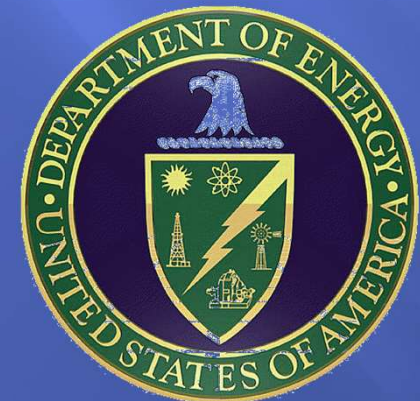


# GRANT FRAUD INVESTIGATION

Office of Inspector General  
U.S. Department of Energy  
Presented by:

Nick Macedonia, Special Agent



Wire Fraud

Aggravated Identity Theft

Money Laundering

Conspiracy

Obstruction of Justice

GRANT  
FRAUD!



# Learning Objectives

- ▣ Identify regulations, personnel, and records associated with the federal grant administration process.
- ▣ Identify the differences between grants and contracts.
- ▣ Identify the primary types of federal grants.

# Learning Objectives (Cont.)

- ▣ Identify common schemes and red flags in grant fraud investigations.
- ▣ Identify investigative steps and legal remedies for grant fraud investigations.
- ▣ Identify best practices in grant fraud investigations.

# Part I: Overview of Grant Process

# Question:

- ▣ Does the federal government spend more on contracts or grants?
  
- ▣ Answer: **Grants!** FY 2023 federal spending:
  - Contracts: \$675 B.
  - Grants: \$1.1 T.
  - Source: [www.usaspending.gov](http://www.usaspending.gov) as of 11/01/22.



# What is a Grant?

- ▣ See 2 CFR § 200.51 (For federal awarding agency)
  - Transfer anything of value;
  - From grantor to grantee;
  - To carry out a public purpose authorized by law;
  - And not to acquire property or services for grantor's direct benefit or use (see also 31 U.S.C. § 6304).
- ▣ Public purposes include building bridges and roads, conducting medical/other scientific research, improve energy efficiency, address juvenile delinquency, etc.

# Contracts vs. Grants

- ▣ Written or oral agreement between two or more parties, intended to be enforceable by law
- ▣ Used to obtain goods and/or services for the use of the government
- ▣ Competition is preferred; sole source must be justified
- ▣ Multiple oversight mechanisms
- ▣ End-product typically a good or service
- ▣ Sum of money given by government for any of various purposes
- ▣ Agencies use grants to provide or advance a public purpose or service
- ▣ Some competition; most awarded via a formula
- ▣ Integrity based system; oversight can vary
- ▣ “Softer” end-product such as report or research

# Contracts and Grants

- ▣ Legal instruments
- ▣ Government giver of money
- ▣ Government rules must be followed

**NOTE ON COOPERATIVE  
AGREEMENTS**

# Two Primary Types of Grants

- ▣ Discretionary Grant
  - Eligibility established by legislation
  - *Open to competition*
  
- ▣ Mandatory Grant
  - Eligibility established by legislation
  - *No competition*

# Discretionary Grants

- ▣ The government can exercise “discretion” in selecting the project and the recipient through a competitive process.
  - Demonstration
  - Research
  - Training
  - Service
  - Construction
  - Conference
- ▣ **Example:** NSF funding of scientific research.

# Mandatory Grants

- ▣ Government is required by law to make the award if the applicant meets eligibility and compliance requirements.
- ▣ Awarded for specific purposes and goals with subtle differences among them.
- ▣ Grants with a defined purpose:
  - Typically awarded to state governments.
  - No competition.
  - *Must be awarded* if the applicant submits an acceptable state plan or application.
- ▣ **Example:** DOE Weatherization Assistance Program.

# Types of Mandatory Grants

- ▣ **Block Grant** – To a state (or its subdivisions) to be used for a broad program area. The state has much leeway over the type of activities to support. Block grants are usually passed through to sub-recipients (beneficiaries).
- ▣ **Formula Grant** – Funds are disbursed to states (or their subdivisions) according to distribution formulas. The formulas are based on population, income, need, etc.
- ▣ **Entitlement Grant** – A grant whereby the government pays a statutorily required share of costs without dollar limits.

# Grant Award Process



Grants Officer; Program Officer

**INTEGRITY BASED SYSTEM**



# Relevant Rules and Regulations

- Solicitations
- Agency-Specific Regulations/Guides
- Certifications of Compliance with Award Terms, generally, and/or Specific Grant Terms
- Uniform Guidance (2 C.F.R. Part 200)/OMB Circulars/Relevant Cost Principles

# Key Documents

- Proposals and budgets (refer back to solicitations)
- Panel reviews
- Award documents:
  - Grant Letters, Grant Conditions, Policy and Procedures Guides
- Training materials
- Correspondence (pre- and post- award)
- Interim reports and certifications
- Final reports and certifications
- Financial drawdowns and certifications

BREAK  
TIME!

# Anyone Like “The First 48?”



# Part II: Overview of Grant Fraud Investigation

# Question:

- ▣ What is the most memorable use of grant funds you recall? (Can be a case you personally worked on or oversaw as a manager.)

# Use of Grant Funds Example



bright MLS

# What is Grant Fraud?

- ▣ Engaging in deception at any stage of the grant process.
- ▣ Fraud involves obtaining something of value through misrepresentation.
- ▣ Simply put:
  - Lying.
  - Cheating.
  - Stealing.



# Key Questions for Grant Fraud Investigators

- ▣ What are the rules?
- ▣ What is the evidence the grantee knew the rules?
- ▣ What is the evidence the grantee broke the rules?



# Remember This?



- False statements
- False certifications
- Ineligible applicant
- Duplicate funding
- Inflated budgets
- Applicant suspended/debarred

- Unallowable, unallocable, unreasonable cost(s) (Inc. personal gain)
- Non-performance
- Inadequate/false documentation

- False statements
- False certifications
- No/late/inaccurate reports
- Cost transfers
- Unmet cost share

**FRAUD AT ANY / ALL STAGE(S)**

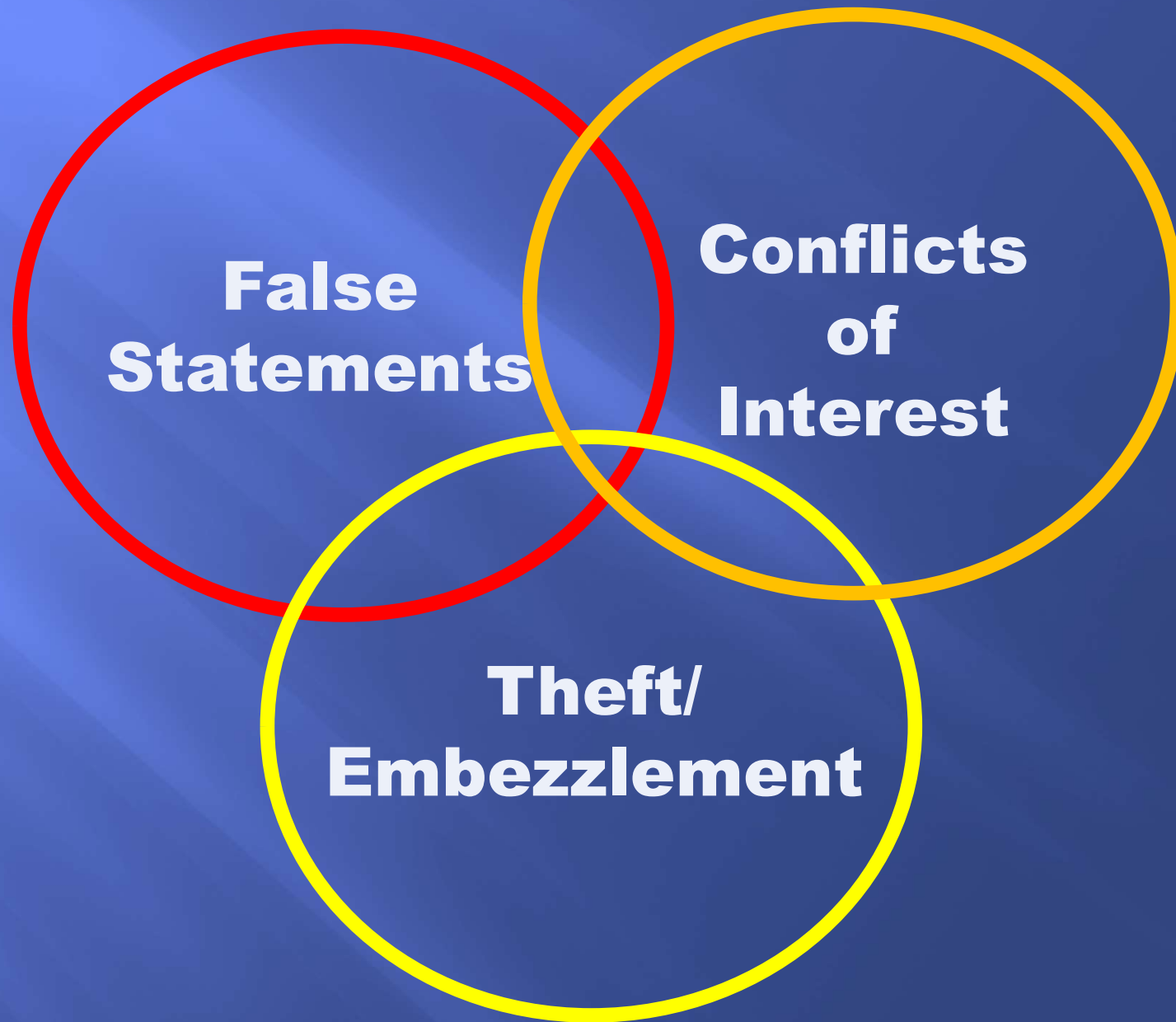
# Importance of Materiality

- ▣ Per Supreme Court: “[T]he most common formulation of that understanding is that a concealment or misrepresentation is material if it has a natural tendency to influence, or was capable of influencing, the decision of the decision-making body to which it was addressed.” (*Kungys v. United States*)
- ▣ The misrepresentation has to matter (Generally, to a grants/program officer).

# Importance of Materiality (Cont.)

- ▣ Per Supreme Court: “...if the Government pays a particular claim in full despite its actual knowledge that certain requirements were violated, that is very strong evidence that those requirements are not material. Or, if the Government regularly pays a particular type of claim in full despite actual knowledge that certain requirements were violated, and has signaled no change in position, that is strong evidence that the requirements are not material.”  
(*Universal Health Services, Inc. v. United States ex rel. Escobar*)
- ▣ The government has to care.

# Common Grant Fraud Schemes



## False Statements

Falsified documents  
Fake/inflated expenses  
False claims/invoices  
Duplicate funding

## Conflicts of Interest

Bribes/kickbacks  
Use of family/friends  
Ownership/control

Personal use  
Time and effort  
“Ghost” individuals  
Identity theft

## Theft/ Embezzlement

# Red Flags (Pre-Award)

- ▣ **Undisclosed conflicts of interest**
- ▣ Excessive or illogical use of “consultants”
- ▣ Duplicate funding/similar sounding titles and abstracts
- ▣ Sham websites and/or emails/lack of internet presence
- ▣ **Individuals associated with grantee do not work for that entity**

# Example Consulting Contract

In exchange for \$10,000 a month, consultant agrees to attempt to do the following:

- Increase awareness of program goals
- Collaborate with community stakeholders to leverage resources across barriers
- Provide feedback and advice when requested on ways to improve operations
- Collect consulting payments in a timely manner



# Red Flags (Award)

- ▣ Cost transfers to spend down expiring awards
- ▣ Early large expenditure report(s)/drawdown(s)
- ▣ **Non-payment of subcontractors**
- ▣ Drawing down all or most of the funds in the last few months of the award
- ▣ Inventories/invoices and financial reports that do not reconcile
- ▣ Inadequate, missing, or altered records
- ▣ **Unrelated/personal expenditures**

# Red Flags (Post-Award)

- ▣ Requests/expenditures made after award period ends
- ▣ **Late/no final reports**
- ▣ **Grants with unliquidated funds at end of award**

# Key Items of Potential Evidentiary Value

- ▣ Testimony (Witness/es, subject/s)
- ▣ Grant proposal(s) and award documents
- ▣ Electronic communications (e.g. emails, text messages)
- ▣ Banking and other financial records

# Michigan Embezzlement/Tax Case

## **Sentencing and Suspension in Weatherization Assistance Program Fraud Case**

A manager at a not-for-profit organization was sentenced in the U.S. District Court, Western District of Michigan, to 41 months of imprisonment and 2 years of supervised release, after having pleaded guilty to one count of Theft or Bribery Concerning Programs Receiving Federal Funds and one count of tax evasion. The manager was also ordered to pay \$431,828 in restitution and a \$200 special assessment fee. As previously reported in the September 30, 2019, *Semiannual Report to Congress*, the manager, employed by a community action entity receiving Department of Energy grant funding, embezzled Weatherization Assistance Program funds for personal use and failed to timely file tax returns with the Internal Revenue Service. The funds were intended for use to weatherize homes in low-income communities. The investigation determined that the manager stole in excess of \$300,000 in Department weatherization funding, as well as funding issued by the Department of Health and Human Services (HHS) through the Low Income Home Energy Assistance Program, by submitting false invoices to the community action organization for reimbursement utilizing Federal funds. These invoices reflected fraudulent expenses for the supposed provision of materials to actual weatherization projects. The manager then diverted the funds issued by the community action organization for personal use. In addition, the manager was suspended from receiving Federal Government contracts. This is an ongoing joint investigation with the Internal Revenue Service Criminal Investigation Division, the HHS OIG, and the FBI.

- ▣ Source: DOE OIG Semiannual Report to Congress, October 1, 2019-March 31, 2020

# Hawaii Embezzlement/Bribery Case

FOR IMMEDIATE RELEASE

Wednesday, June 30, 2021

## **Hawaiian Non-Profit Executive Sentenced to 46 Months of Imprisonment for Embezzling Over \$500,000 from AmeriCorps and for Agreeing to Receive a Bribe for Approving \$845,000 in CARES Act Grants**

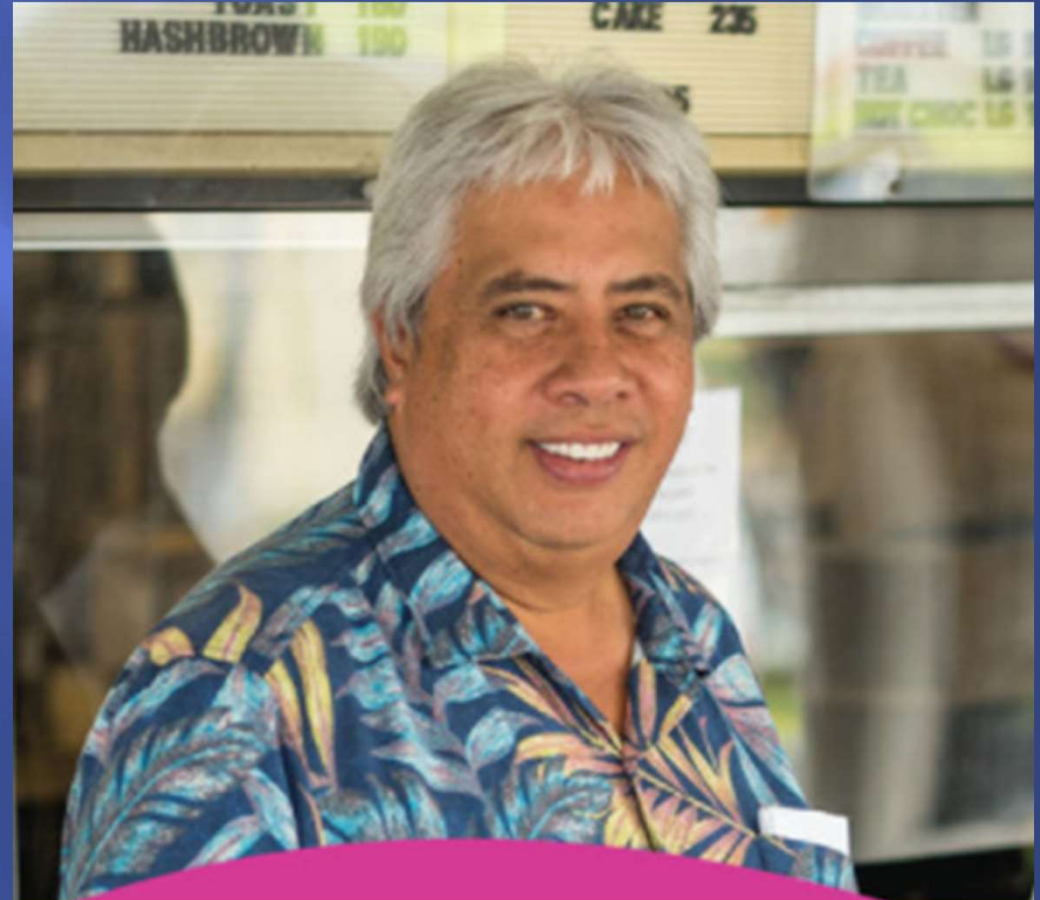
From June 2011 until May 2020, Higa, a former Hawaii County councilman and mayoral candidate, served as the Executive Director of the Hawaii Commission for National and Community Service, the state service commission responsible for administering AmeriCorps programs in Hawaii. From February 2018 through his resignation from the Commission, Higa embezzled more than \$38,000 in AmeriCorps funds by signing and authorizing contracts and purchase orders between the Hawaii Commission and two companies that he owned or controlled, without disclosing his control of the companies. Higa spent the embezzled funds on personal expenses including paying for approximately \$20,000 of elective aesthetic dental care.

## **Former Executive Director of the Hawaii Commission Sentenced To 46 Months in Prison for Embezzling from AmeriCorps And Offering a Bribe in Return for CARES Act Grants**

### **Defendant Pleaded Guilty in Two Schemes**

WASHINGTON — Stacy Higa, 58, a former public official from Hilo, Hawaii, was sentenced in federal court today to 46 months in prison for embezzling from AmeriCorps and also for offering a bribe in return for grants under the CARES Act.

# What Did Higa Do With Embezzled Funds?



# Washington Wire Fraud Case

FOR IMMEDIATE RELEASE

Friday, August 27, 2021

## **Former low-income housing executive sentenced to prison for embezzling nearly \$7 million**

### **Pierce County Housing Authority finance executive used public funds for gambling and lavish lifestyle**

Tacoma – A former Pierce County Housing Authority executive was sentenced today in U.S. District Court in Tacoma to 51 months in prison for wire fraud in connection with her scheme to steal nearly \$7 million, announced Acting U.S. Attorney Tessa M. Gorman. Cova Campbell pleaded guilty in January 2021, admitting that between March 2016 and July 2019, she used a variety of schemes to divert \$6.9 million in public money to her own bank accounts. At the sentencing hearing U.S. District Judge Robert J. Bryan ordered Campbell into custody immediately, and said “There is a substantial question about your remorse... On one level you were a highly competent public servant, but you had a dark side that allowed you to lose your moral compass.”

“At a time when housing resources in our community are in historically high demand, this defendant stole from the poor and vulnerable who most needed assistance,” said U.S. Attorney’s Office Criminal Chief Sarah Vogel. “Her greed meant there were less resources for the elderly, the disabled, the veterans, and the children in Pierce County who count on the Housing Authority to provide safe and secure shelter.”

Source: Press Release, U.S. Attorney’s Office for the Western District of Washington

BREAK  
TIME!



# Ever Been in the News?

## THE ROANOKE TIMES

### Ex-Virginia Tech biotech professor found guilty of grant fraud

Jeff Sturgeon Feb 25, 2019

The defense argued that a former Cell-Free Bioinnovations interim CEO who reported Zhang to law enforcement manipulated an inexperienced government case agent. The agent then conducted a flawed investigation, according to Zhang's lawyer, who asked the judge to acquit Zhang. Attorney Peter Zeidenberg declined to comment Monday.

# Part III: Grant Fraud Investigation Best Practices

# Question:

- ▣ What are some challenges you have encountered in working a grant fraud investigation/having it prosecuted?

“Don't let anyone tell you it's all too complicated. No matter how disguised, fraud is simply lying for money.”

Jed S. Rakoff,  
U.S. District Judge, SDNY

**No Issues**

**Intent**

**Bad  
Decisions**



**Mistakes**

**Gross  
Negligence**

**Laziness**

# What is Generally NOT Grant Fraud?

- ▣ “Unsuccessful” programs
- ▣ Poorly run programs (the fault of the grantee and/or the grantor)
- ▣ Subjective “wasteful” or inefficient spending
- ▣ Immaterial falsities
- ▣ Bad decisions

Perhaps not “fraud”, but still “problems”....

# Grant Fraud?



Source: <https://www.youtube.com/watch?v=KskaUMuARR8>

# Grant Fraud Investigative Tools

- ▣ Document requests/reviews
- ▣ Open-source information
- ▣ Interviews
- ▣ Subpoenas
- ▣ Consensual monitoring
- ▣ Search warrants
- ▣ Sources/informants
- ▣ **Outreach presentations**
- ▣ **Process improvement recommendations**



# Grant Fraud Remedies

## ▣ Criminal



## ▣ Civil



## ▣ Administrative



PARALLEL  
PROCEEDINGS

# Criminal Investigations

- ▣ Theft or Bribery Concerning Programs  
Receiving Federal Funds – 18 U.S.C. § 666
- ▣ Conspiracy – 18 U.S.C. § 371
- ▣ Theft/Embezzlement of Government Property  
– 18 U.S.C. § 641
- ▣ False Statements – 18 U.S.C. § 1001
- ▣ Wire Fraud – 18 U.S.C. § 1343
- ▣ Mail Fraud – 18 U.S.C. § 1341
- ▣ Obstruction – 18 U.S.C. § 1519
- ▣ Money Laundering – 18 U.S.C. § 1956/1957

# Civil Investigations

- ▣ Civil False Claims Act
  - 31 U.S.C. §§ 3729-3733: Civil False Claims
  - 3x Damages + Penalties
  - Need (1) falsity, (2) materiality, and (3) scienter.

## THREE DEFINITIONS OF “KNOWINGLY”

- ▣ Common Law
  - Unjust Enrichment
  - Payment by Mistake
  - Breach of Contract/Fiduciary Duty

# Administrative Investigations

- ▣ Special Award Conditions
- ▣ Withholding/Repayment of Funds
- ▣ Corrective Action Plans
- ▣ Award Suspension/Termination
- ▣ Government-Wide Suspension/Debarment

**GOVERNMENT-WIDE S&D  
ARE NOT PUNITIVE!**

# Proactive Investigations

- ▣ Reactive vs. proactive investigations
- ▣ Use knowledge of grant programs/organizations to identify fraud vulnerabilities
- ▣ Think like a fraudster
- ▣ Great source of potential high-impact cases

# Initial Red Flags?



# Final Outcome

## **Former University Professor and SBIR/STTR Company Sentenced in Wire Fraud Scheme**

We previously reported that a husband and wife were indicted on one count each of wire fraud for a scheme to defraud NSF of more than \$1 million in SBIR/STTR funds. The husband, wife, and company were subsequently charged with mail fraud and suspended governmentwide along with three other associated entities; the husband and company each pled guilty to wire fraud.<sup>8</sup> During this SAR period, the wife was sentenced to 2 years' probation on behalf of her company. The husband, who was a former university professor, was sentenced to 2 years' probation, 200 hours of community service, and a \$25,000 fine. The company and husband were also found jointly and severally liable to pay more than \$1.6 million in restitution, including nearly \$1.3 million to NSF and \$300,000 to a state's economic development corporation. DOJ's press release regarding this case can be found [here](#). The mail fraud charges against the company and husband were dismissed, and both the wire and mail fraud charges against the wife were dismissed. Per their plea agreements, the husband and company agreed to 5-year voluntary exclusions. We recommended NSF debar the wife and the three associated entities for 5 years. NSF's decision is pending.

- ▣ Source: NSF OIG Semiannual Report to Congress, October 1, 2020- March 31, 2021

# Common Grant Fraud Defenses

- ▣ “Firm-fixed price” / “Contract”
- ▣ “Grants are free money”
- ▣ “We did the work”
- ▣ “We submitted a report” / “Gov’t got what it paid for”
- ▣ “The rules are so complicated”
- ▣ “Allowed” / “Grant didn’t say I couldn’t do it”
- ▣ “Gov’t authorized conduct/didn’t care”
- ▣ “Honest mistake” / “No intent”
- ▣ “Administrative matter only”
- ▣ “A rogue employee did it”



# Responses to Common Grant Fraud Defenses

- ▣ Define what a grant is.
- ▣ Articulate the purpose of the grant program.
- ▣ Identify the terms and conditions (promises) and the lies.
- ▣ Identify grantee statements/certifications/trainings.
- ▣ Verify the competitiveness of the program and identify victims.
- ▣ Establish materiality by the agency.
- ▣ Leverage criminal, civil, and administrative remedies.

# Challenges in Grant Fraud Investigations

- ▣ Complex and time-consuming
- ▣ “Technical violations”
- ▣ Prosecutorial interest
- ▣ Minimal/no loss
- ▣ Comingling of funds
- ▣ Agency as “bad victim”

“Small potatoes are  
still potatoes.”

Nick Macedonia,  
Special Agent, DOE OIG

# Thank you!

SA Nick Macedonia

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