which were material bribes

[Former DoD OIG Official Sentenced for Accepting Bribes and Defrauding the United States | USAO-EDVA | Department of Justice](#)

# Understanding Conflicts of Interest

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## ❖ *2 CFR 200.318 (c) (1) – General procurement standards:*

- ❖ The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.
- ❖ No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.
- ❖ Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

## Identifying Red Flags & Solutions

- Contractor's employee creates a company which wins a contract to perform work on site
- Project executives steer work to companies owned or controlled by relatives
- Contractor employs current or former employees as consultants in violation of conflict rules
- Contractor has ownership interest in a company that is used as a subcontractor
- *Educate employees and contractors on city conflicts of interest rules and regulations*
- *Require self-disclosures/written certifications acknowledging conflict of interest rules and regulations*



# Conflict of Interest Violation Case Study

- ❖ Issue # 1: Cape Henry Associates (Virginia Beach, VA) failed to disclose that one of their officers had an ownership interest in KOVA Global, which was a subcontractor on two sole source task orders from the Army and GSA
- ❖ Issue # 2: Cape Henry also failed to disclose a financial relationship they had with a subcontractor, Q.E.D. Systems Inc., a consultant for the Navy
- ❖ On behalf of the Navy, Q.E.D. was required to review Cape Henry's proposals and make recommends for awarding them contracts
- ❖ Cape Henry agreed to pay a \$425K penalty for failure to disclose organizational conflicts in relation to multiple government awards

[Government Contractor Agrees to Pay \\$425,000 for Alleged False Claims Related to Conflicts of Interest | OPA | Department of Justice](#)

# Proactive Audits/Oversight

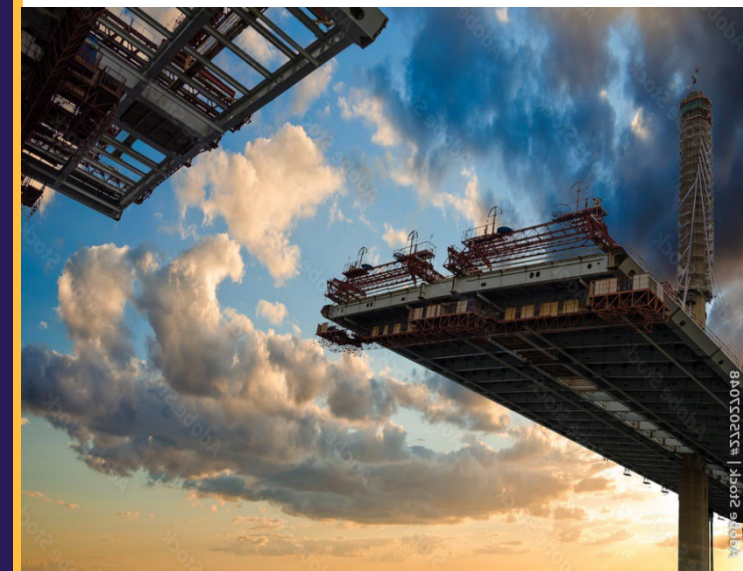
## The importance of real-time desk and field audits

- *Enhances your oversight presence*
- *Ability to address issues before they lead to claw-backs or become systemic (e.g., lack of documentation, vague descriptions of services, cost overruns, etc.)*
- *Real time monitoring of compliance requirements & performance expectation (e.g., Buy America)*
- *Better positioned for future federal IG audits, local audits, and single audits*

### Claw-backs:

- DHS IG audits 2010-2020 recommended the recovery or de-obligation of approx. \$1.3 billion
- HUD IG 2002 -2020 audits resulted in questioned costs totaling more than \$1.7 billion [HUD OIG lessons-learned and-key-considerations for grantees](#) (Nov. 2021)

*“The complexity and size of infrastructure projects, make bribes, inflated invoices, unnecessary or inappropriate line items, and misappropriation of funds easier to conceal”* [Coalition for Integrity - Oversight of Infrastructure Spending](#) (Sept. 2021)



# Importance of an Oversight Team

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- *Keep prominent and visible your oversight team's activities so they continuously set the tone that accountability and integrity is central to your program*
- *Infuse oversight personnel into project meetings*
- *Valuable resource for project teams to rely on for integrity/oversight related questions*
- *Grant funds can be used to hire internal and/or external personnel to assist with oversight*

## **"2 CFR 200.329"**

The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities.



# Integrity/Compliance Monitoring Program

- Due to the historical instances of fraud & corruption on large infrastructure projects, Integrity Monitor (“IM”) programs have been implemented by numerous government agencies over the past three decades
- IM teams range in size from a couple of team members to a larger group of multidisciplinary professionals (auditors, engineers, analysts, investigators, subject matter experts, etc.)
- IMs are embedded in the infrastructure project, but serve as an independent 3<sup>rd</sup> party reporting to a designated official outside of the PROJECT team

Integrity Monitors put in place after the 9/11 attacks to provide oversight of the clean up of the World Trade resulted in approximately \$40 million dollars in cost savings.



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## **Compliance and Reporting**

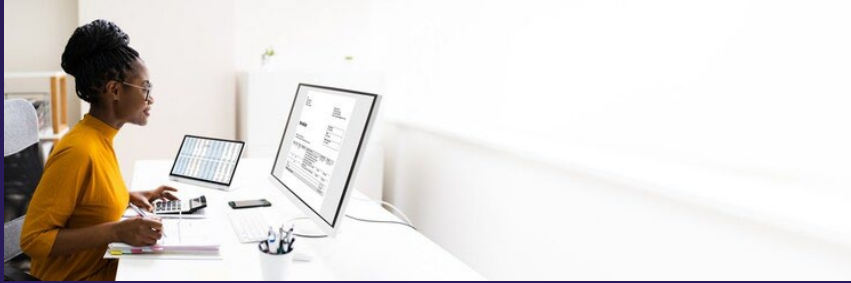
OIG Perspective

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# Compliance and Reporting: Audits



## Regulatory Guidance

- Payments made as a result of federal awards are subject to the provisions of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR 200)



## Federal Audits and Oversight

- Single audit: triggered by >\$750,000 in federal awards during a fiscal year
- Treasury Office of Inspector General (OIG)
- Government Accountability Office (GAO)
- Pandemic Response Accountability Committee

# Compliance and Reporting: Uniform Administrative Requirements

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## Procurement Standards

- States are allowed more flexibility in conducting procurements under the uniform rules
- States may follow their own policies and procedures whether those are more stringent or not compared to the federal standards
- Local governments must follow the most stringent of either their own policies, procedures, rules and regulations or federal standards

## Procurement Fraud Risks

- Bid rigging
- Collusion
- Mischarging costs
- Bribery, kickbacks, and conflicts of interest
- Product / service substitution
- Counterfeit materials (domestic preferences)
- Other schemes

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# Role of Office of the Inspector General

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**Inspector General Act of 1978 states that the Inspector General of the Department of Defense shall:**

1. Be the principal adviser to the Secretary of Defense for matters relating to the prevention and detection of **fraud, waste, and abuse** in the programs and operations of the Department;
2. Initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate;
3. Provide policy direction for audits and investigations relating to **fraud, waste, and abuse** and program effectiveness; and
4. Investigate **fraud, waste, and abuse** uncovered as a result of other contract and internal audits, as the Inspector General considers appropriate.

# Frequently Identified Issues by OIG: Federal Funding

- **Improper Procurement Practices**

Use of ineligible contract types  
Competition and cost analysis  
Restricting competition

- **Unsupported Costs**

Inadequate documentation

- **Poor Project Accounting**

Not accounting for costs on project-by-project basis  
Inadequate accounting entries to support claim

- **Duplication of Benefits**

Insurance proceeds  
Other federal grant funds

- **Excessive Equipment Charges**

Incorrect use of equipment rates  
Overstated equipment charges

- **Excessive Labor and Fringe Benefit Charges**

Incorrect fringe benefit rates  
Overstated labor charges

- **Unrelated Project Charges**

Non-disaster related costs

- **Unapplied Credits**

Credits, proceeds for sales, salvage value

- **Direct Administrative Costs**

Not tracking costs to specific projects  
Lack of monitoring contractor performance leading to higher and unnecessary costs

# Pandemic Response Accountability Committee

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**The Pandemic Response Accountability Committee (PRAC) is an independent oversight committee within the Council of the Inspectors General on Integrity and Efficiency**

- PRAC was created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020
- Ensures that the \$2.2 trillion of the CARES Act, plus 5 other pandemic-related pieces of legislation totaling over \$5 trillion in government funds, were not misspent
- Includes 21 inspector generals from across US federal agencies

<https://www.pandemicoversight.gov/>

# PRAC Findings – self-certified information needs to be validated before payments are sent

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## Small Business Loan Fraud

- Small business owners and nonprofits could apply for economic injury disaster loans to help pay for normal operating expenses such as rent and utilities
- Eligibility was limited to applicants operating on or before January 31, 2020
- To apply, SBA only required applicants to self-certify their business establishment date by entering it on the application form
- Using EIN registration dates, SBA OIG found the agency approved more than 22,700 EIDL applications with registration dates of February 1, 2020, or later
- **As a result, potentially ineligible applicants received \$918M in loan funds**

## Emergency Rental Assistance Program Fraud

- In many cases, recipients rely on documentation and information provided by the applicants to determine eligibility
- Many recipients are balancing the trade-off of detailed documentation review and validation with the need to distribute funds quickly and efficiently
- **False billing, bribery, falsified documentation, and identify theft are all high fraud risks within emergency rental assistance programs**

# PRAC Findings – use existing data sources to verify benefits eligibility

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## PPP Fraud

- In January 2021, the SBA OIG issued a memo warning about improper payments to lenders for potentially ineligible recipients of PPP loans
- To be eligible, a business cannot currently be prohibited from working with the government or have delinquent federal loans
- The SBA and its lenders relied on applicant's self-certification that they met these conditions and were therefore eligible
- The SBA OIG used the Treasury's Do Not Pay (DNP) service to verify recipient eligibility and found that **57,500 PPP loans worth \$3.6B were issued to potentially ineligible recipients**

## Stimulus Check Fraud

- CARES authorized the IRS to send stimulus checks to reduce the financial burden of the pandemic on individuals and families
- The Treasury IG for Tax Administration and the Government Accountability Office (GAO) both reported that the IRS initially failed to use death records from the Social Security Administration to prevent this type of improper payment
- **The IRS sent nearly 2.2M stimulus checks totaling nearly \$3.5B to deceased individuals (as of July 16, 2020)**

# PRAC Lessons – transparency and collaboration are critical to prevent fraud, waste and abuse

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## Transparency

- Federal IGs use data analytics to look for trends, patterns, and anomalies that may indicate potential fraud in pandemic spending data.
- **Lack of information sharing between states and between states and the federal government increases the risk of fraud, waste and abuse in federal funding as these trends and patterns are more difficult to detect**

## Collaboration

- Programs that receive significant increases in funding may be at a higher risk for fraud as an increase may attract fraudsters looking to take advantage of the increased funding available as well as the increased workload for the agency
- New programs may also be more susceptible to fraud because a formal risk assessment may not have been done
- The GAO reported that the SBA did not conduct a formal fraud risk assessment for the \$800B PPP prior to launch
- **Proactive and coordinated oversight enable recipients to fine-tune pandemic relief programs before they launch, build on lessons learned, and improve information sharing to fight fraud**

# Allegations and Risks of Fraud Associated with Federal Funding

**COVID-19 related funding and the newly passed infrastructure funding through the IIJA present new opportunities for fraud, waste and abuse.**

## Fraud schemes associated with CARES Act funding

- Filing fraudulent relief applications (e.g., number of employees, expenses)
- Misuse of funds (e.g., personal expenses, non-COVID-19-related expenses)
- Intentionally applying for and receiving funds for the same expenses from multiple government programs
- Submitting applications with the names of businesses with no actual operations or employees

## Potential fraud risks related to IIJA funding

- Domestic preference requirements (“Buy American”) increase the risk for counterfeit goods and materials
- Large construction projects increase the risk for improper labor practices, contract fraud, and improper procurements of goods and services



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# OIG Trainings and Resources

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- **Fraud Alert: COVID-19 Scams:** [https://oig.hhs.gov/fraud/consumer-alerts/fraud-alert-covid-19-scams/?utm\\_source=web&utm\\_medium=web&utm\\_campaign=covid19-fraud-alert](https://oig.hhs.gov/fraud/consumer-alerts/fraud-alert-covid-19-scams/?utm_source=web&utm_medium=web&utm_campaign=covid19-fraud-alert)
- **Federal Agencies Warn of Emerging Fraud Schemes Related to COVID-19 :** <https://oig.hhs.gov/documents/coronavirus/245/Vaccine-Fraud-PSA.pdf>
- **2 CFR Part 200, Appendix XI Compliance Supplement 2022:** [https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement\\_PDF\\_Rev\\_05.11.22.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement_PDF_Rev_05.11.22.pdf)
- **CIGIE Grant Oversight Capstone:** [https://www.ignet.gov/sites/default/files/files/CIGIEGrantOversightCapstoneReport\(Jan2021\).pdf](https://www.ignet.gov/sites/default/files/files/CIGIEGrantOversightCapstoneReport(Jan2021).pdf)
- **HUD OIG CPD Fraud Risk Inventory for the CDBG and ESG CARES Act Funds:** <https://www.hudoig.gov/sites/default/files/2021-10/2022-FO-0801.pdf>
- **Pandemic Oversight:** <https://www.pandemicoversight.gov>
- **Antifraud Playbook:** <https://www.cfo.gov/wp-content/uploads/2018/10/Interactive-Treasury-Playbook.pdf>
- **GAO Framework for Managing Fraud Risks in Federal Programs:** <https://www.gao.gov/assets/gao-15-593sp.pdf>

# OIG Audit Tips to Manage Fraud, Waste, and Abuse

1

Establish a separate and distinct account for recording revenue and expenditures, and a separate identifier for each distinct FEMA project.

3

Designate a person to coordinate the accumulation of records.

5

Check with your Federal Grant Program Coordinator about the availability of funding under other Federal programs and ensure that the final project claim does not include costs that another Federal agency funded or should have funded.

7

Ensure insurance coverage was applied to the appropriate project to avoid duplication of benefits

2

Ensure each expenditure is recorded in the accounting books and is referenced to supporting source documentation (checks, invoices, etc.) that can be readily retrieved.

4

Maintain all invoice, contract, and procurement documentation for contract costs

6

Ensure that expenditures claimed under the FEMA project are reasonable and necessary, are authorized under the scope of work, and directly benefit the project.

8

Ensure proper grant administration is established and enforced throughout the duration of the grant.

# Reporting Obligations

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## Upcoming Reporting Deadlines:

- Quarterly Project and Expenditure Report – Due Date is July 31, 2022
- Annual Recovery Plan Performance Report – Due Date is July 31, 2022 (Municipalities w/a population that exceeds 250,000 residents)

# Q&A

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**For more information, visit:**

<https://bloombergcities.jhu.edu/program/e311>