DEFICIT REDUCTION ACT OF 2005 MEDICAID COMPLIANCE PROVISIONS

The Deficit Reduction Act of 2005 (DRA), not only involves nearly an $11 billion cut in spending from Medicare and Medicaid over the next five years, but also addresses fraud, waste and abuse in the Medicaid reimbursement system. Section 6032 of the DRA requires certain health care providers to establish written policies and procedures to inform employees and others about certain federal and state false claims and whistleblower laws. The deadline for enacting such policies is January 1, 2007. To date, the Office of Inspector General (OIG) has not issued any guidance regarding the implementation of the DRA provisions. AAHSA anticipates that OIG guidance will be released soon, but in the meantime encourages providers to address this issue should the guidance issue after the January 1, 2007 deadline. Entities that will be subject to these provisions should adopt what they consider sufficiently “detailed provisions” describing their anti-fraud policies and procedures, relevant anti-fraud statutes, and whistleblower provisions.

Application of Section 6032

DRA Section 6032 applies to all health care organizations that receive $5 million or more in annual Medicaid reimbursement. Although there is no specific directive from CMS, this threshold may be measured based upon the aggregate Medicaid payments received by an organization, even if that organization has multiple provider numbers. For example, a provider that includes a skilled nursing facility and home health program, which collectively receive over $5 million in Medicaid reimbursement, will likely be subject to Section 6032.

Requirements of Section 6032

Section 6032 requires providers, which receive at least $5 million in Medicaid payment, to:

1) establish written policies for all employees and contractors or agents of the entity to provide detailed information about the False Claims Act and separate administrative remedies, any state laws pertaining to civil or criminal penalties for false claims or statements, and whistleblower protection under such laws,

2) include as part of the written policies, detailed provisions regarding the entity’s policies and procedures for detecting and preventing fraud, waste, and abuse, and
3) include in the employee handbook, a specific discussion of the rights of the employees to be protected as whistleblowers and the entity’s polices and procedures for detecting fraud, waste, and abuse.

See Appendix A. Section 6032 does not provide any guidance on what constitutes a “specific discussion” or “detailed” provisions or information, which are necessary to comply with the law.

**State False Claims Acts**

Providers, in addition to providing information on the federal False Claims Act and administrative remedies, need to inform employees on their state specific false claims laws and whistleblower protections if they have not already done so. Currently there are at least twenty-five states/jurisdictions that have enacted civil false claims laws: Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Tennessee, Texas, Utah, Virginia, and Washington. Of these states, 17 have enacted *qui tam* or whistleblower provisions: only Arkansas, Colorado, Maine, Nebraska, North Carolina, Ohio, Utah, and Washington do not have whistleblower provisions in their respective state false claims act laws. See Appendix E. Many other states are currently considering false claims legislation.

Providers should monitor state developments on two fronts – the enactment of state false claims laws and any guidelines or regulations for compliance with the DRA requirements published by state Medicaid programs.

**Employee Education and Training**

Although Section 6032 is titled “Employee Education” it does not actually impose live education or other training requirements. Providers should, however, examine their existing compliance policies and determine if such training is necessary or desirable. Moreover, the documentation of an employee’s receipt of this information pursuant to the provider’s existing policies is evidence of a good faith attempt to comply with the DRA provisions.

While informing employees about the False Claims Act and whistleblower protections, providers can also remind employees of the provider’s commitment to compliance and its desire to know, through open lines of communication, if there are any questions or concerns regarding compliance. Providers can reiterate that there will be no retaliation for reporting possible false claims and can assure the employee that the provider is committed to prompt follow-up.
**Action Steps for Compliance**

To summarize, providers should undertake the following steps to comply with the education requirements of Section 6032 of the DRA:

- Providers that receive Medicaid reimbursement should determine if they meet the $5 million threshold for the application of Section 6032.
- If covered, providers should review existing policies to determine if they already meet the Section 6032 requirements and provide information to their employees (and include in their employee handbook), on the following:
  - False Claims Act;
  - Administrative Remedies for False Claims;
  - Applicable state false claims laws;
  - Applicable federal and state whistleblower provisions; and
  - The provider’s policies and procedures for detecting and preventing fraud, waste and abuse.

Providers may already have a policy for detecting fraud, waste, and abuse as part of their corporate compliance plan. So, it is possible that a policy may only need to be updated to reference compliance with Section 6032 itself. Reviewing and creating new policies should be handled through the organization’s standard process.

The Appendices that follow provide the language of Section 6032 of the DRA, the False Claims Act, and the Administrative Remedies for False Claims as well as short summaries of these acts. In addition, Appendix E provides citations to state false claims laws. These are designed to assist providers in drafting their policies. Examples of policies and procedures for detecting and preventing fraud, waste, and abuse can be found in nearly all corporate compliance manuals and are readily available on the Internet.

**Consequences of Non-Compliance**

The DRA does not impose specific penalties on providers that fail to meet the new requirements, but implementation of these provisions will be a condition of Medicaid participation. Thus, failure to meet these provisions could result in the forfeiture of all Medicaid payments during the period of non-compliance.

**Appendices**

Appendix A  Section 6032 of Deficit Reduction Act of 2005

Appendix C  Administrative Remedies for False Claims and Statements; 31 U.S.C. §§ 3801 – 3812

Appendix D  Short Summaries of False Claims Act and Administrative Remedies for False Claims and Statements

Appendix E  Citations to State False Claims Laws with and without Whistleblower Protections
Appendix A

Deficit Reduction Act of 2005

SEC. 6032. EMPLOYEE EDUCATION ABOUT FALSE CLAIMS RECOVERY.

(a) In General- Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended--

(1) in paragraph (66), by striking `and' at the end;

(2) in paragraph (67) by striking the period at the end and inserting `; and'; and

(3) by inserting after paragraph (67) the following:

`(68) provide that any entity that receives or makes annual payments under the State plan of at least $5,000,000, as a condition of receiving such payments, shall—

`(A) establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f));

`(B) include as part of such written policies, detailed provisions regarding the entity’s policies and procedures for detecting and preventing fraud, waste, and abuse; and

`(C) include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity’s policies and procedures for detecting and preventing fraud, waste, and abuse.'.

(b) EFFECTIVE DATE- Except as provided in section 6035(e), the amendments made by subsection (a) take effect on January 1, 2007.
Appendix B

CLAIMS AGAINST THE UNITED STATES GOVERNMENT

(False Claims Act - 31 USC §§ 3729 – 3733)

§ 3729. False claims

(a) Liability for Certain Acts.— Any person who—

(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

(2) 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 by the Government;

(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or

(7) 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, is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the
violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation; the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Knowing and Knowingly Defined.— For purposes of this section, the terms “knowing” and “knowingly” mean that a person, with respect to information—

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) Claim Defined.— For purposes of this section, “claim” includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) Exemption From Disclosure.— Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

(e) Exclusion.— This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

§ 3730. Civil actions for false claims

(a) Responsibilities of the Attorney General.— The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.
(b) Actions by Private Persons.—

(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the Parties to Qui Tam Actions.—

(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2) (A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the
motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government’s prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person’s participation, such as—

(i) limiting the number of witnesses the person may call;
(ii) limiting the length of the testimony of such witnesses;
(iii) limiting the person’s cross-examination of witnesses; or
(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government’s expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government’s investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the
action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam Plaintiff.—

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys’ fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys’ fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any
share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys’ fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain Actions Barred.—

(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, “senior executive branch official” means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, “original source” means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

(f) Government Not Liable for Certain Expenses.— The Government is not liable
for expenses which a person incurs in bringing an action under this section.

**(g) Fees and Expenses to Prevailing Defendant.**— In civil actions brought under this section by the United States, the provisions of section 2412 (d) of title 28 shall apply.

**(h)** Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.

**§ 3731. False claims procedure**

**(a)** A subpoena requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title may be served at any place in the United States.

**(b)** A civil action under section 3730 may not be brought—

1. more than 6 years after the date on which the violation of section 3729 is committed, or

2. more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

**(c)** In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

**(d)** Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is
§ 3732. False claims jurisdiction

(a) Actions Under Section 3730.— Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

(b) Claims Under State Law.— The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

§ 3733. Civil investigative demands

These provisions relate to Attorney General powers to investigate false claims and are not relevant to the education requirements of the DRA.
Appendix C

ADMINISTRATIVE REMEDIES FOR FALSE CLAIMS AND STATEMENTS

(31 USC §§ 3801-3812)

§ 3801. Definitions

(a) For purposes of this chapter—

(1) “authority” means—

(A) an executive department;

(B) a military department;

(C) an establishment (as such term is defined in section 11(2) of the Inspector General Act of 1978) which is not an executive department; and

(D) the United States Postal Service;

(2) “authority head” means—

(A) the head of an authority; or

(B) an official or employee of the authority designated, in regulations promulgated by the head of the authority, to act on behalf of the head of the authority;

(3) “claim” means any request, demand, or submission—

(A) made to an authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(B) made to a recipient of property, services, or money from an authority or to a party to a contract with an authority—

(i) for property or services if the United States—

(I) provided such property or services;

(II) provided any portion of the funds for the purchase of such property or services; or

(III) will reimburse such recipient or party for the purchase of such property or services; or
(ii) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(I) provided any portion of the money requested or demanded; or
(II) will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(C) made to an authority which has the effect of decreasing an obligation to pay or account for property, services, or money, except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1986;

(4) “investigating official” means an individual who—

(A)

(i) in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, is the Inspector General of that authority or an officer or employee of such Office designated by the Inspector General;

(ii) in the case of an authority in which an Office of Inspector General is not established by the Inspector General Act of 1978 or by any other Federal law, is an officer or employee of the authority designated by the authority head to conduct investigations under section 3803(a)(1) of this title; or

(iii) in the case of a military department, is the Inspector General of the Department of Defense or an officer or employee of the Office of Inspector General of the Department of Defense who is designated by the Inspector General; and

(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O–7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule;

(5) “knows or has reason to know”, for purposes of establishing liability under section 3802, means that a person, with respect to a claim or statement—

(A) has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(B) acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(C) acts in reckless disregard of the truth or falsity of the claim or
statement, and no proof of specific intent to defraud is required;

(6) “person” means any individual, partnership, corporation, association, or private organization;

(7) “presiding officer” means—

(A) in the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, an administrative law judge appointed in the authority pursuant to section 3105 of such title or detailed to the authority pursuant to section 3344 of such title; or

(B) in the case of an authority to which the provisions of such subchapter do not apply, an officer or employee of the authority who—

(i) is selected under chapter 33 of title 5 pursuant to the competitive examination process applicable to administrative law judges;
(ii) is appointed by the authority head to conduct hearings under section 3803 of this title;
(iii) is assigned to cases in rotation so far as practicable;
(iv) may not perform duties inconsistent with the duties and responsibilities of a presiding officer;
(v) is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with chapter 51 of such title and subchapter III of chapter 53 of such title;
(vi) is not subject to performance appraisal pursuant to chapter 43 of such title; and
(vii) may be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board;

(8) “reviewing official” means any officer or employee of an authority—

(A) who is designated by the authority head to make the determination required under section 3803 (a)(2) of this title;

(B) who, if a member of the Armed Forces of the United States on active duty, is serving in grade O–7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule; and

(C) who is—

(i) not subject to supervision by, or required to report to, the investigating official; and
(ii) not employed in the organizational unit of the authority in which the investigating official is employed; and
(9) “statement” means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(A) with respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(B) with respect to (including relating to eligibility for)—

(i) a contract with, or a bid or proposal for a contract with; or

(ii) a grant, loan, or benefit from, an authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit, except that such term does not include any statement made in any return of tax imposed by the Internal Revenue Code of 1986.

(b) For purposes of paragraph (3) of subsection (a)—

(1) each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim;

(2) each claim for property, services, or money is subject to this chapter regardless of whether such property, services, or money is actually delivered or paid; and

(3) a claim shall be considered made, presented, or submitted to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

(c) For purposes of paragraph (9) of subsection (a)—

(1) each written representation, certification, or affirmation constitutes a separate statement; and

(2) a statement shall be considered made, presented, or submitted to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

§ 3802. False claims and statements; liability

(a) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—
(A) is false, fictitious, or fraudulent;

(B) includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(C) includes or is supported by any written statement that—

   (i) omits a material fact;
   (ii) is false, fictitious, or fraudulent as a result of such omission; and
   (iii) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(D) is for payment for the provision of property or services which the person has not provided as claimed, shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such claim. Except as provided in paragraph (3) of this subsection, such person shall also be subject to an assessment, in lieu of damages sustained by the United States because of such claim, of not more than twice the amount of such claim, or the portion of such claim, which is determined under this chapter to be in violation of the preceding sentence.

(2) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

   (A) the person knows or has reason to know—

       (i) asserts a material fact which is false, fictitious, or fraudulent; or
       (ii) (I) omits a material fact; and
            (II) is false, fictitious, or fraudulent as a result of such omission;

   (B) in the case of a statement described in clause (ii) of subparagraph (A), is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

   (C) contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

(3) An assessment shall not be made under the second sentence of paragraph (1) with respect to a claim if payment by the Government has not been made on such claim.
Except as provided in paragraphs (2) and (3) of this subsection—

(A) a determination under section 3803 (a)(2) of this title that there is adequate evidence to believe that a person is liable under subsection (a) of this section; or

(B) a determination under section 3803 of this title that a person is liable under subsection (a) of this section, may provide the authority with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under this chapter.

A determination referred to in paragraph (1) of this subsection may be used by the authority, but shall not require such authority, to commence any administrative or contractual action which is authorized by law.

In the case of an administrative or contractual action to suspend or debar any person who is eligible to enter into contracts with the Federal Government, a determination referred to in paragraph (1) of this subsection shall not be considered as a conclusive determination of such person’s responsibility pursuant to Federal procurement laws and regulations.

§ 3803. Hearing and determinations

This section contains the provisions for the procedures involved in hearing claims and is not specifically relevant to the education requirement under the DRA.

§ 3804. Subpoena authority

This section contains the provisions for subpoena authority involved in hearing claims and is not specifically relevant to the education requirement under the DRA.

§ 3805. Judicial review

A determination by a reviewing official under section 3803 of this title shall be final and shall not be subject to judicial review.

Unless a petition is filed under this section, a determination under section 3803 of this title that a person is liable under section 3802 of this title shall be final and shall not be subject to judicial review.
(1) (A) Any person who has been determined to be liable under section 3802 of this title pursuant to section 3803 of this title may obtain review of such determination in—

(i) the United States district court for the district in which such person resides or transacts business;
(ii) the United States district court for the district in which the claim or statement upon which the determination of liability is based was made, presented, or submitted; or
(iii) the United States District Court for the District of Columbia.

(B) Such review may be obtained by filing in any such court a written petition that such determination be modified or set aside. Such petition shall be filed—

(i) only after such person has exhausted all administrative remedies under this chapter; and

(ii) within 60 days after the date on which the authority head sends such person a copy of the decision of such authority head under section 3803 (i)(2) of this title.

(2) The clerk of the court shall transmit a copy of a petition filed under paragraph (1) of this subsection to the authority and to the Attorney General. Upon receipt of the copy of such petition, the authority shall transmit to the Attorney General the record in the proceeding resulting in the determination of liability under section 3802 of this title. Except as otherwise provided in this section, the district courts of the United States shall have jurisdiction to review the decision, findings, and determinations in issue and to affirm, modify, remand for further consideration, or set aside, in whole or in part, the decision, findings, and determinations of the authority, and to enforce such decision, findings, and determinations to the extent that such decision, findings, and determinations are affirmed or modified.

(c) The decisions, findings, and determinations of the authority with respect to questions of fact shall be final and conclusive, and shall not be set aside unless such decisions, findings, and determinations are found by the court to be unsupported by substantial evidence. In concluding whether the decisions, findings, and determinations of an authority are unsupported by substantial evidence, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(d) Any district court reviewing under this section the decision, findings, and determinations of an authority shall not consider any objection that was not raised in the hearing conducted pursuant to section 3803 (f) of this title unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection. If any party demonstrates to the satisfaction of the court that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the
court shall remand the matter to the authority for consideration of such additional evidence.

(e) Upon a final determination by the district court that a person is liable under section 3802 of this title, the court shall enter a final judgment for the appropriate amount in favor of the United States.

§ 3807. Right to administrative offset

(a) The amount of any penalty or assessment which has become final under section 3803 of this title, or for which a judgment has been entered under section 3805 (e) or 3806 of this title, or any amount agreed upon in a settlement or compromise under section 3803 (j) or 3806 (f) of this title, may be collected by administrative offset under section 3716 of this title, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the person liable for such penalty or assessment.

(b) All amounts collected pursuant to this section shall be remitted to the Secretary of the Treasury for deposit in accordance with section 3806 (g) of this title.

§ 3808. Limitations

(a) A hearing under section 3803 (d)(2) of this title with respect to a claim or statement shall be commenced within 6 years after the date on which such claim or statement is made, presented, or submitted.

(b) A civil action to recover a penalty or assessment under section 3806 of this title shall be commenced within 3 years after the date on which the determination of liability for such penalty or assessment becomes final.

(c) If at any time during the course of proceedings brought pursuant to this chapter the authority head receives or discovers any specific information regarding bribery, gratuities, conflict of interest, or other corruption or similar activity in relation to a false claim or statement, the authority head shall immediately report such information to the Attorney General, and in the case of an authority in which an Office of Inspector General is established by the Inspector General Act of 1978 or by any other Federal law, to the Inspector General of that authority.
§§ 3809 – 3812 have either been repealed or are not relevant to the employee education requirements of the DRA.

For a searchable database of Federal and State Law see:
http://www.law.cornell.edu/
Appendix D

Short Summaries of Administrative Remedies for False Claims and Statements and False Claims Act identified in the DRA of 2005:

Administrative Remedies for False Claims and Statements

Sections 3801 to 3812 of the Title 31 of the United States Code provide in pertinent part that:

i. Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that a person knows or has reason to know is false, fictitious, or fraudulent; includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent as a result of such omission, and is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or is for payment for the provision of property or services which the person has not provided as claimed, shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more that $5,000 for each such claim. Such person may also be subject to an assessment of twice the amount of the false, fictitious, or fraudulent claim, or the portion of such claim, which is determined to be in violation of the law.

ii. Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that the person knows or has reason to know asserts a material fact which is false, fictitious, or fraudulent as a result of such omission; and contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,000 for each such statement.

False Claims Act

Sections 3729 to 3733 of the Title 31 of the United States Code provide in pertinent part that:

i. Any person who: knowingly presents, or causes to be presented, to an officer or employee of the United States government a false or fraudulent 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 by the government; conspires to defraud the government by getting a false or
fraudulent claim allowed or paid; has possession, custody, or control of property or money used, or to be used, by the government and, intending to defraud the government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt; authorized to make or deliver a document certifying receipt of property used, or to be used, by the government and, intending to defraud the government, makes or delivers the receipt without completely knowing that the information on the receipt is true; knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the government, who lawfully may not sell or pledge the property; 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, is liable to the United States government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the government sustains because of the act of that person, with certain exceptions.

ii. The Attorney General shall diligently investigate violations of the above, and if the Attorney General finds that a person has violated or is violating the law, then he/she may bring a civil action against the person. A person may bring a civil action for the violation of the above for the person and for the United States government. The action shall be brought in the name of the government. If the government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to certain limitations, and may have a right to share in a recovery if certain conditions are met.
### Appendix E


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<th>State</th>
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<tbody>
<tr>
<td>California</td>
<td>Cal. Gov’t Code Sec 12650 et seq.</td>
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<td>Delaware</td>
<td>Del. Code Ann. Title 6, Sec 1201 et seq.</td>
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<td>District of Columbia</td>
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<td>Florida</td>
<td>Fla. Stat. Sec. 68.081 et seq.</td>
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<td>Indiana</td>
<td>Ind. Code Ann. 5-11-5.5-1 et seq.</td>
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<td>Massachusetts</td>
<td>Mass. Ann. Laws Ch. 12, Sec 5A et seq.</td>
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<td>Montana</td>
<td>Mont. Code Ann. Sec. 17-8-402 et seq.</td>
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<td>Virginia</td>
<td>Va. Code Ann. Sec 8.01-216.1 et seq.</td>
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<td>Utah</td>
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