

# **COMPLIANCE AND INTEGRITY: AN OIG PERSPECTIVE**

**SCCE CONFERENCE FOR EFFECTIVE  
COMPLIANCE SYSTEMS IN HIGHER EDUCATION**

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## **THE REAL and ORIGINAL TITLE**

**How To Prevent OIG Investigators  
From Knocking On Your Door  
(or at least make it a pleasant visit)**

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## **THE OBVIOUS ANSWERS:**

- Read and know the applicable grant conditions, rules and regulations when receiving federal grant funds
- Know and document how federal grant funds are spent
- Maintain (during, not after the fact) adequate documentation to support all expenditures, including cost share

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## **Top 10 Things You Probably Don't Want To Say To An OIG Investigator**

1. Do you think I have time to read all of your rules?
2. Time and Effort Policy? Well, we don't actually have one of those yet.
3. Sorry, I can't get you the records; they are being archived in a dangerous building.
4. Wow..Really? No! Entertainment can't be charged to federal awards?
5. The movie outing to see Bad Boys 2 was sort of cultural excursion.

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## Top 10 Things You Probably Don't Want To Say To An OIG Investigator

6. Wow, I had no idea our records were such a mess.
7. We can't actually tell you how we spent your funds.
8. Chicken Dinner Analogy: which goes...
9. I signed the purchase requisition because I saw that everyone else signed too.
10. No, I haven't received any formal training about federal grants management. BUT I have received "on the job" training.

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## Number 11: But...we did the work!!!

- Very common defense to grant fraud cases
- Problem Scenario: If grantee receives \$1 million to carry out a funded proposal, carries out the work for \$500,000, and spends the full amount of the award....
- We still need to know where the other \$500,000 went...AND
- The Grantee can still be charged for false claims associated with the other \$ ½ million

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## What is an Office of Inspector General?

- Each federal agency has independent OIG
- Audit and investigative components
- OIG missions:
  - Prevent and detect waste, fraud and abuse
  - Promote economy, effectiveness, efficiency
  - Keep agency head and Congress fully and currently informed

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## What Do We Investigate?

### Reactive Investigations:

- Allegations received from:
  - Program officers/NSF Staff
  - Colleagues, Students, Post-Docs
  - Ex-spouses/Ex-partners/Disgruntled Employees
  - University Administrators
  - Anonymous Tips

### Proactive Investigations:

- Program Income
- Participant Support
- Plagiarism
- Human Subjects

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## What Types of Issues Do We Investigate?

### FRAUD

- Theft/Embezzlement
- Financial Mismanagement
- Conflicts of Interests

### RESEARCH MISCONDUCT

- Plagiarism
- Fabrication
- Falsification
- Intellectual Theft

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## America COMPETES Act SEC 7009



“ . . . each institution that applies for financial assistance from the Foundation for science and engineering research or education describe in its grant proposal a plan to provide appropriate training and oversight in the responsible and ethical conduct of research to undergraduate students, graduate students, and postdoctoral researchers participating in the proposed research project”

## NSF Implementation

- ❖ “Effective January 4, 2010, NSF will require that, at the time of proposal submission to NSF, a proposing institution’s Authorized Organizational Representative certify that the institution has a plan to provide appropriate training and oversight in the responsible and ethical conduct of research to undergraduates, graduate students, and postdoctoral researchers who will be supported by NSF to conduct research”

## NSF Implementation

- RCR Frequently Asked Questions (3/3/10)
  - [http://www.nsf.gov/pubs/policydocs/rcr/faqs\\_mar10.pdf](http://www.nsf.gov/pubs/policydocs/rcr/faqs_mar10.pdf)
  - “NSF expects institutions to be able to verify that those students (undergraduates and graduates) and postdoctoral researchers who receive NSF funds (support from salary and/or stipends to conduct research on NSF grants) will obtain RCR training.”

## Award Administration

- Financial Management System
  - Project Accounting
  - Procedures for determining allowability of costs
  - Approvals
  - Budget compared to actual expenditures
- Participant support costs
  - Cannot be reallocated without prior written approval from NSF PO
- Accuracy and timeliness of reporting, notifications
- Equipment inventory maintained

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## Cost sharing

- No federal funds
- Track cost sharing per award  
(no duplication, and no after the fact guestimates)
- Documented and certified (AOR >\$500,000)
  - Valuation at actual/fair market value
  - Report annual and cumulative amounts
  - Both awardee and subawardee cost sharing

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## Possible Outcomes of OIG Investigations?

- Administrative Action
  - Including recommendations for suspension/debarment
- Civil Action
  - Civil False Claims Act
    - Treble damages
- Criminal Action (Prosecution)
  - Criminal False Claims/False Statements
  - Theft/Embezzlement
  - Mail/Wire Fraud

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## How Do Grantees Get in Trouble?

- Embezzlement/Theft
  - Using grant funds to buy bedroom furniture, vacations, American Idol tickets
- False Statements
  - Falsely asserting support of a key organization in proposal
  - Falsely asserting collaboration with a foreign scientist that never happened
  - Falsely certifying required matching funds (cost-sharing)

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## How Do Grantees Get In Trouble? (Part II)

### – FALSE CLAIMS

- Claiming reimbursement for grant funds not spent on funded project
- Grantee-approved no cost extension just to spend remaining grant funds
- Drawing down federal funds for unallowable expenses

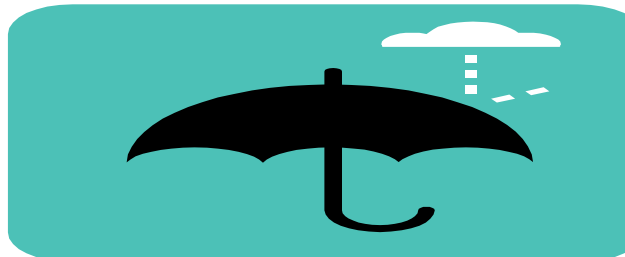
### – MISMANAGEMENT OF FEDERAL FUNDS

- Co-mingling federal and non-federal funds
- Transferring costs from overdrawn project accounts
- Charging one grant for expenditures of another
- Failing to know, follow, or care about applicable rules

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## Key to Prevention?

### Compliance Programs



Government

Institution/University

Researcher

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## What is a Compliance Program?

SYSTEM OF RESPONSIBLE ADMINISTRATIVE, FINANCIAL AND RESEARCH  
MANAGEMENT AND OVERSIGHT, CREATING AN ENVIRONMENT IN  
WHICH EMPLOYEES CAN OPERATE WITH INTEGRITY

Implemented voluntarily or mandated as part of negotiated resolution

### **REQUIRES:**

- **Leadership** - commitment to do the right thing
- **Management** - ethical environment
  - Focus on high risk areas
  - Provide systematic monitoring, auditing, oversight
- **Training** - Communicate facts and expectations
- **Action** - Early detection and correction problems
- **Reporting** – Relay information regarding wrongdoing

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## How do Compliance Programs Prevent Fraud, Waste and Abuse?

- ENSURE ACCOUNTABILITY
- MINIMIZE AND/OR DETECT CRIMINAL MISCONDUCT
- ENCOURAGE REPORTING
- CREATE AWARENESS THROUGH TRAINING

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## What Elements Make an Effective Compliance Program?

1. Reasonable Compliance Standards and Procedures
2. Specific High-Level Personnel Responsible
3. Due Care in Assignments with Substantial Discretionary Authority
4. Effective Communication of Standards and Procedures
5. Establish Monitoring and Auditing Systems and Reporting Systems (whistleblowing without fear of retaliation)
6. Consistent Enforcement of Standards through Appropriate Mechanisms
7. Respond Appropriately to the Offense (reporting to law enforcement, modify program, prevention)  
Federal Sentencing Guidelines  
U.S.S.G. 8B2.5(f) & 8D1.4(c)(1) (11/1/04)

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## Why Are They Important?

A well-structured compliance program can reduce risk and guide decisions

- Demonstrates commitment to ethical conduct
- Signals importance of compliance to faculty and staff
- Communicates facts and expectations, via education and training
- Systematic monitoring (technical assistance)
- Early detection of problems and prevention of regulatory action/penalty
- Prevents improper expenditures and improves grant administration
- May help avoid the filing of legal actions
- Mitigation, e.g., may reduce penalty or administrative action taken

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## How (under what circumstances) Are Compliance Programs Developed

### THE VOLUNTARY

- Trend: many universities voluntarily creating compliance programs because they recognize benefits and because the right thing to do!
- CoGR June 2005 Guidance
  - Encouraging voluntary compliance programs as means for institutions to meet compliance obligations

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## And the “Not So Voluntary”

Trend: DOJ/NSF OIG has incorporated mandated compliance plans into settlements with institutions that have:

- Overcharged IDC
- Misused federal grant funds
- Created false cost-share certifications
- Double charged
- Maintained false time and effort reports

These mandatory compliance plans regularly span 3-5 years, require annual compliance audits, and provide monitoring by federal agency.

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# SO, WHAT'S NEW?

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## One Hundred Eleventh Congress of the United States of America

AT THE FIRST SESSION

*Begun and held in the City of Washington on Tuesday,  
the 3<sup>rd</sup> day of January, 2009, and there*

### An Act

making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency, and science assistance to the unemployed, and state and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

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SECTION 1. SHORT TITLE.

The Act may be cited as the "American Recovery and Reinvest-

## SPECIAL ARRA REQUIREMENTS

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- Reports:
  - Lots of reports, lots of data: Tell the truth!
- You must report to OIG “any credible evidence” of wrongdoing.
- Whistleblower protections:
  - Post notices for employees about their rights.
  - Do not retaliate.
  - OIG investigates allegations of retaliation.

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## QUESTIONS

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## Want to Learn More?

Surf Our Website: [www.oig.nsf.gov](http://www.oig.nsf.gov)

- NSF OIG Brochures
- NSF OIG Semiannual Reports
- NSF OIG Outreach Presentations

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## HOW TO CONTACT US?

**Confidential Communications:**

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