TIPS FOR SUCCESS IN THE OIG SELF-DISCLOSURE PROTOCOL

• Follow ALL the requirements in the Federal Register AND the 2008 Open Letter in your written submission. Common mistake = missing contractor information.

• Mail it to the address in the Federal Register:
  Assistant IG for Investigative Operations, HHS/OIG
  330 Independence Ave, SW, Room 5409, Washington, D.C. 20201

• Don’t disclose prematurely. Your investigation and damages audit either needs to be completed or you commit to completing within three months after acceptance.

• Provide a complete description of the conduct and investigation:
  - What happened?
  - What is the time period?
  - Why did it happen?
  - Why is there potential legal liability for the conduct?
  - Who was involved?
  - How was the conduct discovered?
  - What corrective actions have been taken?

• Identify the fraud laws at issue. Just “Federal laws, rules, and regulations” or “the Social Security Act” is not sufficient.

• Pay attention to the sampling requirements in the Protocol at Section V.

• Stark-only conduct that does not also have a colorable kickback claim is not eligible for OIG’s protocol.
  - CMS has created its own disclosure protocol for Stark-only conduct – http://www.cms.gov/PhysicianSelfReferral/

• Expect that disclosure will result in a settlement agreement for an amount that is a multiplier of damages. Simple overpayments are not appropriate for the SDP.

• Full cooperation is essential.