Section-sponsored teleconference put on by the ABA Center immediately held meetings on the new rule, and a well-attended practicum on the evening before the first day of the 15th Annual Federal Procurement Institute in Annapolis. Moderated by Bob Huffman, cochair of the Procurement Fraud Committee, this practicum focused on the rule’s purpose and compliance with it. The Procurement Fraud and Debarment and Suspension Committees immediately held meetings on the new rule, and a well-attended Section-sponsored teleconference put on by the ABA Center for Continuing Legal Education had national reach as it stepped up to help address these questions through timely programs, which pulled together experts from both the public and private sectors to facilitate discussion of the rule, its purpose, and compliance with it. The Procurement Fraud and Debarment and Suspension Committees immediately held meetings on the new rule, and a well-attended Section-sponsored teleconference put on by the ABA Center for Continuing Legal Education had national reach as it provided valuable information.

Not surprisingly, the Section’s programs on the new FAR mandatory disclosure rule have generated a great deal of interest. Contractors have carefully examined their existing policies and procedures and sought advice on how to interpret the rule to ensure compliance. The Section stepped up to help address these questions through timely programs, which pulled together experts from both the public and private sectors to facilitate discussion of the rule, its purpose, and compliance with it. The Procurement Fraud and Debarment and Suspension Committees immediately held meetings on the new rule, and a well-attended Section-sponsored teleconference put on by the ABA Center for Continuing Legal Education had national reach as it provided valuable information.

The new rule is a significant change from what has long been a voluntary disclosure process, and both contractors and the government are still adapting to it. As a result, the Section addressed the first few months of experience under the rule by providing a practicum on the evening before the first day of the 15th Annual Federal Procurement Institute in Annapolis. Moderated by Bob Huffman, cochair of the Procurement Fraud Committee, this practicum focused on the rule and the implementation efforts of both contractors and the government.

Part of the Section’s response to the new rule has been the creation of a task force comprised of representatives from government, industry, and law firms, and cochaired by Bob Huffman and Fred Levy. This task force is examining the rule’s implementation with an eye toward the creation of a work product to assist in the compliance process. The work product may be a “best practices” manual or set of guidelines.
The Section's involvement with this new rule preceded the issuance of the final rule. The first proposed disclosure rule was issued on November 14, 2007. The Section submitted comprehensive comments that addressed key issues including the lack of statutory authority. Several of the Section's comments were discussed in the commentary section of the second proposed rule, which was issued on May 16, 2008. During the comment period, Congress addressed the lack of statutory authority through enactment of the Close the Contractor Loophole Act. In its comments, the Section noted that the second proposed rule's expansion of the reporting requirement and the addition of the grounds for suspension or debarment. In addition, the American Bar Association Task Force on Attorney-Client Privilege submitted comments on the second proposed rule. Fred Levy, who is a cochair of both the Procurement Fraud and the Debarment and Suspension Committees, serves as the Section's liaison to this task force and contributed to the comments, which addressed concerns about the rule's impact on the attorney-client privilege, problems with the proposed "reasonable grounds to believe" standard for mandatory disclosure, and the "full cooperation" requirement of the proposed FAR rule.

ABA Task Force on Financial Markets Regulatory Reform

During the Fall Council Meeting in Napa, California, the Section discussed ABA activity related to financial markets reform and the Troubled Asset Relief Program (TARP). There are contracting challenges associated with this activity. For example, articles have noted that the Government Accountability Office and Congress are concerned that the Treasury Department has not provided details on how it will manage contractor conflicts of interest to ensure the integrity of the TARP. The sense of the Section's Council in Napa was that we have expertise that can contribute to this effort and we should seek a role in this ABA effort. I am pleased to report that Allan Joseph, a Section delegate to the ABA, was appointed as a member of the ABA task force, and, in addition, Pat Wittie was given a task force liaison position representing our Section.

4th Annual State and Local Procurement Symposium

As I write this column, the Section is completing preparations for its 4th Annual State and Local Procurement Symposium, to be held this year on May 15 at the Hotel InterContinental in New Orleans. Program cochairs Jennifer Dauer and Michael Hordell have put together an excellent program that focuses on the best practices and procurement tools to expedite the acquisition of necessary supplies and services while safeguarding fundamental procurement principles. This program is further evidence of the Section's commitment to all aspects of public procurement—federal, state, and local.

Endnotes