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Effective Compliance Programs: Creating Integrity in the Research Environment

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What is compliance?

- **Compliance is a term of art**
- **Compliance means meeting obligations associated with accepting \$\$\$\$\$**
- **Compliance demonstrates stewardship of public funds**
- **Compliance is a commitment**

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What IS a Compliance Program?

- A compliance program is designed to prevent and detect wrong doing
- A compliance program teaches and encourages employees to conform to ethical and legal standards
- A compliance program is an organized and ongoing effort

Who in Responsible for Compliance?

- Government
- Institution/University
- Individual

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Partnership

- Successful compliance is a partnership
- Successful compliance uses internal controls to effectively monitor adherence to laws and other requirements
- Successful compliance requires leadership

The Partnership

- **Government**
 - Program Officials
 - Funding Officials
 - Oversight Officials
- **Institution/University Officials**
 - Administrative Officials
 - Financial Officials
 - Education Officials
- **Individuals**
 - Researchers
 - Students
 - Post-doctoral research
 - Administrators



Expectations

- **Government**

- Articulate clearly rules/expectations
- Balance public needs, institutional responsibility
 - (reduce bureaucracy)
- Monitor funding and program compliance

- **Institution**

- Provide an environment in which employees can operate with integrity
- Develop compliance plans to assure and oversee
 - administrative functions
 - financial transactions
 - research management

- **Research Investigators**

- Know the ethics and standards of community
- Submit quality proposals and conduct the funded activity
- Know and adhere to rules, regulations and ethics
- Ensure compliance and education of staff, students

NSF's Requirements

Awardee = Institution/University



- **The awardee has full responsibility for the conduct of the project or activity supported under this award and for adherence to the award conditions. Although the awardee is encouraged to seek the advice and opinion of NSF on special problems that may arise, such advice does not diminish the awardee's responsibility for making sound scientific and administrative judgements and should not imply that the responsibility for operating decisions has shifted to NSF.**
- **By accepting this award, the awardee agrees to comply with the applicable Federal requirements for grants and cooperative agreements and to the prudent management of all expenditure and actions affecting the award.**

Reference: NSF's Grant General Conditions, Article 1.

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What IS a Compliance Program?

Systems of Controls to Assure:

- Sound scientific and administrative judgments
- Adherence with the applicable Federal requirements
- Prudent management

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Purpose of a Compliance Program

- Provide clarity and consistency to all institution employees
- Promote self-monitoring
- Provide training to identify potential problems and to take corrective actions

Elements of a Compliance Program

- **Written standards of conduct, policies and procedures**
- **Designated compliance officer and compliance committee to develop, operate, and monitor the compliance program**
(Reports to head of the institution)
- **Effective education and training programs**
- **Effective communication between compliance officer and employees to receive complaints**

Elements of a Compliance Program

(Continued)

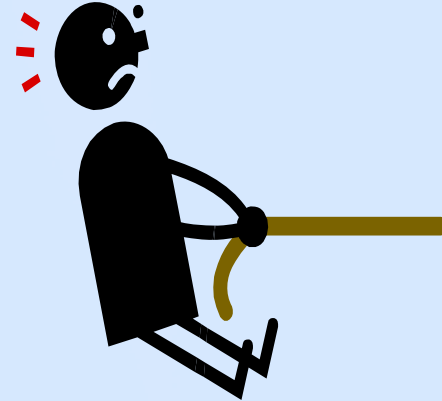
- Clear definition of roles and responsibilities
- Audits and evaluations to identify problems and monitor compliance
- Appropriate disciplinary action when necessary
- Prompt investigations of alleged offences, prompt response to detected offenses; separation of investigation and adjudication

Why Not Have a Compliance Program?

Often Heard Excuses:

- Too expensive
- Not enough staff
- Hard to organize
- No authority
- No need
- Too much trouble

- **Consequences**





Compliance Programs

- Based on United States Sentencing Guidelines
- Vital and effective programs are proactive
- Attention to ethics is an institutional matter

Effective Compliance Program Elements*

a/k/a 7 HABITS OF EFFECTIVE ORGANIZATIONS

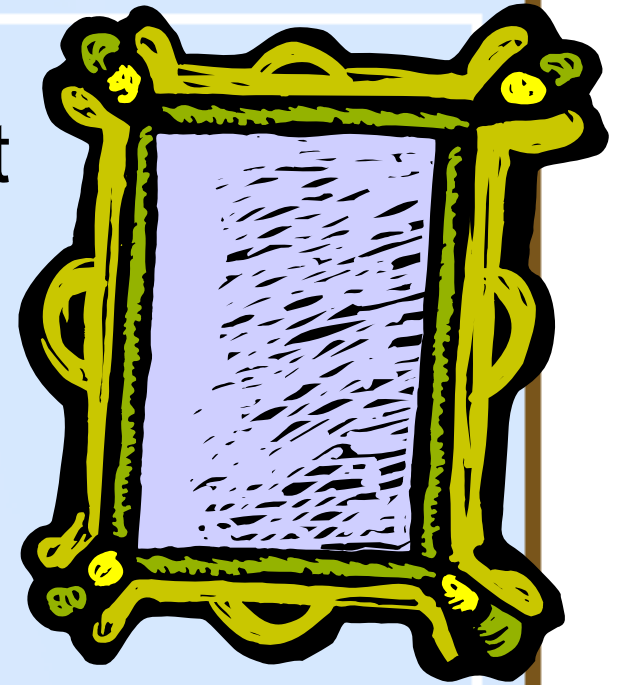
- 1) Reasonable Compliance Standards and Procedures
- 2) Specific High-level Personnel Responsible
- 3) Due Care in Assignments with Substantial Discretionary Authority
- 4) Effective Communication of Standards and Procedures
- 5) Establish Monitoring and Auditing Systems and Reporting System (whistleblowing 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)

Compliance Programs

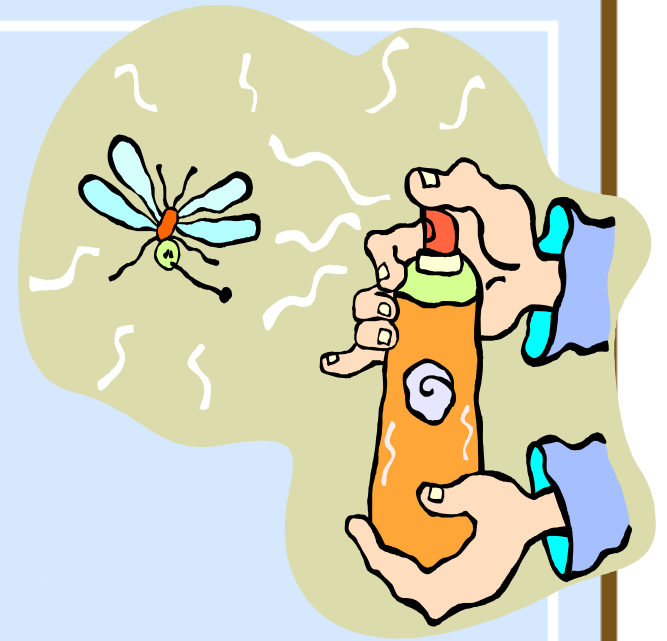
Document Self-Assessment

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



Finding Risk

- What needs more review?
- What is autonomous?
- Where's the black hole?
- When you hear someone else's problems, do bells ring?
- What gives you that "Must check that!" feeling?



Risk and How to Find It

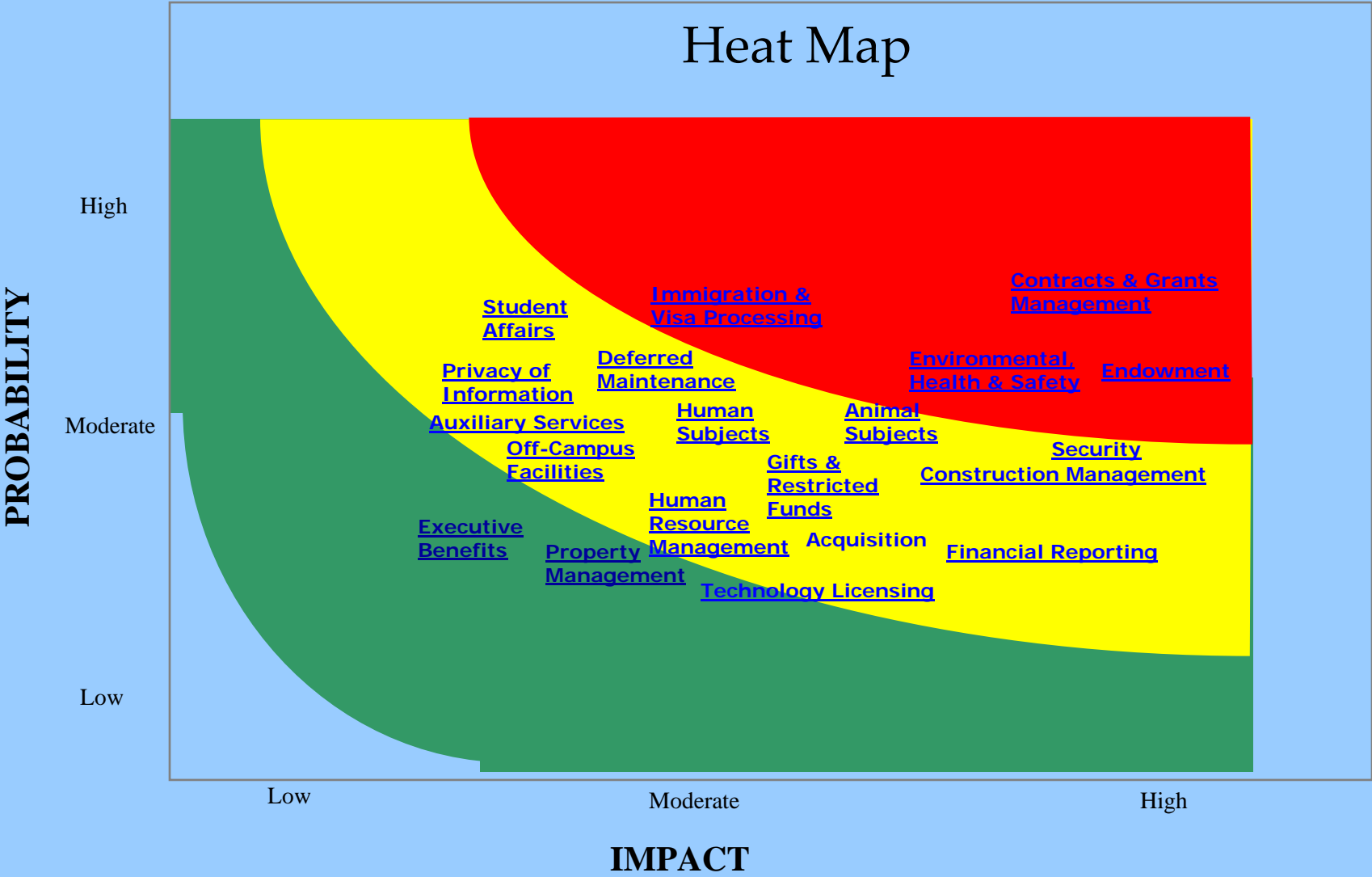
Auditors
Squeaky Wheels
Whistleblowers
Investigators



ARE friends

One University's Risk Assessment

Heat Map



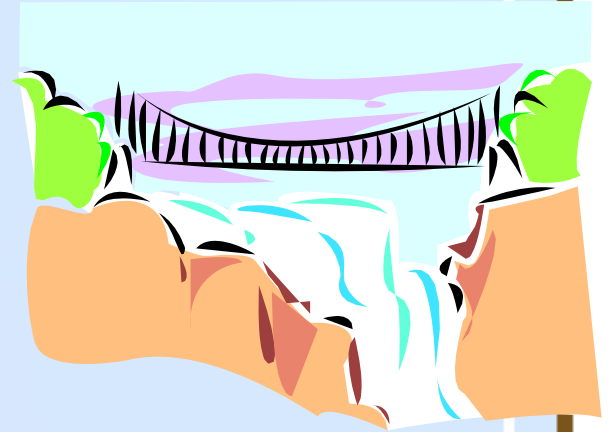
Risk Areas

- Allowable activities and costs
- Cash management
- Eligibility for awards and sub-awards
- Equipment and real property management
- Procurement suspension and debarment
- Program income
- Participant support
- Timely reporting



Other Risk Areas

- 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
- Violations of institutional conflict of interest rules
- Sub-awardee monitoring
- Residual funds



Ethical Issues Researchers Confront

- Data Selection
- Sharing and Using Ideas
- Balancing Priorities
- Making Financial Decisions
- Authorship and Acknowledgements
- Collaborations
- Conflicts of Interest
- Paraphrasing and Plagiarism
- Mentorship/Advisor Problems
- Merit Review
- Obtaining Oversight Reviews



Consequences of Significant Errors

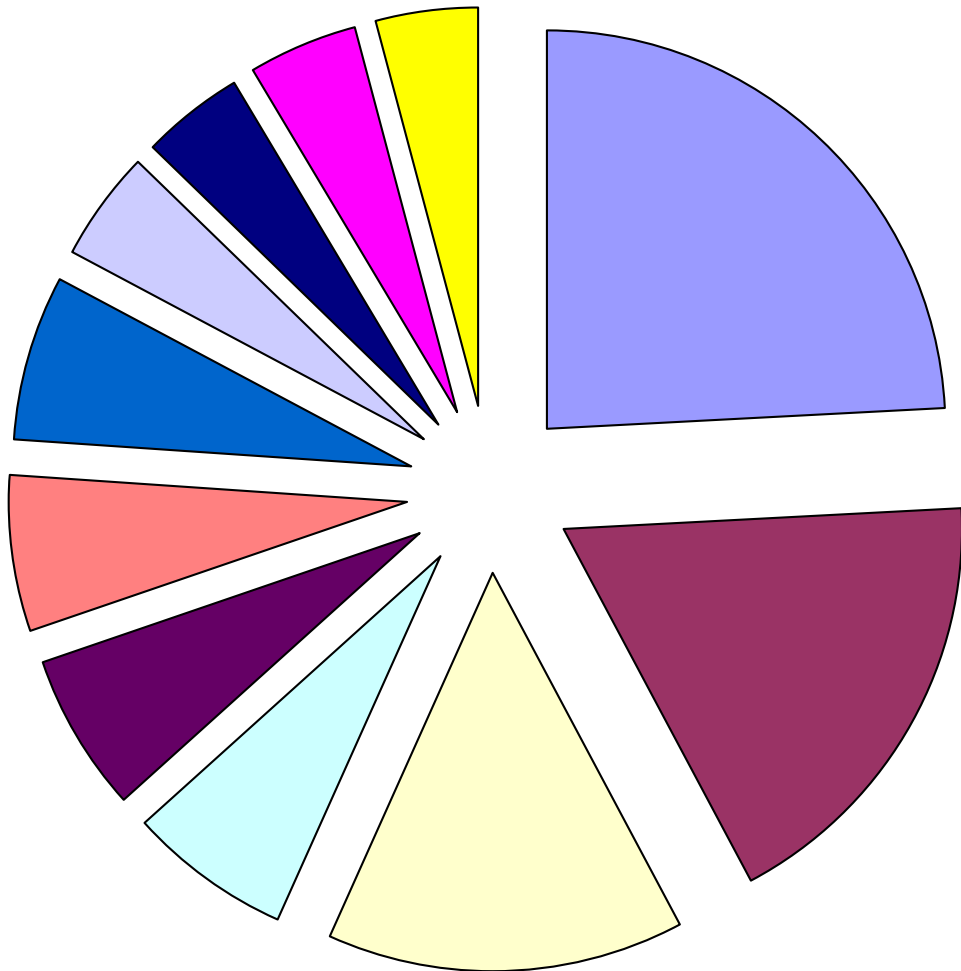
- ✓ **Special Oversight/Review Status**
- ✓ **Administrative Sanctions**
- ✓ **Suspension or Termination of Awards**
- ✓ **Civil/Criminal Violations**
- ✓ **Suspension/Debarment/Exclusion**
- ✓ **Corrective Action Plans**
- ✓ **Mandatory Compliance Plans**
- ✓ **Fines, Penalties**



May apply to either individual or entire institution

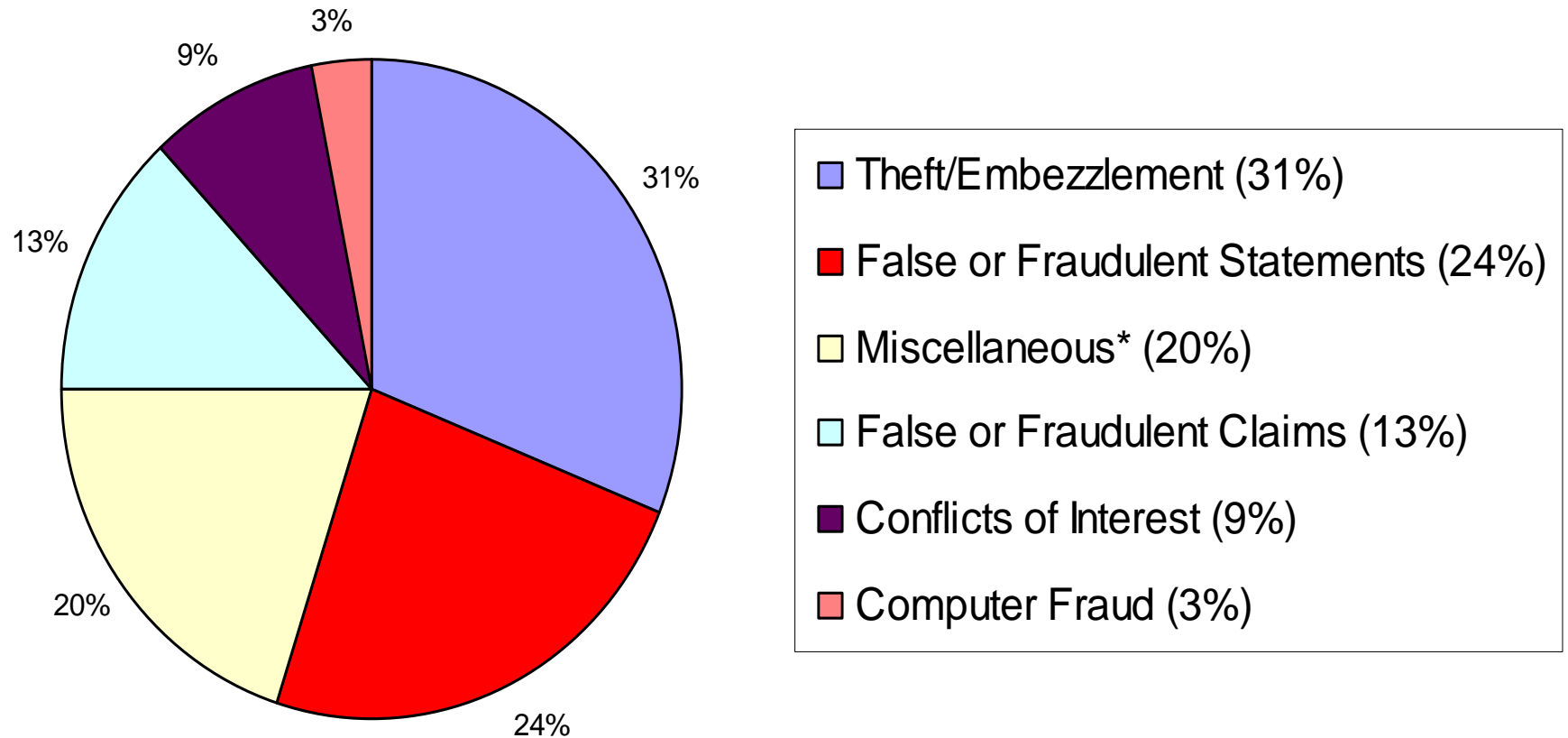


Most Frequent Audit Findings



- Policies and procedures inadequate or absent. 24%
- Lack of source documentation to support costs. 18%
- Inadequate system to track, manage, or account for costs and/or assets. 14%
- Unallowable costs. 7%
- Lack of proper approval, certification, or authorization. 6%
- Lack of subrecipient monitoring. 6%
- Inadequate or absent project or technical report. 6%
- Reconciliations inadequate or not performed. 4%
- Inadequate or absent financial report or proposal. 4%
- Costs claimed exceed amounts or rates allowed by award provisions or Federal regulations. 4%
- Lack of segregation of duties. 4%

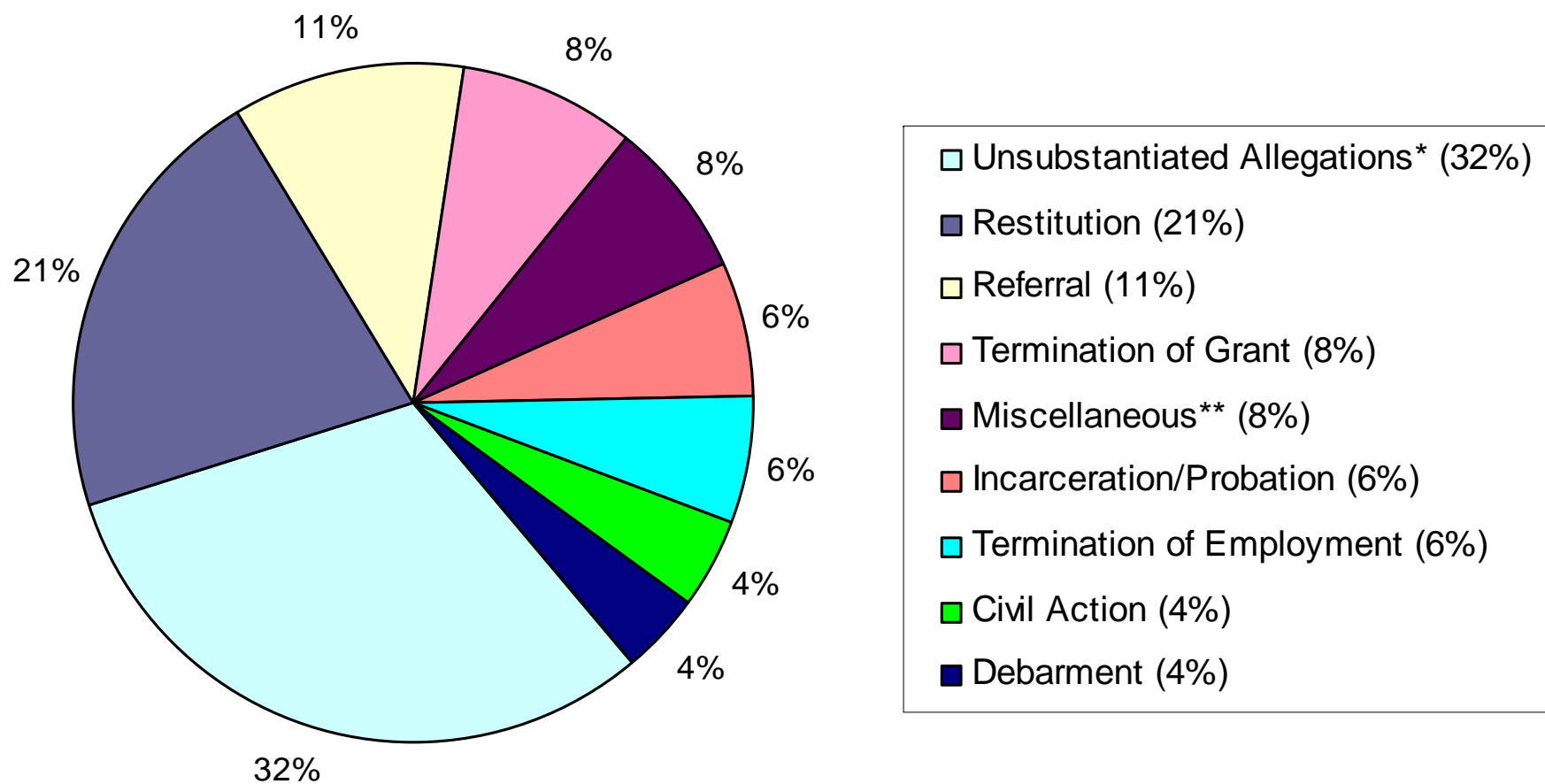
Common Types of Civil/Criminal Allegations



*Includes mail fraud, false identification insurance fraud, impersonating a government officer, and copyright infringement.

Data gathered from NSF OIG closed Investigative files (1990 – Present).

Investigation Outcomes

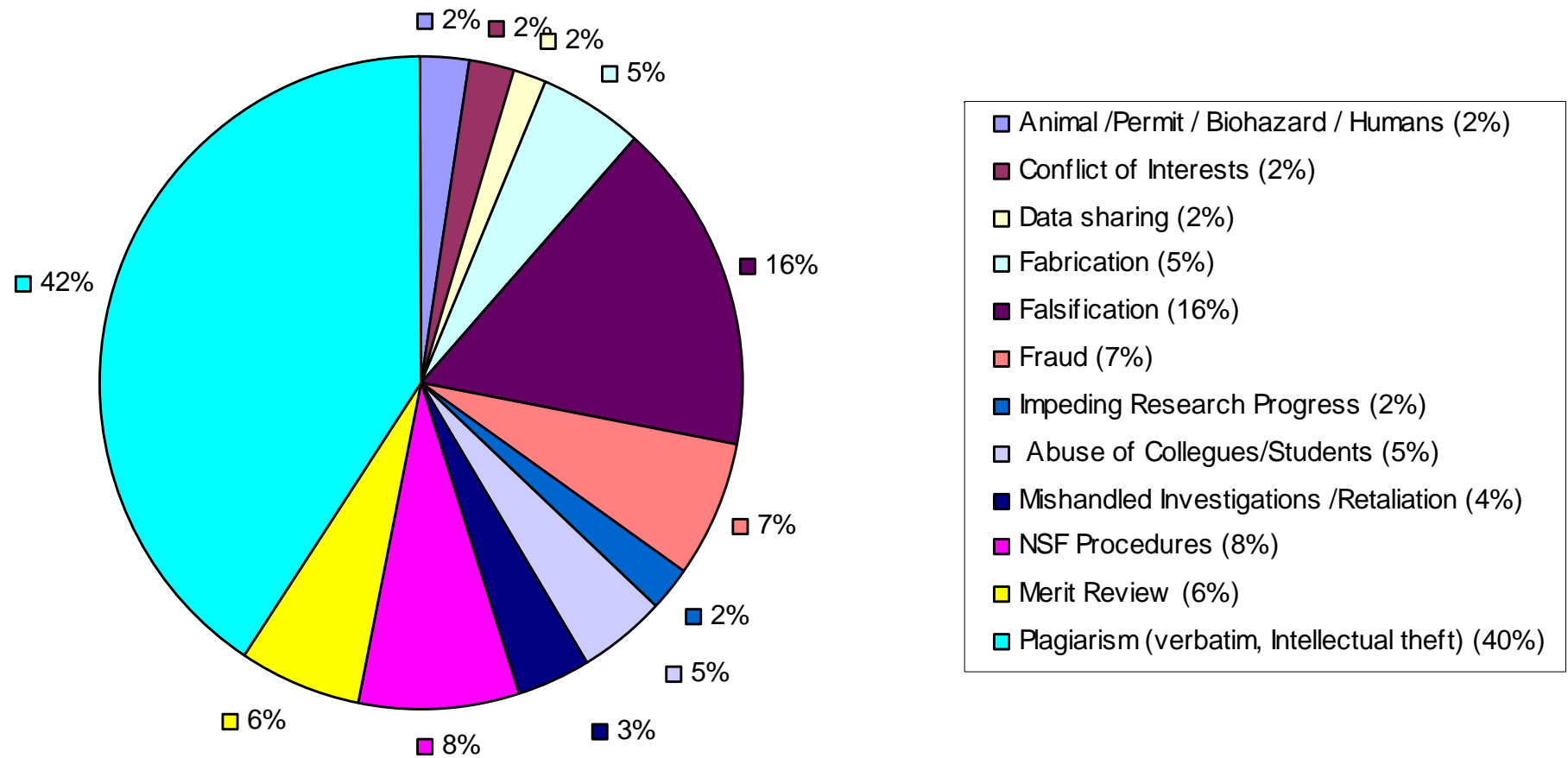


* Allegation was preliminarily investigated but found to be insufficiently material to warrant further action.

** Includes monitoring, enacting new guidelines, letters of reprimand, etc.

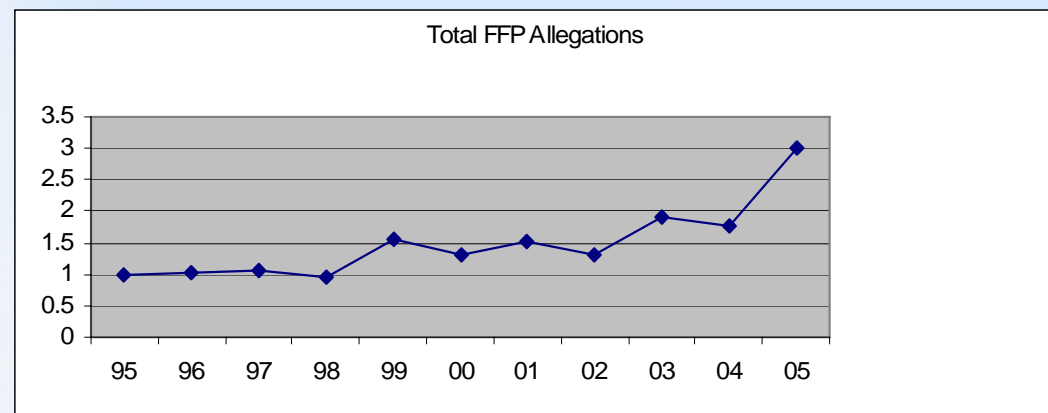
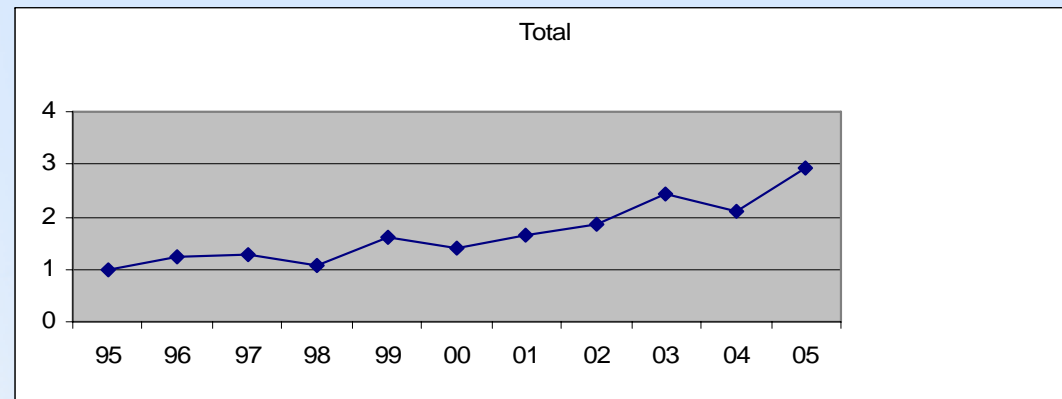
Data gathered from NSF OIG closed Investigative files (1990 – Present).

Common Types of Administrative Allegations



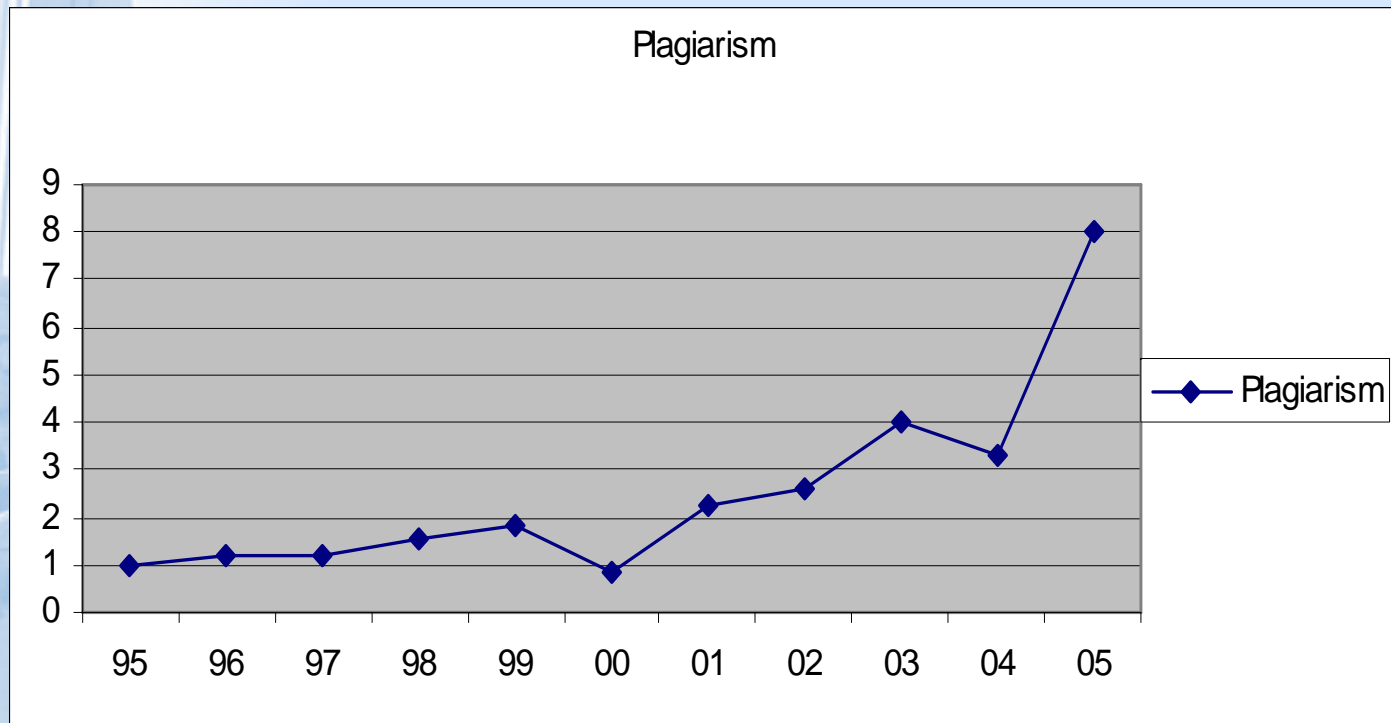
Trends

(x=year, y= relative increase, base year 1995)



Trends

(x=year, y= relative increase, base year 1995)



When you start looking, you can find interesting things!

Government Imposed Compliance Plans in the following situations

- \$15,000,000 overcharging
- \$30,000,000 exceptional status and oversight program; misuse of federal grant funds
- \$12,000,000 overbilling
- \$650,000 research fraud and abuse
- \$1,500,000 cost-sharing
- \$1,200,000 inflated research grant costs
- \$150,000 misuse of federal funds
- \$2,500,000 cost-sharing, salaries, double charging
- \$6,500,000 mischarging awards (commingling)
- \$3,400,000 misuse of federal funds

Developing Effective Compliance Programs requires tough choices and firm decisions



References

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- A variety of University web sites
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Opportunities for Governments

- Promote compliance
- Define expectations and roles of the government, the institution, and the individual
- Detect wrongdoings and act appropriately
- Assure the public that public resources are in trusted hands