Compliance Pitfalls and Strategies for Success

Session Transcript: 2022-2023 Grants Conference

Alesia Brody: Good afternoon, everyone, and welcome again to Common Compliance Pitfalls and Strategies for Success. We are excited to have everyone here with us. My name is Alesia Brody, and I am an Assistant Grants Compliance Officer in the Office of Policy for Extramural Research Administration at NIH, and I will be the moderator and one of the presenters for this session. I am joined today by my colleague and copresenter, Brian Sass-Hurst, who will start us off today. Brian?

Brian Sass-Hurst: Hey, thanks, Alesia. Hi, everyone, glad to be here. So what exactly is compliance? Well, compliance, there can be many definitions, but basically it comes down to doing the right thing. Compliance is the effective management of public funds to maximize research outcomes and the avoidance of fraud, institutional mismanagement and poor management of Federal funds. And so what are recipients' responsibilities, and what do recipients do to ensure compliance? Well, recipients have the responsibility to safeguard all assets, ensure that funds are spent in accordance with their authorized purpose and to develop and implement systems to ensure proper adherence to the terms and conditions of each Notice of Award. This includes financial management systems, procurement systems, payroll distribution, monitoring activities, and it all sums up to adherence to the terms and conditions of the award. To fulfill the compliance requirements of a Federal award, recipients must have institutional policies in place that ensure proper stewardship of funds and monitoring of programs. For example, institutions must have written policies and procedures for financial management systems. These policies and procedures should be well-communicated and understood by those that need to follow them and should be available and easily accessible to those individuals who need to follow and refer to them. All of the things that we are going to talk about are found in 2 CFR 200. But now we're going to discuss the specific compliance requirements that are outlined in this regulation.

First, the administrative requirements; we want to bring your attention to Subpart C and D of 2 CFR 200. These outline the pre and post-award requirements for all Federal grant awards. Some examples of post-award requirements that you may have heard of include property standards, procurement standards, subrecipient monitoring and management, record retention, closeout, collection and amounts due, and you can review all of that information by reading the regulation linked within this presentation. And there are also the cost principles. These are found in 2 CFR 200 Subpart E. These are general provisions that apply to all organizations, including institutes of higher education, state and local governments, Indian Tribes and nonprofit organizations. Appendix VIII, it specifically lists nonprofit organizations that are exempted from Subpart E, and hospitals would refer to Appendix IX, which will link you to a different part of the CFR that discusses cost principles for hospitals. And now I'm going to turn it back over to Alesia, who's going to get into our audit requirements.

Alesia Brody: Thanks, Brian. Listed here on the slide are the different regulations where the audit requirements for the different institutions are found. Please note that foreign organizations will follow the same audit requirements as for-profit organization. Oops, I went too far, sorry about that. In a nutshell, NIH grant recipients that expend 750,000 or more within a year in Federal awards are subject to audit requirements, and more information can be found in 2 CFR 200.501 as also .. . and specified as .. . in the NIH GPS 8.4.3. Audits are due within the earlier of 30 days after receipt of the auditor's reports or 9 months after the end of the recipient's audit period. Recipients that are delinquent in submitting audits risk the imposition of sanctions and potential loss of Federal funds. With prior approval, covered organizations receiving funding under one program may elect a program-specific audit for that program subject to the provisions of 2 CFR 200.507. And just for your reference, we have included a summary of the audit requirements by recipient type. This summary also provides information on where to submit audit reports. And this is a summary of the Federal requirements that we just covered. This table is also organized by recipient type and nicely summarizes the location of the appropriate administrative requirements, cost principles and audit requirements. And finally, here we have some .. . provided some references to documents that could be of great use to you when managing an NIH award. First we have the NIH Grants Policy Statement, otherwise known as the NIH GPS, which serves as a standard terms and conditions of all NIH awards. Next, you have the Notice of Award, or NoA. This document includes general and specific terms and conditions applicable to the NIH award that recipients must comply with. And lastly, we have the NIH Guide to Grants and Contracts. The NIH publishes new policy requirements in this guide typically on an annual basis, around this time of year, in fact. NIH revises the NIH GPS to incorporate the policy changes from these guide notices that were issued throughout the year. If you do not already subscribe to this publication, we encourage you to do so to keep abreast of the latest policy requirements, and also there is a hyperlink to 2 CFR Part 200. And now I'm going to turn it back over to Brian to start our discussion on compliance pitfalls.

Brian Sass-Hurst: Great, thanks, Alesia. So what are some of the common compliance pitfalls? Well, they include excessive cost transfers, allowable cost issues, administrative and clerical costs as well as suspension and debarment. So cost transfers, with cost transfers, recipients must maintain documentation of their cost transfer, and they need to make them available for audit or other review as necessary. Cost transfers should be supported by an adequate explanation, justification and be certified by responsible organizational official. Transfers of cost from one project to another or from one competitive segment to the next solely to cover cost overruns are not allowable, and all charges to grants must be reasonable, allowable, allocable and be consistently applied. They also must conform with limitations and exclusions as contained in the terms and conditions of award, including those in the cost principles.

So we are going to go ahead and get into our first case study. So case study one is a university employee transfers expenses from one account to another and annotates the cost transfer, quote, "to correct an accounting error." The Internal Audit department takes an exception. Why is that? Is it because .. . Oh, there's a pop-up on your screen. So everyone can go ahead and respond. There are four choices. The first choice is because it's been too long since the error occurred; because there is no justification for the error; because the transfer did not certify to the correctness of the new charge by a responsible organizational official; or number four, all of the above. So we'll give everyone a moment to get the responses in, and then they will close the poll for us. All right. So it looks like people did a good job. All of the above is the correct answer to case study number one. Thank you. So let's move ahead and .. . I'm sorry. Let me explain a little bit more about the response. I apologize. Cost transfers do need to be completed within 90 days of when the error was discovered. And then with the cost transfer, recipients must retain documentation of the cost transfer and make them available for audit or for other review. The cost transfers should be supported by an adequate explanation, justification and be certified by a responsible official. And now I'm going to turn it back over to Alesia to discuss allowable costs.

Alesia Brody: Thanks, Brian. So the question is, are office supplies allowable? Material and supplies are normally considered as an indirect cost, but they may be charged as a direct cost if they can be directly allocated to a specific federal award. Computing devices may be charged as a direct cost if essential and allocable but not solely dedicated to the performance of the federal award. Entertainment costs are generally unallowable except if within scope of the approved research project. And meals costs are unallowable on grants where the primary purpose of the grant is to support a conference or a meeting. And additional information on these costs can be found in the NIH GPS in the Chapter 7.9.1 which has a list of selected items of cost. Now we're going to speak a little bit more about meals. So meals are allowable when they are provided to subjects or patients under study provided that they do not duplicate a participant's per diem or subsistence allowance. Specifically approved as part of the project activity in the NoA are integral and necessary part of a meeting or conference such as a working lunch where business is transacted to disseminate technical information. And they must meet the test of reasonableness. So basically, no filet mignon, and they are consistent with the terms of the award.

Now it is time for our second case study. So you are asked by a PI to stop at an office supply store on your way to work and pick up a few items, pens, envelopes and paper clips. The PI also asks you to get some donuts for a lab meeting that morning. When you arrive at work, the PI tells you that all of the items should be charged to the grant. Your Departmental Administrator tells you that these purchases must come from Departmental funds. Why? And the poll should be popping up, so please take a few moments. And the options that we have are because these costs do not apply directly to the grant; because the meals are never allowed to be charge to a grant; because donuts are always overhead costs; and number four, finally, because this project couldn't be done without more pens. So I'll give everyone a couple minutes to respond [Indistinct]

Brian Sass-Hurst: Looks like we might have had the wrong poll questions pop up, Alesia.

Alesia Brody: Oh. Okay. Well, I will go ahead, and I'll say to .. . Share with the attendees the answer to this case study is number one. Just as a reminder: F&A costs are necessary costs incurred by a recipient for a common or joint purpose benefiting more than one cost objective. Examples of F&A costs include research facilities, utilities, administrative salaries and general office expenses which are normally treated as F&A costs since it would be difficult or impossible to allocate such a cost to each individual project. And more information can be found in Chapter 7.3 of the NIH GPS. [Indistinct]

So now we're going to take a look at administrative and clerical costs. So generally these costs are charged as indirect or F&A. NIH policy does allow for these costs to be charged as direct costs if all of the following conditions are met: The administrative or clerical services are integral to a project or activity, individuals involved can be specifically identified with a project or activity, and such costs are explicitly included in the budget, and the costs are not also covered as indirect costs. And such charges must often meet the criteria for allowable costs as described in the GPS in Section 7.2. [Indistinct] Oh, okay, so just a bit more about administrative and clerical costs before we get to our next case study. Prior approval is generally not required when rebudgeting direct charge administrative and clerical costs as long as the conditions in NIH GPS Section 8.1.1.5 are met. However, prior approval is needed when requesting additional funds for the position or the incurrence of the cost constitutes a change in scope. For Modular grants, direct charging of these costs will require that the person's name, percent effort and role be included in the personnel justification, and this justification will also need to address how the cost satisfies the four conditions laid out in the NIH GPS chapter.

So now it is time for our third case study. Dr. Admins from the University of Education submits a research grant application that seeks salaries of administrative and clerical staff as direct costs. Are these costs appropriate? So our options for this case study are, yes, clerical staff are needed for all projects; yes, if the project didn't have clerical staff, nothing would get done; number three, yes, charges to get the work done are allowable to the grant; and no, these are generally indirect costs. So please just take a moment to complete the poll. Oh, wow! Overwhelming 80 percent chose number four which is correct. No, these are generally indirect costs. Salaries of administrative and clerical are normally treated as F&A. However, direct charging may be appropriate only if all of the four conditions are met. The integral part of the project, can be identified with a project or activity and included in a budget or have written prior approval, if applicable, and they're not covered by indirect costs in F&A. Now I will pass it on to Brian to talk about debarment and suspension.

Brian Sass-Hurst: Great, thanks, Alesia. So suspension and debarment, well, suspension and debarment are exclusion actions that are taken to ensure the Federal government is only doing business with entities that are presently responsible to handle Federal funds, which means that the use of these tools is based on an assessment of an entity's current and perspective capabilities, not their past misconduct. So what is the difference between debarment and suspension? Well, debarment is a final exclusion decision for a specified period of time, generally as part of a conviction which is generally financial-related crimes such as embezzlement, or finding a fact in results in the imposition of a set period of time decided on a case-by-case basis. A suspension differs from debarment in the purpose and duration of exclusion. Suspension is a temporary action. It's immediately effective, protects the public interest and pending the completion an investigation or legal proceedings. There are two sections that are implemented as a term and condition of every NIH grant award related to suspension and debarment. And these are the HHS regulation at 2 CFR Part 376 as well as the OMB regulation at 2 CFR Part 180, and both of these are important for answering questions about suspension and debarment. So when it is discovered that a debarred individual has involvement on one of your awards, you should immediately report that situation to your Office of Compliance, if you have one, or to your Office of Sponsored Research. You should also notify each involved NIH funding component, institute or center, and any organization or individual that has suspended .. . that has been suspended, debarred or voluntarily excluded from eligibility cannot receive NIH grants, or be paid from NIH grant funds whether at a primary level or at a lower-tier transaction, including subawards, during their period of suspension, debarment or exclusion. And any charges made to NIH grants for such individuals, for example, their salaries, those costs are unallowable, and they must be returned to NIH.

So as a recipient, what are your responsibilities? Well, prior to the drawdown of funds for each grant awards, recipients are required to report to their funding IC if any of its principles are presently excluded or disqualified, have been convicted within the preceding 3 years of any of the offenses listed at 2 CFR 180.800(a) or had a civil judgement for one of those offenses within that time period, are presently indicted for or otherwise criminally or civilly charged by a governmental entity at the Federal, State or local level with commission of any of the crimes .. . excuse me, any of the offenses listed in 2 CFR 180.800(a) or have had one or more public transactions terminated within the preceding 3 years for cause or default. So now let's move ahead and take a look at our final case study.

Case study four, you recently that a post-doc working on an NIH grant had not disclosed that she was debarred for defaulting on her student loan. Unfortunately, you determined that this situation has gone unreported for a period of 3 years and during that time her salary has been paid by NIH grant funds. Now what? Well, four options: One, do not allow her salary to be charged to the NIH award going forward; two, make sure all funds for that individual are paid with University and not Federal funds; three, immediately report the situation to your Office of Sponsored Research and tell your NIH ICs; or four, tell the individual that they owe the NIH money. Great job, 92 percent of you said to immediately report the situation to your Office of Sponsored Research. Please remember, as a grantee, your responsibility is to immediately report these situations to your Office of Compliance or Office of Sponsored Research. You should also notify each involved NIH funding component, and while checking SAM is not a requirement, all NIH grantees must have a system in place to determine whether the institution or any of its principles be excluded or disqualified for participating prior to the drawdown of funds on a grant award. Grant recipients may decides the method and frequency by which they determine if whether it or any of its principles is excluded or disqualified from participating in a covered transaction prior to entering into that covered transaction, and this comes from the NIH Grants Policy Statement Section 4.1.6. I know I referenced SAM, and if you're not familiar with it, sam.gov is the site that hosts the Excluded Parties list service, and so that's where you can go to search names and organizations to determine who is on the Excluded Parties list. Now I'll turn it back to Alesia to close us out.

Alesia Brody: Thank you, Brian. Now that is .. . concludes the formal part of the presentation, so now we're going to look at some questions that you all have submitted in the Q&A. Let's take a look here. Let's see.

Brian Sass-Hurst: Alesia, I have an interesting one for you.

Alesia Brody: Sure!

Brian Sass-Hurst: Going back to one of the earlier examples, so this person asks .. . the donuts example. If the lab meeting was specific to an NIH grant, would the donuts be allowable?

Alesia Brody: The.. . I guess the donuts would only be allowable if they were necessary, an integral part of the meeting or conference and that business is being done during that meeting. And I would .. . With meals, definitely want to make sure that they're approved as part of the project activity and that they align with the terms of the award.

Brian Sass-Hurst: Thanks.

Alesia Brody: Mm-hmm. I have one here where .. . Um.. . I understand that cost transfers need to be documented. Can you provide a template for this documentation that is acceptable to the NIH? Well, there is no template for documenting cost transfers. Documentation must be consistent with the requirements of the NIH GPS, and that information can be found in Chapter 7.5, I believe, Cost Transfers, Overruns and Accelerated and Delayed Expenditures. Transfers must be supported by the documentation that fully explains the error that occurred and a certification of the correctness of the new charge by one of the responsible organizational officials of the recipient or the consortium participant. And this documentation may also include that this error will be prevented from reoccurring or any other requirements your institution may have. So that's just a question about cost transfers, so let's take another one here.

Brian Sass-Hurst: Alesia, I have an interesting one that I see has seven upvotes.

Alesia Brody: Sure!

Brian Sass-Hurst: This person asks, "If admin, clerical or other CAS items are in the original budget and NIH awards it, are these considered approved by the sponsor as required?"

Alesia Brody: They .. . Yes. However, I will say that if anything is issued in error and the recipient becomes aware of the error, they should notify their GMO listed in the NoA as soon as possible so .. . Because then if, in fact, it's .. . It's always better to double check, to confirm that it's correct and then document that as part of your record. But the NoA is the official document that says the award has been made and what's been approved therein.

Brian Sass-Hurst: Great, thank you.

Alesia Brody: Mm-hmm. And I have another one here, it looks like. There's a question regarding effort requirements of key personnel. The Grants Policy Statement says that a reduction of effort by 25 percent or more applies to key personnel. If someone is listed as key personnel on the application but the NoA does not specifically name them, are they still subject to the 25-percent rule? Well, the requirement to obtain NIH prior approval for a change in status pertains only to the PD or PI and those senior key personnel that are named in the NoA, regardless of whether the applicant organization, the recipient, designates others as key personnel for its own purposes. And more information can be found on this also in the NIH GPS. And just, I guess, in addition, institutions can designate additional staff as key in an application, but individuals not named in the NoA are not considered key to this requirement and subject to this requirement. So I hope that's helpful. So take a look .. .

Brian Sass-Hurst: There was one question about suspension and debarment and how it complies to consultants and vendors. For that individual, I'd recommend you review 2 CFR 180.215 which goes into helping understand what type of procurements are and are not covered by the suspension and debarment regulations. In general, I've always taken the tack that it's usually wise to confirm a suspension and debarment on any sort of transaction. But when you get into the regulation, you have to understand if the transaction itself is covered by the regulation, and then if so that'll help to tell .. . inform whether the procurement or non-procurement transaction, whether you're going to need to do that review of suspension and debarment before engaging in that transaction.

Alesia Brody: Brian, I actually saw another question about debarment.

Brian Sass-Hurst: Okay.

Alesia Brody: And it's asking, who is responsible for verifying whether a post-doc or anyone else was debarred?

Brian Sass-Hurst: Well, if the post-doc is on the award, I used to pose it would be the responsibility of the prime grant recipient, so likely the university, to do that. And then it would really depend on the institution you're at and their policies and procedures to inform what the process is and the responsibility. Often with compliance, compliance is everyone's responsibility. And so even if you aren't the administrator, many individuals, it's valuable to understand what the process is and understand it, so that you know where your responsibilities are as well as your colleagues, and you can all work together to ensure a compliant organization.

Alesia Brody: Oh. We're like scrolling through [Indistinct] Oh, here's one! What is the best action to take if you note that a subaward PI has misrepresented their title or assets, such as lab space and equipment? I would definitely encourage you to .. . well, this is for a sub, so it definitely .. . I don't know if the person who submitted this is a researcher or in sponsored programs, but if you .. . If this is from a researcher, I would definitely notify your sponsored programs office right away. And I would encourage them to look into that and then reach out to the GMO that's listed in the NoA for additional, like, any guidance, but I would definitely, if you are the researcher, notify your sponsored programs office right away and more than .. . Hopefully, there are institution policies in place on how to move forward.

Brian Sass-Hurst: Yeah, it .. . Providing untrue facts in order to receive government funding is generally discouraged and can lead to consequences, so I would echo Alesia's comment that you should definitely reach out to your administrating folks. Subawards are interesting because it's the prime recipient that has direct responsibility over the expenditure funds on the subaward, and so if you were that institution, that could indicate some risk factors that need to be addressed internally to determine what your verification process is as you move forward and how you make subawards, but that would be a pretty serious situation.

Alesia Brody: Oh .. .

Brian Sass-Hurst: I have another Q&A question that popped up about time and effort reporting. This person says that the subrecipient does not have time and effort reporting, but they have another system that is in conformance with the 2 CFR 200 requirements. But the pass-through entity is requiring the subrecipient to provide time and effort reporting as part of the subaward agreement, and they want to know whether the subrecipient needs to come up with a time and effort reporting system, or if the subrecipient should push back. I think that's kind of complicated. The time and effort rules are important because there needs to be supporting documentation for any sort of cost that comes on a grant, but for a prime award .. . excuse me, for a subawards, the prime awardee that's responsible, and so they may have reasons for why they're doing things. So in terms of negotiating between a sub and a prime, I think that would just need to be a negotiation to determine what the law says and what the prime plans to do impose and require as part of the .. . as part of their award.

Alesia Brody: Thanks, Brian. I have another question here about salary increases that has, yes, 10 upvotes. So the attendee is asking, "Are salary increases allowed, either COLA or promotion? I asked the other sessions" .. . Okay. Well, I'll say this. So when it comes to salaries requested, so if someone on a awarded grant is promoted during the budget period or the project period, then if the recipient wants to, they would have to rebudget. But they would have to do so so that it doesn't negatively impact the aims of the award. The additional funds won't be provided once an award is made, generally speaking. So if someone is promoted from .. . I don't know, an assistant professor position to a full professor position, and their salary increases, but the award has already been issued, then there won't be additional funds made available for that person. However, if the institution wants to supplement that person's salary, as long as .. . The one thing I will say about the salary is that you want to make sure that you're treating the person on the NIH grant in line with how you would treat people who are supported by other sources. So you want to make sure that however you apply that, it's consistent. I hope that helps. But once an award is made, additional funds are typically not provided. Additional funds are typically not provided. Let's see. So it looks like we are 5 minutes out, so let's take just another question and then set up for closing out the session. Is prior approval required for rebudgeting? For example, when reducing the amount budgeted for salary and increasing the amount for equipment? This is a good one. So in the GPS, in the section regarding prior approval requirements, it speaks to that there's no prior approval requirement for rebudgeting unless the rebudgeting of funds results in a change of scope, and that's key. Then NIH prior approval is required. A change in scope is a change in the direction, aims, objectives, purposes, type of research training identified in the approved project. The recipient must make the initial determination of the significance of a change and to consult with the grants management officer that's listed in the NoA as necessary. And so in addition, specific terms of award included in the NoA may require prior approval for actions that would modify the approved budget. So another very good reason to make sure that all parties are reading the NoA, especially Section IV, and consult with your GMO on these specific circumstances. So that is all the time we have for Q&A. I'm going to turn it back over to Erin to close out our session.