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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA *ex rel.* :  
RACHEL GOLDBERG, :  
: :

Plaintiff, :  
: :

v. :  
: :

INSTITUTE OF INTERNATIONAL :  
EDUCATION, :  
: :

Defendant. :  
: :

**COMPLAINT-IN-INTERVENTION  
OF UNITED STATES OF AMERICA**

----- X  
UNITED STATES OF AMERICA, :  
: :

Plaintiff-Intervenor, :  
: :

v. :  
: :

INSTITUTE OF INTERNATIONAL :  
EDUCATION, :  
: :

Defendant. :  
: :

**07 Civ. 8294 (PKC)**

----- X  
The United States of America, by its attorney, Preet Bharara, United States  
Attorney for the Southern District of New York, files this Complaint-in-Intervention against the  
Institute of International Education, Inc. ("IIE"), alleging as follows:

## PRELIMINARY STATEMENT

1. The United States brings this Complaint-in-Intervention against IIE under the False Claims Act, 31 U.S.C. §§ 3729-3733 (the “False Claims Act”), and common law, based on IIE’s submission of false claims to the United States Department of State (“State Department”) for payment in connection with IIE’s performance under grants, cooperative agreements and contracts with the State Department, including but not limited to grants and cooperative agreements relating to the Fulbright student and scholar exchange and study program (the “Fulbright Program”). From at least fiscal year 2001 through fiscal year 2009, IIE falsely determined and reported the labor costs it had incurred in performing under various Fulbright grants. Instead of determining and reporting the labor costs *actually* incurred in performing under each of the Fulbright grants – as required by Office of Management and Budget (“OMB”) Circular A-122, compliance with which was required under the express terms of the grants – IIE improperly charged labor costs to the relevant grants based on budget estimates prepared before the work was done, and then fraudulently shifted labor costs between and among the grants to ensure that the grants would be fully exhausted and that no unused grant funds would have to be returned to the United States. By contrast, IIE accurately determined and reported its labor costs incurred in performing under a privately funded grant during the same period. IIE continued to falsely determine and report its labor costs incurred in performing under the relevant Fulbright grants even though at least one IIE manager questioned the propriety of IIE’s time-charging practices. IIE did not change its time-charging practices until December 2008, after it became aware of the United States’ investigation.

## JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. § 1331, and over all claims pursuant to 28 U.S.C. § 1345 and this Court's equitable jurisdiction.

3. Venue lies in this District pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b) because IIE is located within this District and the acts complained of in this action took place in this District.

## PARTIES

4. Plaintiff is the United States, on behalf of the United States Department of State and its Bureau of Educational and Cultural Affairs.

5. Defendant IIE is a New York not-for-profit corporation headquartered at 809 United Nations Plaza, New York, New York 10017. IIE administers publicly and privately funded education exchange and study programs in the United States and internationally, including the State Department's Fulbright programs.

## FACTS

6. The United States brings this Complaint-in-Intervention against IIE under the False Claims Act and common law, based on IIE's submission of false claims to the State Department for payment in connection with IIE's performance under grants, cooperative agreements and contracts with the State Department, including but not limited to grants and cooperative agreements relating to the Fulbright Program.

### The Fulbright Program

7. Established by Congress in 1946, the Fulbright Program is an international educational exchange program sponsored by the United States Government, which is designed to

increase mutual understanding between the people of the United States and the people of other countries. The Fulbright Program provides participants, who are chosen for their academic merit and leadership potential, with the opportunity to study, teach and conduct research, exchange ideas and contribute to finding solutions to shared international concerns. Fulbright grants are available for U.S. citizens to go abroad and for non-U.S. citizens with no U.S. permanent residence to come to the United States. The Fulbright Program is an important element of the United States' bilateral relationships with countries around the world.

8. From at least fiscal year 2001 through fiscal year 2009 (the "Relevant Period") IIE administered the Fulbright Student Exchange Program (the "Fulbright Student Program"), the Fulbright Senior Scholar Program (the "Fulbright Scholar Program"), and the Vietnam Fulbright Student Program (the "Fulbright Vietnam Program") pursuant to grants or cooperative agreements with the United States Department of State (the "Fulbright Grants").

9. Within IIE, the Foreign Fulbright Programs Division, the Placement Division, the Northeast Student Services Division and the Enrichment and Professional Development Division, formerly called the Orientation, English and Special Services Division (collectively, the "Foreign Fulbright Divisions"), among other divisions or groups, participated in the administration of the Fulbright Student, Scholar and Vietnam Programs under the Fulbright Grants.

**OMB Circular A-122**

10. OMB Circular A-122 establishes principles that govern the costs of work performed by non-profit organizations under federal grants and cooperative agreements.

11. Each of the Fulbright Grants pursuant to which IIE administered the Fulbright Student, Scholar and Vietnam Programs during the Relevant Period expressly incorporated, and required compliance with, OMB Circular A-122.

12. Under OMB Circular A-122, IIE, as a grantee, was required to maintain personnel activity reports reflecting the distribution of activity of each employee whose compensation was charged directly to the Fulbright Grant awards. Under OMB Circular A-122, the personnel activity reports maintained by IIE were required to reflect an *after the fact* determination of the *actual* activity of each employee, and further were required to be signed by an employee or supervisor with first-hand knowledge that the distribution of activity represented a reasonable estimate of the *actual* work performed during the periods covered. OMB Circular A-122 prohibited IIE from basing personnel activity reports on budget estimates, *i.e.*, estimates determined *before* the services were performed.

13. OMB Circular A-122 also prohibited IIE from shifting costs between or among grants or cooperative agreements. The Circular provides that “[a]ny cost allocable to a particular award or other cost objective . . . may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.”

14. During and after the Relevant Period, IIE submitted quarterly reports to the State Department for each of the Fulbright Grants. In each quarterly report, IIE certified that the costs (including labor costs) charged to the particular Fulbright Grant, as reflected on the report, were accurate.

### IIE's Time-Charging Practices

15. During the Relevant Period, IIE routinely and consistently charged labor costs for its Foreign Fulbright Divisions to the Fulbright Grants in a manner that violated the requirements of OMB Circular A-122.

16. At the beginning of each fiscal year during the Relevant Period, IIE personnel estimated the percentage of time that each employee in the Foreign Fulbright Divisions was likely to spend on each of the Fulbright Grants during the fiscal year. These percentages were based on budget estimates.

17. Employees in the Foreign Fulbright Divisions were then instructed to charge, and did in fact charge, their time each pay period to the respective Fulbright Grants according to the predetermined percentages.

18. Employees in the Foreign Fulbright Divisions were not instructed by their supervisors or managers to, and did not, track their actual time spent on the respective Fulbright Grants.

19. By contrast, employees in the Foreign Fulbright Divisions *were* instructed, starting in January 2002, to charge labor costs to one privately funded grant based on the actual time that the employees worked on that privately funded grant during each pay period.

20. During the course of each fiscal year during the Relevant Period, IIE personnel periodically revised the predetermined percentages assigned to each employee in the Foreign Fulbright Divisions based on whether the respective Fulbright Grant awards, on a *pro rata* basis, were being over- or under-spent. Based on the availability of funds remaining in each Fulbright Grant award, IIE personnel adjusted the predetermined percentages assigned to each employee, and advised each employee to charge his or her time each pay period according to the adjusted

percentages. Each employee then charged his or her time each pay period to the respective Fulbright Grants according to the adjusted percentages. As each fiscal year drew to a close, the adjustments to the percentages according to which employees in the Foreign Fulbright Divisions were directed to charge their time to the respective Fulbright Grants grew larger.

21. By adjusting the predetermined time-charging percentages periodically throughout each fiscal year, IIE sought to use up the funds available in each of the Fulbright Grants, and to avoid over- or under-spending the respective Fulbright Grants, without regard to the actual amount of time worked by each employee on the respective Fulbright Grants.

22. As a result of IIE's time-charging practices, the time records of employees in the Foreign Fulbright Divisions during the Relevant Period were based on budget estimates, *i.e.*, estimates determined before the services were performed, rather than after-the-fact determinations of the actual activity of each employee on the respective Fulbright Grants during each pay period. These time records did not represent a reasonable estimate of the actual work performed by each employee on the respective Fulbright Grants during each pay period.

23. Through its time-charging practices, IIE shifted costs between and among the Fulbright Grants to overcome the funding limits of the respective grant awards and to avoid restrictions imposed by law and by the terms of each grant award.

24. During the Relevant Period, at least one IIE manager raised questions about the propriety of IIE's time-charging practices, but IIE did not make any changes to these practices until December 2008, after it received a subpoena from the State Department's Office of Inspector General.

25. During the Relevant Period, the United States was not aware that IIE was determining and reporting its labor costs in a manner that violated OMB Circular A-122.

26. In reliance on IIE's statements in its quarterly reports, the United States paid IIE for the labor costs that IIE charged to the respective Fulbright Grants during the Relevant Period as reflected in the quarterly reports.

27. As a result of IIE's time-charging practices, the labor costs that IIE reported to the State Department were inaccurate and false, and IIE received funds to which it was not entitled under the terms of the Fulbright Grants and OMB Circular A-122.

### **FIRST CLAIM**

#### **Violation of the False Claims Act: Presentation of False Claims (31 U.S.C. § 3729(a)(1))**

28. The United States incorporates by reference paragraphs 1 through 27 above as if fully set forth in this paragraph.

29. The United States seeks damages and penalties against IIE under Section 3729(a)(1) of the False Claims Act, 31 U.S.C. § 3729(a)(1).

30. IIE knowingly presented, or in deliberate ignorance or reckless disregard of the truth presented, or caused to be presented, to an officer, employee or agent of the United States a false or fraudulent claim for payment. Specifically, IIE falsely certified to the State Department the accuracy of the labor costs contained in its quarterly reports for each of the Fulbright Grants during the Relevant Period, when in fact IIE fraudulently charged labor costs to the respective Fulbright Grants during the Relevant Period by charging them in a manner that failed to comply with OMB Circular A-122.

31. The United States was unaware of the foregoing circumstances and conduct of IIE, and in reliance upon IIE's false claims, paid IIE for the labor costs that IIE charged to the respective Fulbright Grants during the Relevant Period as reflected in the quarterly reports.



32. By reason of these false claims, the United States has sustained damages in an amount to be determined at trial. The United States is entitled to treble damages pursuant to 31 U.S.C. § 3729(a).

33. The United States is also entitled to mandatory civil penalties ranging from \$5,500 to \$11,000 per false statement or claim made by IIE. 31 U.S.C. § 3729(a)(1).

**SECOND CLAIM**  
**Violation of the False Claims Act:**  
**Making or Using a False Record or Statement**  
**(31 U.S.C. § 3729(a)(2))**

34. The United States incorporates by reference paragraphs 1 through 33 above as if fully set forth in this paragraph.

35. The United States seeks relief against IIE under Section 3729(a)(2) of the False Claims Act, 31 U.S.C. § 3729(a)(2).

36. IIE knowingly presented or used, or in deliberate ignorance or reckless disregard of the truth presented or used, or caused to be presented or used, a false record or statement to get a false or fraudulent claim approved. Specifically, IIE knowingly, or in deliberate ignorance or reckless disregard of the truth, submitted false certifications that the labor costs charged to the respective Fulbright Grants during the Relevant Period, as reflected in its quarterly reports to the State Department, were accurate.

37. The United States paid such false or fraudulent claims because of the acts and conduct of IIE. The United States was unaware of the foregoing circumstances and conduct of IIE, and in reliance upon IIE's false claims, paid IIE for the labor costs that IIE charged to the respective Fulbright Grants during the Relevant Period as reflected in the quarterly reports.

38. By reason of these false claims, the United States has sustained damages in an amount to be determined at trial. The United States is entitled to treble damages pursuant to 31 U.S.C. § 3729(a).

39. The United States is also entitled to mandatory civil penalties ranging from \$5,500 to \$11,000 per false statement or claim made by IIE. 31 U.S.C. § 3729(a)(1).

**THIRD CLAIM**  
**Common Law Fraud**

40. The United States incorporates by reference paragraphs 1 through 39 above as fully set forth in this paragraph.

41. IIE made material misrepresentations of fact to the United States, with knowledge of their falsity, or in deliberate ignorance or reckless disregard of their truth, in connection with the quarterly reports that IIE submitted to the State Department for the respective Fulbright Grants during the Relevant Period. Specifically, IIE misrepresented that the labor costs reflected in the quarterly reports were accurate, when in fact IIE fraudulently charged labor costs to the respective Fulbright Grants during the Relevant Period by charging them in a manner that failed to comply with OMB Circular A-122.

42. IIE intended that the United States would rely upon the accuracy of the false representations referenced above.

43. The United States paid IIE its labor costs charged to the Fulbright Grants during the Relevant Period, as reflected in IIE's quarterly reports to the State Department, in justifiable reliance upon IIE's false representations in the quarterly reports.

44. IIE's actions caused the United States to be damaged in an amount to be determined at trial.

**FOURTH CLAIM**  
**Common Law Payment Made Under Mistake of Fact**

45. The United States incorporates by reference paragraphs 1 through 44 above as if fully set forth in this paragraph.

46. The United States seeks relief against IIE to recover monies paid under mistake of fact. The United States paid amounts to IIE based upon erroneous information contained in IIE's quarterly reports to the State Department for the respective Fulbright Grants during the Relevant Period.

47. Specifically, IIE erroneously certified that the labor costs contained in its quarterly reports were accurate, when in fact IIE falsely charged labor costs to the respective Fulbright Grants during the Relevant Period by charging them in a manner that failed to comply with OMB Circular A-122.

48. This erroneous information was material to the United States' decision to pay IIE.

49. Because of the payment by mistake, IIE has received money to which it is not entitled. By reason of the foregoing, the United States was damaged in an amount to be determined at trial.

**FIFTH CLAIM**  
**Unjust Enrichment**

50. The United States incorporates by reference paragraphs 1 through 49 above as if fully set forth in this paragraph.

51. By reason of the payments made by the United States to IIE, based upon erroneous information contained in IIE's quarterly reports to the State Department for the respective Fulbright Grants during the Relevant Period, IIE was unjustly enriched. The

circumstances of IIE's receipt of these payments are such that, in equity and good conscience, IIE should not retain these payments, the amount of which is to be determined at trial.

WHEREFORE, plaintiff, the United States, requests that judgment be entered in its favor and against IIE as follows:

- (a) on the First Claim for Relief (Violation of the False Claims Act: Presentation of False Claims), for treble the United States' damages as determined at trial, plus an \$11,000 penalty for each false claim presented pursuant to 31 U.S.C. § 3729(a)(1);
- (b) on the Second Claim for Relief (Violation of the False Claims Act: Making or Using a False Record or Statement), for treble the United States' damages as determined at trial, plus an \$11,000 penalty for each false claim made pursuant to 31 U.S.C. § 3729(a)(2);
- (c) on the Third Claim for Relief (Common Law Fraud), in an amount to be determined at trial, together with costs and interest;
- (d) on the Fourth Claim for Relief (Common Law Payment Made Under Mistake of Fact), in an amount to be determined at trial, together with costs and interest;
- (e) on the Fifth Claim for Relief (Unjust Enrichment), in an amount to be determined at trial, together with costs and interest; and
- (f) awarding such further relief as is proper.

Dated: New York, New York  
June 15, 2011

By:

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