



DoJ Settlement Agreements: Cases, Causes, and Consequences

**SRA International
SRA 2007 Annual Meeting
Nashville, TN
Wednesday, 17 October 2007**

**James Kroll, PhD
Head, Administrative Investigations
Office of Inspector General
National Science Foundation**

**William J. Kilgallin
Head, Investigative Legal and Outreach
Office of Inspector General
National Science Foundation**



Offices of Inspectors General

- **Provide leadership and coordination to implement policies to:**
 - Prevent and detect fraud, waste, abuse
 - Promote economy, efficiency, effectiveness
 - Conduct investigations, audits, inspections, reviews of agency programs (funded activities), operations
- **Features:**
 - Independent of agency management
 - Jurisdiction (NSF activities, programs, operations)
 - Staff of experts: administrators, attorneys, auditors, criminal investigators, and scientists



NSF OIG –

Responsible for ensuring the integrity in NSF's programs and operations

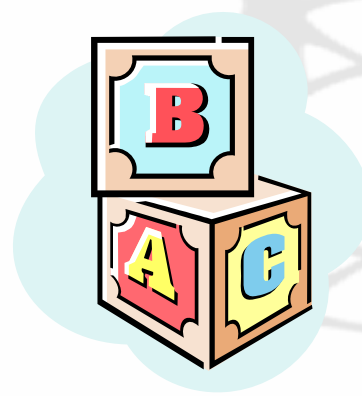


Compliance Plans: A Brief History

- **HHS**
 - HHS “Integrity Agreements” in Medicare
- **OIG Community**
 - HHS OIG Compliance Guidance,
 - 70 Fed. Reg. 227, Draft Guidance: Recipients of PHS Research Awards
 - 64 Fed. Reg. 61893, Guidance for Medicare + Choice Organizations
 - 63 Fed. Reg. 8987, Guidance for Hospitals, February 1998
- **Department of Justice**
- **Federal Agencies**
- **OSTP**



The Basics

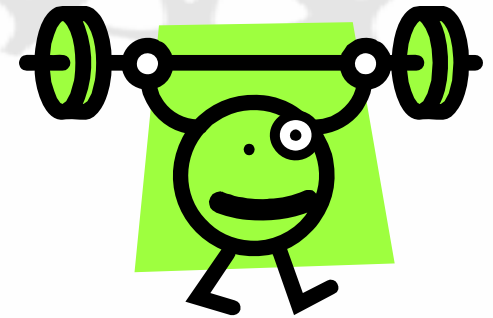


A system of responsible administrative, financial, and research management and oversight, creating an environment in which employees can operate with integrity.

**May be implemented voluntarily
or
mandated as part of negotiated resolution**



Does your organization have what it takes?

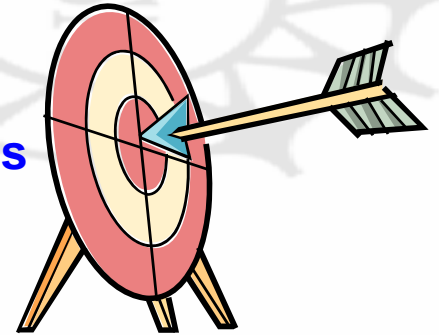


- **Leadership** - commitment to do the right thing
- **Management** - ethical environment
 - Focus on high risk areas
 - Provide systematic monitoring, auditing, oversight
- **Training** - Communicate facts and expectations
- **Action** - Early detection and correction problems
- **Reporting** – Relay information regarding wrongdoing



Effective Compliance Program Elements*

a/k/a 7 Habits of Highly Effective Organizations



- 1) Reasonable Compliance Standards and Procedures
- 2) Specific High-level Personnel Responsible
- 3) Due Care in Assignments with Discretionary Authority
- 4) Effective Communication of Standards and Procedures
- 5) Establish Monitoring and Auditing Systems and Reporting System (whistleblowing without fear of retaliation)
- 6) Consistent Enforcement of Standards through Appropriate Mechanisms (including failure to detect)
- 7) Respond Appropriately to the Offense (reporting to law enforcement, modify program, prevention)

***Federal Sentencing Guidelines
U.S.S.G. §§ 8B2.1, 8C2.5(f), & 8D1.4(c)(1) (11/1/04)**



Risk
(and how to find it)

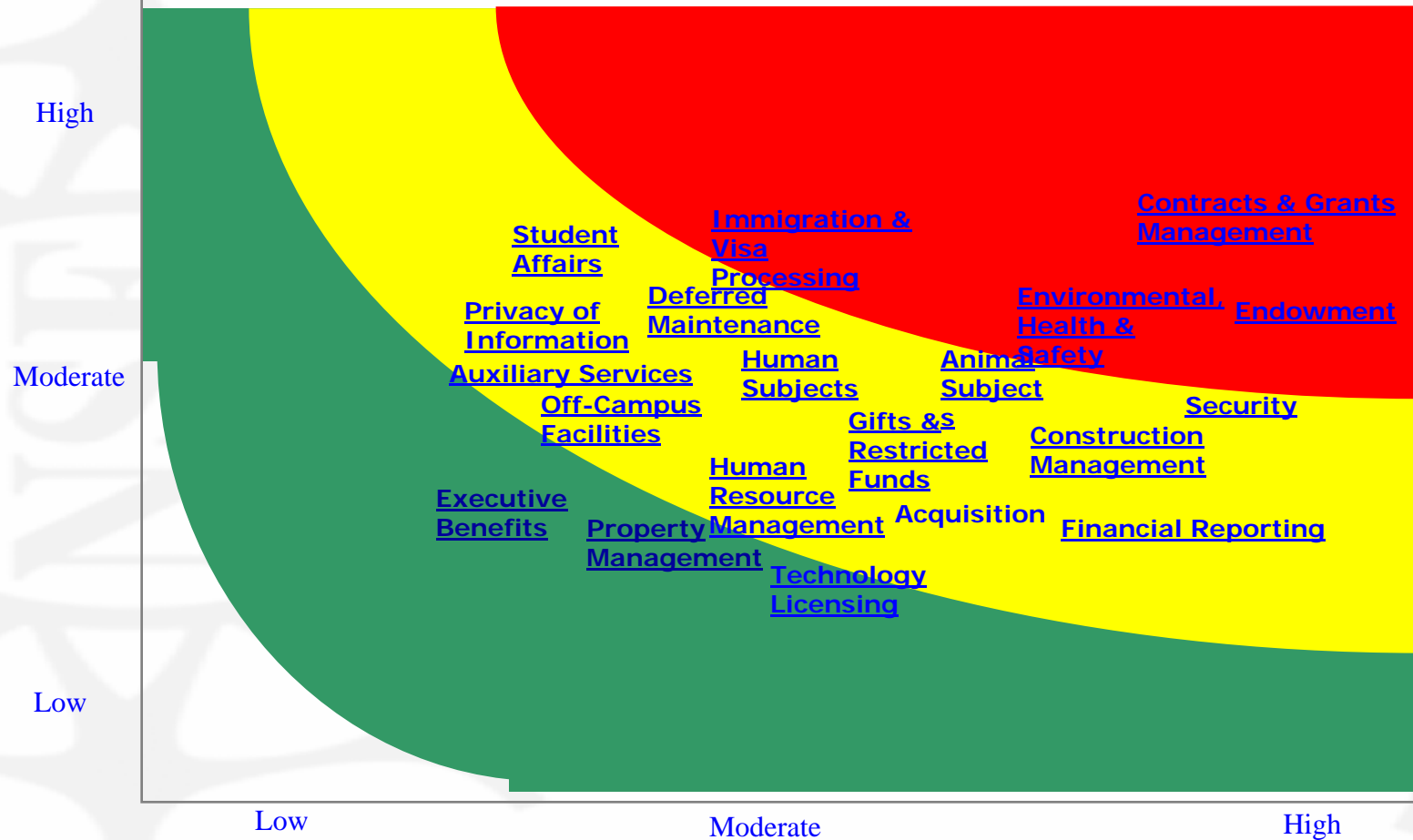
Auditors
Squeaky Wheels
Whistleblowers
Investigators
ARE your friends





One University's Risk Assessment

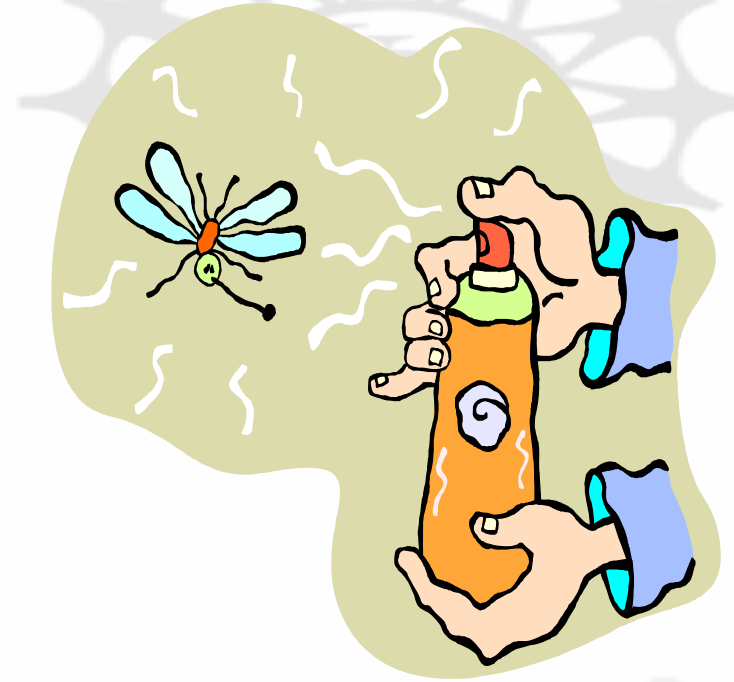
Heat Map





Finding Risk

- What needs more review?
- Where's your itch?
- What's autonomous?
- Where's the black hole?
- Are your warning bells ringing when you hear someone else's problems?
- What gives you that "Gosh, gotta check that right away" feeling?





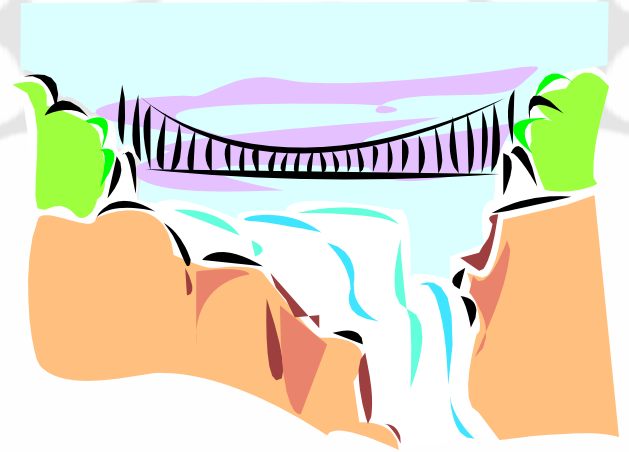
Risk Areas

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





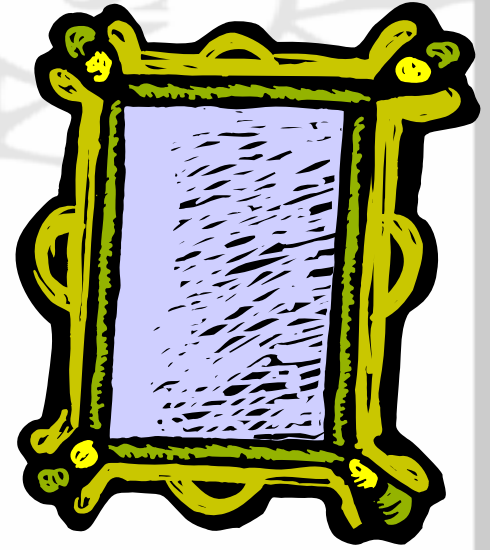
Other Risk Areas



- Lack of adequate documentation
 - travel documentation
 - cost-sharing
 - records retention
 - credit card receipts do not constitute adequate documentation
- Time and effort reporting and procedures
- Separate financial administration for each award, no pooling
- Abuse or violations of institutional conflict of interest disclosure policies and procedures.
- Updated/adequate RM policies and procedures
- Subawardee monitoring (and A-133s)
- Residual funds
- Oversight activities (Conflict of Interest, Humans, Animals)



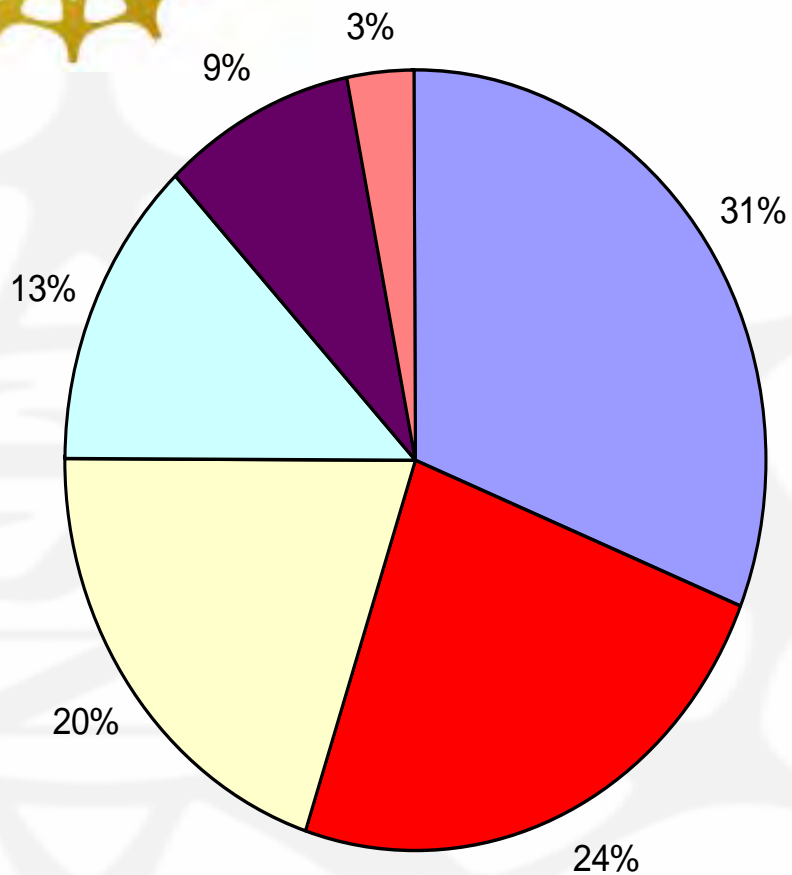
What do you look like?









- Funding Characteristics
 - Grants, contracts and with what entity
- Organizational Profile
 - Decentralized
- Control Profile
 - Rainmakers, President, staff
- Audit Profile
 - How easily can you get down into the weeds?
- Activities Location
 - On-site, off-site, another country, LTER, SBIR, SGER
- Activity Description
 - Animals, humans, collection, collaboration, toxins, radiation; staffing characteristics
 - “Junior, independent” or “senior and wise”
- Training Profile
 - Comprehensive administrative, financial, oversight, fit the issues



Common Types of Civil/Criminal Allegations



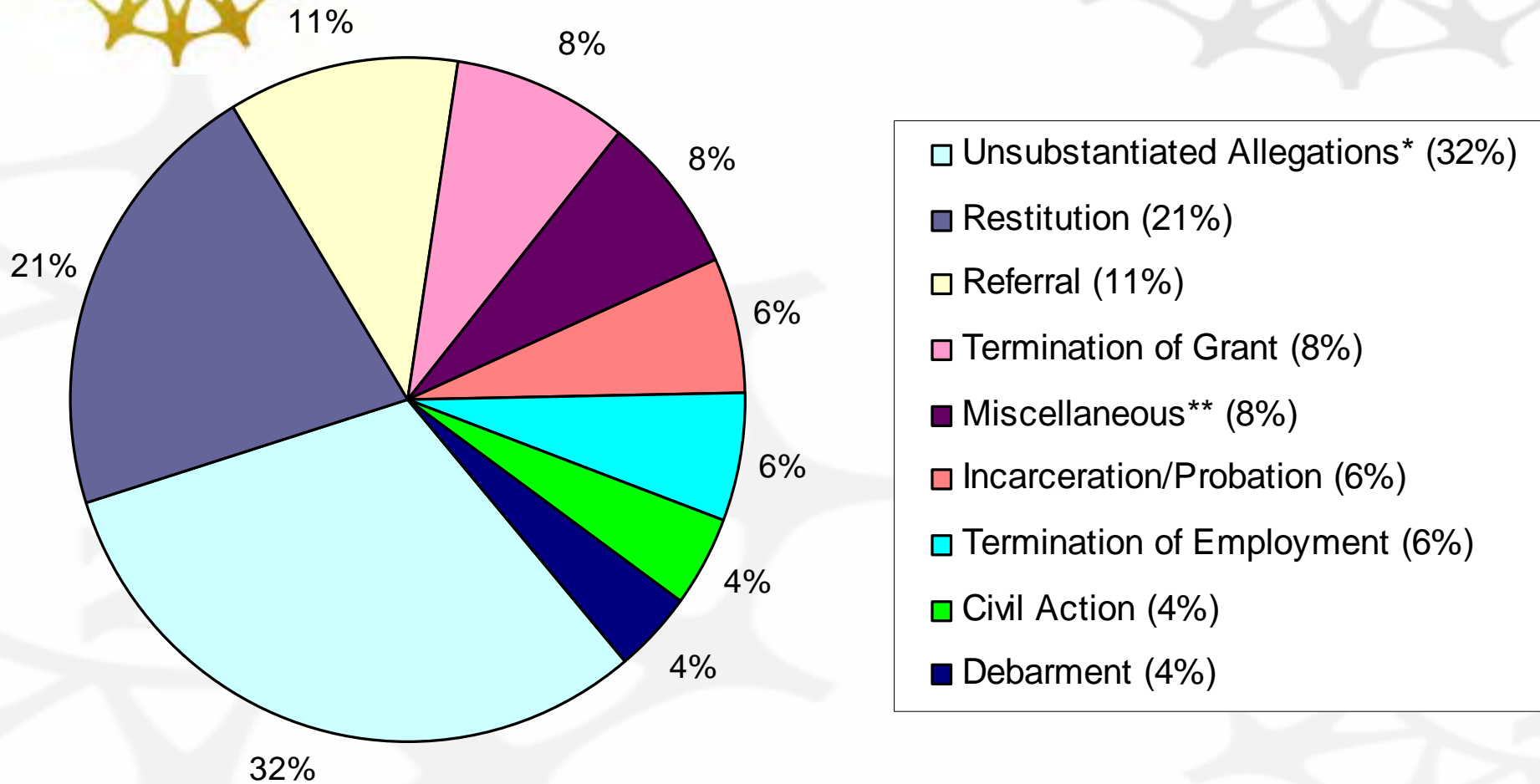
-  Theft/Embezzlement (31%)
-  False or Fraudulent Statements (24%)
-  Miscellaneous* (20%)
-  False or Fraudulent Claims (13%)
-  Conflicts of Interest (9%)
-  Computer Fraud (3%)

includes major categories of civil/criminal allegations
not in

officers and



Investigation Outcomes



ation
ides

cher



Government Imposed Compliance Plans



- \$15 M; overcharging IDC
- \$30 M, exceptional status and oversight program; misuse of grant funds
- \$12 M; overbilling
- \$650,000; research fraud and abuse
- \$1.5 M, 5-year compliance program; cost-sharing
- \$1.2 M; inflated research grant costs
- \$150,000, 5-year compliance plan; misuse of federal funds
- \$2.5 M, 5-year compliance plan; cost-sharing, salaries, double charging
- \$6.5 M, increased oversight; mischarging awards
- \$3.4 M, 5-year compliance plan; misuse of federal funds
- \$1.4M, 5-year compliance plan; cost-sharing
- \$1.55M, 4-year compliance plan; time and effort reporting



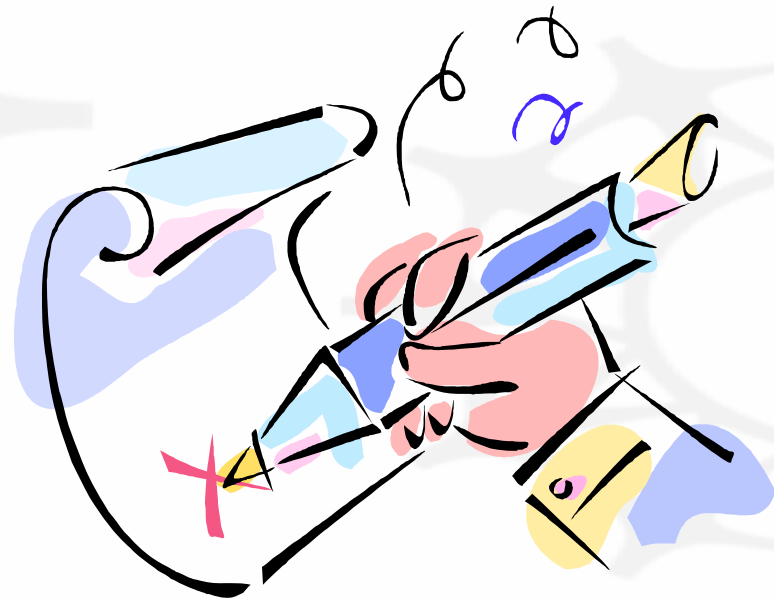
Let's Talk About

- Cost Share
- Program Income
- Subrecipient Monitoring
- Effort Reporting
- Participant Support
- Travel
- Signature Responsibilities
- “GRANTS GONE BAD”





Signature Responsibilities





Consider the Following:

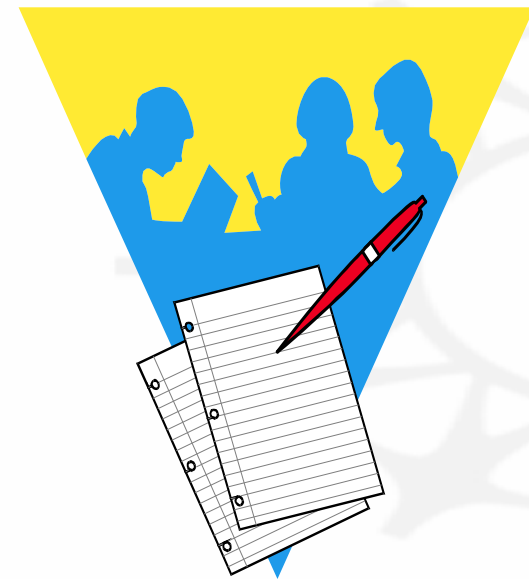
- Certifications on Annual Reports
- Certifications on Final Reports
- Certifications re: Cost Share
- Certifications re: Draw Downs
- Certifications re: Proposals





Proposal Signatures

- Compliance with award terms and conditions
- Accuracy and completeness of statements
- COI Policy
- Drug-Free Workplace
- Debarment and Suspension
- Lobbying (proposal >\$100,000)





Certification for Authorized Organizational Representative or Individual Applicant:

By signing and submitting this proposal, **the individual applicant or the authorized official** of the applicant institution **is: (1) certifying that statements made herein are true and complete to the best of his/her knowledge;** and (2) agreeing to accept the obligation to **comply with NSF award terms and conditions** if an award is made as a result of this application.

Willful provision of false information in this application and its supporting documents or in reports required under an ensuring award is a criminal offense (U. S. Code, Title 18, Section 1001).

In addition, if the applicant institution employs more than fifty persons, the authorized official of the applicant institution **is certifying that the institution has implemented a written and enforced conflict of interest policy** that is consistent with the provisions of Grant Policy Manual Section 510; that to the best of his/her knowledge... . . .

Debarment Certification

Certification Regarding Lobbying

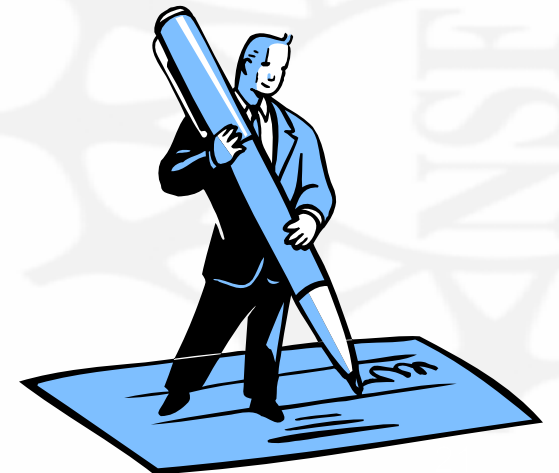
Certification for Contracts, Grants, Loans and Cooperative Agreements

AUTHORIZED ORGANIZATIONAL REPRESENTATIVE SIGNATURE DATE



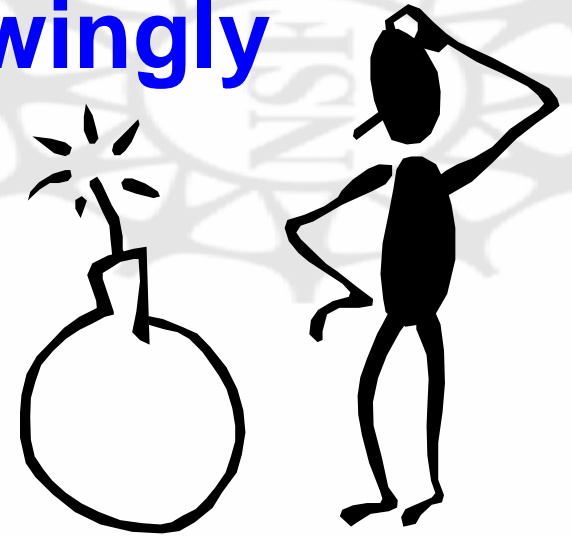
No Problems?

“Well, I’m in the clear. I certainly didn’t KNOW that certification was false when I signed it.”





Knowing and Knowingly Defined



- 1) acts with actual knowledge of the information;
 - 2) acts in deliberated ignorance of the truth or falsity of the information; or
 - 3) acts in reckless disregard for the truth or falsity of the information.
 - 4) And, no proof of specific intent to defraud is required.
- 31 U.S.C. 3729(b)



Examples of Misused Funds



- (1) Grant Fraud
- (2) Embezzlement
- (3) Multi-Agency Fraud
- (4) False Certifications
- (5) Overcharging Grants





Questions





References



- <http://oig.hhs.gov/fraud/complianceguidance.html>
- <http://www.nacua.org/documents/FedSentencingGuidelines.pdf>
- <http://www.ussc.gov/corp/Murphy1.pdf>
- http://www.usdoj.gov/dag/cftf/corporate_guidelines.html
- Grant, G. Odell, G., and Forrester, R; Creating Effective Research Compliance Programs in Academic Institutions; *Academic Medicine*, Vol 74, No. 9, September 1999, p. 951.
- Jordan, K. and Murphy, J.; Compliance Programs: What the Government Really Wants. p. 121.
- Managing Externally funded Research Programs; A Guide to Effective Management Practices; Council on Government Relations, June 2005
- DHHS Draft OIG Compliance Program Guidance for Recipients of PHS Research Awards; Fed. Reg. Monday Nov 28, 2005, vol. 70#227, p:71312
- Ingram, Ginna; Corporate Compliance Programs: More Than Window Dressing. *Journal of Public Inquiry*, Spring/Summer 2007, p. 5.
<http://www.ignet.gov/randp/sp07jpi.pdf>



Contact Info

- **Internet:** <http://www.nsf.gov/oig/>
- **E-mail:** oig@nsf.gov
- **Telephone:** 703-292-4993 (Bill)
703-292-5012 (Jim)
- **Anonymous:** 1-800-428-2189
- **Write:** 4201 Wilson Blvd. Suite II-705
Arlington, VA 22230