



## **FEDERAL ASSISTANCE LAW DIVISION (FALD)**

*U.S. Department of Commerce*

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### **Office Overview.**

The Federal Assistance Law Division (FALD) is a part of the Office of the Assistant General Counsel for Finance and Litigation. FALD is led by Percy Robinson and is staffed by nine (9) full-time attorneys and by one support staff. FALD staff is co-located with the three primary grants offices servicing the Department, at headquarters in Washington, D.C., at the National Oceanic and Atmospheric Administration's offices in Silver Spring, MD, and at the National Institute of Standards and Technology in Gaithersburg, MD.

### **Legal Advisor to the Office of Acquisition Management (OAM).**

OAM establishes Department-wide policies, procedures, terms and conditions, and regulations governing federal assistance programs which are issued by the Chief Financial Officer and Assistant Secretary for Administration and binding upon all the agencies within the Department. FALD works closely with the Grants Management Division within OAM assisting with the drafting and review of the Department's standard terms and conditions, grants manual and related documents that generally apply to all financial assistance awards issued by the Department and its bureaus.

### **Federal Assistance Program Advisor.**

FALD serves as program counsel to all of the bureaus in the Department and their servicing Grants Officers, with limited oversight of the Economic Development Administration's (EDA) programs that are served by their Regional Counsels, providing legal advice on a daily basis on all matters related to federal assistance. We assist in the drafting of rules, regulations, forms, application kits, evaluation processes, peer review procedures, selection processes, terms and conditions of grants and cooperative agreements, and award documents. We also work with NOAA, NIST and NTIA regarding real property issues in connection with their respective construction programs. We often work closely with Chief Counsels when an issue surrounds specific programmatic legislation or regulation and also work with General Law Division on appropriation issues and other funding agreements authorities.

### **Legal Advisor to the Nonprocurement Debarring Official.**

Pursuant to Executive Order No. 12549, Nonprocurement Suspension and Debarment regulations were established by the Department at 15 C.F.R. Part 26, relocated to 2 CFR Part 1326 (December 26, 2006). FALD advises the Director of the Office of Executive Budgeting and Assistance Management, who is the Department's Non-procurement Debarring Official, on the legal sufficiency of the administrative record supporting a proposed debarment or suspension, to assure that burden of proof and due process requirements are met.

## Legal Advisor on Financial Assistance Audits, Audit Resolutions, and Appeals.

Department Administrative Orders (DAO) 213-3 and 213-5 establish the procedures for audits of financial assistance awards and recipients and specifies that OGC shall review any determination that results in adverse action taken against the auditee and also provide clearance of all audit appeal decisions. These two responsibilities fall within the purview of FALD.

## Legal Advisor on Native American Affairs.

The Senior Advisor on Native American Affairs acts as a liaison for the Secretary of Commerce for many issues involving Native Americans. FALD provides legal advice for the Senior Advisor and reviews legislation and regulations affecting or involving Indian tribes. FALD provided drafting assistance and legal review for a working group that is developed the Department's *Tribal Consultation and Coordination Policy of the U.S. Department of Commerce*. This policy is in response to Executive Order (E.O.) No. 13175, "[Consultation and Coordination with Indian Tribal Governments](#)," (November 9, 2000) and Presidential Memorandum, "Tribal Consultation," 2009 Daily Comp. Pres. Docs. 887 (November 5, 2009).

## Federal Assistance Litigation.

Assistance recipients or potential applicants or other interested parties may initiate litigation against the Department in the Government Accountability Office, Court of Federal Claims, Federal District Courts and the Court of Appeals. The lawsuits include challenges under the Constitution and Administrative Procedures Act, usually seeking injunctive relief, related to agency determinations of recipient selections, responsibility determinations, disallowance of costs, contractual disputes, and other claims. We also provide defensive litigation services to the bureaus when a recipient challenges a Departmental audit appeal determination or other cost disallowances. We have successfully defended all challenges. The most recent case was *Trans World Marine v. Hogarth*, which went up to the 9th Circuit on appeal. The United States Court of Appeals ruled in our favor affirming the district court's conclusion that the Department lawfully denied benefits to Trans World. We also represent the Department in Qui Tam actions involving federal assistance and under the Program Fraud Civil Remedies Act (PFCRA). This includes providing DOC's recommendations respecting seeking such relief and, if DOJ decides the Government should proceed, providing legal support to DOJ in Qui Tam matters and prosecuting PFCRA cases. We also provide drafting support to DOJ on various appellate briefs and Supreme Court Briefs as amicus curiae supporting respondents involving federal assistance questions. (e.g., whether FCA imposes liability for a false claim submitted to a recipient of a federal grant – not evidence that claim was ever submitted to an officer or employee of the United States.)

## Governmentwide Support

**Interagency Suspension and Debarment Committee (ISDC).** FALD serves as the Department's representative on the ISDC.

**The Federal Financial Assistance Management Improvement Act (Pub. L. 106-107).** The Chief Financial Officers Council, which represents the 24 largest agencies in the government, has established a Grants Policy Committee to lead implementation of [Public Law 106-107](#). FALD serves as the legal adviser to the Department, and is an ex officio member of the Grants Policy Committee.

**Grants.gov and GMLoB initiatives.** We provide support to NOAA, NIST and the Department to meet the requirements of the Federal Financial Assistance Management Improvement Act. Grants.gov is a single, government-wide electronic portal where the public can find information about all federal funding opportunities for grants under which an agency has discretion to make awards and through which applicants may electronically submit applications. The GMLoB initiative is intended to reduce the number of different “back office,” or internal agency, grants processing systems, and establish common sets of business practices across agencies, thereby reducing redundancy and costs.

**Federal Funding Accountability and Transparency Act (P.L. 109-282).** The new law requires the Office of Management and Budget (OMB) to establish a publicly available online database containing **information** about entities that are awarded federal grants, loans, and contracts. [USAspending.gov](http://USAspending.gov).

### **Uniform Administrative Requirements, Cost Principles, and Audit Requirements.**

On December 26, 2013, OMB published final guidance titled *Uniform Administrative Requirements, Cost Principles, and Audit Requirements* (OMB Uniform Guidance), which streamlines the language from eight existing OMB circulars, including Cost Principles (OMB Circulars A-21, A-87, A 122) and administrative requirements (OMB Circulars A-102 and A 110), into one consolidated set of guidance applicable to federal assistance awards. The OMB Uniform Guidance supersedes the Department’s uniform administrative requirements set out at 15 C.F.R. parts 14 and 24. In accordance with the *Federal Register* notice *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements*, published on December 19, 2014 (79 FR 75871) and the regulation at 2 C.F.R. § 1327.101, the Department adopted the OMB Uniform Guidance, codified at 2 C.F.R. Part 200, effective December 26, 2014. The guidance applies to all new awards and may apply to additional funding to existing awards made on or after December 26, 2014. In addition, the audit requirements of the OMB Uniform Guidance apply to audits of non-Federal entities beginning on or after December 26, 2014. Additional information on the substance of and transition to the OMB Uniform Guidance may be found at <https://cfo.gov/cofar/>.