WHAT IS THE FALSE CLAIMS ACT?
The Federal False Claims Act (the FCA or the Act) prohibits any person, organization or company from defrauding the government on the material terms of its receipt of government money or a government certification. Consequences for violating the law include treble damages plus statutory damages, as well as the risk of suspension or debarment.

In 2013, 846 FCA suits were filed, 753 of which were initiated by whistleblowers in qui tam suits. Regulators recovered over $3.8 billion, while whistleblowers were awarded over $387 million.

WHAT ABOUT STATE FALSE CLAIMS?
The 2005 Deficit Reduction Act created incentives for states to develop their own versions of the False Claims Act. To date, 30 states, among them New York, California and Virginia, have FCA statutes, and the number of states FCAs are expected to grow.

THE FCA AND NONPROFIT CHARITIES
Nonprofit charities in receipt of federal or local government funding are at risk of violating the FCA or its state or local equivalent in the following areas:
- Conversion of charitable funds
- Nonexistent, improper or inaccurate accounting and billing records
- Billing for phantom employees or time not worked to maximize government reimbursement
- Billing for falsified research funded by the government
- Failure to return overpayment of government funds
- False certification of compliance with program guidelines
- Provision of services or goods outside the scope of the government program

FCA RECOVERIES AGAINST NONPROFITS
Recent examples of FCA settlements in the nonprofit context include:
- A nonprofit paid $265 million to settle FCA allegations that it fraudulently increased charges to patients in a government program in order to obtain inflated government reimbursements
- A nonprofit paid $4.3 million for an FCA violation for falsifying records and $1.4 million for charging unnecessary or nonexistent services for reimbursement through a government program
- A nonprofit paid $187,500 to settle alleged FCA violations of billing government program for services for which they lacked information or had insufficient or inaccurate documentation
- A nonprofit organization agreed to implement a compliance program, hire a third party to review its claims for government services and not contest its potential exclusion from government programs, based on allegations that it violated the FCA by submitting false claims for services, overbilling and failing to comply with supervision and documentation requirements
WHAT CAN NONPROFITS DO ABOUT THEIR FCA RISK?

- Educate employees about the FCA
- Develop and conduct training on anti-fraud systems, policies and controls
- Continuously audit and monitor compliance program for gaps and control weaknesses
- Establish and encourage internal reporting of compliance related concerns
- Strictly prohibit any form of retaliation against an employee who reports compliance concerns

ABOUT US

DLA Piper is a global law firm with lawyers across the Americas, Asia Pacific, Europe and the Middle East.

From the quality of our legal advice and business insight to the efficiency of our legal teams, we believe that when it comes to the way we serve and interact with our clients, everything matters.

FOR MORE INFORMATION

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Savaria Harris is an experienced litigator with trials in state and federal courts as well as with government and internal investigations in the white collar context.

Her practice centers on providing clients with an integrated approach to addressing fraud, whistleblower and government actions under the False Claims Act and its local equivalents. She is experienced in risk assessments, internal investigations, ethics and compliance training, as well as litigation and trial representation. In addition to her practice, Savaria is an adjunct professor of Workplace Ethics at Georgetown University, a member of the Advisory Council for the Association of Certified Fraud Examiners and a member of the NYU Program on Corporate Compliance and Enforcement.