The OIG and You: Best Practices, Potential Pitfalls, and Why Compliance Matters

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What is an Office of Inspector General?

› Each federal agency has an OIG
  ◦ Inspector General Act of 1978, as amended

› Independent
  ◦ Reports to head of agency and Congress

› Statutory Mission:
  ◦ Promote economy, efficiency and effectiveness
  ◦ Prevent and detect waste, fraud and abuse

› Audit & Investigative components
What Issues Do OIGs Investigate?

- **Criminal, civil and administrative**
  - **Fraud**
    - Theft/embezzlement
    - Financial mismanagement
    - Conflicts of interest
  - **Research misconduct**
    - Plagiarism
    - Fabrication
    - Falsification
    - Intellectual theft

How to Investigations Begin?

- **Reactive Investigations**
  - Allegations from:
    - NSF Program Officers & Other Staff
    - Colleagues, Students, Post-Docs
    - Ex-spouses/Ex–partners/Disgruntled Employees
    - University Administrators (YOU!)
    - Anonymous Tips

- **Proactive Investigations**
  - Program Income
  - Participant Support
  - Plagiarism
  - Human Subjects
Compliance Works Best When We Work Together

- National Science Foundation
  - Program Officers, Grants Officers, OIG

- Institution Officials
  - Administrative, Financial

- Researchers
  - Colleagues, Post-Docs, Students

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

- Use of internal controls to effectively monitor adherence to applicable statutes, regulations and program requirements

- Finding your risks and minimizing the danger of abuse
What is a Compliance Program?

- 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 corrective steps
  - Reporting – relay information regarding wrongdoing

What is a Compliance Program?

- Voluntary

- Mandated
  - DOJ/NSF OIG have incorporated mandated compliance plans into settlements
  - Typically last 3–5 years
  - Require annual audits and agency monitoring
How Do Compliance Programs Prevent Waste, Fraud & Abuse?

- Ensure accountability
- Minimize and/or detect criminal misconduct
- Encourage reporting
- Create awareness through training

Elements of 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)

Why Compliance Plans Are Important

- Reduce risk and guide decisions
- Proactive prevention of abuse
- “Protect” institution when abuse is found
- Bottom line: **Before is better than after!**

Best Practices

- Award Administration
  - Financial Management System
    - Project Accounting
    - Procedures for determining allowability of costs
    - Approvals
    - Budget compared to actual expenses
  - Sponsored Programs
    - Appropriate checks for adherence to grant requirements (a.k.a. know what you are signing)
Best Practices

- Cost sharing
  - No federal funds
  - Track cost sharing per award
    - No duplication
    - No after the fact guesstimates
  - Certify if >$500,000
    - Valuation at actual/fair market value
    - Report annual and cumulative amounts
    - Both awardee AND subawardee cost sharing

Best Practices

- Participant Support costs
  - Cannot be reallocated without prior written approval from NSF Program Officer
  - Implications for indirect costs

- Accuracy and timing of reporting and notifications

- Equipment inventory maintained
What Does Your Organization Look Like?

- Funding Characteristics
  - Grants, contracts and with what entity?

- Organizational Profile
  - Decentralized?

- Control Profile
  - Rainmakers, President, staff?

- Audit Profile
  - How easily can you get down into the weeds?

What Does Your Organization Look Like?

- Location of work
  - On-side, off-site, LTER, SBIR, SGER, international collaborations?

- Type of Activity
  - Animals, humans, collection, collaboration, toxins, radiation, equipment

- Staffing Characteristics
  - Junior, independent, senior?

- Training Profile
  - Comprehensive administrative, financial, oversight, whether it is relevant to the issues involved in each project
Risk Areas

- Allowable activities supported
- Allowable costs and cost principles
- Cash management
- Eligibility for awards
- Equipment and real property management
- Period of availability of funds
- Procurement suspension and debarment
- Program income
- Participant support
- Holding accounts
- Summer salaries

Risk Areas

- Lack of adequate documentation
  - Travel
  - Cost-sharing
  - Record retention
- Time and effort reporting and procedures
- Separate financial administration for each award
- Abuse or violations of institutional COI disclosure policies and procedures
- Updated/adequate research misconduct policies and procedures
- Subawardee monitoring
- Residual funding
- Human Subjects/IACUC
Ethical Issues Your Researchers WILL Confront

- Data selection
- Sharing and using ideas
- Balancing priorities
- Making financial decisions
- Authorship and acknowledgments
- Collaborations
- Conflicts of interest
- Paraphrasing and plagiarism
- Mentorship/advisor problems

How Do Grantees Get in Trouble?

- **Theft/Embezzlement**
  - Using grant funds to buy vacations, renovate homes

- **False Statements**
  - Falsely asserting support of a key organization in proposal
  - Falsely asserting collaboration with a foreign scientist that never happened
  - Falsely certifying that a similar or overlapping grant proposal has not been submitted to another agency
How Do Grantees Get in Trouble?

- **False Claims**
  - Claiming reimbursement for grant funds not spent on funded project
  - Grantee-approved no-cost extension just to spend down 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

Potential Outcomes of OIG Investigations

- **Administrative Action**
  - Suspension/Debarment

- **Civil Action**
  - Civil False Claims Act, including treble damages

- **Criminal Prosecution**
  - Criminal false statements/false claims
  - Theft/embezzlement
  - Mail/wire fraud
What if OIG Shows Up At Your Door?

› Understand the issues identified and the topics involved

› Provide full disclosure, even if you are the subject

› Self-identify problems and solutions to correct them

› Maintain confidentiality

Case Studies
Case Study #1: University Purchase Card Misuse

- **Allegation:**
  - University accountant and program coordinator used university purchase cards to pay for personal expenses
  - Uncovered during state audit of purchase cards

- **Accountant:**
  - >$316,000 in purchases over 5 years
  - Submitted forged receipts to supervisor
  - Indicted: 17 counts mail fraud; 5 counts of theft of government funds
  - Sentenced: 2 years, 8 months in federal prison, 3 years supervised probation, 250 hours of community service, restitution/fees of $319,074
Case Study #1: University Purchase Card Misuse

- **Program Coordinator:**
  - >$173,000 in purchases over 5 years
  - Also altered receipts
  - Indicted: state theft charges
  - Sentenced: 10 years in prison, 10 years of probation, 400 hours of community service, restitution/fees of $125,000

Case Study #2: False Claims By University

- **Allegation:**

- Fraud, abuse and mismanagement of NSF funds by a university

- OIG requested documentation, interviewed university staff
Case Study #2: False Claims By University

- Investigation revealed
  - PI used NSF funds for entertainment expenditures
  - PI charged expenses related to his other projects to NSF cooperative agreement
  - University failed to meet required cost share, submitted false annual cost sharing certifications

- Outcome:
  - Referred to Department of Justice
  - $500,000 settlement
  - 5 year compliance plan, monitored by OIG
Case Study #3: Comingled Accounting

- **Allegation:**
  - Organization did not properly account for NSF funds and submitted false claims in violation of Civil False Claims Act

- **Investigation revealed**
  - Organization combined NSF funds with non-NSF funds in its accounting system
  - Unallowable expenses were charged to multiple NSF awards
  - Organization requested reimbursements in excess of actual expenses
Case Study #3: Comingled Accounting

Outcome

- Organization returned $950,000
- Forfeited and deobligated additional >$1 million associated with awards from three agencies
- 5 year compliance plan, monitored by OIG

Case Study #4: Reporting False Data

Allegation

- Whistleblower disclosed that CEO of company made material false statements to NSF regarding small business awards in violation of civil False Claims Act
Case Study #4: Reporting False Data

- Investigation revealed
  - Company received ~$100,000 Small Business Innovation Research (SBIR) Phase I award and >$450,000 SBIR Phase II award based on research reportedly conducted in Phase I
  - Company made false statements greatly exaggerating success of experiments conducted in both Phase I and Phase II
    - In proposal for Phase II
    - In project reports for both awards

- Outcome
  - $934,000 Settlement
    - ½ paid by company, ½ by former CEO
  - 5 year compliance plan, monitored by OIG
  - Former CEO “voluntarily” excluded himself from federal funding for 5 years
Case Study #5: Embezzlement/False Certifications

- **Allegation 1**
  - University grants and contracts administrator embezzled funds, including funds from NSF awards.

- **Investigation revealed**
  - Administrator was responsible for reviewing/authorizing disbursements on NSF and other grants.
  - Requested monthly disbursements for his wife, who he falsely claimed as a project participant ($1,200 – $6,500 each).
  - Embezzled >$485,000 (> $415,000 in NSF grant funds).
Case Study #5: Embezzlement/False Certifications

- **Outcome of Allegation 1**
  - Administrator pled guilty to four state fraud and tax code violations
  - Sentenced: 4 years in prison, 4 years of parole, restitution of $480,383
  - 3 year debarment

- **Allegation 2**
  - University drew down funds in excess of expenses
Case Study #5: Embezzlement/False Certifications

- Investigation revealed
  - University drew down significantly more funds than it had actually expended to date
  - University maintained inadequate documentation to support claimed expenses
  - University submitted multiple, inconsistent cost share certifications for each year
  - University owed NSF indirect costs associated with previously returned funds

- Outcome of Allegation 2
  - Referred to Department of Justice
  - $809,000 Settlement
  - 3 year compliance plan, monitored by OIG
Case Study #6: Charging Based On Funding Availability

- Company:
  - (a) shifted charges between different federal and private grants as money was available,
  - (b) charged time to grant that should have been charged to overhead, and
  - (c) charged grants for other unallowable costs, such as proposal preparation

- Referred to Department of Justice
- $1.55 million settlement with 4 year OIG monitored compliance plan

Other Significant Cases

- University transferred costs to “spend down” expiring awards and charged grants for salaries that did not reflect actual time and effort spent on the grants → $7.6 million settlement

- University failed to monitor NSF summer salary restriction → $273,000 returned to NSF

- Grantee submitted false claims for unallowable costs, miscalculated and overcharged indirect costs, and failed to properly track participant support costs → $300,000 settlement, 5 year compliance plan
Integrity starts with you!

- If you are aware of, or suspect:
  - Fraud
  - Waste
  - Abuse
  - Research misconduct
  - Issues of economy or efficiency
  OR
  - If you just have questions

- Please contact the NSF Office of Inspector General!

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NSF OIG Contact Information

- Anonymous Hotline: (800) 428–2189
- Email: oig@nsf.gov
- Internet: www.nsf.gov/oig
- Phone: (703) 292–7100
- Fax: (703) 292–9159
- Address: 4201 Wilson Blvd, Suite II–705, Arlington, VA 22230, ATTN: OIG HOTLINE
Additional Reading

  - OIG Brochures
  - OIG Semiannual Reports
  - OIG Audit Reports
  - *NEW* Case Closeout Memoranda

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