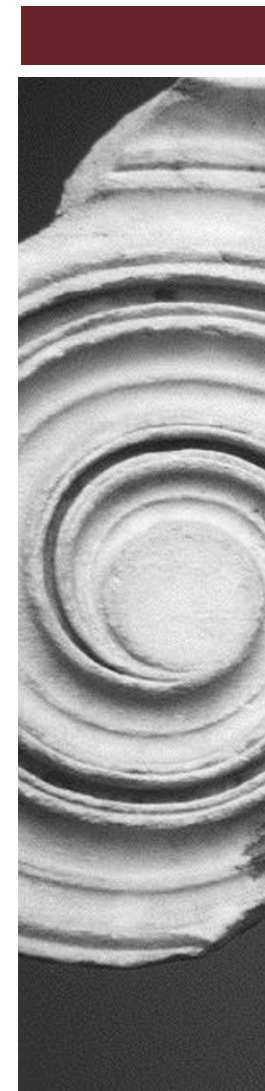


# Federal Investigations of University Research: How to Avoid Trouble

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Effective Compliance Systems in Higher Education  
June 3, 2008



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# What's the Compliance Problem?

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- The last five years have seen an alarming increase in the number of federal fraud cases in the university research area
- Many universities are not well prepared for the scrutiny that a federal fraud investigation entails
- Old compliance strategies aren't working

# Selected Recent University Cases

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- Jun 2006 – Yale -- three parallel Inspector General subpoenas -  
- pending
- Apr 2006 – Clark Atlanta -- \$5M
- Jan 2006 – U Conn -- \$2.5M
- Jun 2005 – Cornell -- \$4.4M
- May 2005 – Mayo Clinic -- \$6.5M
- Apr 2005 – U Ala. Birmingham -- \$3.4M
- Feb 2005 – Florida Int'l -- \$11.5M
- Oct 2004 – George Washington U. -- \$1.8M
- Jul 2004 – Harvard -- \$3.3M
- Feb 2004 – Johns Hopkins -- \$2.6M
- Feb 2003 – Northwestern -- \$5.5M

# The False Claims Act – A Prosecutor’s Dream

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- No need to prove intent to defraud
- No need to prove actual knowledge of falsity
- Deliberate ignorance or reckless disregard can be enough
- No need to prove Govt was misled
- No need to prove Govt was damaged
- Treble damages or up to \$11,000 per claim
- Whistleblower (*qui tam*) cases
  - 15% to 30% share of recovery

# Federal Enforcement Trends

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- Most cases start with a whistleblower
- Some start with voluntary disclosures
- No indication of concerted federal program targeting universities
- But prosecutors are much more willing to pursue research cases
- So far dollars have been relatively small compared to Medicare billing settlements – that could change
- The costs of responding to an investigation can be very high

# How Should Universities Respond?

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- Everybody talks about the increase in university fraud cases, but what can we actually learn from them?
  - The Govt’s “hot button” issues
  - Why compliance problems happen
  - How to minimize future compliance problems

# The “Hot Button” Issues

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- Effort reporting and commitments
- Cost transfers
- Salary supplementation
- Direct charging of administrative costs
- Recharge centers
- Overlap with Medicare billings
- ...among others

# Traditional Conceptions of the Compliance Problem

<b>Cause of the Problem</b>	<b>Response</b>
“Every barrel has a few bad apples.”	Throw up your hands and go home
“Employees think they won’t get caught.”	Hotlines and audits.
“Employees don’t understand the consequences of breaking the rules.”	Horror stories and more discipline.
“Employees don’t even understand the rules.”	More written policies and training



# Emerging Ideas in Compliance

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“Employees know the rules better than we may think.”

“Employees will behave as you pay them to behave”

“Employees won’t do the right thing if they don’t have the money and tools to do so.”

“Information that employees don’t have can hurt us.”

“Employees recognize management lip service when they see it.”

# An Ideal Compliance Environment

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- “Tone at the top” is consistent with how things work at the bottom
- Compensation systems are not at cross-purposes with compliance objectives
- Organizational obstacles to compliance have been recognized and removed
- People are given what they need to do their jobs honestly
  - Funds
  - Tools (e.g., adequate financial systems)
  - Information
  - Training

# Research Compliance Examples: Effort Reporting

- Problem: faculty members are overstating their effort on federal research projects
- Causes:
  - Faculty compensation depends on a high percentage of external salary support
  - Department lacks funds to cover non-sponsored activity such as proposal writing, administration, etc.
  - Effort reporting forms are confusing
  - Faculty members are not required to take responsibility for accuracy of effort reports
  - Faculty don't understand the rules (or don't want to)

# Research Compliance Examples: Cost Transfers

- Problem: costs are being transferred to federal projects late, usually with inadequate documentation, and often for the purpose of clearing deficits on other accounts
- Causes:
  - Financial reports don't inform PIs of the status of charges to their accounts on a current basis, leading to over-runs
  - PIs can't easily check the accuracy of charges to their accounts
  - Decentralized accounting systems allow transfers without central review or control
  - Information on cost transfers is not available to sponsored research personnel

# Research Compliance Examples: Direct Charges of Admin Costs



- Problem: administrative and clerical costs are charged directly to federal sponsored projects, in violation of federal cost rules
- Causes:
  - Insufficient institutional funding for administrative and clerical costs
  - Departmental personnel lack training in the complex rules applicable to charging of admin costs
  - Inadequate data on what kinds of admin costs are being directly charged to federal projects
  - No system for advance clearance of direct admin charges

# A Management Approach to Compliance

- “Compliance” = removing obstacles to good behavior
- Subject matter experts and lawyers may be able to identify the obstacles...
- But they usually don’t have the power to remove them.
- The keys to success are the same as with any other complex management undertaking
  - Commitment of top management -- \$\$ and otherwise
  - Knowledge of how the organization works, and how to fix things when they’re broken
  - Strong project management
  - Measurement of results and good follow-up

**And if research compliance is a  
management problem,  
and if you are part of management,  
don't forget to ask yourself...**

... whether you're part of  
the solution...

...Or part of the problem.

