

# White Collar Litigation and Corporate Compliance Update

## Proposed Rule Changes Dramatically Affect Requirements on Government Contractors

In the next few months, the U. S. Government is expected to amend the Federal Acquisition Regulations (the "FAR") to make effective, well-funded ethics and compliance programs a requirement for companies receiving federal contracts and subcontracts. The proposed rules would apply to government contracts in excess of \$5 million with a performance period of 120 days or more. The two exceptions to these changes are commercial item contracts under Part 12 of the FAR and contracts performed outside the United States.

The FAR regulates the procurement policies and practices of approximately 25 different federal agencies (civilian and defense). Under the newly-revised FAR, companies will need a well-funded and effective compliance program to win and keep federal contracts.

These proposed changes will affect tens of thousands of companies - public and private, foreign and domestic. Any contractor falling under the proposed new rule would be required to do all of the following:

- Have a written code of ethics and business conduct within 30 days of award
- Establish an employee ethics and compliance training program within 90 days of award
- Establish an internal control system within 90 days of award
- Display the agency Office of Inspector General Fraud Hotline poster at its U.S. work sites and on the company's intranet

Companies will have to prove that these programs are more than window dressing. The proposed rule states that a company's employee training program and internal controls should be appropriate for and proportionate to the size of the company and the extent of the company's government contracts business. Among the requirements of an internal control system are the following:

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- Internal and external audits
- An internal hotline for employees to report possible improper conduct
- Periodic assessments of the company's compliance policies and procedures
- Disciplinary action for improper conduct

The new federal requirements are expected to become final this Fall. Deadlines for complying will be extremely short (30-90 days). Penalties for failing to satisfy these new requirements will range from serious (e.g., payment delays) to severe (e.g., payment forfeiture, and possibly even debarment from the federal procurement arena).

The following steps can help prepare contractors to satisfy the new FAR Subpart 3.10 requirements:

- Identify and analyze all federal contracts worth \$5 million or more.
- Benchmark company's compliance-program spending against spending by peer companies.
- Identify and document existing compliance program elements.
- Apply FAR Subpart 3.10 tests and standards to existing compliance program elements.
- Identify any gaps and shortfalls.
- Create an action plan to eliminate those gaps and establish a timeline.
- Obtain independent, third-party certification of company's satisfaction of all FAR requirements.

The proposed rule may be found at the [Federal Register](#).

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