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Fraud in Federal Research: What Can Go Wrong and What To Do Right

September 20, 2018

Federal Grants and Federal Grant Fraud: The Players



Sources of Federal Grant Funds*

- Department of Health and Human Services (HHS)
- National Science Foundation (NSF)
- Department of Defense (DOD)
- Department of Energy (DOE)
- Department of Transportation (DOT)
- Office of Naval Research (ONR)

*Non-exhaustive list

Office of Inspector General (OIG)

- Most federal agencies have an independent OIG
 - Dual reporting obligation: Agency head, Congress
- OIG missions:
 - Prevent and detect waste, fraud, and abuse
 - Promote economy, effectiveness, efficiency
 - Keep agency head and Congress fully and currently informed
- OIG Tools To Meet Mission Goals:
 - Investigations
 - Audits

United States Attorney's Office (USAO)

- Attorneys tasked with the prosecution of criminal cases brought by the Federal Government and the prosecution and defense of civil cases in which the United States is a party
- One of the core priorities of the USAO is to protect Americans from financial fraud that devastates consumers, siphons taxpayer dollars, weakens our markets, and impedes our ongoing economic recovery

Universities

- YOU!



If you learn nothing else today, learn ...

- **Proper documentation and implementation of compliance controls** are key components to success in protecting the **integrity** of your university's grant funds
 - Know your regulations and requirements

The Nitty Gritty: Regulations



Uniform and Agency-Specific Regulations

- 2 C.F.R. 200 – Uniform Guidance
 - Uniform administrative requirements, cost principles, and audit requirements across the government
 - Note: Replaced OMB Circulars
 - Selected provisions:
 - Time and Effort (§200.430)
 - Certifications (§200.415)
 - Mandatory Disclosures (§200.113)
- Agency Specific Regulations

Uniform and Agency-Specific Regulations

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§200.415 Required certifications.

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

- Agency Specific Regulations

Uniform and Agency-Specific Regulations

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§200.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in §200.338 Remedies for noncompliance, including suspension or debarment. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

- Mandatory Disclosures (§200.113)
- Agency Specific Regulations

Research Misconduct

- 45 CFR § 689
 - *“Research misconduct means fabrication, falsification, or plagiarism in proposing or performing research funded by NSF, reviewing research proposals submitted to NSF, or in reporting research results funded by NSF.”*
- For an NSF finding of RM the **preponderance of the evidence** must support:
 - The act (e.g., plagiarism) committed by the subject; and
 - The subject’s intent in doing the act was at least reckless; and
 - The act was a significant departure from accepted practices.

Research Misconduct - Intent

Careless	Reckless	Knowing	Intentional (purposeful)
Reasonable Person Standard		Individual Standard	
No Finding	Finding of Research Misconduct		

What's the Quality of Your RM Policy?

- Current
 - Is it > 10 yrs old and never been used
- Updates?? (post investigation)
 - How do you handle admissions of guilt?
- How do policies link with other policies
 - Consistency with Academic Misconduct policy
- General vs Agency Specific
- GC involved in process
- Community knowledge/adherence
 - Readily available and understood at all levels

Compliance is Key: The Government's View and Tools



In a nutshell, if you don't comply with the regulations, you might end up under investigation.

The Investigation



How Do Investigations Begin?

- Reactive Investigations

- Allegations from:
 - Program Officers & Other Staff
 - Colleagues, Students, Post-Docs
 - Ex-spouses/Ex-partners/Disgruntled Employees
 - University Administrators
 - Anonymous Tips
 - Audit referrals

- Proactive Investigations

- Facilities
- Program Income
- Participant Support
- Plagiarism
- Human Subjects

How Do Investigations Reach DOJ?

- Agency referrals
 - From an investigation
 - From a self-disclosure
 - From hotline complaints
- False Claims Act lawsuits (*qui tam matters*) filed by whistleblower (relator)
 - Arm of the State
 - *U.S. ex rel. Doughty v. Or Health & Scis. Univ*, No. 3:13-cv-01306-BR, 2017 WL 1364208, at *5 (D. Or. Apr. 11, 2017) (on appeal)

Consequences



Consequences: Suspension and Debarment

- Government-wide suspension and debarment
 - To protect federal funds from those who are not “presently responsible”
- Consequences:
 - Central System for Award Management (SAM.gov) listing
 - Applies to all prospective grants and contracts over \$25,000
 - If one agency imposes, barred from ALL federal funds

Consequences: Criminal

- Jail and/or probation
- Fines
- Restitution



Consequences: Civil

- \$\$\$ - Treble damages plus penalties
- Compliance plans



Common Defenses & Justifications (normally ineffective)



BUT ...

- ... we did the work! (common, but generally not valid)
- ... we didn't have time to read all of your rules!
- ... we haven't put together a time and effort policy yet!
- ... we had no idea our records were such a mess.
- ... we don't provide any formal training about federal grants management – we have “on the job” training.

And that's only a few of them!

Case Studies: Real Life Examples



Criminal Case Study: Duplicate Funding and Outside Activities



Criminal Case Study: Outside Company and Student Stipend Kickbacks



Criminal Case Study: Embezzlement by University Accountant



Civil Case Study: Lack of Adequate Documentation Involving Personal Expenses and Advance Payments

Criminal Case Study: Professor Purchases Unauthorized Equipment



Civil Case Study: Time Report Certification and Salary Draw Errors Lead to FCA Settlement

Administrative Case Study: Data Falsification and Plagiarism



Civil Case Study: Falsified Institutional Review Board Approvals



Civil and Criminal Case Study: Falsified Documents During Audit Lead to FCA Settlement

Avoiding These Issues (and us!)



How to Avoid Trouble – What are our Key Take Aways?

1. Read and know the applicable grant conditions, rules and regulations when receiving federal grant funds:
 - Provide and Document (Mandatory) Training
2. Maintain (during, not after the fact) adequate documentation to support all expenditures, including cost share
3. Ensure your financial reporting matches your financial records
4. Do not expend award funds post-expiration or for purposes unrelated to the award
5. Do not provide inaccurate information or false certifications to Grantee institution or Federal Agency

QUESTIONS?

