Federal Grants Compliance: Cost Reimbursement and Administrative Issues

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Overview

- Salary reimbursement and effort reporting
- Effort commitments
- Cost transfer problems
- Avoiding False Claims Act exposure

Effort Reporting Basics

- The ultimate objective is not to track effort, but to allocate salaries correctly to federal awards.
- Effort reporting is just the tool that is used to make that allocation.
- The fundamentals of salary allocation are pretty simple:
  - Figure out what the institutional base salary (IBS) of each employee is – e.g., $100,000
  - Use effort reporting to figure out what percentage of the employee's "total professional effort" is devoted to the federal grant – e.g., 20%
  - Multiply that percentage by the employee's IBS to determine the proper charge to the grant – e.g., $100,000 IBS, 20% effort on federal grant = $20,000 charge to federal grant
- In practice, effort reporting is not so simple

Institutional Base Salary (IBS)

- IBS is "allowable to the extent that the total compensation to individual employees conforms to the established policies of the institution, consistently applied." OMB Circular A-21, Sec. J.10
- IBS must be reasonable in amount and guaranteed (not variable)
- IBS must ordinarily be paid by the grantee, not another institution
- IBS on NIH grants may not exceed the statutory cap – now $191,300
  - Research with a $300,000 salary and 10% effort on an NIH grant
  - Grant may be charged only $19,130 (10% of $191,300)
  - Difference between $30,000 and $19,130 is treated as cost sharing
- IBS may not increase as a result of the receipt of a new federal award
- Joint appointments can cause problems – mismatch between IBS and effort

Effort Reporting Rules – Universities

- OMB Circular A-21, section J.10
- Effort reporting must "reasonably reflect the activity for which the employee is compensated by the institution"
- After the fact confirmation by "Responsible persons with suitable means of verification"
- Independent internal evaluations to ensure the system's effectiveness and compliance
- Timing
  - Plan confirmation example: at least annually
  - After the fact example: every six months for faculty and professional staff; monthly for other employees
  - Timing and frequency of reports may be negotiable

Effort Reporting Myths

- **Myth #1: "**My effort on federal projects can be expressed as a percentage of a "normal" 40 hour work week, regardless of how many total hours I actually work during the week."
  - PI spends 40 hours a week on a federal grant, and 10 hours a week on teaching and admin
  - PI claims 100% of his salary can be allocated to the federal grant, since he is spending the equivalent of a "normal" 40 hour week on the grant
  - This is incorrect – the correct effort allocation is 80%
- **Myth #2:** "University work that I do on my own time (weekends, vacations, etc.) does not have to be counted as part of total professional effort (TPE)."
  - Faculty member spends all of her time during the week working on a federal project, and writes grant proposals on the weekends
  - Weekend effort is part of TPE because it is part of what the faculty member is being paid for

Salary Charging and Effort Reporting -- Red Flags

- Lack of written policy defining an effort reporting system
- Effort reports signed in batches by administrators
- Late, missing, or unsigned effort reports
- Effort reports “corrected” after the fact
- Excessive payroll cost transfers
- Faculty with 100% effort on research grants
- Inconsistency with other time records (e.g. Medicare Cost Report)
- Salary increases tied to grant awards

Effort Commitments – Cost Sharing

- Types of cost sharing
  - Mandatory -- “Grantee must pay 50% of all project costs.”
  - Voluntary committed -- “I will devote 50% effort to this project and charge only 30% of my salary.”
  - Voluntary uncommitted -- faculty member proposes to spend and charge for 30% effort, but
    - charges 30% as proposed but actually spends 50% effort, or
    - actually spends 30% effort as proposed but charges for only 15%.
- Grantees must document mandatory cost sharing and voluntary committed cost sharing
  - Failure to do so may be a violation of grant obligations, and may result in an overstated indirect cost rate
- Grantees are not required to keep track of voluntary uncommitted cost sharing
  - But it generally must be included somewhere in the 100% of total professional effort

Effort Commitments – Minimum Effort Requirements

- Example: NIH Career Development (“K”) Awards
  - Normally such awards require that a minimum of 75% of total professional effort must be devoted to the aims of the award
- Denominator issues – what is included in total professional effort (TPE) for this purpose?
  - For purposes of effort reporting, TPE normally includes only effort paid for by the grantee
  - But TPE may be broader for purposes of minimum effort requirements
  - August 2004 NIH policy clarified that in the case of a University-VA joint appointment TPE could include only University effort, *if* University effort was deemed full-time
    - Implication is that otherwise VA effort would be part of TPE for this purpose
- Numerator issues – what counts toward the 75%?
  - Generally, anything that is in the research plan contained in the proposal, including work at other institutions (but not VA-compensated work)

Effort Commitments – Red Flags

- No system for keeping track of mandatory and voluntary cost sharing commitments, and for confirming that they have been fulfilled
- No entry for voluntary committed cost sharing in the indirect cost rate calculation
- Lack of policy on how to measure compliance with minimum effort requirements in K awards and other federal awards containing such requirements

Abusive Cost Transfers

- "Any costs allocable to a particular sponsored agreement under the standards provided in this Circular may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the sponsored agreement, or for other reasons of convenience." – OMB Circular A-21, section C.4.b.
- Note that "shifting" is a broader term than "transferring"
- Examples of abuses –
  - Transferring costs from Grant A to Grant B to clear deficit on Grant A
  - "Parking" Grant C costs on Grant D for reasons of convenience
  - Charging Grant E for Grant F costs that Grant F will not allow

NIH's Cost Transfer Rule

- NIH Grants Policy Statement at 83-84.
- "Cost transfers to NIH grants…that represent corrections of clerical or bookkeeping errors should be accomplished within 90 days of when the error was discovered."
- Note: HHS Grants Policy Statement says "90 days following *occurrence*"
- Transfers must be supported by documentation that fully explains how the error occurred and a certification of the correctness of the new charge by a responsible organizational official – "to correct error" is not enough
- Grantees must maintain documentation of cost transfers
- Grantees should have systems in place to detect errors within a reasonable time

Cost Transfers – Red Flags

- Cost transfers that have the effect of clearing over-runs in a sponsored project account
- “Batch” transfers of multiple unrelated costs
- Arbitrary transfers – some costs transferred but seemingly related costs not transferred
- Poor explanation of how and why the original charging “error” occurred
- Mismatches between transferred costs and transferee account
- Large volumes of cost transfers
- A pattern of late cost transfers
- No oversight mechanism to detect erroneous transfers

Avoiding False Claims Act Exposure

- Make sure you really understand the rules yourself – they seem simple enough on their face but in practice they create endless complications and difficulties
- Learn to identify “red flags” – signs of possible compliance failures
- Don’t ignore signs of discontent and discomfort within your organization
  - Is there a potential whistleblower who is beginning to feel that his/her warnings are being ignored?
  - Is Internal Audit getting restless and frustrated?
  - Are unfortunate memos and e-mails being circulated?
  - Are reform efforts falling flat?
- Adopt an enlightened concept of compliance

Traditional Compliance Theories

- Employees do bad things because --
  - They are “bad apples”
  - They think they won’t get caught
  - They are acting in their own self-interest, not the organization’s interests
  - They don’t understand the rules
  - They don’t know how much trouble they can get into by breaking the rules
- Features of traditional compliance responses –
  - Moralistic Codes of Conduct
  - Stern threats of discipline
  - More internal auditing and investigation
  - Hotlines
  - Heavy emphasis on training
  - Shifting responsibility to individual employees
  - Little or no change in the organization itself
  - Little high-level institutional attention

A More Enlightened View of Compliance

- Why do smart and basically honest people do bad things?
  - Because they are suddenly overwhelmed by a desire to do evil? *No.*
  - Because they don’t understand the rules? *They understand more than you might think.*
  - Because they think the rules are stupid? *Often they do think so, but that’s rarely their real motivation.*
  - Because their institution secretly wants them to break the rules? *This is almost never the case.*
  - Because the institution’s economics and systems of rewards unwittingly encourage them to break the rules? *Getting warmer.*
  - Because there are institutional dysfunctions that make doing the right thing difficult or impossible? *Now we’re getting somewhere.*
- “Compliance” = removing obstacles to good behavior
- Viewed in this light, compliance is fundamentally a problem for higher management, not for subject matter experts and lawyers

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