

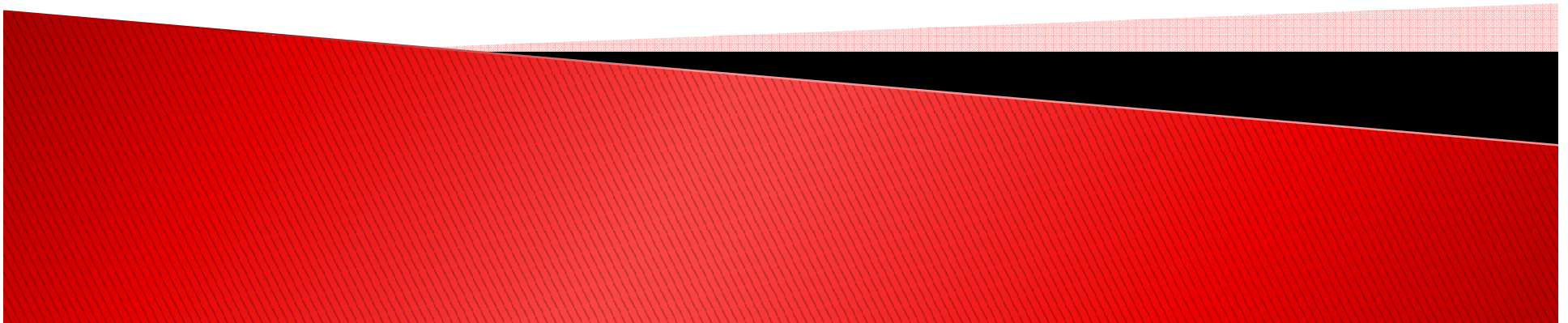
Match Game – Practical Approaches to Sanction Check Due Diligence

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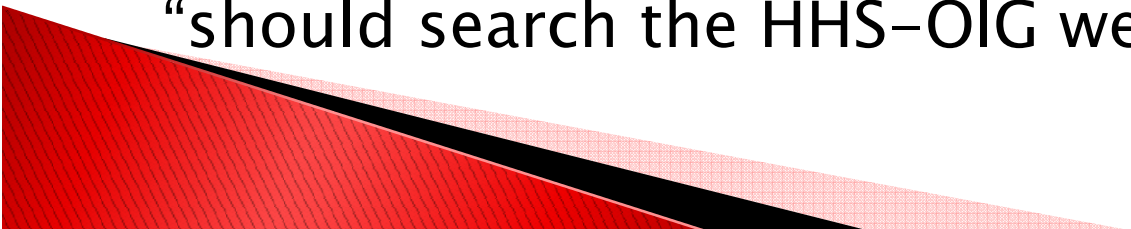
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June 13, 2011



Government Expectations

- ▶ U.S. Sentencing Guidelines:
“ careful delegation of authority and *due care* in hiring/screening employees”
 - ▶ OIG Compliance Program Guidance:
“ *employees, contractors* and *medical and clinical staff* checked routinely (e.g. at least annually) against OIG LEIE and GSA EPLS”
 - ▶ Federal Acquisition Regulation:
“review EPLS *prior to* contract award”
 - ▶ CMS Letter to State Medicaid Agencies (01/16/09):
“should search the HHS–OIG website monthly”
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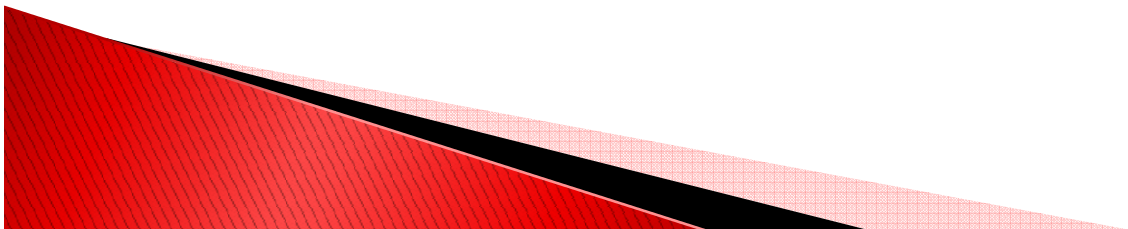
PPACA Implications

- ▶ Requires establishment of compliance program
 - §6401 – Regulatory requirement will most likely mirror OIG compliance guidance
- ▶ Reimbursements for excluded persons can be an overpayment under PPACA
 - §6402(a) – 60 day deadline to report and return any overpayment
 - Reporting and repayment could be to the Secretary, the State, the intermediary, carrier or contractor
 - Any overpayment retained by a person after the deadline for reporting and returning the overpayment is an obligation as defined in the *False Claims Act*



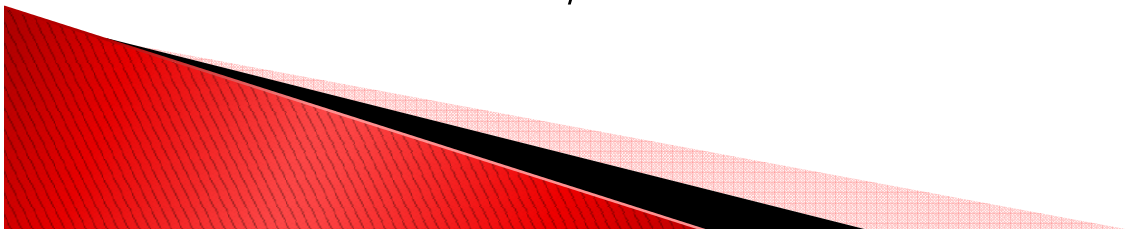
State Medicaid Agencies

- ▶ See 42 CFR 1002 – State – Initiated Exclusion from Medicaid
 - States have the ability to exclude individuals or entities
- ▶ State Exclusion Lists
 - Kentucky Department for Medicaid Services List
 - <http://www.desc.dla.mil/dcm/files/2010%2012-22%20state%20suspension%20and%20debarment%20websites.doc>



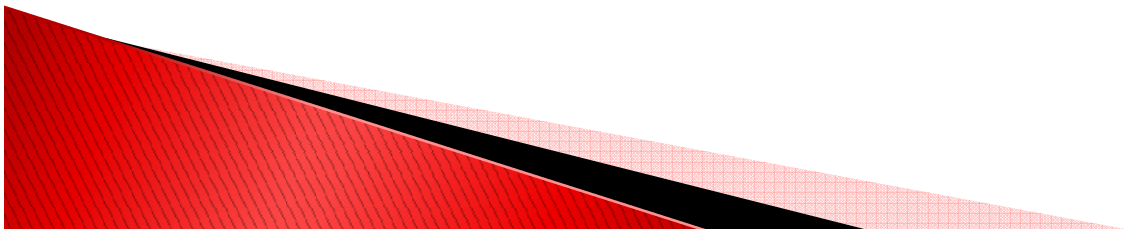
Recent Settlements

- ▶ American Senior Communities (IN)
 - Dec 2010, \$376K to settle civil money penalty case
 - Employment of seven nurses, CNAs, and kitchen workers who were excluded according to HHS OIG
- ▶ The May Institute (CN)
 - March 2010, \$110K to settle False Claims Act case
 - Submission of claims to federal health care programs for services performed by two individuals excluded from Medicare and Medicaid
 - HHS–OIG issued Special Advisory Bulletin advising health care providers to check List of Excluded Individuals/Entities



Increased Enforcement Efforts

- ▶ Excluded Provider Project – New England
 - Joint effort between OIG and U.S. attorney's office to search for and prosecute excluded providers
 - More that \$1 million in improper payments recovered
- ▶ Data-Mining Project – New York OMIG
 - Similar to above, NY OMIG will identify excluded providers and contractors
- ▶ FY 2011 OIG Work Plan –
 - Services Ordered or Referred by Excluded Provider
- ▶ Whistleblowers
 - Qui Tam actions under the False Claims Act



Key Government Lists

▶ DHHS – OIG – LEIE

- Authority to exclude from federal health care programs
- Maintains list of excluded individuals and entities (LEIE)
- Impact of Exclusion – No payment by a federal health care program for items/services provided/ordered/directed/prescribed by an excluded individual/entity
 - Impose CMPs for violations 42 USC 1320a–7a(a)
 - \$10,000 CMP per item or service claimed

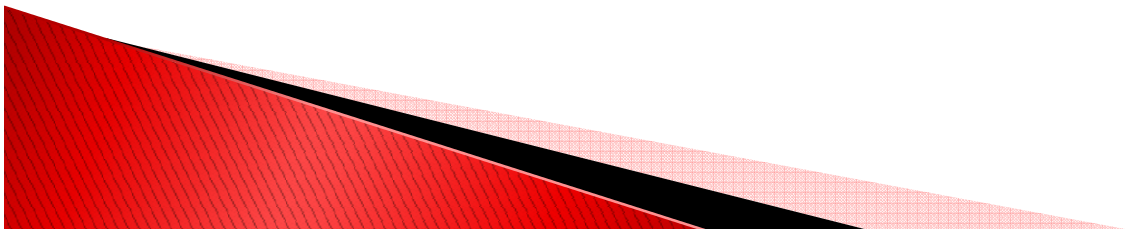
▶ GSA – EPLS

- Excluded Parties List System (EPLS) – government-wide non-procurement suspension and debarment list
- Accuracy of information not guaranteed

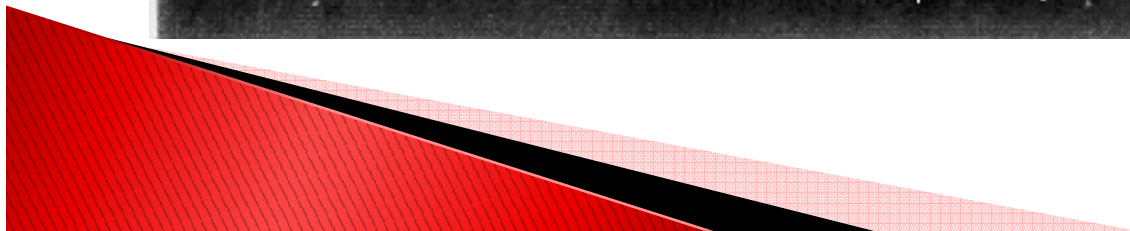
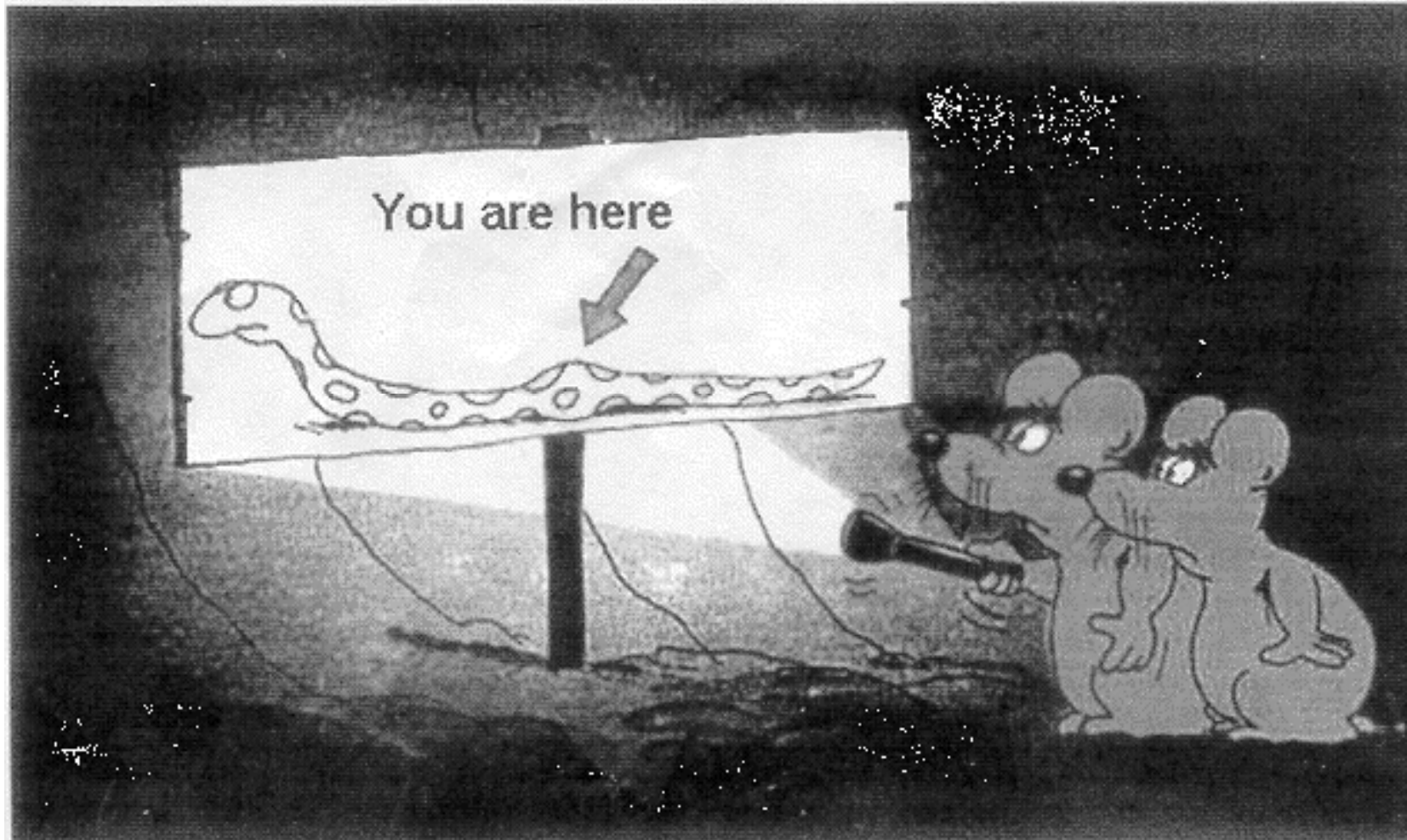


Other Lists

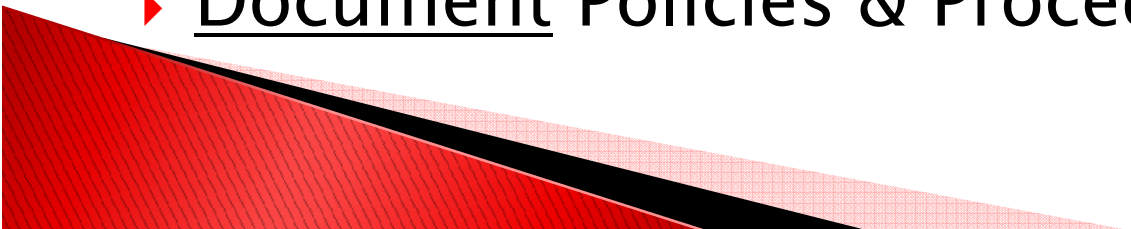
- ▶ FDA – Lists for Clinical Investigator
 - Disqualified, Restricted and Assurances List for Clinical Investigators – FDA determination
- ▶ Office of Foreign Asset Controls (OFAC)
 - Specially Designated Nationals List (SDN) –
 - Terrorist, drug traffickers, ties to certain countries
 - US citizens and permanent residents are prohibited from doing business with those on the SDN
- ▶ Export Control Lists
 - DOC BIS – denied persons list, entity list, and unverified list
 - DOS ITAR – defense articles



OK – Now What Do We Do?



Sanction Check Due Diligence – Program Design

- ▶ Research Applicable Government Lists
 - ▶ Identify Risk Populations
 - ▶ Select Routine Check Intervals
 - ▶ Consider What Other Departments Are Doing
 - ▶ Decide In-House or Vendor Database Search
 - ▶ Apply Verification Procedures for Potential Matches
 - ▶ Initiate Appropriate Action on Verified Matches
 - ▶ Document Policies & Procedures
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UofL Program Overview

- ▶ Lists in Search Database
 - (Fed) OIG / GSA / FDA / OFAC / DOC / DOS
 - (State) KY DMS Excluded Providers

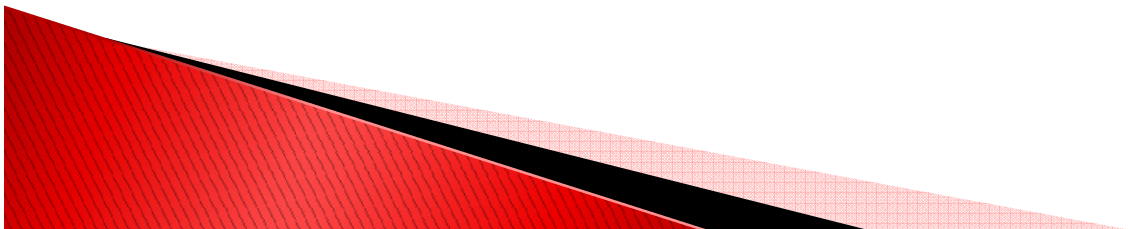
- ▶ Populations:
 - New Employees at Time of Hire and Annual Oversight Check of all Employees,
 - New Commercial Vendors and New Contractors & Renewals Prior to Award, plus Annual Oversight Check of Commercial Vendors \$1,000 +,
 - Affiliated Research Personnel (Semi-Annual)
 - Subcontractors on Federal Awards



Templates #1 & #2

Considerations in Selecting a Vendor On-Line Database System

- ▶ All Applicable Lists Included in Database
- ▶ Variables Included in System Checks (Full Name, Address, DOB, SSN/TIN)
- ▶ Auto Elimination of Non-Matches In Future Search Results
- ▶ Data Security and Record Retention
- ▶ System Administrator Feature Allows ICO to View All Departmental Searches/Results
- ▶ Annual vs. Per Search \$ Fee



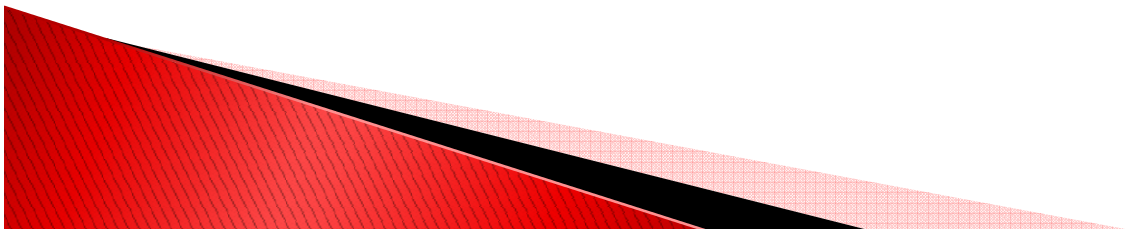
Potential Match Verification – Employees / Affiliated Individuals

- ▶ Name per VOD Exclusion Record Report
- ▶ Social Security Number
- ▶ Date of Birth per Federal Agency Records
- ▶ Address / Action Date Analysis
- ▶ Certification Form

Template #3 – Potential Match Review Worksheet

Template #4 – Verification Procedures

Template #5 – Employee/Affiliate Certification Form



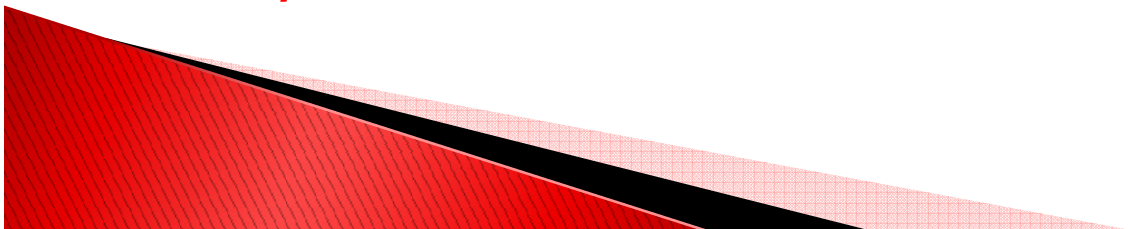
Potential Match Verification – Vendors

- ▶ Name per VOD Exclusion Record Report
- ▶ Tax Identification Number / SSN
- ▶ Address Review
 - City/State Per Federal Agency Record
 - Central Contractor Registration Review
- ▶ Certification Form

Template #6 – Potential Match Review Worksheet

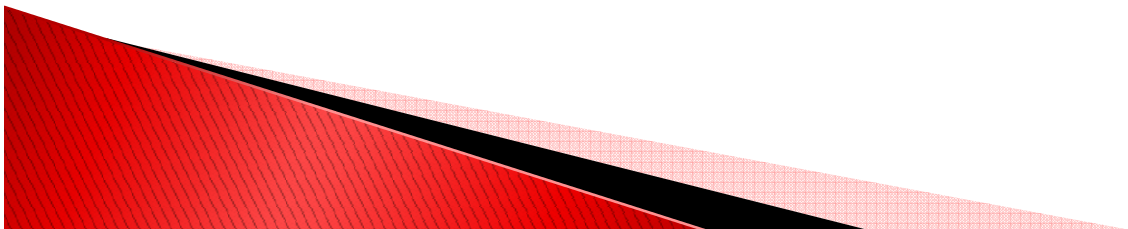
Template #7 – Verification Procedures

Template #8 – Vendor Certification Form



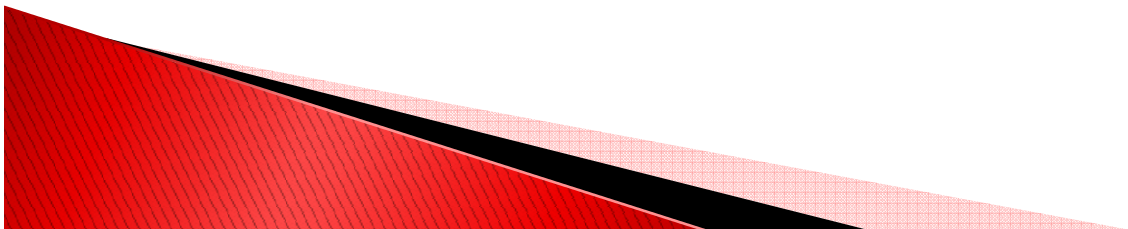
Helpful Hints

- ▶ Finding Federal Agency Lists/Resources
- ▶ Understanding List Nuances/Pitfalls
- ▶ Deciding if Government Agency Contact is Necessary
- ▶ Determining Specific Action Necessary for Verified Matches



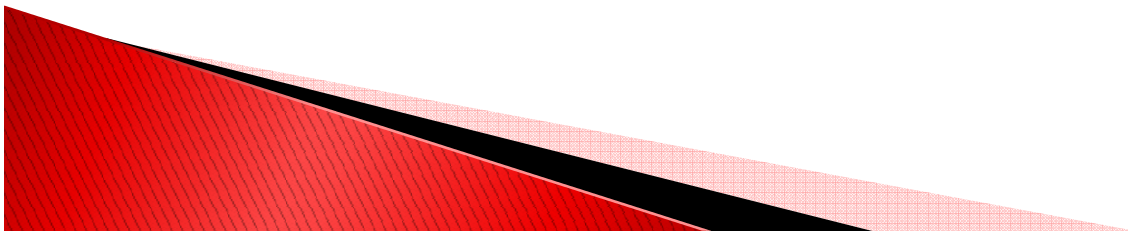
Final Thoughts

- ▶ Fair Credit Reporting Act – Employees
 - Internal v. External Agency
- ▶ Temporary Employees & Volunteers
- ▶ Employee Application Disclosures
- ▶ Vendor & Research Agreement – Contractual Language



Example Disclosure Language

- ▶ “Have you ever been or are you currently excluded, suspended, debarred or otherwise deemed ineligible to participate governmental healthcare, procurement, or other programs?”
- ▶ “If yes, list ALL such exclusions, suspensions, or debarments including applicable governmental agency, action date, and your address at the time of the action.”



Questions?

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