

How Did We Get into this Mess? A Micro View of Effort Reporting and Other Research Compliance Problems

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Objectives of this session

- To identify “hot button” research compliance issues most likely to attract the attention of federal enforcement agencies
- To gain a better understanding of why and how these research compliance problems happen
- To develop strategies for avoiding or minimizing such research compliance problems in the future

Structure of the session

- Brief “macro” discussion of federal enforcement trends
- “Micro” consideration of three hypotheticals
 - Effort reporting
 - Cost transfers
 - Direct charging of administrative costs
- The purpose of the hypotheticals is to focus attention on the *practical challenges* involved in these kinds of research compliance problems

The False Claims Act – a prosecutor's dream come true

- No need to prove intent to defraud
- No need to prove actual knowledge of falsity
- Deliberate ignorance or reckless disregard can be enough
- No need to prove Govt was misled
- No need to prove Govt was damaged
- Treble damages or up to \$11,000 per claim
- Whistleblowers can bring *qui tam* cases on behalf of the United States

Federal enforcement trends

- Most cases start with a whistleblower
- Some start with voluntary disclosures
- No indication of concerted federal program targeting universities
- But prosecutors are much more willing to pursue research cases
- So far dollars have been relatively small compared to Medicare billing settlements – that could change

“Hot button” issues

- *Effort reporting and salary overcharging*
- *Abusive cost transfers*
- *Improper direct charging of administrative costs*
- Improper salary augmentation
- Failure to meet effort commitments
- Overlap with Medicare billings
- Overcharging by recharge centers

What prosecutors look for

- Simplicity of issues
- Deliberate false statements
- Double charging
- Personal gain
- Large dollar impact
- Widespread violations
- Prior misconduct
- Management complicity or neglect
- Destruction or falsification of records

Selected FCA cases

- Cornell-Weill Medical College (Mar 09) – effort commitments -- \$2.6M
- Yale University (Dec 08) – cost transfers, effort reporting -- \$7.6M
- Saint Louis University (Jul 08) – salary augmentation, effort reporting -- \$1M
- Mayo Clinic (May 05) – cost transfers -- \$6.5M
- University of Alabama Birmingham (Apr 05) – effort reporting, double billing of patient care -- \$3.4M
- Florida Int'l University (Feb 05) – effort reporting, direct charging of admin costs -- \$11.5M

Your role in the hypotheticals

- You are the Director of Research Compliance
- It is your job to:
 - Investigate research compliance problems
 - Figure out how and why they happened
 - Develop a plan for preventing recurrences
- You have no staff and no authority to direct anyone to do anything
- How do you handle the following hypothetical situations?

Hypothetical #1: effort reporting

- You find out that Dr. A, the Chairman of the Department of Psychiatry, has been 100% charged to sponsored research for the past three years
- Dr. A clearly has non-research duties (admin, teaching, clinical, proposal writing) to which he should be allocating some of his effort
- He explains that
 - The Medical School expects everyone to cover their salaries through external funding, so he is under great pressure to allocate all his effort to grants
 - The 100% is justified because he spends at least 40 hours a week on his grants – a full-time commitment in his view
 - He does proposal writing on the weekends
 - His teaching, admin, and clinical time are minimal
- Dr. A admits frankly that he has never understood effort reporting, and that his assistant fills out all his effort reports – Dr. A just signs them
- He also says that “dozens” of other Med School faculty are 100% charged to sponsored research, even though they have other institutional duties

What's wrong with this picture?

- Dr. A appears to be overcharging sponsors, some of which are federal
- The 40 hour week argument is not valid
- Proposal writing on the weekends is still part of total University effort and must be reported as such
- You check other records of Dr. A's time and effort and find that
 - Time records kept for Medicare cost report purposes show a substantial amount of admin, teaching and clinical time
 - Clinic records confirm a substantial amount of clinical effort
 - Courseload records show substantial teaching obligations
- Dr. A's effort reports are being filled out by someone with no suitable means of verification of how Dr. A spends his time
- Dr. A has a very poor understanding of effort reporting rules
- To make matters worse, his situation may not be unique

How did we get into this mess?

- Faculty compensation depends on a high percentage of external salary support
- Department lacks funds to cover non-sponsored activity such as proposal writing, administration, etc.
- Effort reporting forms are confusing
- Faculty members are not required to take responsibility for accuracy of effort reports
- Faculty don't understand the rules (or don't want to)
- Other records of time and effort are inconsistent with effort reports

What do we do now?

- Which of these steps seem most useful?
 - More policies and procedures
 - More training
 - Organizational changes
 - Setting a maximum percentage of effort for research
 - Monitoring of high-percentage researchers
 - Requiring faculty members to sign their own effort reports
 - Discipline
- Are there any other measures that might help to prevent recurrences of this problem?
- Is there a need to investigate further?

Hypothetical #2: cost transfers

- You find out that there has been an unusually high incidence of cost transfers in the Biomedical Engineering Department
- Internal Audit reviews the cost transfers at your request, and reports that
 - 75% of the cost transfers are late according to the University's rule, which requires that all cost transfers occur within 90 days after the initial cost charge is made
 - Few cost transfers have documentation establishing that the initial charge was erroneous, or why the erroneous charge occurred
 - Most transfers occur toward the end of the grant period, and 50% of the transfers from grants occur when the grants are in an over-run condition
 - Many transfers are in large batches, in round dollar amounts
 - Often transfers involve cost mismatches – for example, transfer of base salary without transfer of fringe
- The Departmental Business Manager tells you that the transfers were intended mainly to maximize funding of costs, eliminate deficits, and avoid having to return unspent funds

What's wrong with this picture?

- Internal Audit's findings present a pretty clear picture of abusive cost transfers
- It appears that neither the PIs nor the administrators in the Department were fulfilling their responsibility to ensure that costs were allocated to the correct sponsored projects
- Unscrambling the cost transfer egg --
 - We can't necessarily assume, though, that every late or inadequately documented cost transfer resulted in a cost's ending up on the wrong grant
 - Even where costs did end up on grants where they did not belong, often there are offsetting "bad" transfers on and off the same grant, so that the Govt's damages may be less than the total dollar amount of bad transfers

How did we get into this mess?

- Financial reports don't inform PIs of charges to their accounts on a current basis, leading to over-runs
- Financial reports are confusing and uninformative – hard for PIs to check the accuracy of charges
- Grants are poorly managed
- PIs regard grant funds as fungible support
- No source of departmental funds to cover shortages of funds in sponsored accounts
- Decentralized accounting systems allow transfers to occur without central review or control

What do we do now?

- Which of these steps seem most useful?
 - More policies and procedures
 - More training
 - Organizational changes
 - Centralized review of all cost transfers
 - Rejecting all late cost transfers
 - Requiring faculty members to sign off on all cost transfers to or from their grants
 - Discipline
- Are there any other measures that might help to prevent recurrences of this problem?
- Is there a need to investigate further?

Hypothetical #3: direct charging of administrative costs

- You conduct a review of direct charges of administrative and clerical charges to federal awards in selected departments, and find
 - Instances in which a departmental secretary’s effort has been allocated across 20 different federal grants, at 5% effort each
 - Instances in which the university job titles of departmental administrators have been changed to “technical” job titles in grant applications, apparently to conceal the fact that their duties were primarily administrative in nature
 - Instances in which laptops have been charged directly to a federal grant, then used for general purposes like any other office laptop
 - Instances in which Fed Ex charges, photocopying, and other routine office services have been charged directly to federal awards
- You determine that almost all administrative costs not direct charged to research are assigned to administrative cost categories; few if any such costs are allocated directly to teaching or other non-research major functions

What's wrong with this picture?

- Your review has turned up evidence not only of technical violations of direct cost charging rules, but some indications of deliberate mischarging
 - The departmental secretary split 20 ways
 - Changing titles of employees to conceal their administrative character
 - Laptops used for general office purposes
- Direct charging of routine office services and supplies may be justified if the charges are specifically identifiable with individual awards, and if similar direct allocations are made to other direct functions, such as teaching.
 - But you have found that direct allocations of administrative costs are rarely made to teaching and other non-research major functions

How did we get into this mess?

- Insufficient institutional funding for administrative and clerical costs
- Departmental personnel lack training in the complex rules applicable to charging of admin costs
- Inadequate data on what kinds of admin costs are being directly charged to federal projects
- Employees' irresistible urge to have laptops of their own
- No system for advance clearance of direct admin charges
- Lack of a method for assigning admin and clerical charges to teaching and other non-research direct functions – “direct charge equivalent” (DCE)

What do we do now?

- Which of these steps seem most useful?
 - More policies and procedures
 - More training
 - Organizational changes
 - Requiring review of all direct charges of admin and clerical charges
 - Monitoring grants with high levels of direct charging of admin and clerical costs
 - Special rules for certain types of “suspect” admin and clerical costs – e.g., laptops and cell phones
 - Establishing DCE mechanism
 - Discipline
- Are there any other measures that might help to prevent recurrences of this problem?
- Is there a need to investigate further?

A management approach to research compliance

- “Compliance program” = removing obstacles to good behavior
- Subject matter experts and compliance officers may be able to identify the obstacles...
- ... but often they don’t have the power to remove them.
- The keys to success are the same as with any other complex management undertaking
 - Commitment of top management -- \$\$ and otherwise
 - Knowledge of how the organization works, and how to fix things when they’re broken
 - Strong project management
 - Measurement of results and good follow-up