

# RESEARCH COMPLIANCE NEWSLETTER

## SPRING 2011

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## HHS and NSF OIG Release 2011 Workplans

The HHS Office of Inspector General (OIG) recently published its 2011 Workplan. (<http://www.oig.hhs.gov/publications/workplan/2011/>). The 2011 Workplan highlights several initiatives, including:

- > *Review of Extra Service Compensation Payments Made By Education Institutions* — Under OMB Circular A-21, charges for work performed on sponsored agreements by faculty members must be based on the faculty member's regular compensation. The OIG will review payments for extra compensation charged to Federally sponsored grants, contracts, and cooperative agreements by education institutions to determine whether the payments were in accordance with Federal regulations.
- > *Recharge Centers* — The OIG will be reviewing whether recharge centers have a reasonable and consistent rate schedule and comply with applicable standards in A-21.
- > *Indirect Costs Claimed as Direct Costs* — Under A-21, administrative and clerical expenses should normally be treated as indirect costs recovered through negotiated facility and administrative rates, although there are certain recognized exceptions. Focusing in particular on awards made under the Recovery Act (ARRA), the OIG will be assessing the appropriateness of administrative and clerical expenses claimed for reimbursement as direct charges.

The NSF OIG also recently issued its 2011 Workplan on November 23, 2011 (<http://nsf.gov/oig/FY11auditworkplan.pdf>). According to the Workplan, the NSF OIG will focus on three themes this year:

- > Management of Recovery Act (ARRA) funds
- > Human resource issues at NSF, such as workforce and workload management, in light of the increase in awards made with Recovery Act funds
- > Financial and/or program accountability.

The NSF also plans to issue a "capstone" report summarizing significant internal control weaknesses identified in 16 labor/effort audits completed at statistically-selected research universities. The report will identify the extent to which the universities charged unallowable or unreasonable salaries and wages to NSF grants.

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## NIH Prepares to Issue Sweeping Changes to Conflict of Interest Regulations

In May of 2010, the Department of Health and Human Services (DHHS) issued its Notice of Proposed Rulemaking (NPRM) on the "Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought and Responsible Prospective

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Contractors.” (<http://grants.nih.gov/grants/policy/coi/>). The Proposed Rule calls for wide-ranging changes to current federal regulations addressing conflicts of interest related to research.

Some of the highlights of the proposed changes to the regulations include:

- > Investigators will be required to make an annual report of all financial interests related to their professional responsibilities including, but not limited to, activities such as research, research consultation, teaching, professional practice, institutional committee memberships, and service on panels, such as IRBs and safety monitoring boards. Investigators will also be required to make a disclosure any time a research proposal is submitted.
- > The investigator may not limit disclosure by making his or her own assessment of whether the outside activity relates to current research. The responsibility and authority to make that determination rests exclusively with the institution.
- > Investigators will be required to receive training related to conflicts of interest no less frequently than every two years.
- > All interests that the institution determines give rise to a conflict of interest must be disclosed on a public website, as well as reported to the sponsor. Information on the web site must remain available for five years and be updated at least annually.
- > Reporting thresholds are lowered from \$10,000 to \$5,000, and to \$0 for ownership interests (stocks, stock options, etc.) in private entities. Some classes of income become reportable, including book publishing revenue, which were not in the past.
- > Administrative procedures are required for mitigation of conflicts when they are not disclosed in a timely manner.

Although some of these proposed requirements may be modified once the Final Rule is issued, it is certain that the Final Rule will require significant changes in how outside interests that may relate to research are reported to institutions, and how identified conflicts are managed. The Final Rule is expected to be issued in early 2011. **If you have any questions about the Proposed Rule, contact Daniel Shapiro in the Office of Compliance at [dshapiro@ooc.usc.edu](mailto:dshapiro@ooc.usc.edu), or (213) 740-8258.**

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## **Export Control Reform Initiative Proceeds; Troublesome Contract Clauses Continue to Proliferate**

The Obama Administration has announced plans for a new, simplified export control system. These plans contemplate new criteria for “tiering” items to be controlled, the articulation of a “bright line” between items controlled under the Commerce Department’s “dual use” Commodity Control List (CCL) and military items controlled under the State Department’s U.S. Munitions list (USML), and harmonizing the CCL and USML with the view towards combining the two lists.

The eventual goal is to have a single export control list, a single licensing agency, a single enforcement-coordination agency, and a single information technology system. Once finalized, the overhaul will result in simplified classification and licensing determinations, clearer processes to obtain licenses when necessary, and less confusion in assessing whether an item or a piece of technology is export controlled.

Notwithstanding these efforts, university-led associations continue to report that various sponsors still insist on the inclusion of troublesome clauses in university research agreements. Such clauses most often contain restrictions on publications and/or participation by foreign nationals,

and may bear no relationship to whether the research being performed is fundamental or is associated with any legitimate national security concerns.

If you become aware that a sponsored project might carry with it any limitations on personnel or publication, contact the **Department of Contracts and Grants (d cg.usc.edu)** or the **Office of Compliance (ooc.usc.edu)** as soon as possible.

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### **NSF Responsible Conduct of Research (RCR) Resources**

To assist the community in meeting the requirement to provide training in the Responsible Conduct of Research (RCR) for undergraduate and graduate students and post-doctoral fellows supported (i.e., paid a salary or stipend) on an NSF research grant, NSF has developed a website <http://www.nsf.gov/bfa/dias/policy/rcr.jsp>, that includes information on the policy and FAQs concerning the policy. Links are provide to several non-NSF sites as well as access to the National Professional and Research Ethics Portal, the new online resource center for ethics in science, mathematics, and engineering. The University of Illinois at Urbana-Champaign will develop the site with support from NSF and in collaboration with Howard University, the National Academy of Engineering and Public Responsibility in Medicine and Research (PRIM&R).

To learn more about USC's RCR training program please visit [http://www.usc.edu/research/about/policies/responsible\\_conduct\\_of\\_research\\_ror/index.html](http://www.usc.edu/research/about/policies/responsible_conduct_of_research_ror/index.html)