The usual disclaimer applies: *We are not attorneys. We are not giving legal advice. Our legal analyses are those of a layperson, and we are probably getting it wrong. If you rely on our legal analyses, instead of hiring your own competent attorney to give you counsel, you are making a really big mistake.*

We get daily emails from the U.S. Department of Justice.

We are signed-up for a number of email distributions and nearly every day the DoJ sends us an email with a list of things that may interest us. Most of them do not actually interest us. We tend to ignore the remarks of the Attorney General or his team. We tend to ignore the healthcare frauds and the common frauds and the prosecution of tax preparers for tax fraud. And lately we have been ignoring the common government contract fraud notices, because we're tired of those stories.

But two stories recently caught our eye and they seem to only tangentially involve government contracting. Indeed, though each press release carefully noted that Federal funds were involved, we are not actually sure what impact the use of Federal funds had on the prosecution. Our cursory research seemed to indicate that bank fraud is a Federal crime regardless of whether Federal funds were involved. (NOTE: See disclaimer at the top of this article.)

The United States Code at 18 U.S.C. § 1344, which is known as the Bank Fraud Statute, states—

Whoever knowingly executes, or attempts to execute, a scheme or artifice—

(1) to defraud a financial institution; or

(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;

shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

We also found a statement that the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) "bolstered" the Bank Fraud Statute, but we don't know how.

Anyway, the **first** DoJ press release announced that one Los Angeles executive had been arrested while another was being pursued and remained at large. The DoJ announced that –

Chung Yu 'Louis' Yeung, 37, of San Dimas, California, was indicted on Oct. 22, 2014, in the Central District of California for one count of conspiracy to commit bank fraud and five counts of bank fraud. The indictment was under seal until his arrest today. Guo Xiang 'David' Fan, 52, was also indicted for conspiracy to commit bank fraud and bank fraud, as well as money laundering, and remains at large.

The DoJ press release continued with the following description of the alleged crimes:

According to the indictment, Yeung was Vice President and Fan was President of Eastern Tools and Equipment, an Ontario, California company that sold portable generators and other equipment. The indictment charges Yeung and Fan with defrauding United Commercial Bank (UCB) and East West Bank, which took over UCB's accounts, of more than $9 million.

Specifically, the indictment alleges that Yeung, Fan, and others overstated Eastern Tools' accounts receivable to increase its line of credit with UCB and later East West. To support the inflated accounts receivable submitted to the banks, Yeung, Fan, and others allegedly opened approximately 20 shell companies, backstopped with fictitious business name statements, post office boxes, bank accounts, and telephone numbers. They then allegedly moved money from Eastern Tools' bank accounts into the shell companies' bank accounts to create the false appearance of substantial commercial activity. Finally, Yeung, Fan, and others allegedly siphoned those funds into their own personal accounts.

East West Bank allegedly sustained a loss of approximately $9,157,172 as a result of the fraud scheme.

The foregoing story highlights the need for auditors and compliance practitioners to scrutinize accounts receivable (and accounts payable), paying strict attention to those entities that have P.O. Boxes as business addresses. Having a P.O. Box doesn't mean that the entity is a shell company; indeed, Apogee Consulting, Inc.'s business address is a P.O. Box, and we are very much a real small business providing bona fide services to our clientele. But when you see a P.O. Box as a business address, you should take a second look at the purchase orders, invoices and payments to see if anything looks suspicious.

As we noted above, the DoJ press release was careful to state that the bank had received nearly $300 million in TARP funds, none of which had been repaid. The bank had failed despite the infusion of Federal funds. Apparently, we are to infer that this particular alleged scheme led to the bank's failure and loss of Federal funds. We have no idea how that inferred "fact" may have affected the investigation and charging.

The **second** DoJ press release involved a former Bank of America (BOA) Senior Vice President who pleaded guilty to one count of "misapplication of bank funds in a scheme that led to over $6.4 million in losses … on two business-related loans." According to the press release –

Brough admitted to misapplying bank funds in connection with two business loans: a $6.3 million short-term construction loan, and a $600,000 line of credit in connection with the acquisition of a business. Brough admitted that neither borrower qualified for the loans,

because they did not meet the bank's underwriting requirements. Brough further admitted that he falsified documents in order to help both borrowers get the loans, including forging signatures on loan papers.

According to Brough's admissions, when the borrowers had difficulty making payments on the loans, Brough misused the bank's general ledger fund to make a total of $436,676 in payments on the loans for the borrowers. Brough admitted that he disguised those payments, among other ways, as 'goodwill,' 'miscellaneous adjustments' and refunds of various fees. He also admitted that he kept each of the individual payments under $10,000 so he would not need additional approval within BOA.

Both borrowers ultimately defaulted on the loans. According to Brough's plea agreement, the aggregate loss to BOA was $6,468,767: $5,291,000 on the first loan, and $1,177,167 on the second loan.

So two LA executives are facing multiple serious Federal criminal charges while one Las Vegas bank officer has pleaded to one count of "misapplication" of bank funds (a violation of 18 U.S. C. §656). Our reading of the U.S. Code is that both offenses carry roughly the same penalty, so it's not clear to us what the difference may be. Certainly, one possible difference between the two cases may involve the loss of Federal funds. While the first case noted that the TARP funds were not repaid, the second case noted that Bank of America had repaid its TARP funds in full by December, 2009.

In any case, as we government contract cost accountants, auditors, and compliance practitioners review transactions recorded by the entities with which we are involved, it is a good idea to keep in mind the "garden variety" commercial frauds described in these two stories.