Financial Research Compliance

Roseann Luongo, Harvard University
Jeffrey Silber, Cornell University

Compliance 101: Allowability
2 CFR 200.403: Allowability

- Necessary, reasonable, and allocable
- Conform with UG or in the award, including period of performance
- Consistent with policies and procedures uniformly applied
- Consistently treated
- Comply with GAAP
- Not otherwise used for cost sharing
- Adequately documented

2 CFR 200.404: Reasonable

- A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.
- Ordinary and necessary
- Sound business practices, arm’s-length bargaining
- In accordance, with laws, policies, market conditions
2 CFR 200.405: Allocable

• A cost is allocable to a particular award if the goods or services involved are chargeable to that award in accordance with relative benefits received.
  • Direct:
    • Is incurred specifically for the award; or
    • Benefits both the award and other work of the IHE and can be distributed in proportions that may be approximated using reasonable methods
  • Indirect
    • Is necessary to the overall operation of the IHE and is assignable in part to the award in accordance with the cost principles

Consistency

• Costs must accorded consistent treatment.
• A cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the award as an indirect cost.
• For costs to be allowable relevant policies and procedures must apply uniformly to both federal and other activities of the IHE.
Case Study: Audit Review
(note advance reading assignment in yellow)

• Identify the basic allowability concerns in this “unresolved” audit

• Consider:
  • What regulations were allegedly violated
  • How did it occur
  • What might you do to prevent recurrence

Compliance 101: Allowability

• Recap, questions, and discussion
Procurement

Federal Procurement Regulatory Framework

- 2 CFR 200.317-326
- National Defense Authorization Act (NDAA)
- Minority
  - FAR 52.219-8 and 52.219-9 (Small and Small Disadvantaged Business Concerns, Women-Owned Small Business, )
  - 13 CFR 121, 125, and 126 (Small Business in Hubzones)
  - FAR 52.222-37 and 52.222-38 (Veteran-Owned Small Business Concerns)
  - FAR 52.219-27 (Service-Disabled Veteran-Owned Small Business Concerns)
  - ISR/SSR and eSRS
**Procurement Claw**

**Procurement “Claw” (Sections 200.317-326)**

1. Micro-Purchases
   - $0 - $10,000
   - No competition required
   - Distribute equitably among qualified suppliers

2. Small Purchases

3. Sealed Bids

4. Competitive Proposals

5. Sole Source

**General Standards:**
- A. Documented Policies
- B. Reason
- C. Full & Open Competition
- D. Conflict of Interest
- E. Documentation
  - 1. Cost & Price Analysis
  - 2. Vendor Selection

**Uniform Guidance Procurement Requirements**

**Micro Purchases**
- $0 - $10,000
- No competition required
- Distribute equitably among qualified suppliers

**Small Purchases**
- $10,001 to $250,000
- NOT construction
- Just get quotes; award to responsible supplier if institutional (preferred) contractor agreement does not exist
- Must retain quotes as procurement documentation
Uniform Guidance Procurement Requirements

**Sealed Bidding**
- All construction contracts
- Other contracts over $250K
- Advertise publicly
- Specifications
- Public bid opening
- Award to lowest responsive, responsible bidder

**Competitive Proposals**
- When you can’t use sealed bids (but NOT construction)
- Use an RFP identifying evaluation factors
- Advertise publicly
- Award based on evaluation factors

**Non-competitive Proposals**
- Used only under limited circumstances

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Federal Procurement Requirements

**Suspension + Debarment**
- Greater than or equal to $25K
- Required to check whether or not a vendor is on the debarred list; via vendor signed form or look-up in SAM.gov
Governing Federal Acquisition Regulations ("FAR")

**FAR 52.219-8 Utilization of Small Business Concerns (NOV 2016)**
- Applies to any person or entity receiving money from the federal government in excess of $250,000
- Requires a good faith effort to provide an equitable opportunity to small businesses

**FAR 52.219-9 Small Business Subcontracting Plan (JAN 2017)**
- Applies to any person or entity receiving federal funding in excess of $700,000 that has an opportunity to subcontract to other entities
- Requires submission of a small business subcontracting plan

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**FAR 52.219-9 Small Business Subcontracting Plan**

- Subcontractor – includes subawardees and vendors.
- Term and requirement must be flowed down to subcontractors that have further subcontracting opportunities and meet the relevant threshold amount ($700,000).
- Requirement applies to multiple year contracts where total project funding exceeds $700,000, even through individual years or funding segments do not.
- Also applies to contracts that did not originally meet the required dollar amount, but funding is later increased beyond $700,000.
- Subcontracting Plans are required on Federally Funded awards of goods and services over $700,000 or $1,500,000 for construction of public facilities.
<table>
<thead>
<tr>
<th>Category</th>
<th>Qualifications</th>
<th>Certification Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women Owned Business (WBE)</td>
<td>51% owned by a woman</td>
<td>Women Business Enterprise National Council (WBENC) or state certification program</td>
</tr>
</tbody>
</table>
| Minority Owned Business (MBE) or Minority Women Owned Business (MWBE) | 51% owned by a minority  
   - American Indian or Native American  
   - Asian  
   - Black  
   - Eskimo  
   - Hispanic | National or local association of Minority Development Council (NMDC) or state certification program |

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</thead>
<tbody>
<tr>
<td>Small Business</td>
<td>It is determined by the SBA standards</td>
<td>SBA</td>
</tr>
<tr>
<td>Women Owned Small Business (WOSB)</td>
<td>51% owned by a woman</td>
<td>SBA</td>
</tr>
<tr>
<td></td>
<td>The firm must be small, according to SBA's size standards</td>
<td></td>
</tr>
<tr>
<td>Service-Disabled Veteran-Owned Business (SDVOB)</td>
<td>51% owned by a service disabled business</td>
<td>U.S. Department of Veterans Affairs</td>
</tr>
<tr>
<td>Veteran-Owned Small Businesses (VOSB)</td>
<td>51% owned by a U.S. veteran</td>
<td>U.S. Department of Veterans Affairs</td>
</tr>
</tbody>
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HubZone: Historically Underutilized Business Zone

- Small business
- 51% owned by a US citizen
- At least 35% of employees must reside in HubZone
- Principal office located in a HubZone

Small Business Administration (SBA). SBA is a Federal Agency

8 (a) : Business Development Program for Small disadvantaged businesses

- 51% owned by a socially and economically disadvantage individual
- Small business by SBA guidelines

SBA

Small Disadvantage Business (SDB)

- The firm must be 51% or more owned and control by one or more disadvantaged persons.
- The disadvantaged person or persons must be socially disadvantaged and economically disadvantaged.
- The firm must be small, according to SBA's size standards

SBA

Small Business Categories

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Procurement

(note advance reading assignment in yellow)

- Review of Single Audit finding (2017-002) from Duke:
  - Pages 54-55 (PDF 57-58) in 2017 audit in Federal Audit Clearing House (Find Audit Information->Search for Single Audit->2017, EIN 56-0532129)

- Consider:
  - What regulations were allegedly violated
  - How did it occur
  - What might you do to prevent recurrence
Procurement

• Recap, questions, and discussion

Subrecipients and FFATA
2 CFR 200.331: Requirements for pass-through entities

• Provide appropriate information
• Flow down necessary terms
• Evaluate each subrecipient’s risk
• Consider imposing specific conditions

Subrecipient Monitoring

• Review financial and performance reports
• Follow-up thereon and issue management decisions
• Where problems exist consider providing training or assistance. Arrange site reviews or audits where necessary.
• Ensure single audit compliance
• Consider enforcement actions
• Adjust institutional records as necessary
Subrecipient Audits

• Routine desk audits

• External initiatives
• See report from current DHHS OIG program
  https://www.oversight.gov/sites/default/files/oig-reports/51600039.pdf

Federal Funding Accountability and Transparency Act (FFATA)

• The FFATA Subaward Reporting System (FSRS) is the reporting tool PTEs use to capture and report subaward and executive compensation data regarding their first-tier subawards to meet the FFATA reporting requirements.
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- Feeds information to USASpending.Gov
Subrecipients and FFATA

• Recap, questions, and discussion
Cost Sharing

2 CFR 200.306: Cost Sharing

• Definitions:
  • .29: Cost sharing or matching means the portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute).
  • .99: Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal’s budget or the Federal award on the part of the non-Federal entity and that becomes a binding requirement of Federal award.
Cost sharing is not expected on federal research proposals!

- It cannot be used as a factor during merit review
  - Can only be considered if in accordance with agency regulations and in solicitation
- Criteria must be explicitly described in notice of funding opportunity

Eligible Cost Sharing Must Be

- Verifiable from IHE records
- Used as cost sharing only once
- Meet allowability criteria (necessary, reasonable, and other cost principles)
- Must not be otherwise paid for by sponsor
More Criteria

• Use of unrecovered indirect costs may require prior approval, and cannot exceed negotiated rate or caps
• Volunteer or third-party services or properly must follow the UG methodology and be properly documented

Key Cost Sharing Elements

• Mandatory
• Voluntary Committed and Uncommitted
  • A-21 Clarification
• Cost sharing is committed in the proposal budget or budget narrative
• Agencies often provide opportunities to indicate institutional support in proposal without committing cost sharing
Case Study: Cost Sharing

(note advance reading assignment in yellow)

• Review cost sharing or matching concerns in https://www.oversight.gov/sites/default/files/oig-reports/IG-16-013.pdf

• Consider:
  • What were the findings
  • What regulation was violated
  • How did they occur
  • What might you do to present recurrence

Cost Sharing

• Recap, questions, and discussion
Standards for Documentation of Personnel Expense

History

• OMB A-21 had three options
  • Plan Confirmation
  • After the Fact Certification
  • Multiple Methods
• Is this the time keeping that agencies and auditors expect?

“It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting.”
2 CFR 200.430(i) requirements

• Supported by internal controls
• Incorporated into the official records
• Reasonably reflect 100% of total compensated activity
• Integrate federal and non-federal activity
• Comply with institutional policy
• Support distribution across objectives

430(i) requirements continued

• Estimates not sufficient unless
  • Reasonable
  • Adjusted for significant changes
  • There exists an after-the-fact review and adjustment process
• Records may reflect % of total activity

“precise assessment of factors that contribute to costs is not always feasible, nor is it expected”
UG Offers a Blank Slate

- Must comply with the previous requirements
- How the IHE chooses to comply is their choice

Current Status

- Many institutions continue to do what was done under A-21
  - Investment in systems, training, and it works
- Some institutions are looking at revamping controls to eliminate or reduce the need for certifications
- NCURA-funded Alternatives to Effort Certification/Reporting Cohort
University Cohort Deliverables

• A list of alternate methods to “effort reporting”
• Risk Assessment to establish minimum compliance requirements
• Analysis of audits and opinions for alternatives to effort reporting
• Best Practices Guide for “internal controls” and related procedures.
• Survey results of institutions and resulting research analysis for institutional cost savings and metrics for the reduction of faculty and administrative burden for alternatives to effort reporting
• Coordination with professional organizations and federal agencies

Standards for Documentation of Personnel Expense

• Recap, questions, and discussion
Cost Transfers

Reason for Cost Transfer Policy

• Establishes an internal control around accurate costing to federal awards, and timely review to proactively identify and correct errors.
  • §200.303
• Helps ensure that we are not drawing or invoicing $$ for unallowable costs
• Provides a check-point to identify and evaluate possible breakdowns in internal controls, and take action to establish better controls
Cost Transfers & NIH GPS

• Errors should be corrected within 90 days of discovery
• Institutions must maintain documentation according to 45 CFR § 75.364
• Accelerated and delayed expenditure patterns will be reviewed

• [Link](https://grants.nih.gov/grants/policy/nihgps/nihgps.pdf)

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Cost Transfers & NIH GPS

• “The recipient should have **systems in place to detect such errors within a reasonable time frame**; **untimely discovery of errors could be an indication of poor internal controls**. **Frequent errors** in recording costs **may indicate the need for accounting system improvements, enhanced internal controls, or both**. If such errors occur, recipients are encouraged to **evaluate the need for improvements and to make whatever improvements are deemed necessary to prevent reoccurrence**.”

[Link](https://grants.nih.gov/grants/policy/nihgps/nihgps.pdf)
Cost Transfers

- Cost transfers can occur:
  - between two sponsored accounts
  - from a non-sponsored account to a sponsored account
  - from a sponsored account to a non-sponsored account, or
  - Between two non-sponsored accounts
- Institutional definition of cost transfers may vary

Which Cost Transfers are Problematic?

- Inadequate explanation/justification for cost transfer (e.g. “to correct error”)
- Transfers between two Federal projects that clears a deficit off one of the projects
- Salary transfers that invalidate certification or other controls
- Transfers between two Federal projects
- Transfer to Federal projects occurring more than 90 days after the original transaction
- Transfers to Federal projects at the end of the project period
Cost Transfer Audit Findings
(note advance reading assignment in yellow)

• Review of Cost Transfer Audit finding:
  • Consider:
    • What regulations were allegedly violated
    • How did it occur
    • What might you do to prevent recurrence

Cost Transfer Risk Areas for Monitoring

• Transfers made near the end of an award period
• Transfers made without sufficient justification or supporting documentation or approvals
• Salary transfers made after effort certification
Cost Transfers

• Recap, questions, and discussion

Travel Regulations
Federal Travel Regulations
CFR §200.474.3(d))

• Exceptions to Lowest Economy Fare (from Uniform Guidance)

• Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:
  1. Requires circuitous routing
  2. Requires travel during unreasonable hours
  3. Excessively prolongs the travel
  4. Results in additional costs that offset savings
  5. Cannot reasonably accommodate the traveler’s medical needs

Other Airfare Issues

• No cost upgrades? – Allowed
• Fly America – Must adhere!
• Is treatment of business class and economy upgrades the same? – Yes
• Refundable tickets? – Allowable if appropriate and reduces total potential costs, must document
Fly America Act

• The Fly America Act is applicable to all travel funded by United States federal government funds and requires the use of "U.S. flag" airlines (not to be confused with flag carriers) with a few exceptions. These individuals include U.S. federal government employees, their dependents, consultants, contractors, grantees, and others.
• The Fly America Act is incorporated into the Federal Acquisition Regulations (FAR) at Subpart 12.503
• Applies to anyone traveling using US Federal funding, even non-U.S. nationals and non-U.S. companies or their representatives both within and outside the United States

YOU MUST USE A US FLAG CARRIER, UNLESS YOU MEET AN EXCEPTION…

Fly America Act Exceptions

TRAVEL TO AND FROM THE US
• Using a US Flag Carrier would extend travel time, including delays at origin, by 24 hours or more.
• If a U.S.-flag air carrier does not offer nonstop or direct service from your origin to your destination, you must use U.S.-flag air carrier service on every portion of the route that it provides service, unless such use would:
  • Increase the number of aircraft changes you must make outside of the U.S. by 2 or more; or
  • Extend your travel time by at least 6 hours or more; or
  • Require a connecting time of 4 hours or more at an overseas interchange point.

TRAVEL BETWEEN 2 SPOTS OUTSIDE THE US:
• U.S. flag carrier for such travel, if available, unless when compared to using a foreign air carrier, such use would:
  • Increase the number of aircraft changes you must make en-route by 2 or more; or
  • Extend your travel time by 6 hours or more; or
  • Require a connecting time of 4 hours or more at an overseas interchange point.
Risks & Impact

- Cost factor – Foreign ticket is less than U.S. flag air carrier
  - May not be used solely based on the cost of ticket
- Convenient – agency/traveler
  - Must use U.S. flag air carrier service, unless traveler meets one of the exceptions or a matter of necessity
- Certification / Documentation
  - Detailed itinerary of travel to include; dates, origin and destination, air carrier, exceptions as listed in the FTR
- Liability
  - No reimbursement for “any” transportation cost for which an traveler improperly use of foreign flag carrier service

Code Share

What is a Code Share flight?
The traveler is considered to be on a Code Share flight if he/she purchases a ticket from one carrier but flies on the aircraft carrier of another airline. This would be a ticket that is issued by a U.S. Air Carrier that states “U.S. Air Carrier flight XXXX operated by Foreign Air Carrier.”

It doesn’t matter the name on the plane, as long as the name on the ticket is a US carrier.

Example:
Allowable: AA 1234 operated by QF 4321
Unallowable: QF 4321 operated by AA 1234
(AA = American Airlines, QF = Qantas Airways)
Fly America Act Exception: Open Skies

• Open Skies Agreement
  • Current agreements:
    • U.S. & European Union*
    • U.S. & Switzerland
    • U.S. & Australia
    • U.S. & Japan
  • Does not apply to transportation obtained or funded by the Secretary of Defense / the Secretary of a military department

* Iceland and Norway are part of the EU Agreement since June 2011

First and Last Day of Travel

• FTR §301-11.9
• Your per diem or actual expense entitlement starts on the day you depart your home, office, or other authorized point and ends on the day you return to your home, office or other authorized point
First and Last Day of Travel

• FTR 301-11.101 & 301-11.102
• Under GSA Rules, 1st day (day of departure) is paid at 75% of the applicable Meal & Incidental Expense (M&IE) destination rate.
• If the traveler flies over midnight, then they receive 75% for the 1st day and then 100% for the next day.
• For the last day (return back to the residence), then they receive 75% of the M&IE rate applicable to the previous day of travel.

Travel: Institutional Policy

• §200.474(d) defers to “an acceptable, written non-Federal entity policy regarding travel costs”
  • Otherwise the Federal Travel Regulations apply
  • Notwithstanding institutional policy, other parts of §200.474, agency rules, Fly America Act, etc. must apply (i.e. cannot be overridden institutionally)
Travel Risk Areas for Monitoring

• Combined business and personal travel
  • Misallocated expenditures
• Department of Defense Travel
  • Open Skies not an exclusion
• Local business meals
• Alcohol
• Per Diem vs. Actual
• Duplication of Reimbursement

Travel

• Recap, questions, and discussion
Financial Research Compliance Workshop

• Recap, questions, and discussion

If you have questions later …

Roseann Luongo
roseann_luongo@harvard.edu

Jeffrey Silber
silber@cornell.edu