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In the first paper in this issue, “Practice Data from the 2002 SRA-BearingPoint Nationwide Benchmarking Survey,” Bill Kirby and Paul Waugaman report on the latest data from the SRA-BearingPoint sponsored programs administration benchmarking program. The program has collected data on pre-award and post-award workload, staffing, and practices for three cycles of the bi-annual survey to provide comparative sponsored programs administrative data. This paper presents final FY 2002 data on a number of sponsored programs administration institutional policies and practices, including selected comparative data for small, mid-sized, and large institutions. In the FY 2002 survey, the program asked questions to identify the current state of practice in three domains of sponsored programs administration: encouraging faculty to submit proposals to external agencies, developing administrative staff in sponsored programs, and decentralizing administrative functions. The data from the nationwide sample are from the academic and non-profit institutions that represent over 40% of the total US academic research expenditures.

The second paper, “Deemed Export’ Laws Restrict Sharing Information with Foreign Nationals,” is a commentary by an attorney practicing in the areas of export control and business litigation. Bruce J. Casino’s paper considers the effects of “deemed export” laws that since 9-11 restrict the sharing of research and discoveries with foreign nationals. This paper may help alert research administrators to the unintended effects.

In the next two papers, case studies, research administrators share their expertise with journal readers. One develops a model training program in ethics and responsible conduct in research, while the second illustrates how an institution can manage limited submission programs to improve and increase the institution’s external submissions.

“Creating Individual Awareness about Responsible Conduct in Research: A Case Study of One Institution’s Approach for Researchers and Administrators,” was written by Marie Smith, Valerie Eviner, Kathie Weathers, Maria Uriarte, Holly Ewing, Jonathan Jeschke, Peter Groffman, and Clive Jones, eight investigators and administrators at the Institute of Ecosystem Studies in New York. A forum of discussion groups centered on case studies at the Institute of Ecosystem Studies addressed the issues of the potential for misappropriation of funds, the misuse of research subjects, and the falsification of data in an attempt to train researchers in ethical conduct and educate future scientists on what constitutes responsible conduct in research. These case studies, developed by the IES staff, explore much more than the fairly obvious and easily understood ethical breaches such as plagiarism to explore the more complex area of daily behaviors that alienate or exploit colleagues. Responsible Conduct in Research Education can serve as a model for other institutions, either as a standalone resource or as part of a broader educational program. The authors suggest that the topics covered in these discussions should be an integral part of any responsible conduct program. The article contains hyperlinks to the case studies on the IES server.

The second case study, Bob Porter’s “Helpful Gatekeepers: Positive Management of the Limited Submission Process,” concerns limited submission grant programs that force a sensitive “gatekeeper” role on research administrators. The policies of various sponsors to limit the number of proposals an institution may submit in response to a program announcement shift the initial selection decision to the institutions and reduce the agencies’ workloads considerably. This paper recommends ten rules for managing limited submission programs and suggests how research administrators can benefit from the opportunity to provide constructive communications, proposal improvements, and faculty development.

In reviewing David G. Bauer’s How to Evaluate and Improve Your Grants Effort, Linda Schwarz considers the usefulness and currency of this ubiquitous resource.

Our final article is the second installment of the journal’s continuing column of answers to broadly asked questions called “Ask An Expert: Tips and Tools of the Trade” from Chuck Chermside, a member of the journal’s Editorial Review Board. This series of questions and answers grew from presentations at SRA-Virginia and SRA Southern Section meetings. Most apply to university research administration and many have been previewed on the resadm-l@hrinet.org mailing list.
Contributors

Bruce J. Casino is a white collar crime and civil litigator with extensive experience in export control issues. He has represented companies, institutions, and individuals engaged in import/export, government contracting, real estate development, newspaper publishing, cable television, aviation, hotel industry, energy, electronics, information services, health care, investment advising, manufacturing and banking, as well as not-for-profit organizations, including universities and churches. Mr. Casino is a member of the District of Columbia Bar and a partner in the law firm Baker & Hostetler LLP. Mr. Casino graduated with honors from Georgetown University Law School in 1988. Since 1993, he has been an adjunct professor at George Washington University Law School teaching the course on white collar crime. Since 2000, he has co-chaired the American Bar Association’s Fraud and Abuse Subcommittee of the Health Law Committee, Litigation Section. He is on the Board of Directors of the Council for Court Excellence, the National Law Center on Homelessness and Poverty, the University of Bridgeport, and the International Coalition for Religious Freedom.

Herbert B. “Chuck” Chermside, MA, CRA, has recently retired after 23 years as director of sponsored programs administration at Virginia Commonwealth University (VCU). Mr. Chermside joined SRA in 1969 when he discovered that the new profession of research administration fit his interests and has grown in the profession as the profession itself grew. His career has included service to four universities and one federal agency. At VCU his activities included serving as prime representative to the Council on Governmental Relations (COGR), establishing the technology transfer program, serving on the Conflict of Interest Committee and creating many institutional policies related to research. His contributions to the profession include founding two chapters of SRA, numerous publications, and presentations and training sessions at many meetings over the last thirty-five years. His efforts to define the profession include six years on the Board of the Research Administrators Certification Council (RACC), where he participated in creating tests for the CRA certification. He holds a B.A. in psychology from San Francisco State University and an M.A. in higher education administration from Virginia Tech. He remains active in the profession as executive director of RACC, consulting, and now serving on the editorial review board of this journal.

William S. Kirby has over thirty-five years of experience in the management of federally sponsored research, management consulting, executive training, and the application of technology to business and research administration processes. He has been associated with BearingPoint since 1997, specializing in the assessment and improvement of research administration strategy and operations, “best practices” analyses, and the application of technology to improve research administration and grants management processes. He is currently helping to lead BearingPoint’s efforts to establish a comprehensive higher education benchmarking and best practices program to facilitate the use of comparative performance data to meet institutional strategic, operational improvement, and change management needs. Prior to his association with BearingPoint, Mr. Kirby was a senior executive at the National Science Foundation where he was the director of NSF’s grant management operations and policy development. Mr. Kirby has authored and contributed to numerous articles and publications in research administration and general management. He is the recipient of the 1993 Rod Rose Award for the most outstanding article in the Journal of the Society of Research Admin-
Paul G. Waugaman is a principal and co-founder of the Technology Commercialization Group (TGC), representing clients from Western Europe, Russia, and all parts of the U.S. TGC helps its clients maximize the value of their intellectual property through sound business planning and development, seeking collaborative arrangements, and licensing. Mr. Waugaman has been a member of SRA International since 1977. He is currently the president of the commercial division. He has over 40 years' experience in research management and specializes in academic-business technology transfer services, research program planning and evaluation, and research management policies and procedures. Since 1992, Mr Waugaman has worked on two benchmarking programs, looking at performance and best practices in university-industry technology transfer and research management. He has written and published on performance benchmarking and best practices in the management of sponsored research, technology transfer, and the nature of academic-business research relationships. He is a Senior Fellow of the Southern Growth Policies Board, and he has been active in the Association of University Technology Managers, and the Licensing Executives Society as well as SRA. He has studied at the American University and Indiana University and earned a B.A. in political science and masters degrees in public management and public policy.

Robert Porter, Ph.D., is a program development manager with the research division at Virginia Tech. A former college teacher, Dr. Porter spent nearly twenty years with private consulting firms, specializing in strategic planning, organizational development and grant writing. At Virginia Tech, he assists faculty with proposal development and funding searches and conducts workshops on various topics related to sponsored research. He holds graduate degrees in speech communications from the University of Michigan.

Linda Schwarz has worked at Northern Illinois University in pre-award research administration for more than three decades. During those years she has also been involved intermittently in intellectual property administration. Linda has served the Society as program presenter at annual and regional meetings, as Midwest Section President, as a member of the Board of Directors and the Midwest Section Executive Committee, and as a co-Program Chair of an International Society Annual Meeting.

Marie F. Smith, CRA, is manager of grants administration at the Institute of Ecosystem Studies in Millbrook, New York. Since assuming this role in 1998, she has been responsible for pre- and post award administration, contract negotiation, subaward management, grant accounting, A-133 audits, and assisting with compliance issues. In 2001 she passed the Research Administration Certification Council’s certification exam and became a Certified Research Administrator. Recently, Ms. Smith has been charged with leading a series of discussion groups on topics in Responsible Conduct in Research for the Institute of Ecosystem Studies, using the case study approach. Ms. Smith holds associates and bachelors degrees in accounting and management from the State University of New York. Ms. Smith is a board member and board officer of several local non-profit agencies and is a member of SRA, NACUBO, and NCURA.
Practice Data from the 2002 SRA-BearingPoint Nationwide Benchmarking Survey

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Abstract

The SRA – BearingPoint Sponsored Programs Administration (SPA) Benchmarking Program has completed its third cycle of data collection focused on pre-award and post-award workload, staffing, and practices. The bi-annual survey is the only source of comparative sponsored programs administrative data. In 2004, the authors presented preliminary data on a number of sponsored programs administration institutional policies and practices. This paper presents final FY 2002 data on these practices, including selected comparative data for small, mid-sized, and large institutions. This paper combines Symposium papers presented by the authors at the 2003 and 2004 SRA International Meetings in October, 2003, and October, 2004.

Introduction

Benchmarking has evolved over the past 20 years into a powerful tool for performance analysis and total quality management. Its concept is simple: if you want to know how well your organization is doing at some task or function, you need to know how well others are doing at the same task or function. Benchmarking has been defined as “the systematic comparison of elements of the performance of an organization against that of other organizations, with the aim of mutual improvement.” (McNair and Leibfriend, 1992)

In his book Thriving on Chaos, Tom Peters wrote: “... the term ‘what gets measured gets done’ has never been so powerful a truth.” (Peters, 1987) Benchmarking has been embraced by many companies and industries. Companies have seen the value of benchmarking in assessing their competitive positions and adopting “best practices,” which improve outcomes and bottom lines.

By contrast, educational and non-profit sectors have been slow to adopt the metaphors and methods of benchmarking, especially in the management and administration of research and other externally sponsored activities. By providing consistent and independent benchmarking and an objective forum for doing comparative analysis, the SRA-BearingPoint Sponsored Programs Benchmarking Program provides the opportunity for institutions to achieve the benefits of benchmarking for very little cost and effort.

The general approach to benchmarking is captured in Figure 1. Benchmarking is a cyclical process using the following sequence of steps: (1) define a domain of key organizational activity (e.g. winning competitive research awards), (2) Identify either via quantitative performance data or reputational information the “best practitioners” in that domain, (3) document and describe in operational detail the practices of “best practitioner” institutions, (4) dissemi-
nate the findings to other organizations who can then replicate the practices of their more developed peers, and finally (5) use the information gained to identify different areas of interest for future efforts.

Figure 1: The Benchmarking Cycle

The SRA – BearingPoint Sponsored Programs Benchmarking Program has been in place since 1998. Three rounds (FY 1998, FY 2000, and FY 2002) of data collection focused on institutional sponsored research competitiveness, administrative efficiency, productivity, and organizational practices. A nationwide sample of academic and non-profit institutions representing over 40% of total U.S. academic research expenditures provided the data. The database is available to participating institutions using a web-based reporting and analysis tool. This reporting system allows participants to customize and generate institution-specific peer comparisons in a variety of tabular and graphical formats.

In the FY 2002 survey, the Program began to move from focusing primarily on quantitative performance data to a balance between performance data and qualitative practice data. For the first time, we asked a number of practice questions that identify the current state of practice in three domains of sponsored programs administration:

1. Encouraging and facilitating faculty participation in research and other externally sponsored activity,
2. Preparing and developing sponsored programs administrative staff, and
3. Decentralizing responsibility and authority for sponsored programs administration functions.

Participants can couple information about performance to practices, determine, how their practices in these domains compare to those of other participants, and identify other participants whose practices may be worth adopting.

In previous reports, we described the development of the SPA Benchmarking Program, the inclusion of a broader community of participants as independent research institutes were added, the development of a web-based data collection and analysis system, and the results of the 1998 and 2000 surveys (Kirby and Waugaman, 2000-03). This report focuses on findings on institutional practices in three critical research management domains. Data were collected in the FY 2002 survey.

Looking at Institutional Practices

The challenge for most research-intensive institutions is to foster high levels of growth in competitive research consistent with the institution’s mission, goals, and financial health. At the same time, the institutions need to maintain institutional accountability, and accountability to Federal agencies and other sponsors, while providing high quality and efficient service to the researchers. Achieving these goals simultaneously requires clarity of purpose and conscious trade-offs in the most stable of environments. However, a confluence of related factors and developments over the past 10 years has transformed the way institutions approach research administration and has complicated the challenge of reaching these goals. These factors include such things as unprecedented competition for federal research support due to the entry of new “competitors (independent research organizations, small companies, etc.)”; continued pressure by the federal government for cost containment, especially in indirect costs; increased regulatory oversight by government agencies; and a technology explosion that has been applied to the business aspects of research administration only piecemeal.

Thus, the effectiveness of an institution’s research administration system must be
evaluated in four key areas:
1. How well does the institution foster an environment that results in increased research activity and revenue (Competitiveness)?
2. How well does it use and leverage available resources (Efficiency)?
3. How well does it serve its faculty in the support of research competitiveness (Responsiveness)?
4. How well does it maintain requisite sponsor accountability (Stewardship)?

To answer these questions, institutions need a combination of quantitative data that can help identify strengths and weaknesses in performance when compared to similar or peer institutions, and “practice” information that can provide models for effective change.

In addressing the above performance issues in previous surveys we documented several trends characteristic of highly research-intensive institutions. First is a trend toward decentralization of research administration activities from central administration to academic units. Decentralization may be a key factor in improving responsiveness and fostering an environment that promotes faculty involvement in sponsored research and in return helps faculty recruitment.

A second and related trend is devolution of certain research administration authorities from central offices to administrators in academic units. This movement of authority closer to where decisions are made also may be a key factor in both responsiveness and efficiency.

Finally, the survey data appear to show a trend toward a combination of pre- and post-award functions under a single executive. The reasons for doing so usually include 1) better integration between financial and non-financial aspects of research administration, and 2) improved service by presenting a single face to the “researcher-customer” and creating a more seamless process. Thirty-four percent of the institutions reported a structure that combined central pre-award and post-award financial functions in FY2000. This is up from 25% in FY 1998. In FY 2002 over 40% of respondent institutions reported having a research administration structure with some form of combined pre- and post-award functions (Chart 1), and most of the mid-sized institutions reported combined offices.

While decentralization and combination trends may have contributed to some institutions’ improved ability to handle workload and service demands, they are not issue neutral. Many institutions are not making investments in the tools and technology infrastructure to support research and financial information needs in a timely and accurate manner. Their ability to support grants
management functions is often severely con-
strained by limited integration of key grants
management applications with university
financial and administrative systems. In a
decentralized environment, this limited
integration increases the difficulty for PI’s
and academic units to effectively manage
their awards even though the institution
expects this has become a delegated respon-
sibility. At some institutions, significant
investments in research administration sup-
port and staff at academic unit levels and the
accompanying decentralization and devolu-
tion of authorities results in considerable
variation in quality due to insufficient train-
ing and lack of necessary oversight. These
factors may contribute to increasing federal
audit and compliance risk. Thus, clarity
about roles and responsibilities, effective
training mechanisms, and improved com-
unication and information access have
become critical success factors.

The overriding challenge posed by
decentralization then appears to be: How
do institutions effectively leverage depart-
mental administration resources in a decen-
tralized administrative environment while
maintaining quality and compliance? Are
there working models that effectively
address the corollary issues of defining roles
and responsibilities, training, information
access, compliance assurance, communica-
tion, and quality control?

**Practice Question Framework**

Our framework for developing information
about these practices is based on a set of
inter-related domains of interest that
includes the following:

1. **Practices to Promote Faculty Participation in Research and Sponsored Activities.** These questions docu-
ment institutional sponsored project administration practices and policies with respect to incentives for faculty participation in research/sponsored programs. Examples could include such things as release time policies, research initia-
tion programs, proposal develop-
ment assistance, and return of over-
head.

2. **Practices for Staff Development for Sponsored Program Administration.** These questions document institu-
tional sponsored project adminis-
tration practices and policies with
respect to the training and career
development for research adminis-
trators. How do institutions devel-
op research administration expert-
ise and encourage professional
development among both central
sponsored programs staff and aca-
demic unit administrative staff who
are involved with the administra-
tion of grants and contracts?

3. **Practices for Organizing and Managing Sponsored Program Adminis-
tration in the Institution.** These
questions elicit information about
practices for organizing and man-
aging sponsored project adminis-
tration in a decentralized environ-
ment.

Practice questions were comprised of
two types which force respondents to make
subjective choices about where their prac-
tices fit. Respondents were asked to self-
evaluate. Such questions explored not only
whether a practice is being followed, but
how well the practice has been implement-
ed. Questions fell into two categories:

1. **“Who does what” questions**
   These focus on the frequency of
   various types of activities, policies,
   practices, etc. No value is attached
to a question, but responses permit
   comparisons of similar institutions.
   An example from the 1998 and
   2000 Surveys is the question asking
   for the type of organizational struc-
ture and reporting lines for spon-
sored program administration.

2. **Normative questions**
   These questions are based on a nor-
mative set of good practices. Thus,
a value is attached to practices and
doing them well. Respondents are
asked to self-evaluate. Such ques-
tions explore not only whether a practice is being followed but how well the practice has been implemented. The following framework is used in eliciting responses about normative questions.

NO: The practice or policy does not exist
CONCEPT ONLY: The practice or policy exists in concept but no formal or systematic approach is being implemented
BEGINNING: A formal and systematic approach has been started, but with major gaps in implementation or concept that inhibit progress in achieving ultimate goals
INTERMEDIATE: A sound systematic approach, responsive to primary objectives. No major gaps in implementation, though some areas in very early stages.
ADVANCED: A sound, systematic approach fully responsive to overall objectives. Approach is relatively well deployed with no major gaps.

The FY 2002 practice questions are included in Appendix 1.

Who Is Helping Researchers Be Competitive?

One of the most important practices for increasing success rate for competitive proposals or grant applications is to support pilot research to permit applicants to test hypotheses and show reviewers promising preliminary data. Most large universities and successful research groups have a “float” of support to help researchers move from one competing project to the next. However, new investigators and those moving from one institution to another do not enjoy the benefits of this kind of carry-over support and have to look elsewhere. Question A.3 asks if the institution provides this kind of support for faculty. Over half (58%) of the respondents said such practices were at intermediate or advanced stages of development, and 17% reported that these support practices were non-existent or existed only at the concept stage (Chart 2).

Proposal-writing assistance is also believed to be an important factor in boosting faculty competitive success. Question A.2 asked about these practices. Chart 3 shows that adopting this practice is far from uniform. While 37% reported they provided assistance, 14% of institutions reported doing nothing, and only 14% reported that some academic units provide this service. Even for major proposals with institutional implications, less than 25% said assistance was provided. We believe these responses demonstrate the opportunities for institutions to do more to help their researchers compete better in an increasingly competi-

The Responses

The following section reports the findings gained from all responses. Forty-seven institutions participated in the 2002 survey and provided valid responses to the practice questions. A list of participants appears in Appendix 2. Predictably, few significant changes from the preliminary report occur. The same issues are apparent when we look at responses from the entire sample.

The total population was divided into groups of 16 by size of sponsored program expenditures as reported in the survey. These groups are termed “larger,” “mid-sized,” and “smaller” institutions. We looked at the effect of size of respondent on the status of adopting good practices and found only a few instances where size seemed to matter; they are noted below. Otherwise, responses from institutions in each of the size groups showed no remarkable differences.

Chart 2: Does the institution provide funds for gathering early-stage data?

No 11%
Concept Only 11%
Advanced 31%
Intermediate 26%
Beginning 26%
tive environment. Looking at size, 46% of the smaller institutions and 33% of the mid-sized institutions responded yes, while only 10% of larger institutions responded yes (Chart 4). Differences for other variations do not appear remarkable.

Training Is Becoming Important but Certification Is Not. Questions B.1 through B.3 inquire about training in research administration and certification practices. Chart 5 shows response to question B.1, which deals with in-house training. About 45% of the respondents provided some training (at beginning, intermediate and advanced stages), while the other 55% provided none or were just beginning to think about it. While the need for in-service training in research administration is being recognized, the value of certification as a mark of achievement and a qualifier for advancement is missing.

Question B.2 asks about practices for institutional certification or qualification. Only 9% were at the beginning level and 77% responded no (Chart 6).

Furthermore, national certification does not seem to be a fall-back to limited institu-
tional capability. Question B.3 asks if national certification is a factor in selection and promotion actions for research administrators. Ninety-four percent said no, and 6% responded positively. Apparently there is little confidence on the part of institutional decision-makers in the ability to evaluate individual performance or achievement and certify competence in the field of research administration.

**Devolution of Central Research Administration Resources and/or Authority is at Very Early Stages.** Question C.3 asks if responding institutions fully or partially fund research administration positions at academic unit levels from institutional funds. Fifty-one percent said no, while 9% reported that their practices in this regard were advanced. Question C.1 asks if responding institutions delegate signatory authority for institutional approval of proposals to levels below the institutional level (e.g., schools, colleges, other academic or research units or departments). Eighty-nine percent said no, and only 3% claimed their practices were at the intermediate level. None were advanced. These results suggest that institutional leadership has been willing to delegate research administration responsibility but reluctant to delegate research administration authority to academic units. What’s more, the practice of assigning or allocating central resources to support functions in academic units is not widespread.

**Roles and Responsibilities Identified, but Little Formal Training.** Question C.8 asked respondents if their institution has a comprehensive matrix of roles and responsibilities that identifies the specific roles and responsibilities of individual staff members in the conduct and administration of federally sponsored projects. Forty-six percent of the respondents said their established roles and responsibilities were at the intermediate or advanced levels of development (Chart 7). Larger and mid-sized respondents are consistently better at planning, with 70% and 83% respectively claiming their matrices were at intermediate or advanced levels, while only 39% of smaller institutions claim to be at intermediate or advanced levels (Chart 8).

Question C.7 asked if respondents’ institutions have in place and conduct a program of ongoing institution-wide training on grants and contracts management policy and procedures for staff with research administration roles responsibilities and research faculty and staff. Here only 20% claimed their program was at an advanced level, and 26% had no program or were only at the concept level (Chart 9). This pattern of response again shows a disturbing lack of attention to organization and a lack of follow-through to assure that staff is equipped
question C.5 dealing with formal coordination mechanisms for managing activities at various levels of the institution, 40% responded that their efforts were at advanced or intermediate levels, and 60% responded that they had no mechanisms in place (Chart 11). This suggests that follow-up to assure that decentralized activities are working to meet the goals and objectives of the institution may be lacking. This is an important element of overall institutional management that should be addressed.

**Summary**

The FY 2002 SRA-BearingPoint Survey had 25 questions related to the sponsored programs administration practices in three practice areas. For the first time, information about institutional sponsored programs administration practices has been collected in a systematic way. This systematic collection of data has a number of benefits for both participants and the sponsored programs management community.

First, we are able to report the frequency of various practices and the degree of their implementation. Previous surveys have collected information about organizational structures. We are now able to report on 25 practices in the areas of faculty incentives, professional development, communications, training, policies and procedures, etc. The results are disturbing. We began the analysis of data understanding that the questions in each domain spoke to practices generally accepted by research administrators as “best practices.” We do not consider the participating institutions to be under-achievers or unsuccessful at research management. Therefore we were surprised that so many institutions had not yet adopted or perfected these best practices in their research management functions.

Second, by having practice information
available along with performance measures, it will be possible for participants to begin analyzing the relationship between institutional practices and performance quantitatively.

Finally, participants will be able to specifically identify institutions that engage in various practices, including how well those institutions report having implemented that practice. Thus, participants will have a way to begin identifying “best practitioners” from among other participants in the survey.

**References**


**Appendix I**

**Practice Questions, FY 2002 Survey**

**General Instructions**

Practice questions are designed to elicit:

- whether a specific practice or policy exists;
- how fully the practice or policy has been developed; and
- where in the institution responsibility for managing the practice lies.

For most questions, use the following definitions in choosing the level of deployment of the practice:

- **NO**: The practice or policy does not exist
- **CONCEPT ONLY**: The practice or policy exists in concept, but no formal or systematic approach is under implementation
- **BEGINNING**: A formal and systematic approach has been started, but with major gaps in implementation or concept that inhibit progress in achieving our ultimate goals
- **INTERMEDIATE**: A sound systematic approach, responsive to primary objectives. No major gaps in implementation, though some areas in very early stages.
- **ADVANCED**: A sound, systematic approach fully responsive to overall objectives. Approach is relatively well deployed with no major gaps.

**A. Practices to Promote Faculty Participation in Research and Sponsored Activities**
The purpose of the following questions is to document institutional sponsored project administration practices and policies with respect to incentives for faculty participation in research/sponsored programs. For the purposes of these questions, include only programs or practices that are funded or initiated at the central institutional level (e.g., the institution’s chief research or academic officer).

1. Does the institution have “reassigned time” or relief policies and procedures available for faculty members to cover their other responsibilities when they take on research or other sponsored activities? Check one below:
   a. No
   b. On a case-by case basis only for major proposals with institutional implications.
   c. Not provided centrally for the entire institution, but by some academic units.
   d. Not provided centrally for the entire institution but by most academic units.
   e. Yes
   f. Other:____________________

2. Does the institution provide proposal writing and editing assistance (through contract support or with in-house staff) to support faculty and staff?
   a. No
   b. On a case-by case basis only for major proposals with institutional implications.
   c. Not provided centrally for the entire institution, but by some academic units.
   d. Not provided centrally for the entire institution but by most academic units.
   e. Yes
   f. Other:____________________

3. Does the institution provide funds for gathering early-stage data (pilot projects or preliminary experiments to generate data to make a proposal more competitive) to include in proposals?
   a. No
   b. On a case-by case basis only for major proposals with institutional implications.
   c. Not provided centrally for the entire institution, but by some academic units.
   d. Not provided centrally for the entire institution but by most academic units.
   e. Yes
   f. Other:____________________

4. Does the institution provide “start-up” funds to new faculty members to get their externally-sponsored projects underway?

5. Does the institution provide funds to academic units based on levels of F&A cost recovery from sponsored activities?

6. Does the institution have formal recognition activities to promote faculty participation in research or other sponsored activities?

7. Institutional recognition activities are managed by (check all that apply):
   a. Department heads or Center directors
   b. College Deans
   c. Institutional executives
   d. System executives
   e. Other ______________________

8. How are externally-sponsored activities treated in your institutional faculty promotion and tenure policies? Check any that apply:
   a. Research and other externally sponsored activities are not considered in our policies.
   b. Research is a primary factor in our promotion and tenure policies.
   c. Research is a secondary factor in our promotion and tenure policies.
   d. Other sponsored activity (service, training, demonstration) is a primary factor in our promotion and tenure policies.
   e. Other sponsored activity (service, training, demonstration) is a secondary factor in our promotion and tenure policies.
   f. Other: ______________________

B. Practices for Staff Development for Sponsored Program Administration

The purpose of the following questions is to document institutional sponsored project administration practices and policies with respect to the training and career development for research administrators. For the purposes of these questions, include only programs or practices that are funded or initiated at the central institutional level (e.g., the institution’s chief research or aca-
1. Does the institution provide a formal in-house or in-service training program for staff with research administration responsibilities?

2. Does the institution have an internal certification requirement that must be met in order to exercise varying levels of delegated authority?

3. Does national certification of research administrators play a role in selection and promotion of research administrators?
   a. Yes
   b. No

4. Does the institution have formal job classification elements which can be used on positions throughout the organization that cover research administration positions?
   a. Yes
   b. No

C. Practices for Organizing and Managing Sponsored Program Administration in the Institution

The following questions are designed to elicit information about practices for organizing and managing sponsored project administration in a decentralized environment.

1. Does the institution delegate signatory authority for institutional approval of proposals to levels below the institutional level (e.g., schools, colleges, other academic or research units or departments?)

2. Does the institution delegate institutional signatory authority for proposals and awards to more than one individual in the central sponsored programs office in addition to the institution’s primary authorizing official?

3. Does the institution fully or partially fund research administration positions at academic unit levels from institutional funds?

4. Does the institution’s central SPA office employ research administration staff who are assigned to and located within academic units to support activities there?

5. Does the institution have a formal mechanism for coordinating research administration activities at all levels of the institution (e.g., research administration advisory committee, or other representative body)?

6. Does the institution have an adequate system of grants management policies and procedures in place as a means of ensuring consistency of treatment in similar situations? In answering this question an “adequate system” generally includes coverage in the following areas: proposal and application costing, other support, program income, effort reporting, conflicts of interest.

7. Does the institution have in place and conduct a program of ongoing institution-wide training on grants and contracts management policy and procedures for research faculty and staff and staff with research administration roles responsibilities in the conduct and administration of externally supported research and training.

8. Does the institution have a comprehensive matrix of roles and responsibilities that identifies the individuals, e.g., the responsible institutional official, principal investigators, department chairs, departmental administrators, deans, sponsored projects staff, and others who have specific roles and responsibilities in the con-
duct and administration of Federally sponsored projects, especially biomedical and behavioral research and research training supported by federal grants and contracts?

Appendix 2

FY 2002 Benchmarking Participants
Arizona State University (Tempe, AZ)
Dana Farber Cancer Institute
De Paul University (Chicago, IL)
Emory University (Atlanta, GA)
Florida International University (Miami, FL)
Florida State University (Tallahassee, FL)
Georgia Institute of Technology (Atlanta, GA)
Georgia State University (Atlanta, GA)
Medical College of Georgia (Augusta, GA)
Medical University of South Carolina (Charleston, SC)
Memorial Sloan Kettering Cancer Center (NY)
Northeastern University (Boston, MA)
Northern California Cancer Center
Oregon Health Sciences University (Portland, OR)
Purdue University (West Lafayette, IN)
Rhode Island College (Providence, RI)
Southern Illinois University Carbondale (Carbondale, IL)
Southwest Texas State University (San Marcos, TX)
SUNY-College of Env. Sci.-Forestry (Syracuse, NY)
The Hospital for Sick Children (Toronto, ONT, Ca)
Univ of California, Irvine (Irvine, CA)
Univ of Illinois - Urbana-Champaign (Urbana, IL)
Univ of North Carolina at Charlotte (Charlotte, NC)
Univ of Texas Anderson Cancer Center (Houston, TX)
University of Arkansas (Fayetteville, AR)
University of Colorado Health Sciences Center (Aurora, CO)
University of Houston, Clear Lake (Clear Lake, TX)
University of Illinois — Springfield (Springfield, IL)
University of Louisville (Louisville, KY)
University of Massachusetts, Amherst (Amherst, MA)
University of Memphis (Memphis, TN)
University of Michigan - Dearborn (Dearborn, MI)
University of Missouri-Columbia (Columbia, MO)
University of Nevada, Reno (Reno, NV)
University of New Hampshire (Durham, NH)
University of Notre Dame (Notre Dame, IN)
University of Rochester (Rochester, NY)
University of South Dakota (Vermillion, SD)
University of Southern Maine (Portland, ME)
University of Toledo (Toledo, OH)
University of Virginia (Charlottesville, VA)
University of Washington (Seattle, WA)
Virginia Polytechnic Inst & St Univ (Blacksburg, VA)
Western Michigan University (Kalamazoo, MI)
Wright State University (Dayton, OH)
Commentary

“Deemed Export” Laws Restrict Sharing Information with Foreign Nationals

Bruce J. Casino

Abstract

Over the past 25 years, the world’s economies have grown more interconnected in terms of commerce, information sharing, personnel, and trade. According to recent U.S. Internal Revenue Service statistics millions of Americans work abroad, while increasing numbers of foreign nationals are employed by companies and universities here in the States. Companies as well as universities and research facilities are dependent on technology to facilitate internal and external communications across the country and globe as well as to develop, market, and sell their products. Universities, and research centers in particular, are dependent upon modern technology to aid in the discovery process and in need of a vibrant and intellectually superior research staff drawn from all parts of the world. However, restrictions on information sharing with foreign nationals vigorously enforced following the September 11th attacks, may have unexpected consequences for many unsuspecting academic and research institutions.

Heightened Security for Information Sharing

Among the many new security restrictions that have surfaced in the United States in recent years, one area that universities and educational institutions need to watch closely are laws that limit whether foreign nationals working or studying at U.S. universities may be exposed to secret or sophisticated technology, otherwise referred to as “deemed exports.” Foreign nationals are identified essentially as all persons who are not U.S. citizens or permanent residents. This includes visiting scholars and foreign students.

This issue first became a significant concern for Americans back in the 1950s when attention focused on a talented foreign student who had studied aerospace engineering and mathematics at the Massachusetts Institute of Technology (MIT) and the California Institute of Technology (Caltech). That student, Qian Xuesen, later became the “father” of China’s nuclear weapons program. The U.S. government has since recognized that little difference exists between exposing a foreign engineer, or even an intern, to sensitive technical data and putting that data directly into the hands of foreign governments. U.S. laws have increased regulations regarding deemed exports, and relevant agencies are now beginning to impose large fines and criminal penalties that can cause companies and universities public embarrassment.

Some experts in this area are estimating that federal agents plan to make between 40 and 60 visits to research universities in the upcoming months to investigate deemed exports (Flanagan & Carnegie, 2004). In 2004 the Department of Defense issued a...
troubling report concluding that the Department of Commerce’s Bureau of Industry and Security (BIS) does not have “adequate processes to identify unclassified export-controlled technology and to prevent unauthorized disclosure to foreign nationals” (United States Department of Defense [U.S.D.O.D.], 2004). The report also stated that at least two government contractors and one university granted foreign nationals access to unclassified export-controlled technology without an export license or other authorized approval or exemption. The report criticized universities that were relying on the terms of contracts with the government in addressing access by foreign nationals and were not examining their practices in light of the deemed export laws and regulations.

The two federal agencies that administer most of the regulations by which deemed exports are controlled are the BIS and the Department of State’s Office of Defense Trade Controls (ODTC). Unfortunately, having two different agencies oversee this one area causes a significant amount of confusion and makes the regulations difficult to understand, often duplicative and unnecessarily burdensome.

In a nutshell, the BIS propagates and administers the Export Administration Regulations (EAR), which cover dual-use exports. Any software or technology that is subject to the EAR and is released to a foreign national is considered an export to the home country of the foreign national and termed a deemed export (U.S.D.O.D., 2004). Software or technology can be exported by a visual inspection of U.S. equipment and facilities by foreign nationals, oral exchanges of information, or through the application of personal knowledge or technical expertise. These exports include those with both commercial and military or strategic uses as well as those with wholly civil uses. A release of controlled technology to a foreign national who is not a permanent resident of the United States is thus deemed an export. For this reason, American universities and colleges that employ foreign workers or admit foreign students to work on technology research must be conscious of the laws concerning deemed exports. These regulations apply to foreign nationals working for U.S. companies and universities both abroad and within the United States.

These deemed export laws are specifically aimed at foreign nationals and the knowledge and technological skills they may acquire while working and going to school in the United States. The concern is that this knowledge may go back to a foreign national’s country of origin and eventually be used against the United States by an aggressive country. The regulations also cover disclosure to subcontractors and vendors who employ foreign nationals in the United States and to subcontractors and vendors located in other nations.

At least one university has been investigated during the past year for exposing foreign nationals to unclassified export-controlled technology without a proper license (U.S.D.O.D., 2004). The most restricted destinations are embargoed countries and those countries designated as supporting terrorist activities, including Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. However, many other nations of concern, including China and Russia, are also significantly restricted.

Universities that conduct research under contract for private corporations or under U.S. government sponsorship must be very familiar with deemed export requirements. Some of the nation’s top research universities, including MIT, Carnegie Mellon and the University of Chicago, are taking steps to properly educate employees and faculty so that they are aware and can comply with regulations (Norris, Carr, & Keith, 2004).

If no conditions are placed on the research and the organization conducting the research intends to publish its findings in scientific literature, then the BIS considers the research to be fundamental and no license is required. However, if research is expected to be considered proprietary, a license will likely be required. This applies to both corporate and government sponsored research.

A few areas are basically unaffected by EAR. Among these are any item that is
“media,” defined as the content of books, recordings, globes, newspapers, and the like. In a related exception, EAR does not reach “publicly available technology and software … that are already published or will be published,” that are the result of fundamental research, or that “are educational” or contained in certain patent applications (Export Administration Regulations, [E.A.R.] 2004).

For published material to be exempt from EAR, it must be “generally accessible to the interested public in any form.” Publication may be in the medium “available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution.” The other exempted category of fundamental research is “basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community” (EAR, 2004). Fundamental research differs from proprietary research and industrial development because the resulting information is ordinarily published, whereas the results of proprietary research and industrial development are ordinarily restricted for competitive or national security reasons. Corporate research is thus fundamental to the extent that researchers are allowed to publish it without restrictions or delay based on proprietary or security reasons. In addition to fundamental research, technology commonly taught in a university classroom setting need not be licensed, even if some students are from countries to whom domestic exporters are forbidden from selling goods.

In addition to the regulations under BIS, the ODTC also controls exports that could provide sensitive technology to hostile countries through its International Traffic in Arms Regulations (ITAR). These regulations apply only to defense articles on the U.S. Munitions List and to defense services (U.S. Department of State, n.d.). These regulations are stricter than EAR because exemptions are more limited. Every individual deemed export under the purview of the ITAR requires a license.

Both sets of regulations are functionally identical in their definition of the deemed export of non-proprietary information. ITAR’s definition of exports includes the oral or visual disclosure or transfer of technical data, which includes the training of foreigners in the design and development of defense articles. If an item is on the Munitions List, any information required for its design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification, including blueprints, drawings, photographs, plans, instructions, and documentation, may not be transferred without an export license (ITAR, 2004). Like the EAR, information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities or information in the public domain is not included in ITAR. Information in the public domain likewise includes “fundamental research in science and engineering at accredited institutions of higher learning … where the resulting information is ordinarily published” (EAR, 2004).

**Penalties for Non-Compliance**

Universities and other organizations that engage foreign nationals to work or study in various technological fields must be aware of the penalties associated with violating these regulations. Until recently, this area had been largely unheeded by companies and universities and only occasionally enforced by federal agencies, but in the post-9-11 world that is changing. Organizations caught violating the EAR and ITAR face fines of up to $10,000 for each unlicensed export of technology. Violations involving national security controls may also result in civil penalties of up to $1,000,000 per offense and the denial of export privileges, in addition to criminal penalties of up to five years in prison. Although this is an area previously under-enforced by federal agencies, over the past three years reported penalties imposed by BIS for export control violations reached $5.2 million (Pearl, 2004).
Other penalties include potential debarment from federal contracts and grants as well as severe damage to the university’s reputation. In addition, responsible individuals and the university may face criminal penalties. Improved technology used by the Department of Homeland Security and enforcement agencies such as the Federal Bureau of Investigation (FBI) and State Department allow them to more readily identify organizations’ failures to obtain the requisite export control licenses.

In addition to the ITAR and EAR, which theoretically cover any technology with military or strategic value, contract law also protects sensitive technology. If a government agency contracts with a university to conduct research benefiting the military, the contract will require secrecy with respect to certain countries’ nationals. Breaching these terms could subject universities or companies to damages, and perhaps more devastatingly, prevent them from securing future contracts.

**Recommendations**

To ensure conformity with these requirements, academic institutions should educate employees about the regulations as part of the implementation of a formal compliance program. Foreign nationals must be informed about U.S. export controls that restrict their access to certain technical data. This information should include which types of technical data require specific authorization and which are available to all employees. Foreign national employees should be informed that any violation could result in penalties for both the organization as well as the employee for causing, aiding or abetting a violation. Also, foreign national employees should be warned that any unauthorized access to restricted technical data would be grounds for immediate termination of employment.

Compliance audits and spot checks on the work areas and local storage media of affected foreign national employees to determine whether any unauthorized data has been copied, viewed or sent are a good idea. Of course, these audits should be conducted as part of a compliance program incorporating insights from various legal professionals, including experienced employment, privacy, and immigration counsel, to address such issues as workplace privacy and discrimination, as well as counsel experienced in export controls. Periodic “refresher” courses should be given to all employees who come in contact with restricted data in order to ensure full understanding of the access restrictions and to uncover and report any unauthorized disclosures.

**What the Future May Hold**

The future is likely to bring further restrictions, increased penalties and increased enforcement activity in an area viewed by many in government as crucial to the United States’ national security. Increased focus on the threat posed by terrorist organizations and terrorist supporting and embargoed nations, continued concern about China, Russia and other nations co-opting U.S. technology to develop weapons dangerous to the U.S., combined with increasing trends toward international sharing of information between institutions and an understanding of the value of bringing the best and the brightest to U.S. institutions of higher learning as students and teachers will continue to create great tensions in this arena.

University and research centers should expect continued review and tightening of regulations along with efforts by relevant agencies to streamline the process for review and obtaining licenses as the U.S. strives to protect national security and yet assist academic institutions and corporations in appropriate interaction with increasingly important foreign nationals. The increased focus on deemed exports will lead increasing numbers of academic institutions to implement compliance programs in this area to ensure full compliance with federal law.

The federal government will continue to be diligent to prevent a scenario similar to that of the aforementioned Chinese MIT student. After receiving his training at the
Massachusetts Institute of Technology in rocket research and serving time in the U.S. Air Force working on America’s ballistic missile program, Qian Xuesen returned to communist China in 1955 amid charges he was a spy. He quickly became the leading scientist in China’s own effort to develop ballistic missiles and other rockets. Five years later, China successfully launched its first rocket—a Russian R-2 modified by Qian.

References


Case Study

Creating Individual Awareness about Responsible Conduct in Research: A Case Study of One Institution’s Approach for Researchers and Administrators

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Abstract

Fiduciary responsibility, ethical conduct, compliance – If you are a recipient of federal funds, you have seen the increased focus on these issues. Headlines that broadcast “falsified results,” “scapegoats,” “whistleblowers,” “scientific hoaxes,” and “misconduct in investigations” have increased the awareness of legislators and taxpayers of the potential for misappropriation of funds, misuse of research subjects and falsification of data. In an attempt to educate future scientists on what constitutes responsible conduct in research, federal funding agencies are strongly urging that recipients of federal funds train researchers in ethical conduct. At the Institute of Ecosystem Studies (IES), we have used a forum of discussion groups centered on case studies to address not only these issues but the more subtle behaviors that can impact researchers and their research. These case studies, developed for our program by our staff, go well beyond the obvious black and white breaches of ethics such as plagiarism, to explore the gray area of day-to-day behaviors that alienate or exploit colleagues. While these case studies raise difficult issues within our scientific community, they provide a non-threatening avenue for discussion about complex and often contentious topics which are less clear cut, sometimes more insidious, and can be harder to resolve. At IES responsible conduct is viewed as encompassing more than just deliberate and illegal acts of fraud and misconduct. Responsible Conduct includes the interactions of colleagues, peers, senior staff and junior staff and how these interactions impact scientific research, careers and collaborations. It is our belief that this forum for Responsible Conduct in Research Education can serve as a model for other institutions and their administrators and research staff either as a standalone resource or as part of a broader educational program, and that the topics covered in our discussions should be an integral part of any responsible conduct program.

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**Introduction**

Scientific research is increasingly being conducted in the public spotlight and the public is often frustrated by conflicting scientific results. The confusing stream of information surrounding a research topic often provides an example of science working properly since the accumulation of new data often leads to a new interpretation of existing results. Other times, new methods and data display earlier honest mistakes in the scientific approach taken to address an issue. But reversals in scientific knowledge due to deliberately misleading data are very damaging to the image of science. The public finds these types of reversals disquieting and begins questioning the expenditure of tax dollars on research. Furthermore, misconduct in any field of study can taint public trust of scientific research and delay implementation of policy on critical issues such as preventing the release of toxins into the environment or mitigation of global climate change.

Behavioral misconduct toward colleagues also impedes the progression of science and the participation of people from traditionally underrepresented groups. Many scientists are discouraged or quit because they encounter undue hostility towards novel ideas, exploitation of subordinates, co-option of other’s ideas, or alienation of people in differing lifestyle, gender, race or cultural identity. The “relaxed” nature of the scientific enterprise often facilitates misconduct.

Responsible research has been defined (Steneck and Zinn 2003) as research built on commitment to important values, which include honesty, accuracy, efficiency, and objectivity. These values define the meaning of integrity in research. Responsible conduct should be a determinant in how research is performed and the practices that are followed. In order to infuse the research and education process with ethical, responsible behavior, both individuals and communities must explore and identify their own ethical values.

Federal agencies and institutions share the responsibility for the research process and provide guidelines on responsible conduct through laws, institutional practices, non-binding codes and guidelines of professional organizations. However, the enforcement of expectations for responsible conduct ultimately relies on individual researchers and the community dynamics they create. For example, research mentors impart their perspectives and values to their mentees through interactions in their laboratory groups—behavior that may never be consciously examined but that may play a large role in the development of interactions among mentees. Because of this, federal agencies are strongly advocating that individual institutions be responsible for educating their employees on what constitutes responsible conduct and strongly encourage researchers, both seasoned and new, to participate in these programs. One of the first topics of discussion at IES focused on mentoring relationships, and later discussions touched on how mentoring relationships can either positively or negatively impact young scientists and their careers. The case studies were designed to foster discussions on positive and negative mentoring practices, how individuals behave in power situations, and the impact of these practices and behaviors.

**IES Approach to Ethics Education**

Institutions bear the responsibility of providing education that raises the awareness of both neophyte and seasoned researchers to recognize behaviors that can negatively impact collaborations, on any and every level, and suggest ways of overcoming and dealing with these behaviors. Providing education on Responsible Conduct in Research (RCR) has been a challenge for some institutions because of limited resources, limited funds, and staff availability. This important topic needs to be presented in a manner that will capture the attention of the research staff, serve as a catalyst for bringing to light unproductive undercurrents, and facilitate productive discussions that will uncover and begin to resolve conflicts. Regardless of the size of
the institution, there are always resources, such as staff expertise or online resources, available to educate the staff about existing problems and potential solutions. Sometimes it is just a matter of being creative in the use of these resources.

Methods to provide responsible conduct in research training range from full courses to single classes and discussion units. During the 2003-2004 academic year, the Institute of Ecosystem Studies utilized an existing discussion group forum to meet monthly and present case studies for discussion. A mix of postdocs, staff scientists, research assistants, and members of the administrative staff attended the discussions and presented varied reactions to and perspectives on the problems presented in the case studies. These case studies were, for the most part, written by a cross section of IES research and administrative staff and were based on the premise that responsible conduct goes deeper than plagiarism, falsification of data or theft of ideas. They were designed to delve into core individual values and how they shape research interactions and to explore the institutional role in the process. A basic premise was that irresponsible conduct could severely hamper scientific progress.

The goal in providing a series of discussions on RCR was to provide more than a course in ethics. It was to give staff members an open forum to examine, share and discuss problems and concerns. The discussions made the IES community aware of how behaviors negatively and positively impact collaborative relationships. They also made us aware of how important it is to examine and re-examine these interactions so that the parties involved do not lose sight of how their actions and interactions affect each other and the project.

Most of the case studies (available at http://www.ecostudies.org/responsible_conduct.html; see Appendix) were specifically designed to be thought provoking by focusing on the nuances of human interactions rather than the more obvious and deliberate instances of misconduct. In particular, the case studies written by IES research and/or administrative staff were designed to delve into the ways in which individual values shape research interactions. As a secondary goal, many case studies were written to encourage discussion of institutional responsibilities not only in setting guidelines for behavior but also in the development of an atmosphere of trust and respect. These case studies left the reader free to interpret the problems and behaviors of the individual characters and led to many honest debates on how the problems should be addressed and solved. The participants often discussed similar situations in their own careers and the impact that the behaviors or problems that they had with mentors or colleagues had or could have had on their research or their careers. Often the discussions were insightful and stimulating, and all discussions continued beyond the scheduled meeting time. The reactions of participants depended in part on their experience; some considered the discussions new and interesting, while others who had been in situations similar to those in the case studies often found the discussions painful or frustrating. The most positive aspect to these discussions was the opportunity to discuss problematic topics more openly in a somewhat neutral setting. To the extent that these case studies might open awareness among scientists, staff and administrators, they can be used as a somewhat neutral vehicle for exploration of difficult topics. In the long-term, only self-examination of personal values and prejudices can change individual behavior and contribute to ethical behavior within a community.

A common theme throughout many of the case studies was how individuals, colleagues, and institutions should cope with cases of misconduct in which one powerful individual hampers the welfare of another with less status. Cases ranged from co-option of ideas, improper attribution of co-authorship, and sexual or racial discrimination. In all cases, it was clear that power inequalities exist not only among colleagues at different career stages, but also within the same career stage, when one wields more political power within the field or institution. Many participants agreed that in situations with power imbalances, the person on
the losing end was most likely to accept the loss and move on, because attempts by them, or on their behalf, to question the behavior of a more powerful colleague could further jeopardize their career and reputation.

Repeated discussions on this topic made it clear that in order to enforce ethical conduct among colleagues and create an atmosphere that is fair and just, it is essential for the overall community to use peer pressure on their misbehaving colleagues, and to stand behind those who have been placed at a disadvantage by those in power. Institutional authorities need to be very clear that damaging behaviors will not be tolerated, and they need to provide a clear course of action for conflict resolution.

**Communication Is the First Step**

The many discussions emphasized the fact that difficult issues of personal conduct in scientific research are best addressed through clear communication among all participants, their supervisors, and institutional administrators. Effective communication can be successful only in an atmosphere of trust, openness, and respect. The lines of open and honest communication are often intentionally closed because academics are often too busy to discuss topics that require a great deal of time, thought, and energy and because the topics are not considered to be immediately contributing to their career productivity, even though these issues are often central in the longer term.

In many of the case studies, participants perceived the situations differently, and those differences in perception led to differing opinions about the correct course of action. Discussion of these topics made participants aware of how some seemingly innocent behaviors could have harmful effects on some members of the community. For example, when a powerful leader in a scientific discipline makes sexual advances towards a younger colleague at a meeting, it is not simply a matter of the person’s “having fun,” because more often than not, the younger colleague feels de-valued for their scientific accomplishments and worries that their responses to these advances could jeopardize their career in a system based on peer review by influential members of the field. The outcomes of the discussions emphasized that one should be careful not to make assumptions about other people’s perceptions; a clear understanding of a situation requires a dialogue between the parties involved. One of the most enlightening and surprising revelations of the discussions was the fact that, although some staff members had worked side by side for over 15 years, they were unaware of how their co-workers would respond to or felt about many of the issues. On more than one occasion one person would say, “The answer to that is simple and obvious; it is this,” while another participant would say, “I, too, thought the answer was obvious, but it was not this; it is definitely that.”

**Conclusion**

The goal of the discussions was for IES to respond to an institutional and national need to identify institutional problem areas regarding responsible conduct in research, issues that many researchers face at some time during their careers. Perhaps the more important outcomes were that, through discussions, it appears possible to begin to open the lines of communication and to help the members of our scientific community evaluate their behavior. Understanding the effects of one’s behavior on others helps strengthen the good behaviors and re-evaluate the less than positive ones.

We discovered that using the case study approach is a good way to begin discussions that assist the administration to understand institutional problems as well as aiding in the development of policies. It is a model that most institutions can use and benefit from. Postdocs and research specialists participating in the discussions found that the problems they were experiencing were not novel, and they benefited from sharing experiences and possible solutions with their peers and senior staff members. Senior staff
members were often forced to re-examine behaviors and view them from the perspective of those most affected by them. Although often no definitive solutions to many of these problems exist, participants began to recognize the tools needed to improve their handling of difficult situations. These tools can be invaluable to a researcher’s career and present and future collaborations.

IES has made a good start, but it is just a beginning of a long process. The discussions need to continue to keep the dialog open. Individuals and institutions must be open to carefully evaluate and modify their behaviors and attitudes. As an institution, we must remain keenly aware of the possibility for these collaborative and mentoring relationships to go awry, and to prevent harmful situations by providing a forum for conflict resolution and creating an atmosphere that fosters positive interactions among colleagues. The growing emphasis on collaborative relationships coupled with limited funding resources and the need to nurture innovative scientific research makes it essential that institutions attract and retain talented scientists and foster a productive, stimulating atmosphere in which the research of many individuals can flourish.

References

Appendix

Snapshot of Case Studies
Topics on the IES Web Site

January 11, 2005
Harassment, Worship, Admiration or Imagination? - Led by Marie F. Smith, CRA
Case Study — Written by Marie F. Smith, CRA (IES staff)

June 16, 2004
On Being a Responsible Scientist - Led by Clive Jones
Case Study — Written by Clive Jones; Marie F. Smith, CRA; Kathleen Wallen & Dr. Maria Uriarte (IES staff)
Additional reading 1
Additional reading 2

May 13, 2004
Personal Conduct & Harassment - Led by Dr. Maria Uriarte
Case Study — Written by Dr. Maria Uriarte; Dr. Holly Ewing; Dr. Kathleen Weathers; Dr. Valerie Eviner (IES staff)

April 22, 2004
The Other Side of Collaboration: Maintaining the Balance of Power — Led by Dr. Valerie Eviner and Ms. Marie Smith
Case Study — Written by Marie F. Smith, CRA; Dr. Valerie Eviner; Dr. Kathleen Weathers; Dr. Holly Ewing (IES staff)

April 2004 - Presentation to the Board of Directors
Mentoring & Ethics - Led by Drs. Holly Ewing and Maria Uriarte
Case Study — Written by Dr. Maria Uriarte; Dr. Holly Ewing; Dr. Valerie Eviner; Dr. Kathleen Weathers (IES staff)

March 18, 2004
Collaboration - Co-Led by Drs. Valerie Eviner and Kathleen Weathers
Case Study — Written by Dr. Valerie Eviner; Dr. Kathleen Weathers; Dr. Holly Ewing (IES staff)

February 19, 2004
Publication & Authorship
Led by Dr. Jonathan Jeschke
Case Study — Written by Dr. Jonathan Jeschke (IES staff)
discussion in the mailing list ECOLOG-L

January 15, 2004
Ownership of Research Materials - Led by Dr. Peter Groffman
Data Access Policy for the LTER Network

December 18, 2003
Mentoring & Ethics - Led by Dr. Maria Uriarte
Case Study — Written by Dr. Maria Uriarte; Dr. Holly Ewing; Dr. Valerie Eviner (IES staff)
Case Study

Helpful Gatekeepers: Positive Management of the Limited Submission Process

Robert Porter
Virginia Tech

Abstract

Limited submission grant programs force a sensitive gatekeeper role squarely on research administration. By limiting the number of proposals that an institution may submit in response to a program announcement, sponsors (both governmental and private) are, in effect, pushing down to the universities the initial triage of competitive vs. non-competitive grant proposals, thus reducing their own workloads to a considerable degree. At the other end, research administrators can view this role either as an onerous but necessary task, or they can seize opportunities for constructive communications, proposal improvements, and faculty development. This paper describes a process at Virginia Tech that aims at the latter approach, using ten rules for managing limited submission programs.

Introduction

With sponsor budgets flattening as universities ramp up their research agendas, intensified competition has become the norm. In 2003 NSF underwent a near budget freeze, while the number of proposals increased 14 per cent, thus lowering their average success rate from 25 to 20 per cent in one year (NSF 2004). Similarly, universities are witnessing an increasing number of limited submission grant programs with more internal candidates competing for each opportunity. In January of 2005, for example, the research office at Virginia Tech posted twelve programs on its limited submission calendar for the month, one of which had eleven research teams vying for a single slot! In this environment, research administration is under heightened pressure to manage limited submissions in a manner that is perceived as fair by all constituencies.

The following are ten rules for implementing a positive management philosophy in this sensitive arena.

Ten rules for positive management

Rule 1: Cast a broad net

Limited submissions have always presented management challenges, the first being the difficulty in flagging them accurately and in a timely fashion. Recurring programs such as NSF’s Major Research Instrumentation (MRI) or American Honda’s Grants in Scientific Education...
present few difficulties. But, like wayward meteorites, new limited submissions can swoop into view with precious little warning. Online database services such as Community of Science and InfoED can be programmed to issue alerts, but their performance with new programs can be spotty. Likewise, researchers who become aware of a new limited submission may or may not choose to bring it to the attention of the research office until they’re ready to deliver the final proposal. (Why invite competition?) To cast as broad a net as possible, grants specialists and all pre-award staff should report any new program to a single coordinator who is responsible for immediate communications to researchers.

**Rule 2: Communicate in multiple channels**

Researchers who belatedly find themselves excluded from the limited submission process often complain they weren’t aware of it. To fight this, recall an old rule of organizational communications: Send important information through at least three channels. For limited submissions, the big three are: a) web site calendars with internal deadlines going forward several months, b) individual e-mail alerts to researchers, department heads and deans; and 3) periodic postings in printed newsletters.

**Rule 3: Set workable deadlines**

Maintaining workable deadlines while trying to balance the conflicting needs of researchers, sponsors, the university and the research office can often seem like mission impossible. Stay focused on the primary goal: To assure the selected investigator(s) has sufficient time to prepare a high quality proposal, a task that requires at least five weeks after a project has been selected for submission. Working backward from the sponsor’s deadline, the initial program posting should go out about 12 weeks ahead. Internal notices of intent should be required nine weeks before the sponsor deadline, with preproposals (if necessary) due about two weeks after that. Of course, all the timelines suggested below must be adjusted to fit the academic calendar, as well as the sponsors’ choices in setting dates for the initial program announcement and the submission deadline. Finally, granting exceptions to any of these deadlines is a dangerous practice and will almost always be regretted.

**Rule 4: Provide a concise policy statement to investigators**

Even with the best of communications, some researchers will remain unaware of the institution’s need to systematically manage the limited submission process. A concise policy and procedure statement, posted on the web site and repeated periodically through other communication channels, should reduce the number of uninformed. The statement should include the key steps to be followed, as well as the respective responsibilities of the PI, research administration, and leaders of the academic units involved.

**Rule 5: Require notices of intent and structured preproposals**

As the sole purpose of written notices of intent is to determine whether an internal competition will be necessary, the notices need only include a brief statement of the project title, a sentence or two about its scope, and the names of investigators. Should the notices of intent exceed the sub-

<table>
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<td><strong>Limited Submission Announced</strong></td>
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mission limit, an internal competition is called for, and the next communication is critical. Each PI should receive a list of all notices that have been received, together with explicit instructions for preparing and submitting their preproposal. Full disclosure to all of the investigators involved and their project titles can have beneficial results, as it signals the candidates of the level of internal competition, and on occasion can trigger collaborations and/or early withdrawals.

Requirements for preproposals should be clearly spelled out, and they should be tailored to the needs of each specific grant program. Preproposals are just that: concise project summaries that give reviewers enough details to judge their relative merits. A maximum of three pages is sufficient for most programs, and PI’s should be instructed to reference the program announcement in two important ways: (a) show specifically how the project will meet the sponsor’s program goals and objectives; and (b) use the sponsor’s instructions for proposal preparation to outline the preproposal. This forces investigators to scrutinize the sponsor’s requirements in greater detail and assures a solid head start for the PI who is selected to write the full proposal. PI’s should be reminded at the outset that the selection committee consists of their own hard working colleagues who do not appreciate small fonts, crowded margins, lack of subject headings or documents that exceed page limits. In other words, when writing preproposals (or full proposals for that matter) more is not more.

**Rule 6: Choose selection committees carefully**

Selection committees are the foundation of the whole process. Functioning as internal proposal review panels, each group must include the appropriate range of scholarly expertise, and their deliberations must result in the best possible outcomes for the university, i. e., they must consistently select those proposals with the best chances for success. Any evidence of bias or inability to properly evaluate the merit of proposed projects would seriously undermine the integrity of the entire enterprise. Deans and department heads should take the lead in putting the panel together; they are the best judges of who should or should not serve on any given committee, and they have a vested interest in maintaining quality and fairness over the long run. Selecting the right panel members can be challenging even in large universities, as faculty with the appropriate expertise often have conflicts of interest. Moreover, as sponsors increasingly stress interdisciplinarity, some proposals can have a breadth of scope that stretches beyond the abilities of a small group of reviewers to evaluate fairly.

**Rule 7: Nurture the selection committee**

The research administrator serves in a classic staffing role to the selection committee. This means taking every opportunity to inform, assist, and simplify life for every member. Among the helping steps that make this assignment less onerous to committee members are: (a) sending an initial note thanking them for offering to serve and instructing them as to the committee’s working procedures and probable calendar; (b) delivering a package with hard copy of all preproposals together with the program announcement to their offices (saves them time from downloading, printing and compiling the correct stack of documents); and (c) assuring that their meeting room is as convenient and comfortable as possible. Amenities such as morning coffee or box lunches are always wise investments.

**Rule 8: Be a catalyst, not a participant in the selection process**

During the committee meeting, the research administrator should be a facilitator, not a voter. This means guiding the discussion in a nondirective, yet structured manner aimed at achieving a consensus ranking of the preproposals. Always start by reviewing the essential features of each grant program, with special emphasis on program goals and review criteria. Resist any group’s tendency to move too quickly to a voting mode which can be done by encouraging general discussion of each preproposal beforehand. Here is a sequence of facilitator
prompts that can help move the committee toward consensus:

**Round one:** General discussion of each proposal. Facilitator prompt:

Our work today really has two goals. Of course we want to agree on which proposal(s) should be submitted based on their likelihood for success, but we also have an obligation to provide feedback to all the PI’s who submitted preproposals. There’s a great opportunity here to help improve their future proposals, whether they were selected or not. So let’s list the overall strengths and weaknesses we see in each preproposal, plus our recommendations for improvement, before we start narrowing down.

During the discussion that follows, the facilitator should take notes on a flipchart or greaseboard to make sure key points are recorded and are clearly visible to the committee.

**Round two:** Pick the extremes. Facilitator’s prompt:

Based on our discussion, and looking at the notes, do we see any preproposals that stand out, either as being quite strong, or conversely, quite weak? Let’s try to justify our choices based on the points we’ve already discussed.

This instruction goes a long way in building consensus, and the ensuing discussion rarely ends with more than two closely ranked preproposals still open for discussion as to which one should go forward.

**Round three:** Review and test for consensus. (In this example, two submissions are allowed.) Facilitator’s prompt:

Let’s review our choices. First we eliminated (name proposals and reasons for elimination). Then we decided the strongest proposal was (name proposal and strong points). That will be the first submission. For the second submission, we had some difficulty choosing between (name proposals), but we finally decided that (PI’s name) proposal was stronger because (reason). So that will be the second submission. Are we all still agreed on these choices?”

Such a summary may seem like needless repetition of the obvious, but it has a powerful effect on the group, as it reaffirms the rationale for their choices and cements their ownership of same. Prior to adjourning, be sure to collect any written comments committee members made for individual proposals, as these will help in writing summary notes to the PI’s. Finally, a warm thank you note is in order.

**Rule 9: Provide written feedback to investigators**

The most important step in positive management of limited submissions, and the one most easily overlooked, is providing feedback to PI’s. Whether their proposal was selected or not, PI’s invariably benefit from constructive feedback, and the research administrator has an excellent opportunity to be seen as a helper and a coach and not just a traffic cop who signals stop or go.

Setting up meetings with selected PI’s is relatively easy, as they are usually on the lookout for tips to improve their chances. Getting an audience with rejected PI’s is often more difficult. Some will want to argue the committee’s decision, some will ignore the invitation for a meeting, and some will ask that you simply send the notes by e-mail. Whenever possible, try to set up a face to face meeting, as this has far more impact and provides an excellent opportunity to discuss other possible funding sources. Always provide the PI with neatly written notes, as this lends weight to the discussion that cannot be achieved by an informal chat alone (see sample notes, Appendix A).

Do a funding search beforehand and take along a sheaf of grant summaries—there is a strong possibility that among them are one or two potential sponsors the researcher was not aware of, and this can change the tone of the whole session. Finally, you can draw upon your broader knowledge of faculty expertise and award history to suggest possible collaborators or mentors, and this is too is greatly appreciated, especially by younger faculty.

**Rule 10: Be prepared to swing into contingency mode**

Expect snags to crop up. Consider this scenario: a new limited submission program has slipped under the radar screen and never
appears on the research office’s posted list. Shortly before the sponsor’s deadline, a PI appears in your pre-award office with a sketchy draft proposal. Being first in line and with the deadline approaching, she’s given the go ahead. The next day, a more polished proposal comes in, with a second PI anxious to submit. What to do? In this situation, the best course is to seek shared decision making. Convene a quick meeting of the principals (PI’s plus department heads or deans), and start the discussion by (a) acknowledging the lapse in communications, and (b) reminding the group that the ultimate purpose of the limited submission policy is to assure the best proposal goes forward while being fair as possible to all participants. Then ask them which proposal they think should be submitted (the documents should be distributed to all before the meeting). Given that both PI’s were lax in communicating their intent, the tentative approval given the first PI becomes moot, and you have at least a reasonable chance that the group will agree to send the better proposal. Many variations to this scenario exist, but the point is to act quickly and to take responsibility immediately for any shortcoming(s) on the part of the research office.

**Summary**

The expanding gatekeeper role forced by more limited submission programs provides rich opportunities for research administration to be seen, not as a reluctant enforcer, but as a conscientious supporter of the university’s—and the faculty’s—best interests. To do this effectively, a positive management philosophy must be articulated, backed by systematic procedures that assure fairness and consistent benefit to the principal stakeholders. Above all, constructive feedback to all PI’s can turn a difficult process into a powerful tool for faculty development.

**References**


**Appendix A**

**Sample Feedback Notes to PI**

<table>
<thead>
<tr>
<th>Limited Submission Program: NSF, Major Research Instrumentation Selection Committee Meeting: December 8, 2004 Project Title: Acquisition of Advanced Mass Spectroscopy Instrumentation to Support Bio/Nanotechnology Laboratory</th>
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**Overall Strengths of the Preproposal:**

- A well conceived and well written document; the logic is easy to follow
- Proposed project supports the university’s strategic plan and research priorities
Co-PIs are well qualified, with a strong research record.

Instruments requested could be used to support a variety of interdisciplinary projects (though only 2 researchers are mentioned in proposal).

Some components of the proposed Bio/nanotech laboratory are already in place.

**Areas needing improvement:**

(Note: Some of the following comments may be due to the abbreviated nature of the preproposal as reviewed by the Committee)

- How other users would be able to access the equipment is not clear. This could cost points in an NSF review, as a multidisciplinary need is not demonstrated. More Co-PIs and their lines of research should be mentioned.

- The broader impacts statement is not convincing. Similarly, the education/outreach components are not well developed. These criteria are becoming increasingly important as competition heats up at NSF.

- In general, the narrative is well written, but the budget appears to be a hasty, last minute effort.

- The small font and narrow margins make the document hard for reviewers to read. Enlarge the font or use a two column format.

**Committee recommendation:**

Proposal not approved for submission to NSF. There are strong qualities in this proposal, as it ranked fourth out of the nine submitted, coming just behind the three that were approved. But the weaknesses cited above lowered the committee's overall score. Given the importance of this research to the university's current priorities, and the existing infrastructure to support the requested equipment, the PI's are encouraged to pursue funding. If future proposals to NSF are anticipated, they should seek assistance with the education/outreach components. (Note: A workshop on this subject is being offered by the research office next month.)
**Book Review**

**Assessing the Grants Office**

Linda L. Schwarz  
Northern Illinois University


David G. Bauer is practically an industry in himself. Author, presenter, consultant, as well as owner and president of David G. Bauer Associates, Inc., Bauer has sought for more than two decades to answer the needs of the burgeoning grant seeking and fundraising fields. His organization is an education-based consulting firm that provides in-house seminars on various aspects of these fields. Additionally, Bauer, who was a research administrator himself, has published at least 27 titles since the mid-1980’s, focusing on How To grants manuals, or source books, or grant program management. He is, arguably, one of the grants field’s best known consultants. He is an entrepreneur, and if he has succeeded it is in large part because he knows his stuff.

One would be hard pressed to find a more comprehensive work of reference. In more than 300 packed pages, this second edition, published in 2001, provides assistance to research administrators in evaluating the grants system and pre- and post-award services. Bauer’s 17 chapters cover the gamut of issues research administration offices typically address, including discussing the purpose of the office; developing a pre-proposal review system; increasing faculty interest in grants activity; contacting funding sources; tracking proposals; administering Federal funds; understanding indirect cost recovery and disbursement; evaluating and developing a web site; and defining trends and changes in grants office personnel.

Bauer explains that this book differs from the first by focusing on techniques of evaluation and assessment and by helping the research administrator develop his/her own ability to assess the system and to gather feedback regularly. In seeking to accomplish his goal, Bauer makes liberal use of more than 100 separate diagrams, worksheets, and checklists which are comprehensive enough to be highly useful to various research administrators.

A glance at the book’s helpful exhibits reveals this wide variety: sample project budget forms, sample Standard Form 424, suggested research administration office inventory forms, a sample letter to a private funding source for an appointment, a letter proposal, a job description of a research and program officer. The reader may, however, have trouble discerning the intricacies of some of his loop diagrams that are designed to help the administrator map out or diagram programs which are designed on the management techniques of Peter Senge (pp. 6 – 11).

Among the documents provided to assist the research administrator is the Eastern Michigan University Client Satisfaction Survey. This survey differentiates among faculty who have had recent submission or award activity, those who have not had recent grants activity, and those who have never had grants activity. Bauer not only discusses the survey in detail—his discussion extends to tabulating the responses—but also as part of the volume package he provides the reader with a survey CD.

I found reviewing this book three years after publication interesting. In the environ-
ment of electronic research administration and increasing Federal interventions, one may legitimately question the wisdom of an investment in a print volume such as this. The resources we use and the challenges we face in research administration change quickly. The book is so comprehensive that it is essential to keep in mind that restrictive quality, whether reading about electronic proposal submission or consulting the List of Resources. The reader should be mindful of this time frame, also, in referring to Chapter 9, which discusses the role of the research administration office in Assurances, Certifications, Institutional Reviews, and Research Compliance.

The book has no bibliography, but the time lag shows up in some of Bauer’s citations. For instance, in Chapter 1, he cites the work of experts in the field, such as Sharon Davis and Peggy Lowry (although Lowry’s name is misspelled in the Index). Davis and Lowry wrote their various articles on that theme in the early-mid 1990’s. Another citation, that of the work of Sharol Jacobsen and Mary Elizabeth O’Brien, is from 1992. Did Bauer simply borrow these from the First Edition or have they remained the standards in the field?

However, even as some things change exponentially, at their core some research administration variables remain remarkably the same, and this volume is so inclusive and offers such well-founded advice that I believe it would be an important addition to your professional bookshelf, for ready reference.

References


Ask An Expert: Tips and Tools of the Trade, Series 2

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1. Cost Share Planning

Q: How do you plan cost share?
A: Carefully and completely!
First, is cost sharing necessary? A PI’s desire to “sweeten the pot” seldom gives a proposal an advantage. No cost sharing should be included on a for-profit sponsored project. Meeting “Mandatory Cost Sharing” is necessary for the proposal to be considered for review; federal project announcements will specify if there is Mandatory Cost Sharing. For federal awards with Mandatory Cost Sharing a record of the cost sharing must be kept and the cost sharing must be reported as part of the project financial report.

“Voluntary Committed Cost Sharing” (VCCS) is cost sharing written into the proposal when it is not required and should be clearly stated in the budget. A promise made in the proposal text is just as binding as an item in the budget. VCCS also must be recorded. At post award, it is not counted in the project financial report, but it is entered into the cost sharing pools when computing F&A under long form. Salaries paid above a sponsor’s cap (e.g., NIH cap on rate of reimbursement for salaries) are VCCS, but are often accounted differently from other VCCS for administrative convenience. Cost sharing is usually accomplished with faculty time and benefits and related F&A. Remember, you don’t record F&A on cost shared items, but it is a real cost buried in your accounts, so you can impute it.

You can include other costs as cost sharing. Faculty time is usually easiest to account; others may require special record keeping. You can cost share with uncollected F&A, but be sure that is within institutional policy. You cannot cost share with space if you charge on-campus F&A. You can use the difference between your on- and off-campus F&A rate to account for space cost shared on campus, if the sponsor needs that part of foregone F&A separately documented. If the work is off-campus, you may be able to count third party provided space; be sure to document the value carefully. You can count a closely related non-federal award as cost sharing for a federal award—and vice versa, but it’s not usually needed. You can count third party cost sharing, but carefully, usually when the third party is a subawardee and the requirement for documenting the cost sharing is written into the subaward agreement.

2. “Cash” vs. “In-Kind” Cost Sharing

Q: My PI wants to propose “in-kind” cost sharing; how do I handle this?
A: “Cash” and “in-kind” have a very precise meaning for cost sharing: “cash” cost sharing with faculty time and benefits and related F&A. Remember, you don’t record F&A on cost shared items, but it is a real cost buried in your accounts, so you can impute it. You can include other costs as cost sharing. Faculty time is usually easiest to account; others may require special record keeping. You can cost share with uncollected F&A, but be sure that is within institutional policy. You cannot cost share with space if you charge on-campus F&A. You can use the difference between your on- and off-campus F&A rate to account for space cost shared on campus, if the sponsor needs that part of foregone F&A separately documented. If the work is off-campus, you may be able to count third party provided space; be sure to document the value carefully. You can count a closely related non-federal award as cost sharing for a federal award—and vice versa, but it’s not usually needed. You can count third party cost sharing, but carefully, usually when the third party is a subawardee and the requirement for documenting the cost sharing is written into the subaward agreement.
sharing can be documented in the cost sharer’s books with an exact value, whereas “in-kind” cost sharing is the value of donated goods and services. OMB Circular A-110 specifies how to evaluate in-kind cost sharing. For example, the cost sharing value of 50 hours of carpentry is that of a carpenter on the local market even if a brain surgeon does the work. Although many people use the term in-kind to refer to any cost sharing, research administrators should use these precise meanings to know what records are needed for audit.

3. Export Controls: ITAR, EAR, and OFAC

Q: What should I know about the export regulations ITAR and EAR?

A: ITAR, EAR, and OFAC are the law of the land. Each institution should have a policy statement and a knowledgeable empowered official. The U.S. Department of Commerce regulates certain dual-use technologies by the Export Administration Regulations (EAR). The U.S. Department of State controls the export of defense articles, defense services, and defense related technical data through the International Traffic in Arms Regulation (ITAR). The Treasury Department’s Office of Foreign Assets Controls (OFAC) limits “foreign” payments.

Under ITAR and EAR, the institution, and each employee personally, is responsible for safeguarding sensitive and export-controlled objects, data, and information from disclosure to foreign persons without prior approval. A license from the U.S. government is required before a foreign national has access to hardware or technology controlled by either the U.S. Department of Commerce or the U.S. Department of State. The big problem in a university, with its foreign students and faculty, is a “deemed export,” the exposure of a foreign national (sometimes only certain nations) to controlled materials and information during routine university activities.

Fortunately, each set of regulations contains an exception for fundamental research, defined in National Security Decision Directive 189, EAR section 734.8 and ITAR section 120.11. A significant part of that definition is that matters published in the open scientific literature are excepted. Sponsors, particularly industrial sponsors, are increasingly including clauses regarding EAR and ITAR responsibilities. One strategy for dealing with this is to use standard language, such as: “University represents that all work undertaken under this agreement meets the definition of fundamental research in EAR section 734.8 and ITAR section 120.11, and is intended to be published in the open scientific literature.” Any limitation on publication other than removal of sponsor’s proprietary data or a short delay for intellectual property protection removes the work from the fundamental research exclusion. Use of standard language does not replace careful review of all university activities by the empowered individual—especially in engineering and computer science areas—for ITAR and EAR compliance, and in some limited areas no “open literature” exists.

OFAC prohibitions involve making payments to, or for, a prohibited recipient. OFAC prohibitions include both individuals and classes of recipients. Although compliance is directly a finance responsibility, sponsored program activities may involve possible OFAC prohibited payments such as travel, honoraria, and services. A preaudit by OSP and the finance office of payments to foreign nationals, institutions, or places is wise policy.

4. Charging Terminal Leave

Q: A technician has worked 100% on a research grant, and when the grant expires he is being separated from the institution. He has earned leave he has not taken. Is it proper to charge this terminal leave to the grant?

A: Your institution must pay for earned leave on separation (termination), unless written policy specifies the contrary. So your question is really where to charge the leave. Had the individual taken leave during the project presumably it would not have been completed, or completed as successfully. Therefore the project benefited from the effort and should pay the leave. And the charge is constructively payable from the project effective his last day of work, so it is not a charge after expiration of the project,
even if the charge hits during the close-out period because you are using a cash accounting system. If no funds remain in the project budget to cover the cost, however, you will have to cover it from another source.

5. F&A on an “Earmarked” Grant

Q: Should the University charge F&A on an earmarked grant, if it’s not specifically prohibited?
A: Federals grants are, by federal law, assistance rather than procurement. Their purpose is to assist an institution to perform an activity for which it does not have the resources. The federal sponsor is not buying services. It is merely reimbursing the institution for some of the expenses it incurred performing activities it desired. That it got an earmark to ensure funding does not change this. The institution must decide how much of the total earmark to spend for direct costs and how much for indirect. Any indirect marked in the budget as not claimed becomes voluntary committed cost sharing. If the earmark is written to require a match, consider matching with unreimbursed F&A. Discuss with those who got the earmark whether the dollars earmarked were intended to cover full costs or only direct costs. Usually you should seek maximum F&A reimbursement unless the institution has a good reason to subsidize the project. An earmark does need to be scrutinized individually and in relation to why it was earmarked.

6. Unrecovered Indirect is Not a Loss

Q: Training grants only pay 8% indirect. Our auditors have maintained that the under-recovery of indirect costs associated with training grants has to be recognized on the accounting statements as a financial loss, i.e. made up from our financial reserves. This seems strange to me. (We are not a university.)
A: Your auditors are off track. Federals grants are, by federal law, assistance, rather than procurement, as described above. Therefore, you as the institution cannot be suffering a loss if the grant reimburses you for less than your total costs. You merely recover less of your expense. Your organization’s purposes include “enhancing learning, promoting health, and fostering a deeper understanding of the world” [I looked up the questioner’s organizational information]. One of the things you do is to train people in certain skills as part of this goal. And the federal government has decided through various processes (based in statute) to assist you in doing this training, by reimbursing you for some of your costs, because it judges that “the public” benefits. In some assistance programs the assistance includes reimbursement of both direct costs and of indirect costs. The statutory and regulatory authority related to the training grants includes a rate for indirect cost recovery that is less than that “full” rate you are allowed to apply to research. So you are doing something for the public good (training) and the government has decided to assist you by reimbursing some of your costs, but a smaller portion than if you were conducting research. If, in fact, you were selling services to the government as a procurement and recovered less than your cost, that could be considered a loss. But you aren’t selling services, so the difference between cost and recovery is part of your cost of doing business but not a loss. You never had any expectation of recovering 100% of the costs. If your auditors cannot grasp the difference between assistance and procurement, you should consider another auditor.

7. Ownership of Laboratory Notebooks

Q: Who owns (and controls) data and/or laboratory notebooks? Do institutions have formal policies on ownership of data, access to data by faculty and students other than PI, and when/if data might be made available to third parties (subject to terms of use in any consents)?
A: Each institution should have a policy regarding ownership of data and of the records of data. Federal regulations related to grants and contracts require the institution to be able to act as if it “owns” certain things. Without a policy this becomes a very murky area, because universities generally do not lay claim to all their employees’ actions. The policy should give the institution...
tion only what it needs and leave the rest to the investigator. My suggestions are to differentiate between “information” and certain records of that information, e.g., “original observations and methods of a study and the analyses of these original data that are necessary for reconstruction and evaluation” of the work. The institution is not claiming the information, just the records. The investigator can be responsible for custody, preservation, retention, access, etc. on behalf of the institution, keeping to the institution only the authority to take possession of the records when necessary. In that way the institution can access the records when needed, to submit a report when the PI does not, or to deal with charges of scientific misconduct. You also need to recognize a method of moving those records, so the investigator can take them, or a copy, when he leaves.

8. Ownership of an Invention

Q: I’ve asked this question before but want a refresher. A graduate student is employed on a federal sponsored agreement subject to Bayh-Dole and the research assistantship is considered a 50% employee appointment, an appointment that is a salaried position not subject to local personnel act (i.e. not eligible for overtime work; get the “job” done, irrespective of total time). This graduate student creates IP while working in “the lab” to which s/he is assigned while working on the federal sponsored agreement. The IP is the result of a much broader aspects of the discipline under which s/he is working as described by the federal sponsored agreement.

Is it true that this IP does not need to be disclosed to the federal sponsor and the federal sponsor accrues no rights in the IP because [its] relationship to the specifics for which the sponsored agreement was issued cannot be related to the objectives (and deliverables) of the sponsored agreement? Further, what constitutes sufficient support for or against the reason to disclose?

A: No, the invention needs to be reported. The individual is employed to work on the federal grant. Therefore all activity is supposed to be related to that federal grant. If the person also worked on other sponsored or non-sponsored activities, the salary should not have all been charged to the grant. So the presumption must be that the work was grant-related, and the IP must be reported. 37 CFR 401.14 (a) (2) says “Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract....”

Your argument suggests that the assignment of work for the student might have been improper. Or, alternatively, that the work was within the PI’s discretion of expanding the work beyond what was in the proposal, something certainly allowable under the regulations—unless it was a change in the scope of the grant, which again would make the work assignment improper. If it was discovered early that the work was mis-charged, the personnel expense can be transferred. That would have to be done within the parameters of your institutional policy on correcting erroneous charges to federal grants. If the transfer is made only after the IP is disclosed, there would be a significant question as to the propriety of that correction.

Some questions arise from the institutional policy regarding IP. I believe a policy that excludes students—or fellows (not the position you revealed for this student)—from a share in the IP rewards would violate federal regulations. I suggest that the federal interest in the invention is not a problem for the institution, unless it conflicts directly with other contractual commitments with external parties, in which case the situation may be complicated. The residual federal interest in IP usually causes no real problem in exploiting that IP unless a direct conflict exists with other external agreements regarding the exclusive commitment of IP rights to a different sponsor. This may require some education of potential IP licensors—but if a potential licensor does not understand how limited those residual federal rights are, that licensor may be too inexperienced to be considered a viable licensor. The question as to what internal
and external sources have interests in that IP, and also in the manner of IP exploitation that best serves the institution, the sponsor, and the inventor(s) are matters for an institutional tech transfer function, rather than departmental. The department may have knowledge and expertise that aids the Tech Transfer Office, but there should be no decision making in the department.

This problem illustrates the confusion that is caused when a department or laboratory pays student support from whatever source may be available without relating the work to that source. Some might argue that fraud is implied. If this practice is commonplace, the institution’s research executives should learn more about the federal False Claims Act.

9. F&A on Clinical Trials

Q: Most schools that conduct industry sponsored clinical trials charge F & A costs at 20%-30%. What base do you use for this calculation?

A: For clinical trials, most institutions use Total Direct Cost (TDC). Modified Total Direct Cost (MDTC) is incomprehensible to industry, because “patient care” for most universities is arcane by defined by accountants very differently from the way health care professionals define it. And anyway, this is a case where the sponsor is looking at the number in front of the % sign, with no consideration of what base is used. Some informal studies found that 25%-30% TDC brings in about the same as full MTDC rate. (But that computation is easily subject to manipulation depending on how you charge for physician time—is it a project cost, or is it procured from your captive, but legally separate, practice plan!)

10. Gift vs. Award

Q: How would your university handle a grant awarded with the conditions described below from a private foundation? Would the grant be administered by our gift foundation or by the university sponsored projects/grants office? The sponsor’s literature states: “Grants are awarded to nonprofit public charitable organizations that are tax exempt under Section 501(c)(3) of the Internal Revenue Code.” The purpose of the grant is to “recruit and train (ethnic minority) school administrators.” The grant funds were paid at the start rather than by cost reimbursement, and the grant allows 15% indirect costs that our gift foundation would intend to claim if grant expenditures are made directly from the foundation rather than from the university. The deliverable is a final product report/video to help distribute knowledge/lessons learned to others in the field. Other specific terms and conditions are that the award is revocable, a period of performance is specified, a detailed financial report is required showing how the funds were expended, and unexpended funds must be returned.

A: This is clearly a sponsored program rather than a gift. It fits the “exchange transaction” rather than “non-exchange transaction” definition. (See NACUBO website). Don’t be misled by the clause “Section 501(c)(3) of the Internal Revenue Code”—many state universities have their non-profit status under a different section applying to instrumentalities of government. I have found only one foundation that does not accept that the government tax exception is equivalent for their purposes, but you might check to make sure.

11. Additional Duties

Q: I have a couple of specific questions about overload. Is there a compliance problem in either of the following situations as long as 100% of effort is allocated to all the activities in which the faculty member is participating?

1. A faculty member’s duties have increased because he has taken on additional work outside the work described in his contact and the department wants to adjust his compensation accordingly.

2. A faculty member normally has a nine month position and takes on additional summer work during the three summer months, resulting in an increase in his base pay.

A: The second situation is covered explicitly in OMB Circular A-21. The base
salary for an AY salary is not changed. The summer pay is at the same rate as the previous AY salary. Some institutions have a separate payroll type for summer pay for AY faculty, because the employee benefits are calculated for 12 months and spent over 9 months, so the only benefit is FICA/Medicare on the summer pay. One can use an hourly payroll type for summer.

The first situation is more problematic and may depend on your internal policies. The “additional work” (which cannot be the grant work itself) may be a temporary supplement for temporary additional work under your overload policy. Read your policy carefully to determine if this is really an increase in base pay. It probably is not if the work is temporary. If the additional work is a permanent change in work assignment for a semester or more, then that increases the base pay on a permanent basis (or until removed) and is truly an increase in base pay.

12. Indemnification and Hold Harmless

Q: Recently a foundation distributed to current grantees revised language regarding hold harmless and liability. Our legal counsel has asked that we check other recipients for their willingness to accept the new language.

A: Many state universities cannot agree to indemnify and/or hold harmless anyone for any reason. Period. Private institutions may have similar policies. You might substitute the following language:

To the extent permitted by the [legal reference], or, where found liable, to the extent of insurance coverage, Institution shall be responsible for the negligent acts or omissions of its officers, employees or agents arising out of its obligations under this agreement. Nothing contained herein shall constitute a waiver of the sovereign immunity of Institution or the State. The State, its agencies, institutions, and employees are covered by [state insurance—for example, “a self insured plan based on a comprehensive general liability manuscript form as authorized by [code reference]”].

Customize to your situation, and clear it with your institutional attorney!

13. IPA Agreements

Q: How do you handle Intergovernmental Personnel Act (IPA) agreements from Federal agencies, when the university employee is temporarily detailed to the Federal agency? Are they processed through your sponsored programs office or your personnel office? Do you invoice by hours or percent effort? How do you handle the university employment agreement guaranteeing the employee XX days of holiday leave when the IPA agreement states that the IPA employee can only take Federal holidays (our problem is the winter break)? What is your opinion of agency requests to hire people not now employees expressly to work for the agency on an IPA?

A: Most universities process IPA’s as sponsored programs. Although they are really a personnel/payroll matter, your sponsored programs and accounting offices have the contractual expertise and billing capacity to handle them. Most agencies do not allow F&A, although DOD has recently stated F&A is allowable based on the administrative costs of the arrangement, which is different from research or instruction rates. I am not aware of any institutions that have developed such a rate. Time, if not 100%, is charged in percent of effort (Federal agreement, A-21). Setting up an IPA generally involves working at a federal installation, so federal holidays rather than university are commonly agreed to; this agreement overrides your regular leave policy, and the faculty member signs the agreement. The agreement may include a dislocation allowance (often as extra pay); if so have a memo in place regarding reversion to an appropriate pay rate upon return. The employee may have travel to and from the IPA assignment paid by the IPA agreement. Ensure the agreement provides that the feds pay directly for travel for federal business. Be sure that the government is not treating your faculty member unfairly. Employing someone solely for an IPA just to avoid federal manpower caps is inappropriate.

14. Use of Off-Campus F&A

Q: How does your organization determine when to use off-campus F&A rates
in sponsored project budgets? Do certain conditions have to be met? For example, does the budget need to include funds to pay rent? What percentage of the research or sponsored activity has to be done off campus in order for the off-campus rate to apply to the entire budget? And does your F&A base matter?

A: First, read the definition of off-campus in your federal rate agreement. Some include the words “and to which rent is directly allocated to the project(s).” Thus if no rent is budgeted, you cannot use off-campus rate. Note, “allocated to project” means part of the total project cost of the project, not necessarily just the sponsor budget. When a project is conducted largely in locations owned by others, and the third party cost sharing specifies provision of space in a way that the institution can evaluate the value (comparative rents), it can be categorized off-campus.

Second, review with your F&A negotiators what spaces go into the facilities pool. Never let activities in such spaces have the off-campus rate. For some institutions this may be locations “owned” only; for others it may also include leased spaces. Third, be specific that “field work” is not misinterpreted as “off-campus.”

Most F&A rate agreements provide that a single rate will apply for any single agreement. Generally the key here is “more than 50% is performed.” Define a consistent way to measure that. The percentage of personnel cost in the sponsor budget is a reliable measure of “performed.” (Get documentation in advance. Have the PI specify in a memo, concurred by the chair, if it is not clear in the proposal.) Don’t rely on percent of effort, because that is generally more variable in the conduct of a project than personnel cost budgeted. This division may be examined when the sponsor reviews the budget but is not often examined on audit. If you consistently apply a reasonable measure, an auditor can be satisfied.

15. Regulation Flow-down in a Foreign Sub-Award

Q: A foreign subcontractor wants to say that it will comply only with those federal laws we provided them. If a foreign entity applies as a subcontractor, shouldn’t it be responsible for knowing which regulations apply to it? Should we just refer them to the “dot gov” web site and tell them all the regs they need are on there? Since it’s an NIH sub, is the NIH Grants Policy Manual comprehensive enough?

A: You should treat a foreign recipient with no experience with NIH as fully unknowledgeable. Be explicit about applicable regulations and provide URL’s. Also inform them as to what does not apply (you need to know that anyway to ensure proper monitoring). You will have to add some clauses to your stock subagreement to handle these special matters. The NIH GPM is a good place to start, but give them CFR’s and OMB Circulars, too. Specify that “requests to the sponsor agency” come to you, not the sponsor. Also provide a contact to answer explicit questions about applicability. You are responsible for the performance of the subawardee in all ways. Some subawardees have systems similar enough to the U.S. that there are few problems. Others may not. Be sure that the subaward they receive will be set up in an account not commingled with any other funds; commingling is common in many foreign entities. To ensure appropriate measure of time and effort you may have to provide informal advice on how to do that. Also include a clause warranting that the individual signing the agreement has the authority to execute on behalf of the institution. And you should include a clause under which the subrecipient reimburses you any costs paid but found unallowable by a later audit. But don’t hold your breath on this; nothing substitutes for careful monitoring of invoices.

16. Cash Match Requirements

Q: One of my clients is a small university where a lot of grant opportunities have to be passed over due to the cash match required. Could they not use the money recouped from their indirect cost rate to build up a matching fund pool?

A: Yes; recovered F&A is yours to do with as you wish. Also, foregone F&A on the
project can be used, except with those few federal agencies that do not allow foregone F&A to count as cost sharing. The U. S. Department of Education is a notorious example. Check the agency guidelines and the program announcement carefully.

17. Paying Federal Employees

Q: Can we use Federal contract or grant funds to pay (as a fee or honorarium) or reimburse (e.g., travel costs) a Federal employee to attend a conference, present a seminar, consult, etc. regardless of which Federal agency the employee belongs to and which Federal agency is funding the award?

A: Most of the time, acceptance of funds (whatever the source) by Federal employees without their agency’s approval is a violation of the employing agency’s Conflict of Interest restrictions. However, if the Federal employee is allowed to accept such payments, then it is immaterial if the funds came from a Federal source unless the award has a prohibition.

18. Post-Doc Stipend Rates

Q: I’ve been asked by the budget makers whether we are required to pay our postdocs (paid from either grants or institution funds) according to the NIH stipend schedule. Does anyone else pay institutionally supported postdocs according to the NIH stipend scale?

A: The NIH schedule is for fellowship stipends for people in a trainee capacity for specific NIH awards; this is not salary. Do not mix the two. You may have fellowships from institutional or other sources for postdocs. However, post-docs on research agreements, and most that are paid from institutional funds, are employees receiving salary. You may, or may not, want parity between the two. Traineeship stipends are taxed differently: they are “income,” but not “wage income” (IRS terms). No social security/Medicare applies, tuition paid by the trainee can be deducted by the individual, and payment of health insurance (for the individual only) is usually part of the fellowship grant. NIH traineeships are competitive and represent (presumably) the cream of the crop. Maybe your institution funds other post-doctoral traineeships from other sources than federal traineeship grants. Post-doc employees work for their funds. They may or may not get employee benefits, depending on your institutional system. They may even get tuition benefits as employees. If you want parity between post-doc fellows and workers, consider the entire compensation package rather than setting “pay scale” equal to “stipend scale.”

19. Recharge Rate Review Frequency

Q: Where does it specify how often recharge facilities rates are to be reviewed? In A-21 J. 44 c (Specialized Service Facilities) the rates charged for services do not have to equal the cost of providing those services during any one fiscal year as long as rates are reviewed periodically for consistency with the long-term plan and adjusted when necessary. Many educational institutions review annually or every other year. Where does this principle originate?

A: Timing for review is not prescribed but is an internal management decision, so long as it is reasonable. Annual is generally well received, often scheduled to change the same date as other rates, and often on the institution’s fiscal year change. A new activity might warrant review after six months to see that assumptions made about the first year’s activities are on target.